

THE CODE OF IOWA

AS REPORTED TO THE

FOURTEENTH GENERAL ASSEMBLY

BY THE COMMISSIONERS

FOR

THE REVISION OF THE STATUTES.

PART I. PUBLIC LAW.

DES MOINES:
G. W. EDWARDS, STATE PRINTER.
1872.



PART FIRST.

PUBLIC LAW.

TITLE I. OF THE SOVEREIGNTY AND JURISDICTION ON THE STATE, AND OF THE LEGISLATIVE DEPARTMENT.

CHAPTER 1. *Of the Sovereignty and Jurisdiction of the State.*

2 SEC. 1. The boundaries of the State of Iowa are defined in the preamble
of the constitution.

2 SEC. 2. The state possesses sovereignty co-extensive with the bounda-
ries referred to in the preceding section, subject to such rights as may at
3 any time exist in the United States, in relation to the public lands, or to
4 any military or naval establishment within the above limits.

2 SEC. 3. The state has concurrent jurisdiction in the waters of any river
or lake which forms a common boundary between this and any other state.

2 SEC. 4 Exclusive jurisdiction over such lands of this state, as the United
States has already purchased or, may hereafter purchase within the limits of the
3 state, is hereby ceded to the United States of America; provided said Uni-
4 ted States shall purchase said lands of the purchasers thereof, and shall erect
5 thereon buildings for public uses; and provided further that nothing in this
6 section shall be so construed as to prevent, on such lands, the service of ju-
7 dicial process, issued by any court in this state, or to prevent the courts of
8 this state from exercising jurisdiction of crimes committed thereon.

2 SEC. 5. All the lands over which jurisdiction is hereby ceded, and the
buildings and property which may be placed thereon by said United States,
3 shall be exempt from taxation so long as the same are owned by the United
4 States.

CHAPTER 2. *Of the General Assembly:*

2 SEC. 1. The sessions of the general assembly shall be held at the seat of
government, unless the governor shall specially convene them at some other
3 place, in times of pestilence or public danger.

2 SEC. 2. At two o'clock in the afternoon of the day of the sitting of the
general assembly, and at the place of sitting of the houses respectively, the
3 president of the senate shall call the senate to order; and some person
4 claiming to be elected a member of the house of representatives shall call
the house to order, and the persons present claiming to be elected to the
5 senate, shall choose a secretary, and those of the house of representatives a
6 clerk for the time being. In case of the absence of the president of the
7 senate at the time of the convening of the general assembly, the senate
8 may be called to order by any person claiming to be elected a member of
9 that body, and a temporary president shall be chosen from their own num-
10 ber, by the persons claiming to be elected senators.

2 SEC. 3 The secretary and clerk so elected, shall receive and file the cer-
3 tificates of election presented, each for his own house, and make a list of
the persons who appear by such certificates to be elected members of the
4 respective houses.

2 SEC. 4. The persons so appearing to be members shall then proceed to
3 elect such other officers as may be requisite for the time being; and when so
4 temporarily organized, shall choose a committee of five by ballot, or *viva*
5 *voce*, as those present may determine, which committee shall examine and
report upon the credentials of the persons claiming to be members.

2 SEC. 5. When the above committee has reported, those who are
3 reported as holding certificates of election from the proper authority, shall
4 proceed to the permanent organization of their respective houses by election
of officers.

2 SEC. 6. No member of the general assembly shall be questioned in any
3 other place for any speech or debate in either house.

2 SEC. 7. Any member is authorized to administer oaths in the house of
3 which he is a member, and while acting on a committee he may administer
4 oaths upon the business of such committee.

2 SEC. 8. The compensation of each member of the general assembly
3 shall be five dollars per day, during the session thereof, and three dollars for
4 every twenty miles travel in attending such session and returning, to be com-
5 puted by the nearest traveled route within the state from the residence of
such members to the place where such session is held.

2 SEC. 9. The amount allowed to each member for postage shall not exceed
3 three dollars per week, and for stationery two dollars per week.

2 SEC. 10. The speaker of the house of representatives shall hold his office
3 until the first day of the meeting of a regular session of the general assembly
4 next after that at which he was elected. All other officers elected by the
5 senate or house of representatives, shall hold their offices only during the
session at which they were elected.

2 SEC. 11. Each house of the general assembly has authority to punish as
3 a contempt, by fine and imprisonment, or either of them, the offense of
4 knowingly arresting a member in violation of his privilege; of assaulting
5 or threatening to assault a member, or threatening to do any harm to the
6 person or property of a member, for anything by him said or done in either
7 house as a member thereof; of attempting by menace or other corrupt
8 means, to control or influence a member in giving his vote, or to prevent
9 his giving it; of disorderly or contemptuous conduct tending to disturb its
10 proceedings; of refusing to attend, or to be sworn, or to be examined, as a
11 witness before either house or a committee when duly summoned; of
12 assaulting or preventing any person going to either house, or its committee
13 by order thereof, knowing the same; of rescuing or attempting to rescue any
14 person arrested by order of either house, knowing such arrest; and of
15 knowingly impeding any officer of either house in the discharge of his du-
ties as such.

2 SEC. 12. Imprisonment for contempt of either house shall not extend
3 beyond the session at which it is ordered, and shall be in the jail of the
4 county in which the general assembly may then be sitting, or, if there is no
jail, then in one of the nearest county jails.

2 SEC. 13. Fines and imprisonment for contempt shall be only by virtue
3 of an order of the proper house, entered on its journals, stating the grounds
4 thereof. Imprisonment shall be effected by a warrant under the hand of the
5 presiding officer for the time being of the house ordering it, countersigned
6 by the secretary of the house, running in the name of the state, and directed
7 to the sheriff or jailor of the proper county; and under such warrant the
8 officer of the house, the sheriff and jailor will be authorized to commit and
detain the person. Fines shall be collected by virtue of a similar warrant,

9 directed to any proper officer of any county in which the offender has property,
10 and executed in the same manner as executions for fines issued by courts of
11 record, and the proceeds shall be paid into the state treasury.

2 Sec. 14. Punishment for contempt, as in this chapter provided, is no bar
to any other proceeding, civil or criminal, for the same act.

3 Sec. 15. Whenever a committee of either branch of the general assem-
4 bly, or a joint committee of both branches is charged with an investigation
5 requiring the personal attendance of witnesses for the purpose of giving
6 testimony or producing papers in evidence, any person may be compelled to
7 appear before such committee as a witness, by serving upon him, in the
8 same manner that a subpoena is required by law to be served in a civil case
9 in the district court, an order naming the time and place at which he is
10 required to appear, signed by the presiding officer of the house appointing
the committee and attested by its secretary or clerk; or in the case of a
joint committee, signed and attested by the officers of either house.

2 Sec. 16. Witnesses shall be entitled to the same compensation for attend-
3 ance in obedience to the preceding section before an investigating commit-
4 tee, as provided by law for witnesses before the district court, but shall not
have the right to demand payment of their fees in advance.

2 Sec. 17. At each regular session of the General Assembly next preceding
3 the expiration of the constitutional term of service of a United States senator,
4 or at any session when a vacancy shall exist, at an hour to be designated by a
5 resolution of either branch, with the concurrence of the other branch of the
6 general assembly, the members of both houses thereof shall meet in con-
7 vention in the hall of the house of representatives, for the purpose of elec-
8 ting a senator or senators, by joint vote, in pursuance of the Constitution of
the United States, to represent this state in the senate of the United States.

2 Sec. 18. The president of the senate, or in his absence, the speaker of
3 the house of representatives, shall preside over the deliberations of the con-
4 vention; and in the absence of both, a temporary president shall be ap-
pointed by joint vote.

2 Sec. 19. At any time prior to meeting in convention aforesaid, after the
3 time for meeting has been designated as aforesaid, each branch of the gen-
4 eral assembly shall appoint one teller, and the two tellers thus appointed
shall act as judges of the election.

2 Sec. 20. The secretary of the senate, and the chief clerk of the house
3 of representatives, shall each keep a fair and correct record of the proceed-
4 ings of the convention, which shall be entered upon the journals of each
5 branch of the general assembly. The chief clerk of the house of represen-
tatives shall act as secretary to the convention.

2 Sec. 21. The names of the members of the general assembly shall be
3 arranged, by the secretary, in alphabetical order, and each member shall vote
in the order in which his name stands when thus arranged.

2 Sec. 22. When the convention shall be organized as aforesaid, the mem-
3 bers present shall proceed to choose, *viva voce*, a senator or senators, as the
4 case may be, to represent this state in the senate of the United States. The
5 name of the person voted for, and of the members voting, shall be entered
6 in writing by the tellers, who shall, after the secretary shall have called the
7 names of the members a second time, and the name of the persons for whom
8 each member has voted, report to the president of the convention the num-
ber of votes given for each candidate.

2 Sec. 23. If neither of the candidates shall receive the votes of a majori-
ty of the members present, a second poll may be taken, and so from time

3 to time, until some one of the candidates shall receive a majority of the
4 votes of the members present.

SEC. 24. If the election shall not be completed at the first meeting, the
2 president shall adjourn the convention whenever and to such time as a ma-
3 jority of the members then present shall determine, and so from time to
4 time, until some one of the candidates shall receive a majority as afore-
5 said.

SEC. 25. When any person shall have received a majority of the votes
2 as aforesaid, the president of the convention shall declare him to be duly
3 elected a senator to represent the state, in the senate of the United States;
4 and he shall, in the presence of the members of both houses, sign two cer-
5 tificates of the election, attested by the tellers, one of which he shall trans-
6 mit to the governor, and the remaining one shall be preserved among the
7 records of the convention, and entered at length on the journals of each
8 house of the general assembly.

SEC. 26. Upon the reception of said certificate, the governor shall cause
2 a credential to be made out, with the great seal of the state affixed thereto,
3 and cause it to be delivered to such senator elect, which credential shall be
4 in form following:

5 "STATE OF IOWA, *to wit*: The general assembly of this state, on the —
6 day of —, one thousand eight hundred and —, having, in pursuance
7 of the constitution of the United States of America, chosen —
8 senator to represent this state in the senate of the United States, I, —
9 —, governor of the state of Iowa, do, by these presents, certify the
10 same to the senate of the United States.

11 Given under my hand and the great seal of the state of Iowa, this —
12 day of —, one thousand eight hundred and —."

SEC. 27. When the executive shall, by virtue of the constitution of the
2 United States, make a temporary appointment of a senator, he shall give to
3 such a senator a credential in form following:

4 "STATE OF IOWA, *to wit*: —, who was chosen United States
5 senator from this state, in pursuance of the constitution of the United States
6 of America, having died, (resigned, or otherwise, as the case may be,) during
7 the recess of the general assembly of this state, I, —, governor
8 of the state of Iowa, have, therefore, thought fit to appoint —
9 to fill the vacancy.

10 Given under my hand and the great seal of the state of Iowa, this —
11 day of —, one thousand eight hundred and —."

SEC. 28. The election of all other officers required to be elected by joint
2 vote of the general assembly, shall be conducted according to the foregoing
3 provisions as far as the same may be applicable.

SEC. 29. In the absence of other rules, the rules of parliamentary prac-
2 tice, comprised in Jefferson's Manual, shall govern the convention.

CHAPTER 3. *Of the Statutes.*

SEC. 1. When the governor approves a bill he shall set his name
2 thereto with the date of his approval.

SEC. 2. When a bill, which passes both houses of the general
2 assembly, is returned by the governor without his signature and with his
3 objections thereto, and upon reconsideration is passed in both houses by a
4 constitutional majority, it shall be authenticated as having become a law by
5 a certificate indorsed thereon or attached thereto in the following form:

6 "This bill, having been returned by the governor with his objections thereto,
 7 and having upon reconsideration been passed in both houses of the general
 8 assembly by a constitutional majority, has become a law this — day of
 10 — ;" which certificate shall be signed by the presiding officer of each of
 11 the houses.

SEC. 3. When a bill passes both houses of the general assembly
 2 and is not returned by the governor within three days after it is presented
 3 to him, and thereby becomes a law, it shall be authenticated by the gover-
 4 nor causing that fact to be certified thereon by the secretary of state
 5 in the following manner: "This bill, having remained with the governor
 6 three days (Sunday excepted,) the general assembly being in session, has
 7 become a law this — day of —.

J. C., Secretary of State."

SEC. 4. The original acts of the general assembly shall be deposited
 2 with, and kept by the secretary of state, and be printed and distributed and
 3 copies deposited for sale as the general assembly directs.

SEC. 5. All acts of a private nature, which do not expressly prescribe
 2 the time when they are to take effect, shall take effect on the thirtieth day
 3 next after the day on which they are approved by the governor, or other-
 4 wise become law in conformity with the constitution.

SEC. 6. All acts which are to take effect by publication in the news-
 2 papers shall be published in at least two papers, (one at least of them at the
 3 seat of government if there be one there,) and shall take effect on the
 4 twentieth day after the date of the last publication, and the secretary of
 5 state shall make and sign, on the original roll of each of such acts, a certifi-
 6 cate stating in what papers it was published, and the date of the last publi-
 7 cation in each of them, and such certificate shall be conclusive thereof, and
 8 the printing thereof at the foot of the act in the volume of printed laws
 9 shall be evidence of its own genuineness.

SEC. 7. The acts of a public nature and resolutions passed at the regular
 2 sessions of the general assembly are required to be printed, bound, and de-
 3 posited in the office of the secretary of state, by the first day of May follow-
 4 ing the session, and the secretary shall distribute them to all the counties of
 5 the state by the first day of June following, and such acts as have not taken
 6 effect before by virtue of other provisions of law, shall take effect throughout
 7 the state on the *fourth* day of July following. And every such act shall
 8 be presumed to have taken effect at that time unless the contrary appear as
 9 provided in the following two sections.

SEC. 8. In case the statutes are not in fact distributed to all the counties
 2 by the first day of July, the secretary of state shall make, sign, and file in
 3 his office, a certificate stating on what day they were deposited in the last
 4 county, and they shall take effect on the tenth day after the day on which
 5 they are so deposited.

SEC. 9. The said certificate, or a copy thereof under the hand of the
 2 secretary and the seal of the state, shall be considered evidence of the fact
 3 therein stated, and, immediately after filing it in his office, the secretary
 4 shall publish a copy thereof for four weeks successively in six different
 5 newspapers, two of them being papers published at the seat of government
 6 (if such there be,) which publication shall be presumptive evidence of the
 7 existence of such a certificate.

SEC. 10. The acts and resolutions of the special sessions shall be pub-
 2 lished at such time, and in such manner, as the general assembly direct in
 3 conformity with the constitution.

2 SEC. 11. The auditor of state is authorized to allow any accounts for
 3 publication of laws ordered by the general assembly at the expense of the
 4 state, where the compensation for such publication is not fixed by law:
 5 *provided*, that he shall not allow more than thirty cents per square of ten
 6 lines.

2 SEC. 12. The board of supervisors of each county shall at each regular
 3 meeting in January select two newspapers having the largest circulation,
 4 or one if but one be published in the county, in which shall be published
 5 all general laws enacted by the general assembly.

2 SEC. 13. In counties having a population exceeding eighteen thousand
 3 inhabitants, in which a newspaper is printed in the German or other foreign
 4 language, the general laws aforesaid shall be published in one of such papers
 5 in addition.

2 SEC. 14. It shall be the duty of the secretary of state to furnish to the
 3 clerks of the several boards of supervisors, printed slips or copies of news-
 4 papers containing all general laws enacted and special laws applicable within
 5 the county, and it shall be the duty of said clerk, on the receipt thereof, to
 6 deliver the same to the newspapers selected as aforesaid, for publication
 7 therein.

2 SEC. 15. The compensation for the publication of the laws as aforesaid
 3 shall be one-third the rates of legal advertisements as allowed by law; and
 4 all claims for such compensation shall be audited and paid as other claims
 5 against the state.

2 SEC. 16. In the construction of the statutes of this State, following rule
 3 shall be observed unless such construction would be inconsistent with the
 4 manifest intent of the general assembly or repugnant to the context of the
 5 statute.

- 5 1. The repeal of a statute does not revive a statute previously repealed;
 6 nor does such repeal affect any right which accrued, any duty im-
 7 posed, any penalty incurred, nor any proceeding commenced, under
 8 or by virtue of the statute repealed.
- 9 2. Words and phrases shall be construed according to the context, and
 10 the approved usage of the language; but technical words and
 11 phrases, and such others as may have acquired a peculiar and ap-
 12 propriate meaning in law, shall be construed according to such
 13 peculiar and appropriate meaning.
- 14 3. Words importing the singular number only may be extended to sev-
 15 eral persons or things, and words importing the plural number only
 16 may be applied to one person or thing, and words importing the
 17 masculine gender only may be extended to females.
- 18 4. Words giving a joint authority to three or more public officers or other
 19 persons shall be construed as giving such authority to a majority
 20 of them, unless it be otherwise expressed in the act giving the
 21 authority.
- 22 5. The words "highway" and "road" include bridges, and may be held
 23 equivalent to the words "county way," "county road," "common
 24 road," and "state road."
- 25 6. The words "insane person" include idiots, non-compotes, lunatics,
 26 and distracted persons.
- 27 7. The word "issue," as applied to the descent of estates, include all the
 28 lawful lineal descendents of the ancestor.
- 29 8. The word "land," and the phrases "real estate," and "real property,"
 30 include lands, tenements and hereditaments, and all rights thereto,
 31 and interests therein, equitable as well as legal.

- 82 9. The words "personal property" include money, goods, chattels, evi-
 33 dences of debt, and "thing in actions."
 34 10. The word "property" includes personal and real property.
 35 11. The word "month" means a calendar month, unless otherwise ex-
 36 pressed, and the word "year" alone, and also the abbreviation
 37 "A. D.," is equivalent to the expression "year of our Lord."
 38 12. The word "oath" includes "affirmation" in all cases where an affir-
 39 mation may be substituted for an oath; and in like cases the word
 40 "swear" includes the word "affirm."
 41 13. The word "person" may be extended to bodies politic and corpo-
 42 rate.
 43 14. Where the seal of a court or public office, or officer, may be required
 44 by law to be affixed to any paper, the word "seal" shall include an
 45 impression of such seal upon the paper alone as well as upon wax
 46 or a wafer affixed thereto.
 47 15. The word "state" when applied to the different parts of the United
 48 States, includes the District of Columbia and the territories, and the
 49 words "United States" may include the said district and territories.
 50 16. The word "town" may include cities as well as incorporated villages.
 51 17. The word "will" includes codicils.
 52 18. The words "written" and "in writing" may include printing, engrav-
 53 ing, lithography and any other mode of representing words and let-
 54 ters; excepting those cases where the written signature, or the mark
 55 of any person is required by law.
 56 19. The term "sheriff" may be extended to any person performing the
 57 duties of the sheriff, either generally, or in special cases.
 58 20. The word "deed" is applied to an instrument conveying lands, but
 59 does not imply a sealed instrument; and the words "bond" and
 60 "indenture" do not necessarily imply a seal, but in other respects
 61 mean the same kind of instruments as heretofore; and the word
 62 "undertaking" means a promise or security in any form, where re-
 63 quired by law.
 64 21. The term "executor" includes an administrator where the subject-mat-
 65 ter applies to an administrator.
 66 22. The Roman numerals and Arabic figures are to be taken as part of the
 67 English language.
 68 23. Unless the terms clear days are used, the mode of computing time is
 69 by excluding the first day and including the last, and should the
 70 last day fall on Sunday, the length of time prescribed shall be ex-
 71 tended one day, so as to include the whole of the following Mon-
 72 day, unless otherwise expressed.
 73 24. Degrees of consanguinity and affinities in this code, shall be computed
 74 by the civil law.

CHAPTER 4. *Of the Code and its Operation*

SECTION 1. In the citation of the statutes of this state, this statute shall
 2 not be reckoned as one of the statutes of the present political year, but it may
 3 be designated as the "CODE," adding as may be necessary the title, chapter,
 4 or section.

SEC. 2. All public and general acts passed prior to the present session
 2 of the general assembly, and all public and special acts the subjects whereof are

3 revised in this code, or which are repugnant to the provisions thereof, are hereby
4 repealed, subject to the limitations and with the exceptions herein expressed.

SEC. 3. Local acts are not repealed, unless it be herein so expressed, or
2 unless the provisions of this code are repugnant thereto.

SEC. 4. The existing acts continue in force until the provisions of the code
2 take effect upon them or their subjects respectively.

SEC. 5. This repeal of existing acts shall not affect any act done, any
2 right accruing or which has accrued or been established, nor any suit or pro-
3 ceeding had or commenced in any civil cause, before the time when such
4 repeal takes effect; but the proceedings in such cases shall be conformed to
5 the provisions of this code as far as consistent.

SEC. 6. No offense committed and no penalty or forfeiture incurred un-
2 der any act hereby repealed and before the repeal takes effect, shall be affected
3 by the repeal; except that when a punishment, penalty, or forfeiture is miti-
4 gated by the provisions herein contained, such provisions shall be applied to
5 a judgment to be pronounced after the repeal.

SEC. 7. No suit or prosecution, pending when this repeal takes effect,
2 for an offense committed, or for the recovery of a penalty or forfeiture incurred,
3 shall be affected by the repeal, but the proceedings may be conformed to the
4 provisions of this code as far as consistent.

SEC. 8. Persons holding office when this repeal takes effect, may con-
2 tinue to hold the same until the provisions of the code are carried into effect
3 in relation to them respectively, except those offices which are herein abol-
4 ished, and those as to which a different provision is made.

SEC. 9. The terms "heretofore" and "hereafter," as used in this code,
2 have relation to the time when this statute takes effect.

TITLE II. OF THE EXECUTIVE DEPARTMENT.

CHAPTER 1. *Of the Governor.*

SEC. 1. The governor shall keep the executive office at Des Moines, in
2 which shall be transacted the business of the executive department of the
3 state government, and he shall keep a secretary at said office in his absence.

SEC. 2. The governor shall cause a journal to be kept in the executive
2 office, in which shall be made an entry of every official act done by him,
3 and such entry shall be made at the time when the act is done. If acts are
4 done elsewhere than in the executive office, in cases of emergency, an entry
5 thereof shall be made in the executive journal as soon thereafter as possible.

SEC. 3. The governor shall cause a military record to be kept, in which
2 shall be made an entry of every act done by him as commander-in-chief.

SEC. 4. Whenever the governor of this state shall be satisfied, by au-
2 thentic information, that a capital crime has been committed within the
3 state, and that the person or persons charged with the commission of such
4 crime have escaped from arrest, or remain unarrested, he may, in his dis-
5 cretion, offer a reward not exceeding five hundred dollars for the arrest
6 and delivery to the proper authorities of the person or persons so charged,
7 and where the governor shall be satisfied that such reward has been earned
8 in compliance with his proclamation offering such reward, he shall give to
9 the person entitled to the same a certificate stating that fact, and the auditor,
10 upon the presentation of such certificate, shall issue his warrant on the treas-
11 urer for the amount so certified, which shall be paid as other warrants.

2 SEC. 5. Whenever the governor receives information of the commence-
 3 ment of any action or proceeding by which the rights, interests, or property
 4 of the state are liable to be affected, he may employ counsel to act in con-
 5 junction with the counsel of the proper party, to protect the interests of the
 6 state, and when any civil action is, or is about to be commenced by any
 7 prosecuting attorney in behalf of the state, if in the opinion of the gov-
 8 ernor, the case be such as to render it advisable, he may employ addiitonal
 counsel to assist in the cause.

2 SEC. 6. Expenses incurred under the preceding section and in causing
 3 the laws to be executed (when not otherwise provided for) and also in re-
 4 capturing fugitives from justice fleeing from this state, may be allowed by
 5 the governor and paid from the contingent fund, or by appropriation made
 by the general assembly.

CHAPTER 2. *Of the Secretary of State.*

2 SEC. 1. The secretary of state shall keep his office at the seat of gov-
 3 ernment, and perform all duties which at any time may be required of him
 4 by law, and he shall have charge of and keep all the acts and resolutions of
 5 the territorial legislature, and those which have been or may be passed by
 6 the general assembly of the state, the enrolled copy of the constitution of
 7 the state, all official bonds of officers approved by the governor, except the
 8 bond of such secretary, and all books, records, maps, registers, and other
 papers, which now are or hereafter may be deposited to be kept in his office.

2 SEC. 2. Commissions required by law to be issued by the governor shall
 3 be countersigned by the secretary, who shall register each commission in a
 4 book to be kept for that purpose, specifying the name of the officer, the office
 conferred, the date of the commission, and the tenure of the office.

2 SEC. 3. The secretary shall procure, at the expense of the state, for each
 3 county when organized, a seal for the district court of the same description
 4 with that heretofore adopted; and also provide the necessary stationery and
 5 fuel for his office, and that for the general assembly during its session, the
 accounts for which shall be audited like other claims on the state.

2 SEC. 4. Immediately after the adjournment of the general assembly he
 3 shall furnish the printer authorized to print the statutes with copies of the
 4 acts and resolutions passed at the session, prepared with marginal abstracts,
 and cause them to be printed in a plain manner as a pamphlet.

2 SEC. 5. He shall make his certificate that the acts and resolutions therein
 3 contained are truly copied from the original rolls, and cause the certificate to
 4 be printed at the end of each volume, which shall be presumptive evidence of
 their correctness.

2 SEC. 6. The secretary is required to report to the general assembly at
 3 each regular session, (and at such other times as required,) an abstract for
 4 each year of the criminal returns received from the clerks of the district
 court, embracing all the facts contained in such returns.

2 SEC. 7. He shall furnish to the library of congress two copies of all
 3 laws, legislative journals, supreme court reports, and reports of state officers,
 4 published by the state of Iowa, immediately upon the publication thereof.

CHAPTER 3. *Of the Auditor of State.*

- 2 SEC. 1. The auditor is the general accountant of the state, and it is his
3 duty :
- 4 (1.) To keep and state all accounts between the state of Iowa and the
5 United States or any other state, or any public officer of this state
6 indebted thereto, or intrusted with the collection, disbursement, or
7 other management of any funds belonging to the same, when they
8 are derivable from, or payable into, the state treasury ;
 - 9 (2.) To settle the accounts of all county treasurers and other collectors
10 and receivers of state revenues, taxes, tolls, and incomes, payable
11 into the state treasury, for each of their official terms separately ;
 - 12 (3.) To keep fair, clear, and separate accounts of all the revenues, funds,
13 and incomes of the state payable into the state treasury, and also
14 of all disbursements and investments thereof, showing the partic-
15 ulars of the same ;
 - 16 (4.) To settle the accounts of all public debtors for debts due the state
17 treasury, and require such persons or their legal representatives,
18 who have not accounted at the proper time, to settle their accounts ;
 - 19 (5.) To settle all claims against the treasury, and when the law recognizes
20 a claim but no appropriation has been made therefor, to settle the
21 claim and give the claimant a certificate thereof and report the
22 same to the general assembly ;
 - 23 (6.) To direct and superintend the collection of all money payable into
24 the treasury, and to cause to be instituted and prosecuted the proper
25 action for the recovery of debts and other moneys so payable ;
 - 26 (7.) To superintend the fiscal affairs of the state and secure their manage-
27 ment in the manner required by law, and to furnish proper instruc-
28 tions and forms to the assessors and treasurers of the counties, as
29 may be found expedient ;
 - 30 (8.) To draw warrants on the treasurer for money directed by law to be
31 paid out of the treasury as the same may become payable ; and
32 each warrant shall bear on its face its number, date, amount, the
33 name of the payee, and a reference to the law under which it is
34 drawn, be entered in a book kept for that purpose in the order of
35 issuance, and as soon as practicable after issuing such warrant he
36 shall certify the above particulars in relation to it, to the treasurer,
37 who is required to enter the same in the same order ;
 - 38 (9.) To have the custody of, and keep, all books, papers, records, docu-
39 ments, vouchers, and all conveyances, leases, mortgages, bonds,
40 and other securities, appertaining to the fiscal affairs and the pro-
41 perty of the state, which are not required by law to be kept in
42 some other office ; and to have charge of all property of the state
43 where no other provision is made by law for its custody ;
 - 44 (10.) To furnish to the governor on his requisition, information in writ-
45 ing upon any subject connected with this office ; and to suggest to
46 the governor, or the general assembly, plans for the improvement
47 and management of the public revenue and property ;
 - 48 (11.) To report to the general assembly, at its regular sessions, and at
49 such other times as it may require, a complete statement of the
50 revenue, funds, income, taxable property, and other resources of
 the state, and of the property of the state, known to his office, and

51 of the public revenues and expenditures of the state since his last
52 report, up to the first Monday of the November preceding each
53 regular session, with a detailed estimate of the expenditures to be
54 defrayed from the treasury for the ensuing two years, specifying
55 each object of expenditure, and distinguishing between such as are
56 provided for by appropriations, and such as require to be provided
57 for, and showing the probable deficiency of any former appropria-
58 tions;

69 (12.) To perform all other duties which may from time to time be required
60 of him by law.

2 Sec. 2. When the amount due from the state to any person exceeds
3 twenty dollars, the auditor is directed, if requested, to divide the sum into
4 parcels of not less than ten dollars, and to issue warrants for the several
5 sums.

2 Sec. 3. The auditor may at any time require any person receiving
3 money, securities, or property, or having the management, disburse-
4 ment, or other disposition, of any property, money, or securities, of the
5 state, of which an account is kept in his office, to render statements thereof
6 or information touching the same in his possession. And any such person
7 refusing or neglecting to render such statement or information shall forfeit
8 the sum of twenty-five dollars, to be recovered by civil action in the name
9 of the state.

2 Sec. 4. Every claim against the state shall be presented to the auditor
3 for settlement within two years after the claim accrues, and not thereafter;
4 and when a claim is so presented, the auditor is authorized to swear and
5 examine the claimant, and any other persons as witnesses, touching the
6 claim, or cause them to answer by affidavit or deposition.

2 Sec. 5. If any officer who is accountable to the treasury in respect to any
3 money or property, neglects to render his account to the auditor within the
4 time prescribed by law, or, if no time be so prescribed, then within twenty
5 days after being so required to do so by the auditor, the auditor shall state an
6 account against him from the books of the auditor's office, charging ten per
7 cent. damages on the whole sum appearing due, and interest at the rate of
8 six per cent. per annum on the aggregate from the time when the account
9 should have been rendered; all which may be recovered by an action
0 brought on such account stated, or on the official bond of the officer.

2 Sec. 6. If any such officer fail to pay into the treasury the amount re-
3 ceived by him, within the time prescribed by law, or having settled an
4 account with the auditor fails to pay the amount due from himself, the audi-
5 tor shall charge him with twenty per cent. damages on the amount due, with
6 interest on the aggregate from the time the first sum was payable, at the
7 rate of six per cent. per annum, and the whole may be recovered by an
8 action brought on either such account stated or on the official bond of the
9 officer, and he shall forfeit his commissions.

2 Sec. 7. The penal provisions in the preceding two sections are subject to
3 any legal defense which the officer may have against the account as stated by
4 the auditor, but judgment for costs shall be rendered against the officer in
5 the action, whatever be its result, unless he rendered an account within the
6 time named in the above two sections.

2 Sec. 8. When a county treasurer, or other collector or receiver of public
3 money, seeks to obtain credit on the books of the auditor's office for pay-
4 ment made to the treasurer, before giving such credit the auditor shall require
5 him to take and subscribe an oath that he has not used or appropriated any

5 of the public money for his private benefit, (further than that which the law
6 allows him,) nor for the benefit of any other person.

2 SEC. 9. In those cases where the auditor is authorized to call upon per-
3 sons or officers for information or statements, or to render accounts, he may
4 issue his requisition therefor, in writing, to the person or officer called upon,
5 allowing reasonable time, which, being served as a notice in a civil action,
6 by the sheriff or any constable of the county in which the person or officer
7 called upon resides or exercises his office, and returned to the auditor with
8 the service endorsed thereon, shall be evidence of the making the requisition
9 therein expressed.

2 SEC. 10. It shall be the duty of the state auditor, from time to time, to pre-
3 pare and furnish to all the clerks of the boards of supervisors, and the county
4 treasurers and collectors of taxes, directions and forms, in compliance with
5 which such clerks, treasurers, and collectors, shall severally keep their accounts
6 relating to the revenue. Also, forms for the reports required to be made by
7 said officers to said auditor; and forms of receipts to be given by the treas-
8 urers and collectors of taxes to tax-payers; and said clerks, treasurers and
9 collectors shall conform in all respects to the forms and directions thus pre-
scribed.

2 SEC. 11. The auditor of state shall, on the first Monday in March and
3 September of each year, apportion the interest of the permanent school
4 fund among the several counties of this state, in proportion to the number
5 of persons between five and twenty-one years of age, in each, as shown by
6 the last report of the number of such persons filed with him by the super-
intendent of public instruction.

2 SEC. 12. All things pertaining to the auditor's office are at all times open
3 to the inspection of the governor, the general assembly, or either house
thereof, and to any committee thereof appointed to examine into them.

2 SEC. 13. All books, maps, stationery, furniture, fuel, and other neces-
3 saries for the use of the auditor's office, are to be furnished at the expense
of the state.

CHAPTER 4. *Of the Treasurer of State.*

2 SEC. 1. It shall be the duty of the treasurer of state to keep an accurate
3 account of the receipts and disbursements at the treasury, in books to be
4 kept for that purpose, in which he shall specify the names of the persons
from whom money is received, and on what account, and the time thereof.

2 SEC. 2. He shall enter the memorandum of warrants issued as certified
3 to him by the auditor, and he shall receive in payment of public dues the
4 warrants issued by the auditor in conformity with law, and redeem such
5 when presented if there be money in the treasury not otherwise appropri-
6 ated; and on receiving any such warrant, cause the person presenting it to
7 indorse it, and the treasurer shall write on its face the word "redeemed,"
8 and enter in his book containing the auditor's memoranda in the appropriate
9 columns, the name of the person to whom in fact paid, the date of the pay-
ment, and the amount of the interest if any.

2 SEC. 3. When any amount is paid into the treasury, the treasurer is
3 required to give the person paying receipts in duplicate, stating the fund
4 to which the money belongs, one of which may be kept by him, and the
5 other must be delivered to the auditor in order to obtain the proper credit,
and the amount shall be charged to the treasurer.

2 SEC. 4. He shall pay no money from the treasury but upon the warrant
3 of the auditor, and shall pay such warrants in the order of their issuance, or
4 if there be no money in the treasury from which such warrant can be paid he
5 shall, upon request of the holder, indorse upon the warrant the date of its
6 presentation, and sign it, from which time the warrant shall bear an interest
of six per cent per annum, until the time limited in the next section.

2 SEC. 5. He shall keep a record of the number and amount of the sev-
3 eral warrants so presented and indorsed for non-payment, and when there
4 are funds in the treasury for their payment to an amount sufficient to render
5 it advisable, he shall give notice thereof, and to what number of warrants
6 the funds will extend, or the number of the outstanding warrants which the
7 fund will pay, by three insertions in a newspaper printed at the seat of gov-
8 ernment; and at the expiration of thirty days from the day of the first
9 insertion the interest on the warrants so notified of being payable shall
cease.

2 SEC. 6. Once in each week he shall certify to the auditor the number,
3 date, amount, and payee, of each auditor's warrant taken up by him, with
4 the date when taken up, and the amount of interest allowed, if any: and on
5 the first Monday of March, June, September and November annually he is
6 directed to account with the auditor and deposit in his office all such war-
7 rants received at the treasury, and take the auditor's receipt therefor.

2 SEC. 7. As soon as practicable after the first Monday of November pré-
3 ceding the regular session of the general assembly, he shall report to the
4 governor the state of the treasury up to that date, exhibiting the amount
5 received and paid out by the treasurer since his last report, and the balance
6 remaining in the treasury.

2 SEC. 8. It is his duty to submit his books, accounts, vouchers, and funds,
3 to the inspection of the governor, the general assembly, either house thereof,
4 or any committee of either house appointed for that purpose, when re-
5 quired thereby.

2 SEC. 9. The expenses of the treasury are to be audited like other
3 claims on the state, and paid by the state.

2 SEC. 10. The treasurer of state shall keep in the safe in his office all
3 moneys received by him as such treasurer, until the same are withdrawn
4 therefrom upon warrants issued by the auditor of state in accordance with
5 law. The treasurer shall not deposit any of the moneys received by him as
6 treasurer with, or lend any portion thereof to any person or persons, or asso-
7 ciations of persons whatever, or to any company incorporated or unincorpor-
8 ated, nor shall he in any manner whatever allow said moneys, or any part
9 thereof, to be withdrawn from said safe or used in any manner whatever, oth-
erwise than may be provided by law.

2 SEC. 11. Should the treasurer of state at any time violate any of the pro-
3 visions of the foregoing section, he shall be deemed guilty of a misdemea-
4 nor, and upon conviction thereof shall be fined in any sum not less than five
5 thousand dollars, nor more than twenty thousand dollars, and imprisoned
6 in the county jail not less than one year nor more than five years, or both,
7 at the discretion of the court.

2 SEC. 12. Whenever interest upon any bonds of this state becomes due,
3 the state treasurer shall provide sufficient funds on the day such interest falls
4 due, at the place where such interest shall be payable; and persons holding
5 the said bonds are required to present the same at such place within ten days
6 from such day. At the expiration of the said ten days the treasurer shall
7 cause the balance of the funds remaining unexpended, (if any), and vouchers
for interest paid, to be returned to his office in Des Moines, Iowa.

CHAPTER 5. *Of the State Land Office, and the Register thereof.*

SECTION 1. For the purpose of preserving a proper record of all lands
2 belonging to the state, and of their final disposition, and of transacting
3 business in relation thereto, there shall be a state land office established at
4 the seat of government, with a register thereof, who shall be elected by the
5 people.

SEC. 2. The books and records of the state land office shall be so kept
2 as to present and preserve an accurate chain of title, from the general gov-
3 ernment to the ultimate purchasers of each smallest legal subdivision of
4 land; and to preserve a permanent record in books suitably indexed, of all
5 correspondence with the general government, or any of its departments, in
6 relation to state lands: and to preserve by proper records thereof, copies of
7 the original lists furnished by the state selecting agents, and of all other
8 papers in relation to state lands which are of permanent interest.

SEC. 3. Separate tract-books shall be kept for the university lands, the
2 saline lands, the half million acre grant, the sixteenth sections, the swamp
3 lands, and such other lands as the state now owns, or may hereafter own,
4 so that each description of state lands shall be kept separate from all others,
5 and each set of tract books shall be a complete record of all the lands to
6 which they relate.

SEC. 4. Said tract books shall be ruled in a manner similar to those used
2 in the United States land offices, so as to record each tract by its smallest
3 legal subdivisions, its section, township, and range, and to whom sold, and
4 when, the price per acre, to whom patented, and when.

SEC. 5. The state land office shall be kept open for business during
2 business hours, and shall have the personal supervision of the register; the
3 documents and records therein shall be subject to inspection, in the presence
4 of the register, by parties having an interest therein, and certified copies
5 thereof, signed by said register, with the seal of said office attached, shall be
6 deemed presumptive evidence of the fact to which they relate, in all courts
7 of this state, and on request they shall be furnished by the register for a
8 reasonable compensation.

SEC. 6. All patents for lands shall issue from the state land office, and
2 shall be signed by the governor, and recorded by the register, and each pat-
3 ent shall contain therein a marginal certificate of the book and page on which
4 it is recorded, which certificate shall be signed by the register, and all
5 patents shall be delivered to the patentees free of charge.

SEC. 7. No patents for any portions of the state lands now set apart
2 for educational purposes shall issue, except upon the written requisition of
3 the auditor of state, which requisition the register of the state land office
4 shall file and record; and no patent shall issue for any other lands belong-
5 ing to the state, except upon the written requisition of the person or persons
6 specially charged with the custody of the same, or in pursuance of law.

SEC. 8. The register is authorized, empowered, and required to correct
2 all errors and discrepancies in the descriptions of tracts of lands conveyed
3 by the state to any parties found upon the records in said office, upon proper
4 evidence that such errors exist.

SEC. 9. Said register is required to attach a marginal note to each con-
2 veyance, briefly setting forth the error to be corrected, and the reason for

3 such correction, and record the same with the original deed, attaching his
4 name and the date of correction.

2 SEC. 10. Such correction, when made in accordance with the foregoing
3 provisions, shall have all the force and effect in law of a deed originally
correct.

2 SEC. 11. The register shall receive any field-notes, maps, records, or
3 other papers, relating to the public surveys of this state, whenever the same
4 shall be turned over to the state, in pursuance of an act of congress, entitled,
5 "an act for the discontinuance of the office of surveyor-general, in the sev-
6 eral districts as soon as the surveys therein can be completed, for abolishing
7 land offices under certain circumstances, and for other purposes," approved
8 June 12, 1840, and any act amendatory thereof, and shall provide for their
9 safe keeping and proper arrangement as public records; and free access to
10 the same by the lawful authority of the United States, for the purpose of
taking extracts therefrom, or making copies thereof, shall always be granted.

2 SEC. 12. It shall be the duty of the secretary of State to furnish the state
3 land office with a suitable and appropriate seal, upon which shall be en-
graved the words "Seal of the state land office of Iowa."

2 SEC. 13. Whenever the governor is satisfied by the commissioners of the
3 general land office that the title to any lands which may have been certified
4 to the state under any of the several grants, is inferior to the rights of any
5 valid interfering pre-emptor or claimant, he is authorized, and required to
6 release by deed of relinquishment such color of title to the United States,
7 to the end that the requirements of the Interior Department may be com-
8 piled with and that such tract or tracts of land may be patented by the
general government to the legal claimants.

2 SEC. 14. Whenever the governor is satisfied by proper record evidence
3 that any tract of land which may have been deeded by virtue of any dona-
4 tion or sale to the state, is not the land intended to have been described,
5 and that an error has been committed in making out the transfers, in order
6 that such error may be corrected, he is authorized to quit-claim the same to
7 the proper owner thereof, and receive a deed or deeds for the lands intended
to have been deeded to the state originally.

CHAPTER 6. *Of the Census Board and Board of Immigration.*

2 SEC. 1. The governor and secretary, auditor and treasurer of state,
3 or any three of them, constitute a census board for the state.

2 SEC. 2. The census board must prepare and cause to be printed suitable
3 blank forms for this purpose, which, together with such printed directions
4 as will be calculated to secure uniformity in the returns, must be furnished
5 to the respective county auditors, and by them to the township assessors on
6 or before the first Monday in January of the year in which the census is to
be taken.

2 SEC. 3. The township assessor of each township shall, at the time of
3 assessing property in the year eighteen hundred and seventy-five, and every
4 ten years thereafter, take an enumeration of the inhabitants in his town-
ship.

2 SEC. 4. Said assessor shall make return on or before the first day of
3 June, of such enumeration, to the auditor of the county, who shall make

3 and forward to the secretary of state on or before the first day of Sep-
4 tember, in the current year, an abstract of said census return, showing the
5 total number of males. The total number of females. The number of per-
6 sons entitled to vote.

7 The number of the militia.

8 The number of foreigners not naturalized.

9 The total number of children between five and twenty-one years of age.

10 The number of families and the number of dwelling houses.

11 The number of acres of improved and unimproved lands.

12 An enumeration of agricultural, mining and manufacturing statistics,
13 including the value of the products of the farm, herd, orchard and dairy,
14 each, and the value of manufactured articles, and of mineral sold, the year
15 preceding the census.

16 The number of miles of railroad finished and unfinished.

17 The number of colleges and universities, with the number of pupils
18 therein.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18
5 6 7 8 9 10 11 12 13 14 15 16 17 18
6 7 8 9 10 11 12 13 14 15 16 17 18
7 8 9 10 11 12 13 14 15 16 17 18
8 9 10 11 12 13 14 15 16 17 18
9 10 11 12 13 14 15 16 17 18
10 11 12 13 14 15 16 17 18
11 12 13 14 15 16 17 18
12 13 14 15 16 17 18
13 14 15 16 17 18
14 15 16 17 18
15 16 17 18
16 17 18
17 18
18

SEC. 5. The census board must require such other facts, in addition to those hereinbefore stated, to be ascertained and returned as they may deem expedient.

SEC. 6. The secretary of state shall file and preserve in his office the abstracts received from the county auditors, and cause an abstract thereof to be recorded in a book to be by him prepared for that purpose, and published in such manner as the census board may direct.

SEC. 7. When any township assessor fails to make an accurate return of the census, as herein provided, the county auditor may appoint some suitable person to take the census according to the provisions of this chapter, and at as early a day as practicable, which shall be done at the expense of the county in which the service is performed.

SEC. 8. The census board shall require any auditor failing to make returns as herein provided, to send up the returns as soon as practicable, at the expense of the delinquent county.

SEC. 9. The secretary of state shall keep a journal of the acts of the census board.

SEC. 10. The board of immigration shall be composed of seven members. The governor of the state shall be president of the board by virtue of his office, and he shall appoint one member from each congressional district for two years.

SEC. 11. The board shall meet in the city of Des Moines on the first Monday in April of each year.

SEC. 12. It shall be the duty of this board to do all which will encourage immigration into this state, either from the eastern states or from the eastern hemisphere.

SEC. 13. The board shall elect at their first meeting, a secretary from their own number, or outside of the same. The secretary shall act as commissioner of immigration. He shall be a person who is familiar with the agricultural, mineral, and other resources of the state; and it shall be his duty to prepare, publish, and distribute pamphlets and documents, setting forth facts and statistics, illustrating the advantages and material resources of the state, and containing correct information for immigrants, in relation to its climate, soil, productions, schools, railroads, and all other matters of interest to said immigrants. It shall further be the duty of said commissioner to maintain correspondence with associations and parties generally interested in immigration; and he may publish, or cause to be published,

12 in eastern journals, essays and articles, treating on, and describing truly,
 13 the agricultural, mineral, commercial, social, and other characteristics of the
 14 state. The said secretary shall act under the control of the board of immi-
 15 gration, and shall make a report of his doings to the same, at their regular
 16 meeting.

SEC. 14. The secretary shall receive a just compensation for his services,
 2 to be determined by the board, and to be paid out of the funds created as
 3 hereafter provided.

SEC. 15. The board shall have power, whenever deemed expedient by
 2 them, to appoint an agent or agents, either for the eastern states or for
 3 Europe, for the purpose of aiding and advising immigration; and such
 4 agent or agents shall act solely under the instruction of the board of immi-
 5 gration, who shall also allow them a just compensation for their services.

SEC. 16. In case of a vacancy in the board, occurring by death, removal,
 2 resignation or otherwise, such vacancy shall be filled by the governor.

SEC. 17. It shall be the duty of said board to cooperate with the board
 2 of immigration at Washington City, and to make regular reports of their
 3 labor and proceedings to the general assembly, accompanied by such refer-
 4 ences, suggestions, and statistics, as may furnish good and reliable data, and
 5 a proper basis for further legislation on the subject of immigration.

SEC. 18. The members of the board shall receive no compensation for
 2 their services, but shall be allowed the same amount of mileage that is
 3 allowed the members of the general assembly, to be paid out of the state
 4 treasury, but shall in no case be allowed for more than two meetings in one
 5 year.

CHAPTER 7. *Of Duties assigned to two or more Officers jointly; and General
 Regulations.*

SEC. 1. The auditor, secretary, and treasurer of state shall make estimates
 2 of all the paper needed for the public printing, and of all the stationery neces-
 3 sary for the general assembly, the public officers, and the supreme court, and
 4 the auditor shall advertise for sealed proposals of the quantity, quality and kinds
 5 thereof, which may be needed, in two newspapers at the capital, and in one
 6 newspaper printed at St. Louis, Chicago, and New York, for the period of
 7 sixty days, requiring a delivery of the articles at least ninety days before the
 8 same will be wanted, and bids for the same shall be opened by said auditor,
 9 treasurer and secretary, at such time as may be fixed by said advertisement;
 10 and they shall award the contracts for furnishing said stationery, paper, etc.,
 11 to the lowest responsible bidders therefor, who shall give security, to be ap-
 12 proved by them, for the performance of their contract; and upon the deliv-
 13 ery of the articles contracted for at the office of the secretary of state, at the
 14 capital, in compliance with the terms of said contracts, and presenting re-
 15 cepts therefor, signed by the secretary, to the auditor of state, he shall
 16 issue to the contractors, his warrants on the treasurer for the amount due,
 17 which shall be paid out of any money in the treasury not otherwise appro-
 18 priated.

SEC. 2. It shall be the duty of the secretary of state, to take charge of said
 2 articles, and furnish the public printer all the paper needed for the various
 3 kinds of public printing, in such quantities as may be needed for the prompt
 4 discharge of his duties, and he shall supply the governor, secretary of state,

5 auditor, treasurer, attorney-general, clerk of the supreme court, superinten-
6 dent of public instruction, and general assembly, all the stationery required
7 for public use, taking receipts of the proper officers therefor.

2 SEC. 3. In all cases where any appropriation shall be made, as a contin-
3 gent fund for any office, or officer, it shall be the duty of the person disburs-
4 ing said contingent fund to keep an account with said fund, showing when,
5 and preserve receipts, for all funds or amounts expended by him, as afore-
6 said.

2 SEC. 4. In all appropriations made for any purpose, and to be expended
3 for the state, under the direction or supervision of any person charged there-
4 with, it shall be the duty of said person to open an account with said fund,
5 showing when, to whom, and for what, the same, or any part thereof, has
6 been expended, and take and preserve receipts for all services, thus paid out
by him.

2 SEC. 5. Each person mentioned in the preceding sections, shall make re-
3 port to each session of the legislature, of the manner, to whom, and when,
4 said moneys were by him expended.

2 SEC. 6. No person above mentioned shall be credited with any expendi-
3 ture as aforesaid, unless expended in the manner contemplated by the law
4 making such appropriations, nor unless he preserves proper receipts, or
5 vouchers, for each sum paid, as above mentioned.

2 SEC. 7. All such sums, not accounted for, as above mentioned, may be
3 recovered by the state from the person charged therewith, together with
4 fifty per cent damages on the same.

2 SEC. 8. Every person appointed or elected a trustee, manager, commis-
3 sioner or inspector, or a member of any board of trustees, managers,
4 commissioners or inspectors, now or hereafter created or provided by law
5 for the government, control, management or inspection of any public build-
6 ing, improvement or institution whatever, owned, controlled or managed,
7 in whole or in part, by or under the authority or direction of this state,
8 shall, before entering upon the discharge of his duties, as such trustee,
9 manager, commissioner or inspector, take and subscribe an oath, in sub-
10 stance and form as follows: "I, (here insert affiant's name) do solemnly
11 swear that I will support the constitution of the United States, and of the
12 state of Iowa; that I will honestly and faithfully discharge the duties of
13 (here describe the nature of the office, trust or position as trustee, manager
14 or inspector, as the case may be) according to the laws that now are or that
15 may hereafter be in force, regulating said institution, and prescribing the
16 duties of trustees, managers, commissioners or inspectors thereof, (as the
17 case may be); that I will, in all things, conform to the directions contained
18 in said law or laws, and that I will not directly or indirectly, as such trustee,
19 manager, commissioner or inspector, (as the case may be) make, or enter into,
20 or consent to any contract or agreement, expressed or implied, whereby any
21 greater sum of money shall be expended or agreed to be expended than is
expressly authorized by law, at the date of such contract or agreement.

2 SEC. 9. Any such officer who shall be empowered to expend any public
3 moneys, or to direct such expenditures, is hereby prohibited from making any
4 contract for the erection of any building, or any other purpose which shall
5 contemplate any excess of expenditures, beyond the terms of the law under
6 which said officer was appointed.

2 SEC. 10. All the oaths required by this chapter shall be filed in the office
of the auditor of state, and the state auditor shall not draw any warrant upon

3 the state treasury, for the purposes for which any of said officers are ap-
4 pointed, until said oaths are so filed.

5 SEC. 11. Any person, willfully violating the provisions of sections eight
2 and nine of this chapter, or either of them, shall, upon conviction thereof,
3 be liable to a fine not exceeding five thousand dollars, or imprisonment in
4 the penitentiary not exceeding five years, or both, at the discretion of the
5 court.

6 SEC. 12. It shall be the duty of all commissioners, or architects, or super-
2 intendants, having in charge the erection of public buildings belonging to
3 the state, and of all regents, trustees, principals, directors, inspectors, and
4 wardens of any charitable school, university, asylum, or penitentiary, or
5 proper officer of other state institutions, before each regular session of the
6 general assembly, to transmit to the governor of the state (to be by him
7 laid before the assembly) a detailed report showing the expenditures of all
8 public moneys placed in, or coming into their hands, with each and every
9 separate voucher, or duplicate voucher for all expenditures they have made.

2 SEC. 13. The failure or refusal of any officer as above named to make
3 such report as is herein required, shall work a forfeiture of office, and be
3 deemed a misdemeanor, and be punished as such.

2 SEC. 14. The biennial fiscal term for all institutions required to report
2 to the governor, or to the general assembly, shall commence on the first
3 Monday of November next preceding the regular session of the general
4 assembly; and the several officers of all such institutions shall commence
5 their reports on that day, and close them on the day preceding.

2 SEC. 15. The officers, whose duty it is to make such reports, shall have
2 the same delivered to the executive office on or before the fifteenth day of
3 December following the close of the fiscal term, excepting the secretary of
4 the agricultural college and farm, whose report shall be delivered as above by
5 the first day of February following, as provided by law.

2 SEC. 16. The governor shall cause to be printed of each of said reports
2 three thousand copies, to be bound and distributed as follows: twenty-five
3 hundred copies to be bound in paper, and distributed as follows: one
4 thousand copies equally among the members of the general assembly,
5 one thousand copies to the officers making the same, for distribution by
6 them; five hundred copies to remain with the secretary of state for the use
7 of future general assemblies, and special calls therefor, and five hundred
8 copies to be stitched and bound in boards in a book containing a copy of
9 each report, to be distributed as follows: one copy to each member and
10 officer of the general assembly, one copy to each state officer and state insti-
11 tution, one copy to the office of clerk of the district court in each county, to
12 belong to said office; eighty copies to the state historical society, as now re-
13 quired by law, one hundred copies, or so many thereof as may be needed, to
14 the secretary of state for exchange with other states, and for distribution to
15 the public libraries of the state, as provided hereafter, and the remainder to
16 be placed in the state library. And further, the governor shall cause to be
17 printed three thousand copies of the report of each state officer, which shall
18 be bound and distributed in the same manner as above provided.

2 SEC. 17. Whenever any public documents are in the hands of any officer
2 of this state for distribution, one copy thereof shall be delivered to every
3 public library in the state which shall be regularly incorporated under the
4 laws of Iowa, and which shall also have filed with the secretary of state an
5 affidavit of its president and secretary, stating that it is in actual operation
6 as a public library within this state, and contains more than two hundred
7 volumes.

CHAPTER 8. *Of the State Printer.*

2 SEC. 1. The state printer shall be elected at each session of the general
3 assembly, by a joint vote of the two houses thereof, and shall hold his office
4 for the term of two years.

2 SEC. 2. The president of the senate and the speaker of the house of
3 representatives shall furnish to the person elected to the office of state
4 printer, a certificate of his election, and within ten days after receiving the
5 same, he shall give bond and security, and take the oath of office, and he
6 shall enter upon the discharge of his duties on the first day of May in the fol-
7 lowing year, and if he fail to give such bond and security, and take such
oath, his office shall become vacant.

2 SEC. 3. The bond of the state printer shall be given to the state of Iowa,
3 signed by at least three good securities, in the penalty of five thousand dol-
4 lars, conditioned for the faithful and punctual performance of all the duties
5 of his office, and shall be approved by the governor and secretary of state,
6 and filed in the office of secretary of state, to be by him recorded.

2 SEC. 4. The state printer shall, at all times during his term, keep an
3 office at the capital of the state, with sufficient material, type, presses and
4 workmen, to do all the incidental printing of the state, and all printing for
5 the state officers; and a failure to keep such office at all times at the capital
6 during his said term, ready to do all work that may be required of him,
7 promptly and in a workman-like manner, shall be deemed a resignation of
the office.

2 SEC. 5. If the office of state printer shall become vacant from death, re-
3 signation, or otherwise, the governor shall appoint a public printer, who
4 shall give bond and qualify in the same manner, and shall hold his office for
5 the same time that the person in whose stead he shall be appointed would
have held.

2 SEC. 6. The state printer shall print the laws, the journals of the two
3 houses of the general assembly, the incidental printing thereof, and all forms
4 and blanks that may be required to supply the offices of the governor, secre-
5 tary of state, auditor, treasurer, and superintendent of public instruction.

2 SEC. 7. The laws, journals, and all other printing in book form, shall be
3 executed in small pica type, on pages to contain not less than fifteen hundred
4 ems, and shall be printed on strong and fair paper of good quality, and the
5 head notes and indexes, printed by the state printer, shall be in brier type.

2 SEC. 8. All the state printing shall be done in a neat, substantial and
3 workmanlike manner, and shall be promptly performed and delivered, so
4 that the public business shall not be delayed, nor the public interest permit-
5 ted to suffer from any failure to have the work done in a reasonable and
6 proper time.

2 SEC. 9. It shall be the duty of the secretary of state, upon the com-
3 pletion of the printing of the laws and journals, to examine whether they
4 have been properly executed according to the provisions of this chapter, and
5 should they be thus executed, he shall give his receipt therefor, stating the
6 same together with the amount to which the printer is entitled for said work;
7 and if not so executed he may, nevertheless, receive the same and give his
receipt therefor, noting said deficiency in said receipt.

2 SEC. 10. The auditor of state, on the production of the aforesaid re-
3 ceipt of the secretary of state, shall issue his warrant on the state treasurer

3 for the amount therein stated; and should there be a deficiency noted on
4 said receipt, he is hereby required to order suit to be commenced immediate-
5 ly against the printer and his securities, on the bond hereinbefore provided
6 for, and report the proceedings thereon in his next report to the general as-
7 sembly.

2 SEC. 11. The accounts of the state printer, for bills and all other job
3 work done for each house of the general assembly, shall be carefully and
4 strictly examined by a committee, and so much as is justly due to him shall
5 be certified to the auditor of state by the presiding officer of the house for
6 which the work shall have been done, and thereupon the auditor shall draw
7 his warrant upon the state treasurer, in favor of the state printer, for the
amount thus certified.

2 SEC. 12. The secretary of state shall furnish to the state printer, within
3 ten days after the adjournment of the general assembly, at each session, a
4 copy of all acts, memorials, and joint resolutions, passed at each; and the
5 state printer shall, within fifty days after such copy shall have been furnish-
6 ed to him as aforesaid, print all copies that may be by law required, and the
7 secretary of state shall, within five days after the same are printed, make
8 out and deliver to the public printer an index to the same, who shall, within
9 thirty days, print the same and deliver to the secretary of state such copies
10 of the laws, bound in such manner as hereinbefore provided for; but the
11 time herein provided for printing laws shall not apply to the printing of any
revised code of laws hereafter adopted by the general assembly.

2 SEC. 13. The secretary of state shall furnish to the state printer all the
3 paper needed for the various kinds of public printing in such quantities as
4 may be needed for the prompt discharge of his duties.

2 SEC. 14. The compensation for state printing shall be, for composition
3 on the laws, journals, reports, circulars, and all other printed matter, except
4 blanks, sixty cents per thousand ems, and ninety cents per thousand ems
5 for figure work, where the figures are arranged in columns, and one dollar
and twenty cents per thousand ems for rule and figure work.

2 SEC. 15. For press work the compensation shall be fifty cents per token
3 for each eight page form, octavo size, or for each four page form quarto size;
4 provided that two hundred and forty-two impressions shall constitute a token,
5 except when the work ordered shall not amount to that many impressions;
6 when any less quantity shall be counted as a token; and for pressing books
7 and pamphlets in the sheet, said printer shall receive eight cents per hundred
red sheets.

2 SEC. 16. For printing blanks where the blanks require one side of a
3 sheet of folio-post or any larger sized paper, there shall be allowed for the
4 first quire, one dollar and seventy-five cents, for the balance of the first ream,
5 sixty cents per quire, and twenty-five cents per quire for any number exceed-
ing one ream.

2 SEC. 17. For printing blanks on letter, cap or any larger paper (less than
3 folio post) there shall be allowed for the first quire, one dollar and twenty
4 cents; if the blank occupy one side of a sheet, for the balance of the first
5 ream, thirty cents per quire, and for any number exceeding one ream, twenty
6 cents per quire; provided that twenty-four blanks shall constitute a quire,
7 except when two blanks are printed on one side of a sheet, when twenty-
four sheets of paper shall constitute a quire.

2 SEC. 18. For printing blanks upon any paper mentioned in the preceding
3 section, or any smaller paper, and when two or more blanks are printed up-
on a half-sheet, seventy-five cents shall be allowed for the first quire, fifteen

4 cents per quire for any number exceeding one ream; provided that for this
5 kind of blanks twelve sheets of paper shall constitute a quire.

SEC. 19. For printing heading to assessments or census blanks, one dol-
2 lar and thirty cents shall be allowed for the first quire, and forty cents per
3 quire for the balance of the first ream, and twenty-five cents per quire for
4 any number exceeding one ream; provided that when a sheet is printed on
5 both sides, twelve sheets shall constitute a quire, and when on one side,
6 twenty-four sheets shall constitute a quire.

SEC. 20. All accounts rendered by the state printer for composition or
2 press work, shall be, for type actually set and imposed, or for paper actually
3 printed; and no constructive charges of any kind shall be allowed.

SEC. 21. The state printer shall file with the secretary of state a copy
2 of each job, on which each item of charges is made at the time of rendering
3 his account. The actual number of ems and tokens of press work in each
4 job shall be specified, with a statement that the law has been strictly com-
5 plied with, and that no constructive charges are embraced in his account as
6 rendered, which statement shall be sworn to by the state printer, before the
7 auditor of state shall audit such account.

SEC. 22. The journals and the acts, resolutions and memorials shall be
2 printed in small pica type, and the matter shall be solid. Whenever a sub-
3 ject is commenced, whether it be the name of a member or otherwise, the
4 subject matter shall follow in the same line, unless such line is filled by such
5 word. The report of each motion or resolution shall be embraced in one
6 paragraph, and where the yeas and nays are given, each division list shall be
7 in one paragraph with the names run in alphabetically, and the result given
8 in the last line.

SEC. 23. It shall be the duty of the secretary of state to provide a "state
2 paper receipt book," and whenever he shall deliver to the state printer paper
3 for any kind of printing, a receipt therefor shall be entered in said book,
4 which receipt shall describe the kind and quality of paper so delivered.

SEC. 24. Whenever any work is performed by the state printer he shall
2 certify the amount of paper used in said work to the secretary of state,
3 who, when satisfied that the same is correct, shall give a receipt to the state
4 printer, which shall be a voucher therefor.

SEC. 25. All accounts audited under this chapter shall have endorsed
2 by the auditor upon their backs, the amount allowed, and the number and
3 date of the warrant issued in payment of the same, which account shall be
4 filed in the office of the auditor of state, and carefully preserved by him.

SEC. 26. All other accounts for work done for the state by the state
2 printer in pursuance of law, the payment for which is not hereinbefore pro-
3 vided for, shall be presented and allowed in the same manner as is provided
4 for in this chapter.

SEC. 27. At any time during the progress of the printing of the laws or
2 journals of the general assembly, the secretary of state may issue his cer-
3 tificate for one-half the value of the work done and performed according to
4 the requisitions of this chapter, to be ascertained by said secretary, and the
5 amount so certified shall be audited and allowed as is provided in this
6 chapter.

SEC. 28. It shall be the duty of the several state officers to have their
2 reports prepared and placed in the hands of the state printer at least two
3 months before the assembling of the legislature, and it shall be the duty
3 of the state printer to have one thousand of each the aforesaid reports
4 printed and laid upon the desks of the members of the general assembly on
5 the first day of the session.

CHAPTER 9. *Of the State Binder.*

2 SEC. 1. A state binder shall be elected at each session of the general
3 assembly, by a joint vote of the two houses thereof, who shall hold his
4 office for the term of two years.

2 SEC. 2. The president of the senate, and the speaker of the house of
3 representatives shall furnish to the person elected to the office of state
4 binder, a certificate of his election, and within ten days after receiving the
5 same, he shall give bond and security, and take the oath of office ; and he
6 shall enter upon the discharge of his duties on the first day of May in the
7 following year ; and if he fails to give such bond and take such oath, his
8 office shall become vacant.

2 SEC. 3. The bond of the state binder shall be given to the state of
3 Iowa, signed by at least three good securities, in the penalty of two thou-
4 sand dollars, conditioned for the faithful and punctual performance of all
5 the duties of his office, and shall be approved by the governor, and filed in
6 the office of the secretary of state, to be by him recorded.

2 SEC. 4. If the office of state binder shall become vacant by death,
3 resignation, or otherwise, the governor shall appoint a public binder, who
4 shall give a bond and qualify, as above directed, and hold the office for the
5 same time that the person in whose stead he shall be appointed, would have
6 held.

2 SEC. 5. The state binder shall hold his office at the seat of government,
3 and bind the laws, the journals, and the incidental binding of the two houses
4 of the general assembly, and the incidental binding that may be required for
5 the offices of governor, secretary of state, auditor, treasurer, superintendent
6 of public instruction, and other officers of the state.

2 SEC. 6. All the state binding shall be done in a neat, substantial, and
3 workmanlike manner, and promptly performed and delivered, so that the
4 public business shall not be delayed, nor the public interest permitted to
5 suffer from any failure to have the work done in a reasonable and proper
6 time.

2 SEC. 7. It shall be the duty of the secretary of state, upon the binding
3 and completion of the laws and journals as aforesaid, to examine whether
4 they have been executed according to the provisions of this chapter ; and
5 should they be thus executed, he shall give his receipt therefor, stating the
6 same, together with the amount to which the binder is entitled for said
7 work ; and if not so executed, he may, nevertheless, receive the same, and
8 give his receipt therefor, noting said deficiency in said receipt.

2 SEC. 8. The auditor of state, on the production of the aforesaid re-
3 ceipt of the secretary of state, shall issue his warrant on the state treasurer
4 for the amount therein stated ; and should there be a deficiency noted in said
5 receipt, he is hereby required to order suit commenced immediately against
6 the binder and his securities on the bond hereinafter provided for, and report
7 the proceedings thereon in his next report to the general assembly.

2 SEC. 9. The state printer shall furnish to the state binder the sheets of
3 all work that requires binding, as soon as the same are printed and ready for
4 folding, and the state binder shall bind all work that comes into his hands,
5 within a reasonable time, and when the same is bound, deliver the said work
6 to the secretary of state.

2 Seco. 10. All other accounts for work done for the state by the state
3 binder, in pursuance of this law, the payment of which is not hereinbefore
4 provided for, shall be presented and allowed in the same manner as is provided for in this chapter.

2 Seco. 11. At any time during the progress of the binding of the laws or
3 journals of the general assembly, the secretary of state may issue his certificate for one half of the value of the work done and performed according
4 to the requisitions of this chapter, to be ascertained by said secretary, and
5 the amount so certified shall be audited and allowed, as is provided in this
6 chapter.

2 Seco. 12. The state binder shall be paid the following prices for all
3 work for the state, done by order of the secretary of state, viz :

3 For folding and trimming all documents not stitched, fifteen cents per
4 hundred copies.

5 For folding, stitching, and binding in paper covers, all messages, reports,
6 and documents not exceeding one sheet, (allowing eight pages for a sheet),
7 one dollar and twenty-five cents per hundred copies; and for each additional
8 sheet of eight pages twenty-five cents per hundred copies, the cover of
9 each copy to be counted as four pages.

10 For folding, sewing, and binding the journals of the two houses of the
11 general assembly in paper covers, twenty cents per copy.

12 For folding, sewing, and binding in muslin, or cases, with gilt letters for
13 title, (same style as the agricultural reports for 1866,) thirty-five cents per
14 copy for a volume of four hundred pages or less, and for each additional
15 hundred pages, or fraction thereof over fifty pages, five cents.

16 For folding, sewing, and binding in "half sheep," with gilt letters for
17 title, (same style as the legislative documents of 1866,) sixty cents per copy
18 for each volume of four hundred pages or less, and five cents for each additional
19 hundred pages, or fraction thereof over fifty pages.

20 For folding, stitching, and binding the laws of each general assembly in
21 boards, with muslin backs and paper sides, (same as the laws of 1866,)
22 eighteen cents per copy; and for all styles of work not named in this act
23 he shall be paid as nearly as possible in accordance with the rates above
24 specified.

TITLE III. OF THE JUDICIAL DEPARTMENT.

CHAPTER 1. *Of the Supreme Court Reporter.*

SECTION 1. At the general election in 1874, and every four years thereafter, there shall be elected a reporter of the decisions of the supreme court, whose term of office shall commence on the first Mouday in January next ensuing, and continue four years.

SEC. 2. It shall be lawful for the reporter to receive, at the close of each term, the records in all cases decided thereat, with the opinions filed therein, and retain the same for such reasonable time as he may require to prepare a report thereof, when they shall be returned to and shall remain in the office of the clerk.

SEC. 3. The reporter shall, as soon as practicable after a case is decided by written opinion, prepare an exact syllabus of the opinion, a brief abstract of the facts involved in the decision, and a statement of the legal propositions made by counsel in the argument; but the arguments shall not be reported at length. Cases, the importance of which does not demand a formal report, may be set apart by the court to be reported briefly without syllabus or argument, in an appendix to the volume.

SEC. 4. The reporter shall attend all the terms of the supreme court, to report briefly such cases of practice and other matters disposed of at the hearing, as the court shall deem of sufficient importance to be reported.

SEC. 5. As often as there shall be sufficient matter to constitute a volume of six hundred pages, exclusive of the index and table of cases, it shall be the duty of the reporter to arrange the same, with a table of cases and an index, and publish the same in a manner and style as neat and substantial as that of the thirteenth volume of Iowa Reports; but the Supreme Court may order the publication of a volume containing five hundred and fifty pages, exclusive of table and index, or may increase the size of the volumes when necessary to contain all the reports. Two volumes only shall be published in a year.

SEC. 6. The secretary of state shall deliver to the reporter such stationery as may be needed in reporting and preparing the manuscript for publication.

SEC. 7. It shall be the further duty of the reporter within forty days after the close of each term of the supreme court to publish in some newspaper printed at the capital of the state, the syllabi of the opinions filed at such terms; *provided*, always, that such publication can be made without expense to the state.

SEC. 8. For the purpose of securing the prompt publication of the reports, it is hereby made the duty of the secretary of state to subscribe for and receive for the use of the state, five hundred copies of each volume as soon as published, upon presentation by the reporter of a certificate signed by a majority of the judges of the supreme court, showing that the volume is prepared and published in compliance with the provisions of this chapter.

7 When the copies thus subscribed for, or any portion thereof, are delivered
 8 to the secretary of state, he shall execute his receipt therefor, and upon
 9 presentation of the same to the auditor of state, he shall draw his warrant
 10 upon the treasurer, payable to the reporter, or such persons as he may order,
 11 in payment for the same at the rate of five dollars per volume. It shall not
 12 be lawful for the reporter to sell or dispose of any volume of reports before
 13 the same has been approved by a majority of the judges of the supreme
 14 court in the manner prescribed by law.

2 SEC. 9. The reporter shall be entitled to receive and hold in his own
 3 right the copyright of his reports; but the supreme court shall have power
 4 to order the publication of a new edition of any one volume, when in their
 5 opinion the public interest shall require the same, and to require a compli-
 6 ance with said order within six months from the date of its being entered
 7 of record, and if the reporter neglects or refuses to publish in accordance
 8 with said order, the court shall have power to declare the copy-right for-
 9 feited to the state.

2 SEC. 10. The copies of reports received by the state shall be disposed of
 3 by the secretary of state as follows: * * * * *

2 SEC. 11. The secretary of state is authorized to exchange one hundred
 3 copies of each volume of the reports for such other law books as the supreme
 4 court may select, and the books obtained by such exchange shall be de-
 5 posited in the state library and remain the property of the state.

2 SEC. 12. It is hereby made the express duty of every executive and judicial
 3 officer who shall receive any reports from the state under the provisions of this
 4 chapter, or who now has in his possession copies of reports received from the
 5 state, by virtue of his office, to deliver the same to his successor upon vaca-
 6 ting the office of which he is or was an incumbent at the time of receiving
 7 said reports; and a failure to comply with the requirements of this section,
 8 shall subject the delinquent to a penalty of ten dollars for each volume
 9 received and not thus delivered, to be recovered in an action by the state.

2 SEC. 13. The published reports shall not be sold by the reporter or any
 3 other person at a rate higher than five dollars a volume; and if any person
 4 shall sell any volume of said reports in violation of the provisions of
 5 this chapter, he shall on conviction thereof, pay a fine of two hundred
 6 dollars.

CHAPTER 2. *Of the Attorney-General.*

2 SEC. 1. The attorney-general shall appear for the state and prosecute and
 3 defend all suits and proceedings, civil and criminal, in which the state shall
 4 be a party or interested, when requested to do so by the governor, secretary
 5 of state, auditor, treasurer, or general assembly, and shall prosecute and
 6 defend for the state all causes in the supreme court in which the state may
 7 be a party, or interested.

2 SEC. 2. The attorney general when requested, shall give his opinion in
 3 writing upon all questions of law submitted to him by the general assembly
 4 or either branch thereof, governor, lieutenant governor, auditor, secretary
 5 of state, treasurer, superintendent of public instruction, register of state
 6 land office, and district attorneys; and when required he shall prepare
 7 proper drafts for contracts, forms and other writings which may be required
 8 for the use of the state, and shall report to the general assembly when re-
 9 quested, upon any business pertaining to his office.

2 SEC. 3. All moneys received by the attorney general belonging to the
3 people of the state, shall be paid by him into the state treasury.

2 SEC. 4. The attorney shall keep in proper books a register of all actions
3 prosecuted and defended by him in behalf of the state, and of all proceed-
4 ings had in relation thereto, and shall deliver the same to his successor in
5 office.

2 SEC. 5. The secretary of state shall furnish a suitable office at the capi-
3 tol, and such books of record and stationery as may be required for his office ;
4 and the attorney general shall attend in person at the capital of the state
5 during the session of the general assembly, and the supreme court.

2 SEC. 6. The attorney general shall keep in his office a book in which he
3 shall record all the official opinions given by him during his term of office,
4 which book shall be by him delivered to his successor in office.

CHAPTER 3. *Of the District-Attorneys.*

2 SEC. 1. It shall be the duty of the district-attorney to appear for the
3 state, and the several counties composing his district, in all matters in
4 which the state or any such county may be a party or interested, in the
5 district and circuit courts of his district, and before any judge on a writ of
6 *habeas corpus* sued out by a person charged or convicted of a public offense
7 within his district. When any of the above proceedings are taken from
8 his district to the supreme court, he shall furnish to the attorney-general a
9 brief containing the substance thereof and the questions therein involved,
10 before the proceeding is set for hearing in the supreme court. He shall
11 also appear for the state or any county in any proceedings brought to his
12 district from another on change of venue. He may in his discretion appear
13 before a magistrate at the preliminary hearing of a criminal case, but
14 nothing herein contained shall prevent the board of supervisors from em-
15 ploying other counsel in any case properly belonging to his duties when
16 they deem it necessary.

2 SEC. 2. The district attorney shall, when requested, give his opinion in
3 writing without fee, upon all questions of law submitted to him by any
4 county officer within his district, which have reference to the official
5 duty of such officer, and whenever requested by any such officer he shall
6 prepare proper drafts for contracts, forms and other writings which may be
7 wanted for the use of any county in his district, and he shall file in his
8 office and preserve a copy of his opinions thus furnished.

2 SEC. 3. All moneys received by the district attorney belonging to the
3 people of the state or any county, shall immediately upon the receipt
4 thereof be paid by him to the officer who by law is entitled to the custody
5 thereof.

CHAPTER 4. *Of the Clerk of the Supreme Court.*

2 SEC. 1. At the general election in 1874, and every four years thereafter,
3 a clerk of the supreme court shall be elected, whose term of office shall
4 commence on the first Monday in January after said election, and continue
5 four years

2 SEC. 2. The judges of the supreme court shall have power to fill by ap-
 3 pointment all vacancies in the office of such clerk, and the person so ap-
 4 pointed shall hold his office until the first Monday of January, succeeding
 the next general election thereafter.

SEC. 3. Such clerk shall keep his office at the capital of the state.

2 SEC. 4. He shall keep a complete register of all the proceedings of the
 court, with an index of the same.

2 SEC. 5. He must not allow any written opinion of the court to be re-
 3 moved from his office, except by the reporter, but shall permit any one to
 4 examine or copy the same, and shall, when required, make a copy for any
 one for a fee of six cents for every one hundred words.

2 SEC. 6. He shall promptly announce by letter, any decision rendered, to
 3 one of the attorneys of each side, when such attorneys are not in attend-
 ance at the place of court.

2 SEC. 7. He shall make a record of every opinion rendered by said court,
 3 as soon as filed, and shall perform all the duties ordinarily pertaining to his
 office.

2 SEC. 8. When the clerk shall have arranged the causes from the different
 3 counties for their days, he shall publish the same four weeks in some news-
 4 paper, published in the city where the court is to be held, and send copy
 5 thereof to the clerk of the district court in each county in the state, who
 shall post the same in a conspicuous place in his office.

CHAPTER 5. *Of the Clerk of the District and Circuit Courts.*

2 SEC. 1. The clerk of the district court is, by virtue of his office, clerk
 3 of the circuit court also, and register of probate.

2 SEC. 2. He shall keep his office at the county seat: shall attend the
 3 sessions of the district and circuit courts himself or by deputy: keep
 4 the records, papers, and seals of both courts; and record their proceedings
 5 as hereinafter directed under the direction of the judges of each court re-
 spectively.

2 SEC. 3. The clerk of the district court shall, while acting as clerk of
 3 the circuit court, be known and designated as "clerk of the circuit court;"
 4 and in all certificates and records relating to said court, signed by him, he
 5 shall so designate himself. The deputy of the clerk of the district court
 6 may perform any of the duties required by the clerk of the district court to
 7 be performed in and for said circuit court; and may sign all certificates and
 8 records thereof in the same manner and with the same force and effect as
 the clerk of the district court.

2 SEC. 4. The records of each court consist of the original papers consti-
 3 tuting the causes adjudicated or pending in that court, and the books pre-
 scribed in the next section.

2 SEC. 5. The clerk is required to keep the following books for the
 3 business of the district and circuit courts severally:

- 3 1 A book containing the entries of the proceedings of the court,
 4 which may be known as the "record book," and which is to have
 5 an index referring to each proceeding in each cause under the name
 6 of the parties both plaintiff and defendant, and under the name of
 7 each person named in either party;
- 8 2. A book containing an abstract of the judgments, having in separate

9 and appropriate columns the names of the parties, the date of the
10 judgment, the damages recovered, costs, the date of the issuance
11 and return of executions, with the entry of satisfaction, and other
12 memoranda; which book may be known as the "judgment docket,"
13 and is to have an index like that required for the record book ;

14 3. A book in which to enter in detail the costs and fees in each action
15 or proceeding under the title of the same, with an index like that
16 required above, and which may be known as the "fee book;"

17 4. A book in which to enter the following matters in relation to any
18 judgment under which real property is sold, entering them after
19 the execution is returned—the title of the action, the date of the
20 judgment, the amount of damages recovered, the total amount of
21 costs, and the officer's return in full—which book may be known as
22 the "sale book," and is to have an index like those required
23 above;

24 5. A book in which to make a complete record when required by
25 law;

26 6. A book to be called the "incumbrance book," in which the sheriff
27 shall enter a statement of the levy of every attachment on real
28 estate, as required by Part III of this Code.

29 7. A book to be known as the "appearance docket," with an index to
30 the same, in which all actions entered in said docket shall be in-
31 dexed directly in the name of each plaintiff, and reversely in the
32 name of each defendant therein.

SEC. 6. The clerk shall enter in said appearance docket each suit that
2 shall be brought in the court, numbering them consecutively in the or-
3 der in which they shall have been commenced, which number shall not be
4 changed during the further progress of the suit. In entering the suits the
5 clerk shall set out the full name of all the parties, plaintiffs and defendants,
6 as the same shall be contained in the petition of the plaintiff, or as the same
7 shall subsequently be made parties by any pleading, proceeding, or order, and
8 shall give the date of the filing of the petition.

SEC. 7. When the original notice shall be returned to the office of the
2 clerk, he shall enter in said docket so much of the return thereon as to
3 show who of the parties have been served therewith and the manner and
4 time of service.

SEC. 8. The clerk shall, immediately upon the filing thereof, make a
2 memorandum of the date of the filing of all pleas, demurrers, answers,
3 motions, or paper of any other description in the cause, and no pleading of
4 any description shall be considered as filed in the cause, or be allowed to be
5 taken from the clerk's office, until the said memorandum is made.

SEC. 9. Immediately upon the sustaining or over ruling of any demurrer
2 or motion; the striking out or amendment of any pleadings; trial of the
3 cause; rendition of the verdict; entry of judgment; issuing of execution
4 or any other act or thing done in the progress of the cause, the like mem-
5 orandum thereof shall be made in said docket, giving the date thereof
6 and the number of the book and page of the record where the entry
7 thereof shall have been made, it being intended that the appearance docket
8 shall be an index from the commencement to the end of a suit.

SEC. 10. The district and circuit judges of any county may, by a joint
2 order under their hands, direct that the records and minutes of both
3 courts be kept in one set of books. But all matters touching decedents'
4 estates, wills, administrations, guardians and heirs, and all business relating

5 thereto, transacted in the circuit court, and also the record of marriage
6 licenses shall be kept separate in proper books, prepared for that purpose, as
7 heretofore.

SEC. 11. The books and stationery of the clerk's office shall be procured
2 at the expense of the county.

SEC. 12. The clerk of the district court is required to report to the sec-
2 retary of state on or before the first Monday in November of each year,
3 the number of convictions for all crimes, and misdemeanors in that court
4 in his county for the year preceding, and such report shall show the char-
5 acter of the offense, and the sentence of punishment, the occupation of the
6 convict, whether he can read and write, and his general habits, and also the
7 expenses of the county for criminal prosecutions during the year, including,
8 but distinguishing, the compensation of the district attorney.

SEC. 13. For a failure to make such report the clerk shall forfeit the
2 sum of ten dollars to be recovered in the name of the state by a civil ac-
3 tion. And the certificate of the secretary, under the seal of the state, and
4 sworn to by him before a competent officer, that no such report has been
5 received at his office, shall be evidence.

CHAPTER 6. *Of the Administration of Oaths.*

SEC. 1. The following officers are authorized to administer oaths and
2 take and certify the acknowledgment of instruments in writing :
3 Each judge of the supreme court ;
4 Each judge of the district court ;
5 Each judge of the circuit court ;
6 The clerk of the supreme court ;
7 Each clerk of the district court, as such, or as clerk of the circuit court; each
8 deputy clerk of the district and circuit courts ;
9 Each county auditor ;
10 Each sheriff and his deputies, in cases where they are authorized by law to
11 select commissioners or appraisers, or to empanel jurors for the view
12 or appraisement of property ;
13 Each justice of the peace within his county ;
14 Each notary public within his county.

SEC. 2. Persons conscientiously opposed to swearing may affirm, and
2 shall be subject to the pains and penalties of perjury as in case of swearing.

CHAPTER 7. *Of Commissioners in other States.*

SEC. 1. The governor may appoint and commission, in each of the
2 United States and Territories, one or more commissioners, to continue in
3 office for the term of three years from the date of commission, unless such
4 appointment shall be sooner revoked by the governor ; such commissioners,
5 when qualified as hereinafter provided, shall be empowered to administer
6 oaths, take depositions and affidavits to be used in the courts of this state,
7 and to take acknowledgments or proof of deeds and other instruments to be
8 recorded and used in this state.

SEC. 2. Each commissioner, exercising the authority conferred upon him
2 by this act, shall have an official seal, on which shall be engraved the words

3 "COMMISSIONER FOR IOWA," with his surname at length, and at least the
 4 initials of his christian name; also the name of the state in which he has
 5 been commissioned to act, which seal must be so engraved as to make a
 6 clear impression on wax or wafer.

2 SEC. 3. A signature and impression of such seal of any commissioner,
 3 qualified as herein provided, and corresponding with that on file in the office
 4 of the secretary of state, shall be entitled to the same credit as evidence, in
 5 of the courts and public offices of this state, as the signature and seal of a clerk
 6 of the district court or notary public of this state.

2 SEC. 4. Such commissioner is authorized to demand for his services the
 3 same fees as may be allowed for similar services, by the laws of the state in
 4 which he is to exercise his office.

2 SEC. 5. Oaths administered by any such commissioner, affidavits and
 3 depositions taken by him, and acknowledgments as aforesaid certified by
 4 him over his official signature and seal, are made as effectual in law to all
 5 intents and purposes, as if done and certified by a clerk of the district court
 6 or justice of the peace of this state.

2 SEC. 6. Before such commissioner can perform any of the duties of his
 3 office, he is required to take and subscribe an oath, that he will support the
 4 constitution of the United States and the constitution of the state of Iowa,
 5 and that he will faithfully perform the duties of such office, which oath shall
 6 be taken and subscribed before some judge or clerk of a court of record in
 7 the state in which the commissioner is to exercise his appointment, and certified
 8 under the hand of the person taking it, and the seal of his court—or
 9 before a duly authorized commissioner for Iowa, resident in said state, which
 10 certificate shall be filed in the office of secretary of state of this state, and
 11 on which shall be the official signature and a clear impression of the official
 seal of such commissioner.

2 SEC. 7. All persons who have heretofore been appointed and commis-
 3 sioned as commissioners in other states and territories, pursuant to the
 4 provisions of any previous laws of the territory or state of Iowa, and whose
 5 commissions were issued prior to the eighteenth of April, A. D., 1870, and
 6 since the fourth day of July, A. D., 1867, shall continue in force for the
 7 term of three years from and after the date of commission.

2 SEC. 8. The secretary of state, upon the reception of the certificate as
 3 provided in section three of this chapter, shall examine the same, and if
 4 this chapter has been strictly complied with, it shall be his duty to forward
 5 to said commissioner a certificate properly attested, that he has been duly
 6 commissioned as a commissioner for Iowa; and that he is duly qualified as
 7 required by the laws of Iowa, authorizing the appointment of commissioners
 8 in other states; and it shall be the further duty of the secretary of the state to
 9 forward a duplicate of said certificate to the secretary of the state in which
 10 said commissioner may have been appointed.

2 SEC. 9. The secretary of state shall cause to be published with the ses-
 3 sion laws of each general assembly, a full and complete list of all commis-
 4 sioners for Iowa, who are duly qualified, (and whose commissions do not
 5 expire on or before the fourth day of July of the year in which such publi-
 6 cation is made), which list shall give the post office address, date of qualifi-
 7 cation, and date of expiration of the commission of each commissioner.

2 SEC. 10. Commissioners of the like nature, appointed in this state,
 3 under the authority of any other of the United States or Territories, are
 4 hereby invested with the authority of a justice of the peace to issue sub-
 5 pœnas requiring the attendance of witnesses before them to give their testi-
 6 mony by deposition or affidavit in any matter in which such deposition or

6 affidavit may be taken by the law of such other state, and they are also
 7 authorized to administer oaths in any matter in relation to which they are
 8 required or permitted by such law of the other states ; and false swearing
 9 in such cases is hereby made subject to the penal laws of this state, relating
 10 to perjury ; provided that such commissioner shall cause to be filed in the
 11 office of the secretary of state, a certificate of the secretary of the state or
 12 territory for which he claims to act that he is properly appointed and quali-
 13 fied as required by the laws of said state, and has in his possession a certifi-
 14 cate that this section has been complied with.

SEC. 11. The secretary of state shall keep in his office a complete record
 2 of all appointments made by the governor, pursuant to the provisions of
 3 this chapter, and shall be authorized to collect as fees, the sum of three dol-
 4 lars for each commission, and the amount now allowed by law for cer-
 5 tificates.

CHAPTER 8. *Of Notaries Public.*

SEC. 1. The governor may appoint and commission one or more notaries
 2 public in each county of the state, who may respectively hold their offices
 3 three years, unless sooner removed by the governor.

SEC. 2. Each notary is invested with the powers and shall perform the
 2 duties which pertain to that office by the custom and law of merchants.

SEC. 3. Before entering upon the discharge of his official duties, he shall
 2 give bond to the state of Iowa, in the penal sum of five hundred dollars,
 3 conditioned for the true and faithful execution of the powers and duties of
 4 his office, with two or more sureties, to be approved on said bond by the
 5 clerk of the district court of the proper county.

SEC. 4. On the approval of said bond by said clerk, said notary shall
 2 have his commission recorded by the recorder of deeds of his county, and
 3 said notary public shall then be deemed commissioned, and not before.

SEC. 5. The clerk of the district court shall thereupon transmit to the
 2 secretary of state, a certificate that said notary public is duly qualified, and
 3 specifying the date of his qualification, which certificate shall bear the sig-
 4 nature of said notary public, and said secretary is hereby required to file
 5 said certificate in his office, and to keep a book in which he shall enter the
 6 names of notaries hereafter qualified, in the order in which the same are
 7 transmitted to him, with the name of the county and the date of qualifica-
 8 tion of each.

SEC. 6. Each notary public is required to have a seal, in which are to
 2 be engraved the words "notarial seal," and "Iowa," with his surname at
 3 length, and at least the initials of his christian name.

SEC. 7. The certificate of the clerk of the district court to the secretary
 2 of state showing the qualification of a notary public, shall have thereon an
 3 impression of the seal of such notary, and the secretary of state shall ac-
 4 knowledge the receipt of such certificate, and in such acknowledgment shall
 5 state whether such seal conforms to law ; and the clerk, on receiving such
 6 acknowledgment, with a statement that such seal does not conform to the
 7 law, shall notify such notary of that fact, and it shall be the duty of such
 8 notary to procure a seal in accordance with the law ; and until he procure
 9 such seal he shall not act as a notary public.

SEC. 8. It shall be the duty of the secretary of state, sixty days before
 2 the expiration of the commission, to notify each notary of the time his

3 commission will expire. Such notice may be served by mail by letter, di-
 4 rected to such notary at his place of residence as shown in the application
 5 for the commission. The secretary shall deliver to the attorney-general
 6 once in each year a list of all notaries who have failed to renew their com-
 7 missions ; and it shall be the duty of the attorney-general to enforce the
 8 law in regard to notaries public exercising the duties of their office, after
 9 the expiration of their commissions [?].

2 SEC. 9. Any notary public exercising the duties of his office after the
 3 expiration of his commission, or when otherwise disqualified, or appending
 4 his official signature to documents, when the parties have not appeared
 5 before him, shall be guilty of a misdemeanor, and be subject to a fine of
 6 fifty dollars for each offense, to be recovered before any justice of the peace
 7 of the county, and shall also be removed from office by the governor.

2 SEC. 10. Every notary public is required to keep a true record of all
 3 notices given or sent by him, with the time and manner in which the same
 4 were given or sent, and the names of all the parties to whom the same were
 5 given or sent, with a copy of the instrument in relation to which the notice
 6 is served, and of the notice itself.

2 SEC. 11. Such records and copies of them authenticated by the hand
 3 and seal of the notary, his protests, and all his official acts as notary, and
 4 his seal, shall receive such credit and faith as they are entitled to by the
 5 law and custom of merchants.

2 Notaries public are empowered to administer oaths, and to take the
 3 acknowledgment and proof of deeds required or permitted by the law of
 4 this state to be recorded or acknowledged.

2 SEC. 12. On the death, resignation, or removal from office of any notary,
 3 his records with all his official papers shall within three months therefrom
 4 be deposited in the office of the clerk of the district court in the county for
 5 which such notary shall have been appointed. And if any notary on his
 6 resignation or removal neglect for three months so to deposit them, he shall
 7 be held guilty of a misdemeanor and be punished accordingly and be liable
 8 in an action to any person injured by such neglect; and if an executor or
 9 administrator of a deceased notary wilfully neglect for three months after
 10 his acceptance of that appointment to deposit the records and papers of the
 11 deceased notary which came into his hands in said clerk's office, he shall be
 held guilty of a misdemeanor and punished accordingly.

2 SEC. 13. If a notary remove his residence from the county for which he
 3 was appointed, such removal shall be taken as a resignation.

2 SEC. 14. It is the duty of each clerk aforesaid to receive, and safely
 3 keep, all such records and papers of the notary in the cases above named,
 4 and to give attested copies of them under the seal of his court, for which
 5 he may demand such fees as by law may be allowed to the notaries, and
 such copies shall have the same effect as if certified by the notary.

CHAPTER 9. *Of Securities and Investments.*

2 SEC. 1. Whenever security is required to be given, by law or by order
 3 on judgment of a court, and no particular mode is prescribed, it shall be
 4 by bond.

2 SEC. 2. Such security, when not otherwise directed, may, if for the
 3 benefit of individuals, be given to the party intended to be thereby secured.

3 If in relation to the public matters concerning the inhabitants of one county
 4 or part of a county, it may be made payable to the county; if concerning
 5 the inhabitants of more than one county, it may be made payable to the
 6 state. But a mere mistake in these respects, will not vitiate the security.

2 SEC. 3. Where investments of money are directed to be made and no
 3 mode of investment is pointed out by statute, they must be made in the
 4 stocks of this state or of those of the United States, or upon bond and mort-
 5 gage of real property of clear unincumbered value of at least twice the
 investment.

2 SEC. 4. When such investment is made by order of any court, the
 3 security taken shall in no case be discharged, impaired, or transferred with-
 out an order of the court to that effect entered on the minutes thereof.

2 SEC. 5. The clerk or other person appointed in such cases to make the
 3 investment, must receive all moneys as they become due thereon and apply
 4 or reinvest the same under the direction of the court, unless the court
 appoint some other person to do such acts.

2 SEC. 6. Once in each year, and oftener if required by the court, the
 3 person so appointed must render to the court an account in writing and
 on oath of all moneys so received by him and of the application thereof.

2 SEC. 7. No defective bond or other security, or affidavit in any case,
 3 shall prejudice the party giving or making it, provided it be so rectified
 4 within a reasonable time after the defect is discovered as not to cause essen-
 tial injury to the other party.

2 SEC. 8. The ministerial officer whose duty it is to take a surety in any
 3 bond provided for by this code, shall have the right to require the person
 4 offered as surety to make affidavit of his qualification, which affidavit may
 5 be made before such officer. The taking of such an affidavit shall not
 6 exempt the officer from any liability to which he might otherwise be subject,
 for taking insufficient security.

2 SEC. 9. The surety in every bond provided for by this code, must be a
 3 resident of this state, and worth double the sum to be secured, beyond the
 4 amount of his debts, and have property liable to execution in this state
 5 equal to the sum to be secured. Where there are two or more sureties in
 6 the same bond, they must, in the aggregate, have the qualification prescribed
 in this section.



TITLE IV. OF COUNTY, TOWN, AND CITY GOVERNMENT.

CHAPTER 1. *Of Counties.*

2 SEC. 1. Each county is a body corporate for civil and political purposes
3 only, and as such may sue and be sued; shall keep a seal such as provided by
4 law; may acquire and hold property and make all contracts necessary or
5 expedient for the management, control, and improvement, of the same, and
6 for the better exercise of its civil and political powers; may make any order
7 for the disposition of its property; and may do such other acts and
8 exercise such other powers as may be allowed by law.

2 SEC. 2. Counties bounded by a stream or other water, have concurrent
3 jurisdiction over the whole of the waters lying between them.

2 SEC. 3. Whenever the citizens of two or more counties desire a change
3 in the boundaries thereof, they may petition their respective boards of su-
4 pervisors therefor, and each of said petitions shall designate the change de-
5 sired, and shall be signed by none but legal voters of the county, before
6 whose board the same is presented, and shall be signed by at least one half
7 of such legal voters, as shown by the last census, and be accompanied by
8 the affidavits of at least two creditable witnesses that the signatures to the
9 petition are genuine, and that the persons signing the same are legal voters
10 in said county.

2 SEC. 4. Before any petition shall be heard, satisfactory proof shall be
3 made by affidavit to said board that at least three notices containing copies
4 of such petition have been posted at least six weeks before the same shall be
5 heard, in three public places in each township in the counties to be affected
6 by such change of boundary, one of which shall be kept posted upon the
7 door of the office of the clerk of the district court of said counties; which
8 notices shall contain a copy of the petition, and shall show the time of hear-
9 ing; and if an equal number shall sign the remonstrances in each county
10 where the petition is to be heard, to the number signing the petitions, no
election shall be held.

2 SEC. 5. The petition of the voters of each of the counties interested in
3 such change shall be presented to their respective boards of supervisors at
4 the same regular session, and it shall be the duty of said boards of super-
5 visors upon being so petitioned, to order that at the next general election
6 holden thereafter, a vote shall be taken by the several counties interested,
7 upon the proposed change.

2 SEC. 6. The board of supervisors of each county, at the time they make
3 the order for such election, shall make an order requiring their clerk to
4 give at least four weeks notice of such election, by causing it to be published
5 in some newspaper printed in their county; if there be no news-
6 paper published in either of said counties, then notice shall be given in the
7 county having no newspaper, by posting up written or printed notices in
8 one public place in each organized township in said county, for the same
9 length of time, which notice shall set forth the exact portion of the territory
10 to be detached from one of the counties, and to what county the same is

10 to be attached; and also, that at the next general election the question will
 11 be presented to the qualified electors of the counties, whether such change
 12 in the county boundaries shall be made.

2 SEC. 7. At said election separate ballots shall be cast on the question of
 3 changing the boundary lines of said counties, which ballots shall have writ-
 4 ten or printed thereon the words—"Changing county boundary—yes," or
 5 "Changing county boundary—no," for which ballots a separate box shall be
 6 kept, and a return of said vote shall be made to the board of county can-
 7 vassers, and canvassed as provided by law for other returns.

2 SEC. 8. Should a majority of all the votes cast in the county to which
 3 the territory belonged, be in favor of the proposed change, the auditor of
 4 said county shall notify the auditor of the county or counties interested
 5 therein; and should it be found that a majority of the votes cast in each of
 6 the counties interested is in favor of the proposed change, due record shall
 7 be made thereof in the Minute Book of the board of supervisors in each
 8 of the counties interested.

2 SEC. 9. The county to which the territory shall be attached, shall cause
 3 to be transcribed from the records of the county to which said territory
 4 formerly belonged, all records pertaining to the real estate so attached, all
 5 taxes due and unpaid in said territory against the property or parties; also
 6 a transcript of all judgements in the district or circuit court, affecting any
 7 real estate in said territory, and all other records, papers, and documents,
 8 which properly belong to the county to which said territory is attached,
 9 which said records, papers or documents shall be transcribed or filed as
 10 the case may be, in the appropriate records and respective offices to which
 11 the same belong, and shall have the same force and effect, and be of the
 12 same validity in all cases and for all purposes as if the same originally
 13 belonged thereto, except as hereinafter provided.

14 All the costs attending the transfer of the above mentioned records,
 15 papers, and documents, shall be paid by the county to which said territory
 is attached.

2 SEC. 10. On the first Monday of January next succeeding the said elec-
 3 tion, if the same shall have been determined in favor of the change, the
 4 change shall be deemed to have taken place, and all the officers whether
 5 township or district, residing in the territory so detached, shall be held to
 6 belong to the county to which the same is attached. In case the territory so
 7 attached does not constitute a civil township or townships, the officers of the
 8 township to which such portion is attached shall have jurisdiction therein;
 9 and such territory shall for all purposes except as herein otherwise provided,
 be deemed a part of such organized townships.

2 SEC. 11. If the territory included in the change constitutes one or more
 3 civil townships, the bonds of all the officers therein, that are required to be
 4 filed, or approved by any county officer, shall be transmitted by copy duly
 5 certified by the officer having charge thereof, to the same office in the county
 6 to which the territory is attached, which said bonds shall be of the same
 effect and validity as if originally filled in such office.

2 SEC. 12. The detached territory shall not by reason of such change be
 3 released from the payment of its just and equitable proportion of any indebt-
 4 edness incurred by the county to which it formerly belonged, existing at the
 5 time of such detachment, nor shall such territory so detached be subject to
 6 the payment of any portion of indebtedness, either principal or interest,
 7 contracted by the county to which it becomes attached, prior to the date of
 such attachment.

2 SEC. 13. In order to fully carry out the provisions of the last section, it
 3 is hereby made the duty of the board of supervisors of the county to which
 4 said territory formerly belonged, when they shall have levied a tax upon
 5 the property of their county (which tax must be uniform throughout their
 6 county,) for the purpose of raising funds to pay off in whole or in part,
 7 either principal or interest, any indebtedness existing against said county at
 8 the time of such detachment, to cause their auditor to certify under the seal
 9 of their board a statement of the amount of such levy, and transmit the
 10 same to the auditor of the county to which said territory has become at-
 11 tached, and it shall be the duty of such auditor at the time he receives such
 12 statement to levy a tax to the amount therein stated upon the taxable prop-
 13 erty included within the limits of such detached territory according to the
 14 last assessed value thereof, and it shall be the duty of such auditor at the
 15 time he completes the annual tax-list of the county, to carry out said tax
 16 against such taxable property included in such detached territory, in a col-
 17 umn by itself, and the same shall be delivered and charged to the treasurer,
 18 collected and treated in all other respects as provided by law for the collec-
 19 tion of other county taxes; and it shall be the duty of said treasurer to pay
 20 the same over from time to time as the same is collected to the county treas-
 21 urer of the county to which the same belongs, taking his receipt therefor,
 22 which receipt shall be his voucher on settlement therefor, *Provided*, how-
 23 ever, the said treasurer shall retain therefrom the sum of five per centum
 24 on said amount so collected, which shall be placed by him in the county
 25 treasury of his county as a full compensation to said county for trouble and
 26 expenses incurred in the collection of said tax; and it shall be the duty of
 27 the board of supervisors of the county to which said territory is attached
 28 whenever they levy any tax in their county to pay in whole or in part,
 29 either principal or interest, any indebtedness existing against said county at
 30 the time of such attachment, to exempt from such levy and tax the property
 included within the limits of such attached territory.

2 SEC. 14. The taxes levied and unpaid in said detached territory, delin-
 3 quent or otherwise, at the time of such change, shall be transcribed from
 4 the books in the hands of the treasurer of the county to which said territory
 5 formerly belonged, in the manner in which said tax stands upon said books,
 6 together with the warrant attached to said tax book, and passed over to the
 7 treasurer of the county to which said territory is attached, taking his receipt
 8 therefor, which transcript with the duplicate warrant thereto attached shall
 9 be sufficient authority to authorize said treasurer to proceed to collect said
 10 tax, and he shall collect, or cause the same to be collected and account and
 11 be responsible therefor in the same manner, and to the same extent as pro-
 12 vided by law for the collection of other county or state taxes, and said tax
 13 shall be used in that portion of the county upon which the same was levied,
 14 except that raised for state and county purposes, which shall be paid over
 15 by said treasurer to the county treasurer from which said territory was de-
 tached from time to time as the same is collected.

2 SEC. 15. Whenever the citizens of any county desire a re-location of
 3 their county seat, they may petition their board of Supervisors respecting
 4 the same, at any regular session.

2 SEC. 16. Such petition shall designate the place at which the petitioners
 3 desire to have the county seat re-located, and shall be signed by none but
 4 legal voters of said county, and shall be accompanied by the affidavits of
 5 credible witnesses sufficient to satisfy said board that the signers are all
 6 legal voters of said county, and that the signatures on said petition are all
 genuine.

2 Sec. 17. Remonstrances, signed by legal voters of the county only, and
3 verified in like manner with the petitions, may also be presented to the
4 board. If the same persons petition and remonstrate they shall be counted
5 only on the remonstrance and if a greater number of legal voters remon-
strate against the re-location than petition for it no election shall be ordered.

2 Sec. 18. Twenty days' notice of the presentation of any such petition
3 shall be made by one insertion in a weekly newspaper, if there be one
4 printed in the county; if no paper be therein printed, by posting the same
5 in every township in the county, and on the door of the court house in said
county.

2 Sec. 19. Upon petitions certified as required in section sixteen of this chap-
3 ter being presented at any regular session of the board of supervisors, signed
4 by at least one-half of all the legal voters in said county, as shown by the
5 last preceding census, asking for a re-location of the county seat at any one
6 place therein named, said board shall order that at the next general election
7 a vote shall be taken between said place and the existing county seat, and
8 shall require a constable of each township in the county to post notices of
9 such order in three public places in such township at least fifty days before
10 said election, and shall also publish a notice of such election in some news-
11 paper, if there be one published in the county, four consecutive weeks, the
last publication to be at least twenty days before said election.

2 Sec. 20. Such elections shall be conducted as elections for county
3 officers. The ballot shall state that it was cast for the county seat and name
4 the place voted for.

2 Sec. 21. If the point designated in the petition obtain a majority of all
3 the votes cast, the board of supervisors shall make a record thereof, and
4 declare the same to be the county seat of said county, and shall remove the
5 records and documents thereto as early as practicable thereafter.

2 Sec. 22. The vote for re-location above provided for shall not take place
3 in any county oftener than once in three years.

2 Sec. 23. Whenever the board of supervisors of any county shall
3 at any regular session be presented with a petition signed by one-fifth of the
4 legal voters of their county, praying for a change in the name of said county,
5 they shall submit the question to the people of their county at the next
general election.

2 Sec. 24. The supervisors shall select the name to be voted upon as a
3 substitute for the original name of their county, and the manner and effect
4 of such submission to the people shall be as provided for the submission of
5 other questions.

2 Sec. 25. No county, incorporated city, or town, in this state, shall in their
3 corporate capacity, or by their officers, directly or indirectly, subscribe for
4 stock, or become interested as a partner, shareholder, or otherwise, in any
5 banking institution, whether the same be a bank of issue, deposit or
6 exchange, nor in any plank road, turnpike or railroad, or any other work of
7 internal improvement, nor shall they be allowed to issue any bonds, bills of
8 credit, scrip or other evidences of indebtedness for any such purposes—all
9 such evidences of indebtedness for said purposes being hereby declared
10 absolutely void: *provided nevertheless*, that this section shall not be so con-
11 strued as to prevent, or in any wise to embarrass, the counties, cities or
12 towns, or any of them, in the erection of their necessary public buildings,
13 bridges, laying off roads and highways, streets, alleys and public grounds,
14 or other local works in which said counties, cities or towns may respectively
be interested.

2 Sec. 26. All bonds or other evidences of debt hereafter issued by any
3 corporation to any railroad company, as capital stock, shall be null and void,
4 and no assignment of the same shall give them any validity.

2 Sec. 27. In all actions now pending or hereafter brought in any of the
3 courts held in this state, on any bond or coupon issued or purporting to be
4 issued by any county, incorporated city, town or village in this State, for
5 railroad purposes, a former recovery against such corporation, or any one or
6 more or any part of such bonds, or coupons, shall not bar or estop any
7 defense such corporation has made or might have made, to such bonds or
8 coupons in the action in which such former recovery was had; but the cor-
9 poration sought to be charged in any such action now pending or hereafter
10 brought, may allege and prove any matter of defense in such action to the
11 same extent and with the same effect as though no former action had been
brought or former recovery had.

2 Sec. 28. No officer of any county or other municipal corporation, or any
3 deputy or employee of such officer, shall either directly or indirectly be
4 permitted to take, purchase or receive in payment, exchange, or in any way
5 whatever, any warrant, scrip, or other evidence of the indebtedness of any
6 county, or other municipal corporation, or any demand against the county,
7 or other municipal corporation, for a less amount than that expressed on
the face of the warrant, scrip, or other evidence of indebtedness or demand.

2 Sec. 29. It shall be the duty of the treasurer of every county, or other
3 municipal corporation, when he shall receive any warrant, or scrip, or other
4 evidence of indebtedness of any county, or other municipal corporation, to
5 indorse thereon the date of its receipt, from whom received and what
amount.

2 Sec. 30. Any officer of any county, or other municipal corporation, or
3 any deputy or employee of such officer, who violates any of the provisions of
4 this act, shall be deemed guilty of a misdemeanor, and on conviction thereof
5 shall be fined not less than one hundred dollar and not more than five
hundred dollars for each offense.

2 Sec. 31. In any county having a population exceeding 3,000 inhabitants,
3 the outstanding indebtedness of which, on the first day of January, 1870,
4 exceeded the sum of five thousand dollars, the board of supervisors, by a
5 vote of two-thirds of all the members thereof, are empowered, if they
6 deem it for the public interest, to fund the same and issue bonds of the
7 county therefor, in sums not less than one hundred dollars, nor more than
8 one thousand dollars each, having not more than ten years to run, and bear-
9 ing a rate of interest not exceeding ten per cent per annum, payable semi-
annually, which bonds shall be substantially in the following form :

10 No.....
11 The county of.....in the state of Iowa, for value received
12 promises to pay to... ..or order, at the office of the treasurer of
13 said county in.....on the first day of..... 18.., or at any time
14 before that date, at the pleasure of the county, the sum of.....
15 dollars, with interest at the rate of.....per cent per annum, payable
16 at the office of said treasurer semi-annually, on the first days of.... ..
17 andin each year on presentation and surrender of the interest-
18 coupons hereto attached. This bond is issued by the board of supervi-
19 sors of said county under the provisions of chapter...of the code of Iowa,
20 and in conformity with a resolution of said board, dated.....day of
21187..

22 In testimony whereof, the said county, by its board of supervisors, has
23 caused this bond to be signed by the chairman of the board,
24 } SEAL. } and attested by the auditor, with the county seal attached,
25 this.....day of.....187..

26
27 Chairman of board of supervisors.

28 Attest :
29
30 Auditor.....

31 And the interest coupon shall be in the following form :
32 \$ the treasurer of county, Iowa, will pay
33 the holder thereof, on the day of 187..., at his office
34 in, dollars, for interest on county bond No,
35 issued under provisions of chapter — of the code of Iowa.
36
37 County Auditor.

38 A copy of this act shall be printed on the back of each bond issued under
39 its provisions.

SEC. 32. Whenever bonds issued under this act shall be duly executed,
2 numbered consecutively, and sealed, they shall be delivered to the county
3 treasurer, and his receipt taken therefor, and he shall stand charged, on his
4 official bond, with all bonds delivered to him, and the proceeds thereof, and
5 and it shall be his duty to sell the same, or exchange them on the best avail-
6 able terms, for any legal indebtedness of the county, outstanding on the first
7 day of May, 1870, but in neither case for a less sum than the face value of
8 the bonds, and all interest accrued on them at the date of such sale or ex-
9 change; and if any portion of said bonds are sold for money, the pro-
10 ceeds thereof shall be applied exclusively to the payment of liabilities ex-
11 isting against the county, at and before the date above named. When they
12 are exchanged for warrants and other legal evidences of county indebtedness,
13 the treasurer shall at once proceed to cancel such evidences of indebtedness,
14 by indorsing on the face thereof the amount for which they were received,
15 the word "cancelled," and the date of cancellation.

16 He shall also keep a record of bonds sold or exchanged by him, by num-
17 ber, date of sale, amount, date of maturity, and name and post-office address
18 of purchasers, and, if exchanged, what evidences of indebtedness were re-
19 ceived therefor; which record shall be open at all times to inspection by the
20 public. Whenever the holder of any bond shall sell and transfer it, the
21 purchaser shall notify the treasurer of such purchase, giving at the same
22 time the number of the bond transferred, and his post-office address, and
23 every such transfer shall be noted on the record. The treasurer shall also
24 report under oath to the board, at each regular session, a statement of all
25 bonds sold or exchanged by him since preceding report, and the date of such
26 sale or exchange, and when exchanged, a list or description of the county
27 indebtedness exchanged therefor, and the amount of accrued interest received
28 by him on such sale, or exchange, which latter sum shall be charged to him
29 as moneys received on bond-fund, and so entered by him in his books.

SEC. 33. It shall be the duty of the board of supervisors to cause to be
2 assessed and levied each year, upon the taxable property of the county in
3 addition to the levy authorized for other purposes, a sufficient sum to pay the
4 interest on outstanding bonds accruing before the next annual levy, and
5 such proportion of the principal, that at the end of three years, the sum

6 raised from such levies shall equal at least twenty per cent. of the whole
 7 amount of bonds issued; at the end of five years at least forty per cent. of
 8 the amount; and at and before the date of maturity of the bonds, shall be
 9 equal to the whole amount of the principal and interest; and the money
 10 arising from such levies shall be known as the bond-fund, and shall be used
 11 for the payment of bonds and interest-coupons, and for no other purpose
 12 whatever; and the treasurer shall open and keep in his books, a separate
 13 and special account thereof, which shall at all times show the exact condition
 14 of said bond-fund.

SEC. 34. Whenever the amount in the hands of the treasurer, belonging
 2 to the bond-fund, after setting aside the sum required to pay interest matur-
 3 ing before the next levy, is sufficient to redeem one or more bonds, it shall
 4 be his duty to notify the owner of such bond or bonds that he is prepared
 5 to pay the same, with all interest accrued thereon, and if not presented for
 6 payment or redemption within thirty days after the date of such notice, the
 7 interest on such bonds shall cease, and the amount due thereon shall be set
 8 aside for its payment whenever presented. All redemptions shall be made in
 9 the exact order of their issuance, beginning at the lowest or first number;
 10 and the notice herein required shall be directed to the post-office address of
 11 the owner, as shown by the record kept in the treasurer's office.

SEC. 35. If the board of supervisors of any county which has issued
 2 bonds under the provisions of this act, shall fail to make the levy necessary
 3 to pay such bonds, or interest-coupons at maturity, and the same shall have
 4 been presented to the county treasurer, and the payment thereof refused,
 5 the owner may file the bond, together with all unpaid coupons, with the au-
 6 ditor of state, taking his receipt therefor, and the same shall be registered in
 7 the auditor's office; and it shall then be the duty of the census board, at
 8 their next session as a board of equalization, and at each annual equalization
 9 thereafter, to add to the state tax to be levied in said county, a sufficient rate
 10 to realize the amount of principal or interest past due, and to become due
 11 prior to the next levy, and the same shall be levied and collected as a part
 12 of the state tax, and paid into the state treasury, and passed to the special
 13 credit of such county, as bond-tax, and shall be paid by warrant, as the pay-
 14 ments mature, to the holder of such registered obligations as shown by the
 15 register in the office of the state auditor, until the same shall be fully satis-
 16 fied and discharged; any balance then remaining being passed to the gene-
 17 ral account and credit of said county.

SEC. 36. The provisions of the last five sections are not intended and
 2 shall not be construed to embrace the indebtedness of any county, arising
 3 from bonds issued to aid in the construction of any railroad.

CHAPTER 2. *Of the Board of Supervisors.*

SEC. 1. The board of supervisors in each county shall consist of three
 2 persons, except where the number may heretofore have been, or hereafter
 3 be increased, in the manner provided by section 7, of this chapter. They
 4 shall be qualified electors, and be elected by the qualified voters of their
 5 respective counties, and shall hold their office for three years.

SEC. 2. At the general election in each year there shall be one super-
 2 visor elected in each county, who shall not be a resident of the same town-
 3 ship with either of the members holding over, and who shall continue in
 4 office three years.

2 SEC. 3. The members of the board shall meet at the county seats of
3 their respective counties, on the first Mondays of January, April, June,
4 and such special meetings as are provided for by law.

2 SEC. 4. The members of the board of supervisors shall each receive
3 four dollars for each day actually in session, and six cents per mile for
4 every mile traveled in going to and from said session of the board: *Pro*
5 *vided*, That in counties having a population less than 10,000, they shall not
6 receive compensation for more than twenty days in one year; and in coun-
7 ties having a population of more than 10,000, but less than 30,000, for more
8 than thirty days in the year; and in counties having a population of 30,000
or over, not more than forty days in one year.

2 SEC. 5. A majority of the board of supervisors shall be a quorum to
3 transact business, but should a division take place on any question, when
4 only two members of the board are in attendance, the question shall be
continued until there is a full board of supervisors.

2 SEC. 6. Resignations of supervisors shall be made to the county audi-
3 tor, and in case of vacancy, caused by resignation, death, removal, or other
4 cause, except expiration of term of office, when the interest of the county
5 shall require such vacancy to be filled before the next annual election, the
6 auditor, clerk, and recorder of said county, or a majority of said officers,
7 shall meet at the seat of justice of said county, and appoint one or more
8 supervisors as the case may require, who shall continue in office until the
9 next regular election, and until a supervisor or supervisors are elected and
10 qualified to fill such vacancies; and the absence of any supervisor from the
county for six months in succession, shall be a resignation of the office.

2 SEC. 7. The board of supervisors of any county may submit to the
3 qualified voters of the county at any regular election, the question, "Shall
4 the number of supervisors be increased to five," or "seven," as the board shall
5 elect, in submitting the question. If the majority of the votes cast shall be
6 for the increase of the number, then, at the next ensuing election for a su-
7 pervisor, the requisite additional supervisors shall be elected, whose terms
8 of office shall be determined by lot, in such a manner, that one-half of the
9 additional members shall hold their office for three years, and one half for
two years.

2 SEC. 8. The board of supervisors at their first meeting in every year
3 shall organize by choosing one of their number as chairman, who shall pre-
4 side at all the meetings of the board during the year.

2 In case of his absence the members present shall choose one of their number
3 as temporary chairman. Every chairman of the board of supervisors shall
4 have power to administer an oath to any person concerning any matter sub-
5 mitted to the board or connected with their powers.

2 SEC. 9. Special meetings of the board of supervisors shall be held only
3 when requested by a majority of the board, which request shall be in writ-
4 ing, addressed to the county auditor, who shall immediately give notice in
5 writing to each of the supervisors by causing the same to be delivered to
6 such supervisor or by leaving a copy at his residence at least six days
before such meeting.

2 SEC. 10. If any supervisor shall neglect or refuse to perform any of the
3 duties which are or shall be required of him by law as a member of the
4 board of supervisors, without just cause therefor, he shall for each offense
be fined one hundred dollars.

SEC. 11. The board of supervisors at any lawful meeting shall have the following powers, to-wit:

- (1.) To appoint one of their number chairman, and also a clerk in the absence of the regular officers.
- (2.) To adjourn from time to time, as occasion may require.
- (3.) To make such orders concerning the corporate property of the county as they may deem expedient.
- (4.) To examine and settle all accounts of the receipts and expenditures of the county and to examine, settle and allow all just claims against the county unless otherwise provided by law.
- (5.) To build and keep in repair the necessary buildings for the use of the county and of the courts.
- (6.) To cause the county buildings to be insured in the name of the county or otherwise, for the benefit of the county as they shall deem expedient, and in case there is no county building, to provide suitable rooms for county purposes.
- (7.) To set off, organize and change the boundaries of townships in their respective counties, designate and give names thereto and define the place of holding the first election.
- (8.) To grant licences for keeping ferries in their respective counties as provided by law.
- (9.) To purchase for the use of the county any real estate necessary for the erection of buildings for county purposes, to remove or designate a new site for any county buildings required to be at the county seat when such removal shall not exceed the limits of the village or city at which the county seat is located.
- (10.) To require any county officer to make a report under oath to them on any subject connected with the duties of his office, and to require any such officer to give such bonds or additional bonds as shall be reasonable or necessary for the faithful performance of their several duties; and any such officer who shall neglect or refuse to make such report or give such bonds within twenty days after being so required, may be removed from office by the board by a vote of a majority of the members elected.
- (11.) To represent their respective counties, and to have the care and management of the property and business of the county in all cases where no other provision shall be made.
- (12.) To manage and control the school fund of their respective counties as shall be provided by law.
- (13.) To appoint commissioners to act with similar commissioners duly appointed in any other county or counties, and to authorize them to lay out, alter or discontinue any road extending through their own and one or more other counties, subject to the ratification of the board.
- (14.) To fix the compensation of all services of county and township officers not otherwise provided for by law, and to provide for the payment of the same.
- (15.) To authorize the taking of a vote of the people for the re-location of the county seat as provided by law.
- (16.) To alter, vacate or discontinue any state or territorial road within their respective counties.

- 52 (17.) To lay out, establish, alter or discontinue any county road heretofore
 53 or now laid out or hereafter to be laid through or within their re-
 54 spective counties, as may be provided by law.
- 55 (18.) To provide for the erection of all bridges which may be necessary
 56 and which the public convenience may require within their respect-
 57 ive counties and to keep the same in repair.
- 58 (19.) To determine what bounties, in addition to those already provided
 59 by law, if any, shall be offered and paid by their county on the
 60 scalps of such wild animals taken and killed within their county,
 61 as they may deem it expedient to exterminate. But no such boun-
 62 ty shall exceed \$5 00.
- 63 (20.) To fill by appointment all vacancies that may occur in any of the
 64 county offices by death, resignation or removal and such appointee
 65 shall hold his office until the next succeeding general election.
- 66 (21.) To purchase for the use of the county any real estate necessary for the
 67 erection of buildings for the support of the poor of such county
 68 and for a farm to be used in connection therewith.
- 69 (22.) To have and exercise all the powers in relation to the poor given by
 70 law to the county authorities.
- 71 (23.) To make such rules and regulations (not inconsistent with law) as
 72 they may deem necessary for the government of their body, the
 73 transaction of business and the preservation of order.
- 74 (24.) The board of supervisors shall constitute the board of county can-
 75 vassers.
- 76 (25.) It shall not be competent for said board of supervisors to order the
 77 erection of a court house, jail, poor house, or other building or
 78 bridge, where the probable cost will exceed five thousand dollars,
 79 nor the purchase of real estate for county purposes exceeding two
 80 thousand dollars in value, until a proposition therefor shall have
 81 been first submitted to the legal voters of the county, and voted
 82 for by a majority of all voting for and against such proposition, at
 83 a general election, notice of the same being given for thirty days
 84 previously in a newspaper, if one is published in the county, and
 85 if none be published therein then by written notice, posted in a
 86 public place in each township in the county.
- 87 (26.) The board of supervisors of any county having a population of 15,000
 88 may appropriate for the construction of a bridge the sum of \$10,-
 89 000, and for each additional 5,000 of population there may be
 90 appropriated \$2000 additional. But in no case shall such appro-
 91 priation exceed \$20,000.

2 SEC. 12. They shall cause to be made out and published immediately
 3 after each regular or special meeting of the board, in at least one newspaper,
 4 if there be one in the county, if not by posting on the court house door, a
 5 schedule of the receipts and expenditures of the county, which shall state
 6 the names of all claimants, the amount claimed, the amount allowed, for
 7 what purpose allowed, and a full statement of the amounts of the treasurer's
 8 accounts at the last settlement as on his balance sheet, or account-current in
 9 making the settlement; no tax shall be levied, no contract for the erection
 10 of any public buildings entered into, no settlement with the county officers
 11 made, no real estate purchased or sold, no new site designated for any
 12 county buildings, no change made in the boundaries of townships, and no
 13 money appropriated to aid in the construction of roads and bridges without
 14 a majority of the whole board of supervisors voting therefor and consenting
 thereto.

2 SEC. 13. The authority formerly exercised by the county judge in order-
 3 ing the publication of advertisements in each county, shall be here after
 4 exercised by the clerk of the district court, sheriff, auditor, treasurer and
 5 recorder respectively, each one acting for his own department, and the board
 6 of supervisors shall designate the journals in which all other county notices
 7 shall be published. But in all counties having a population exceeding
 8 eighteen thousand inhabitants, in which a newspaper is published in any
 9 foreign language, all publications required by law to be in newspapers, shall
 10 be made in such of the first above-referred-to class of newspapers as the
 11 board of supervisors may order, except those publications required in civil
 12 actions, and as to such the officer or person having the control may order the
 13 publication in any newspaper in the county printed in any foreign language.

2 SEC. 14. The proceedings of all meetings of the board of supervisors
 3 shall be published in the papers selected for the publication of the laws, as
 4 provided in chapter second of this code at the expense of each county
 5 respectively; and the clerk of said board shall furnish said papers copies
 6 of such proceedings for that purpose. But nothing in this section shall
 7 prevent any board of supervisors from procuring the publication of their
 8 proceedings at a less price than that prescribed for the laws.

2 SEC. 15. The board is authorized and required to keep the following
 3 books:

- 3 (1.) A book to be known as the "minute book," in which shall be
 4 recorded all orders and decisions made by them, except those re-
 5 lating to roads, and in which, orders for the allowance of money
 6 from the county treasury, shall state on what account and to whom
 7 the allowance is made, dating the same and numbering them con-
 8 secutively through each year.
- 9 (2.) A book to be known as the "road record" in which shall be recorded
 10 all proceedings and adjudications relating to the establishment,
 11 change, or discontinuance of roads.
- 12 (3.) A book to be known as the "warrant book," in which shall be en-
 13 tered in the order of their issuance, the number, date, amount,
 14 names of the drawee of each warrant drawn on the treasury—
 15 and the number of the warrants as directed in relation to the minute
 16 book.

2 SEC. 16. The county auditor shall be the clerk of the board of super-
 3 visor, and it shall be his duty,

- 3 (1.) To record all the proceedings of the board in proper books provided
 4 vided for that purpose.
- 5 (2.) To make full entries of all their resolutions and decisions on all
 6 questions concerning the raising of money and for the allowance
 7 of money from the county treasury.
- 8 (3.) To record the vote of each supervisor on any question submitted
 9 to the board if required by any member present.
- 10 (4.) To sign all orders issued by the board for the payment of money,
 11 and to record in a book provided for the purpose, the reports of
 12 the county treasurer of the receipts and disbursements of the
 13 county.
- 14 (5.) To preserve and file all accounts acted upon by the board with
 15 their action thereon, and he shall perform such special duties as
 16 are or may be required of him by law.

2 SEC. 17. It shall be the duty of the clerk to designate upon every
 3 account on which any sum shall be audited and allowed by the board, the

3 amount so audited and allowed and the charges for which the same was
 4 allowed, and he shall also deliver to any person who may demand it, a cer-
 5 tified copy of any record in his office, or any account therein, on receiving
 6 from such person a fee of five cents for every folio of one hundred words
 7 contained in such certified copy.

2 SEC. 18. The clerk shall not sign or issue any county order except upon
 3 the recorded vote or resolution of the board of supervisors authorizing the
 4 same, except for jury fees, and every such order shall be numbered, and date,
 5 amount, and number of the same and the name of the person to whom
 6 issued shall be entered in a book to be kept by him in his office for the pur-
 7 pose.

2 SEC. 19. Whenever the clerk of the board of supervisors of any county
 3 shall receive from the state authorities notice of the appropriation of school
 4 moneys to be distributed in the county, he shall file the same in his office
 5 and transmit a certified copy thereof to the county treasurer, and he shall
 6 also lay a certified copy thereof before the board at their next regular
 7 meeting.

2 SEC. 20. The board of supervisors may submit to the people of the
 3 county at any regular election, or at any special one called for that purpose,
 4 the question whether money may be borrowed to aid in the erection of
 5 public buildings; whether the county will construct, or aid to construct,
 6 any road or bridge which may call for an extraordinary expenditure;
 7 whether stock, swine, or sheep shall be permitted to run at large, or at what
 8 time it shall be prohibited; and the question of any other local or police
 9 regulation not inconsistent with the laws of the state. And when the war-
 10 rants of a county are at a depreciated value, they may in like manner
 11 submit the question whether a tax of a higher rate than that provided by
 12 law shall be levied, and in all cases when an additional tax is laid in pursu-
 13 ance of a vote of the people of any county for the special purpose of
 14 repaying borrowed money, or constructing, or aiding to construct,
 15 any road or bridge, such special tax shall be paid in money, and in no other
 16 manner.

2 SEC. 21. The mode of submitting such questions to the people shall be
 3 the following: the whole question, including the sum desired to be raised,
 4 or the amount of tax desired to be levied, or the rate per annum, and the
 5 whole regulation, including the time of its taking effect or having operation,
 6 if it be of a nature to be set forth, and the penalty for its violation if there
 7 be one, is to be published at least four weeks in some newspaper printed in
 8 the county. If there be no such newspaper, the publication is to be made
 9 by being posted up in at least one of the most public places in each town-
 10 ship in the county, and in all such cases in at least five among the most
 11 public places in the county including the above, and one of them in all
 12 cases at the door of the court house, during at least thirty days prior to the
 13 time of taking the vote. All such notices shall name the time when such
 14 question will be voted upon, and the form in which the question shall be
 15 taken, and a copy of the question submitted shall be posted up at each
 16 place of voting during the day of election.

2 SEC. 22. When a question so submitted involves the borrowing or the
 3 expenditure of money, the proposition of the question must be accompanied
 4 by a provision to lay a tax for the payment thereof, in addition to the usual
 5 taxes, as directed in the following section, and no vote adopting the ques-
 6 tion proposed will be of effect unless it adopt the tax also.

SEC. 23. The rate of tax shall in no case be more than one per cent on

2 the county valuation in one year. When the object is to borrow money for
 3 the erection of public buildings as above provided, the rate shall be such as
 4 to pay the debt in a period not exceeding ten years. When the object is to
 5 construct, or to aid in constructing, any road or bridge, the annual rate shall
 6 not be less than one mill on a dollar of the valuation, and any of the above
 7 taxes becoming delinquent shall draw the same interest with the ordinary
 8 taxes.

2 SEC. 24. When it is supposed that the levy of one year will not pay
 3 the entire amount, the proposition and the vote must be to continue the
 4 proposed rate from year to year, until the amount is paid.

2 SEC. 25. The board of supervisors, on being satisfied that the above
 3 requirements have been substantially complied with, and that a majority
 4 of the votes cast are in favor of the proposition submitted, shall cause the
 5 proposition and the result of the vote to be entered at large in the minute
 6 book, and a notice of its adoption to be published for the same time and in
 7 the same manner as above provided for publishing the preliminary notice,
 8 and from the time of entering the result of the vote in relation to borrowing
 9 or expending money, and from the completion of the notice of its adoption
 10 in the case of a local or police regulation, the vote and the entry thereof on
 11 the county records shall have the force and effect of an act of the general
 assembly.

2 SEC. 26. Propositions thus adopted, and local regulations thus estab-
 3 lished, may be rescinded in like manner and upon like notice by a subsequent
 4 vote taken thereon, but neither contracts made under them, nor the taxes
 5 appointed for carrying them into effect, can be rescinded.

2 SEC. 27. The board shall submit the question of the adoption or rescis-
 3 sion of such a measure when petitioned therefor by one-fourth of the
 4 voters of the county, unless a different number be prescribed by law in any
 5 special case.

2 SEC. 28. The record of the adoption or rescission of any such measure
 3 shall be presumptive evidence that all the proceedings necessary to give the
 4 vote validity have been regularly conducted.

2 SEC. 29. In case the amount produced by the rate of tax proposed and
 3 levied exceeds the amount sought for the specific object, it shall not there-
 4 fore be held invalid, but the excess shall go into the ordinary county funds.

2 SEC. 30. Money so raised for such purposes is specially appropriated
 3 and constitutes a fund distinct from all others in the hands of the treasurer,
 4 until the obligation assumed is discharged.

CHARTER 8. *Of the County Auditor.*

2 SEC. 1. The county auditor shall act as clerk of the board of supervisors,
 3 and shall perform all duties required by law to be performed by such clerk,
 4 and such other duties as may be required of him by the board of supervis-
 5 ors. He shall perform all duties in respect to the school fund and school
 6 lands formerly performed by the clerk of the district court; and for a failure
 7 or neglect to discharge any of the duties hereby or by law conferred on
 8 him, shall be liable to the same penalties, and in the same manner, and to
 9 the same extent, as the clerk of the board of supervisors or clerk of the
 district court were liable for like failure or neglect.

2 SEC. 2. The auditor shall have power to exercise all the duties of the

2 clerk of the board of supervisors in relation to the establishment, altera-
 3 tion, and vacation of roads within his county, and for that purpose shall
 4 have power and jurisdiction to revive petitions, issue notices, appoint com-
 5 missioners, and to hear and determine all matters in relation to the vacation,
 6 establishment, or alteration of roads, and to make all orders relating to the
 7 same, subject, however, in all cases, to final review and approval by the
 8 board of supervisors.

SEC. 3. The auditor shall have the keeping and management of the
 2 transfer books provided for by law, and the county recorder shall not file for
 3 record any deeds of real property, until the proper entries have been made
 4 upon the transfer books in the auditor's office, and indorsed upon the deed.

SEC. 4. The county auditor shall have the general custody and control
 2 of the court house in each county respectively subject to the direction of the
 3 board of supervisors.

SEC. 5. The county auditor shall report to the secretary of state the name,
 2 office, and term of office of every county officer elected or appointed, within
 3 ten days after their election and qualification, and the secretary of state
 4 shall record the same in a book to be kept for that purpose in his office.

SEC. 6. The clerk of the district court and county recorder shall each be
 2 eligible to the office of county auditor, and may discharge the duties of both
 3 offices.

CHAPTER 4. *Of the County Treasurer.*

SECTION 1. It is the duty of the treasurer to receive all money payable
 2 to the county, and to disburse the same on warrants drawn and signed by
 3 the county auditor and sealed with the county seal, and not otherwise; and
 4 to keep a true account of all receipts and disbursements, and hold the same
 5 at all times ready for the inspection of the board of supervisors.

SEC. 2. When the warrant drawn by the auditor on the treasurer is pre-
 2 sented for payment, and not paid for want of money, the treasurer shall in-
 3 dorse thereon a note of that fact and the date of presentation, and sign it,
 4 and thenceforth it shall draw interest at the rate of six per cent; and when
 5 a warrant which draws interest is taken up, the treasurer is required to in-
 6 dorse upon it the date and the amount of interest allowed, and such warrant
 7 is to be considered as canceled and shall not be re-issued.

SEC. 3. When a person wishing to make a payment into the treasury
 2 presents a warrant of an amount greater than such payment, the treasurer
 3 shall cancel the same and give the holder a certificate of the overplus, upon
 4 the presentation of which to the county auditor, he shall file it, and issue a
 5 new warrant of that amount, and charge the treasurer therewith, and such
 6 certificate is transferable by delivery, and will entitle the holder to the new
 7 warrant, which, however, must be issued in the first drawee's name.

SEC. 4. The treasurer is directed to keep a book, ruled so as to contain a
 2 column for each of the following items in relation to the warrants drawn on
 3 him by the auditor—the number, date, drawee's name, when paid, to whom,
 4 original amount, interest—and on receiving the memoranda of the warrants
 5 issued by the auditor, to enter the particulars contained in the memoranda,
 6 and on payment of the warrants to enter the remaining particulars.

SEC. 5. The treasurer shall keep a separate account of the several taxes
 2 for state, county, school, and road purposes, opening an account between
 3 himself and each of those funds, charging himself with the amount of the

4 tax, and crediting himself with the amounts paid over severally, and with
5 the amount of delinquent taxes when legally authorized so to do.

2 SEC. 6. The warrants returned by the treasurer shall be compared with
3 the warrant book, and the word "canceled" be written over the minute of the
4 proper numbers in the warrant book, and the original warrant be preserved
at least two years.

2 SEC. 7. The treasurer is required to make weekly returns to the auditor
3 of the number, date, drawee's name, when paid, to whom paid, original
4 amount, and interest, as kept in the book before directed.

2 SEC. 8. A person re-elected to, or holding over, the office of treasurer,
3 shall keep separate accounts for each term of his office.

CHAPTER 5. *Of the County Recorder.*

2 SEC. 1. The recorder shall keep his office at the county seat, and it is
3 his duty to record at length and as speedily as possible all instruments in
4 writing which may be delivered to him for record in the manner directed
by law.

2 SEC. 2. The same person may be eligible to and hold the office of
3 county recorder and county treasurer.

2 SEC. 3. No person holding the office of judge or clerk of the supreme,
3 district or circuit court, district attorney or sheriff, shall hold the office of
4 county recorder, and if any person is elected to both offices, his qualification
for the one shall be a refusal of the other.

CHAPTER 6. *Of the Sheriff.*

2 SECTION 1. It is the office of the sheriff and his deputies to serve or oth-
3 erwise execute according to law, and return all writs and other legal pro-
4 cess issued by lawful authority and to him or them directed or committed,
and to perform such other duties as may be required of him by law.

2 SEC. 2. His disobedience of the command of any such process is a con-
3 tempt of the court from which it issued and may be punished by the same
4 accordingly, and he is, farther, liable to the action of any person injured
thereby.

2 SEC. 3. He has the charge and custody of the jail or other prison of his
3 county, and of the prisoners in the same, and is required to receive those
4 lawfully committed, and to keep them himself or by his deputy or jailor
until discharged by law.

2 SEC. 4. The sheriff and his deputies are conservators of the peace, and to
3 keep the same, or to prevent crime, or to arrest any person liable thereto, or
4 to execute process of law, may call any person to their aid, and when nec-
essary the sheriff may summon the power of the county.

2 SEC. 5. The sheriff shall attend upon the district and circuit courts at
3 their sessions in his county, and he is allowed the assistance of three con-
4 stables, and of such further number as the court may direct, whose appoint-
ment constitutes them special constables.

2 SEC. 6. No sheriff, deputy-sheriff, coroner or constable shall appear in
3 any court as attorney or counsel for any party, nor make any writing or
4 process to commence, or to be in any manner used in the same, and such
writing or process made by any of them shall be rejected.

2 SEC. 7. No sheriff, deputy-sheriff, coroner, or constable, shall become the
3 purchaser, either directly or indirectly, of any property by him exposed to

3 sale, under any process of law, and every such purchase is absolutely void.

2 SEC. 8. In case of a vacancy occurring in the office of sheriff from any
3 cause, his deputies shall be under the same obligation to execute legal pro-
4 cess then in his or their hands and return the same as if the sheriff had
5 continued in office, and he and they will remain liable under the provisions
6 of law as in other cases.

2 SEC. 9. Where a sheriff goes out of office, he shall deliver to his successor
3 all books and papers pertaining to the office, and property attached or levied
4 upon, and all prisoners in the jail, and take his receipt specifying the same,
5 and such receipt shall be sufficient indemnity to the person taking it.

2 SEC. 10. On the election or appointment of a new sheriff all new pro-
3 cess shall issue to such new sheriff.

2 SEC. 11. If the sheriff die or go out of office before the return of any
3 execution, his successor, or other officer authorized to discharge the duties
4 of the office in such case, may proceed thereon in the same manner that the
5 out-going sheriff should have done.

2 SEC. 12. Sheriffs and their deputies shall have power to administer oaths
3 in all cases of appraisement of the property, on an attachment or execution or
4 any proceeding connected therewith, and also, to administer oaths in all
5 other cases, where sheriffs are authorized by law to select commissioners or
6 appraisers or empanel jurors for the purposes of appraising, or of viewing
7 premises or property.

CHAPTER 7. *Of the Coroner.*

2 SEC. 1. It is the duty of the coroner to perform all the duties of the
3 sheriff, when there is no sheriff, and in cases where exception is taken to
4 the sheriff as provided in the next section.

2 SEC. 2. In all proceedings in the courts of record, where it appears
3 from the papers that the sheriff is a party, and where in any action com-
4 menced or about to be commenced an affidavit is filed with the clerk of the
5 court stating a partiality, prejudice, consanguinity, or interest, on the part
6 of the sheriff, the clerk or court shall direct process to the coroner, whose
7 duty it is to execute it in the same manner as if he were sheriff.

2 SEC. 3. When there is no sheriff, deputy sheriff, or coroner, qualified
3 to serve legal process, the clerk of the court may, by writing under his hand
4 and the seal of the court certifying the above fact, appoint any suitable person
5 specially in each case to execute such process, who shall be sworn, but he
6 need not give bond, and his return shall be entitled to the same credit as
7 the sheriff's, when the appointment is attached thereto.

2 SEC. 4. The coroner shall hold an inquest upon the dead bodies of such
3 persons only as are supposed to have died by unlawful means. When he
4 has notice of the dead body of a person supposed to have died by unlawful
5 means, found or being in his county, he is required to issue his warrant to a
6 constable of his county requiring him to summon forthwith three lawful
7 men of the county to appear before the coroner at a time and place named
8 in the warrant.

SEC. 5. The warrant may be in substance as follows :

2 STATE OF IOWA, }
3 County. }
4

To any constable of the said county:

5 In the name of the state of Iowa you are hereby required to summon forth-
6 with, three lawful men of your county, to appear before me at (name the
7 place), at (name the day and hour or say forthwith), then and there to hold
8 an inquest upon the dead body of _____, there lying, by what means he
9 died.

10 Witness my hand this _____ day of _____ A. D. 18 .
11 (Signed,) A. B., coroner of _____ county.

SEC. 6. The constable shall execute the warrant, and make return thereof
2 at the time and place named.

SEC. 7. If any juror fails to appear the coroner shall cause the proper
2 number to be summoned or returned from the bystanders immediately, and
3 proceed to empanel them and administer the following oath in substance :—

4 “ You do solemnly swear (or affirm) that you will diligently inquire, and
5 true presentment make, when, how, and by what means the person whose
6 body lies here dead came to his death, according to your knowledge and the
7 evidence given you : So help you God.”

SEC. 8. The coroner may issue subœnas within his county for witnesses,
2 returnable forthwith, or at such time and place as he shall therein direct,
3 and witnesses shall be allowed the same fees as in cases before a justice of
4 the peace, and the coroner has the same authority to enforce the attendance
5 of witnesses, and to punish them and jurors for contempt in disobeying his
6 process as a justice of the peace has when his process issues in behalf of the
7 state.

SEC. 9. An oath shall be administered to the witnesses in substance as
2 follows :

3 “ You do solemnly swear that the testimony which you shall give to this
4 inquest, concerning the death of the person here lying dead, shall be the
5 truth, the whole truth, and nothing but the truth : So help you God.”

SEC. 10. The testimony shall be reduced to writing under the coroner's
2 order, and subscribed by the witnesses.

SEC. 11. The jurors having inspected the body, heard the testimony, and
2 made all needful inquiries, shall return to the coroner their inquisition in
3 writing, under their hands in substance as follows, and stating the matters in
4 the following form suggested, as far as found :

STATE OF IOWA, }
County, }

5 An inquisition holden at _____, in _____ county, on the _____ day of
6 _____ A. D., 18_____ before _____ coroner of the said county, upon the
7 body of _____ (or a person unknown) there lying dead, by the jurors whose
8 names are hereto subscribed. The said jurors upon their oaths do say (here
9 state when, how, by what person, means, weapon, or accident, he came to
10 his death, and whether feloniously.)

11 In testimony whereof the said jurors have hereunto set their hands, the
12 day and year aforesaid ;
13 [which shall be attested by the coroner.]

2 SEC. 12. If the inquisition find that a crime has been committed on the
3 deceased, and name the person whom the jury believe has committed it, the
4 inquest shall not be made public until after the arrest directed in the next
section.

2 SEC. 13. If the person charged be present, the coroner may order his
3 arrest by an officer or any other person present, and shall then make a war-
4 rant requiring the officer or other person to take him before a justice of the
peace.

2 SEC. 14. If the person charged be not present, and the coroner believes
3 he can be taken, the coroner may issue a warrant to the sheriff and consta-
4 bles of the county, requiring them to arrest the person and take him before
a justice of the peace.

2 SEC. 15. The warrant of a coroner in the above cases shall be of equal
3 authority with that of a justice of the peace, and when the person charged
4 is brought before the justice he shall be dealt with as a person held under an
information in the usual form.

2 SEC. 16. The warrant of the coroner shall recite substantially the trans-
3 actions before him and the verdict of the jury of inquest leading to the
4 arrest, and such warrant shall be a sufficient foundation for the proceeding
of the justice instead of on information.

2 SEC. 17. The coroner shall then return to the district court the inquisi-
3 tion, the written evidence, and a list of the witnesses who testify material
matter.

2 SEC. 18. The coroner shall cause the body of a deceased person which
3 he is called to view, to be delivered to his friends if any there be, but if
4 not he shall cause him to be decently buried, and the expense to be paid
5 from any property found with the body, or, if there be none, from the
6 county treasury by certifying an account of the expenses, which being pre-
7 sented to the board of supervisors shall be allowed by them if deemed
reasonable and paid as other claims on the county.

2 SEC. 19. When there is no coroner, and in case of his absence or ina-
3 bility to act, any justice of the peace of the same county is authorized to
4 perform the duties of coroner in relation to dead bodies, and in such case
5 he may cause the person charged to be brought before himself, by his war-
rant, and may proceed with him as a justice of the peace.

2 SEC. 20. In the above inquisition by a coroner, when he or the jury
3 deem it requisite, he may summon one or more physicians or surgeons to
4 make a scientific examination, and may allow in such case a reasonable
compensation instead of witness fees.

CHAPTER 8. *Of the County Surveyor.*

2 SEC. 1. It is the duty of the county surveyor to make all surveys of land
3 within his county which he may be called upon to make, and his surveys
4 shall be held as presumptively correct.

2 SEC. 2. The field notes and plats made by the county surveyor shall be
3 transcribed into a well bound book under the supervision of the surveyor,
4 when desired by a person interested, and at his expense.

2 SEC. 3. Previous to making any survey he shall furnish himself with a
3 copy of the field notes of the original survey of the same land, if there be
4 any in the office of the county auditor, and his survey shall be made in ac-
cordance therewith.

SEC. 4. He is required to establish the corners by taking bearing trees, and noting particularly their course and distance, but if there be no trees within reasonable distance, the corners are to be marked by stones firmly placed in the earth, or by mounds.

SEC. 5. In the re-survey and subdivisions of lands by county surveyors, their deputies, or other persons, the rules prescribed by acts of congress and the instructions of the secretary of the interior, shall be in all respects followed.

SEC. 6. It is the duty of the county surveyor when requested, to furnish the person for whom the survey is made, with a copy of the field notes and plat of the survey, and such copy certified by him, and also a copy from the record, certified by the county auditor, with the seal, shall be presumptive evidence of the survey and of the facts herein required to be set forth, and which are stated accordingly, between those persons who join in requesting it and any other person then concerned who has reasonable notice that such a survey is to be made, and of the time thereof.

SEC. 7. The board of supervisors is required to furnish a substantial, well bound book, where it is not now done, in which the field notes and plats by county surveyor may be recorded.

SEC. 8. The plat and record shall show distinctly of what piece of land it is a survey, at whose personal request it was made, the names of the chainmen, and that they were approved and sworn by the surveyor, and the date of the survey; and the courses shall be taken according to the true meridian, and the variation of the magnetic, from the true, meridian stated.

SEC. 9. The necessary chainmen and other persons must be employed by the person requiring the survey done, unless otherwise agreed; but the chainmen must be disinterested persons, and approved of by the surveyor, and sworn by him to measure justly and impartially to the best of their knowledge and ability.

SEC. 10. Every surveyor is authorized to appoint a deputy; and such deputy, after being duly sworn, may perform any of the duties pertaining to the office of county surveyor, and all the doings of such deputy may be recorded in the same manner, and shall have the same effect and validity as if made by the county surveyor himself.

CHAPTER 9. *Of Townships and Township Officers.*

SEC. 1. The board of supervisors of each county shall divide the same into townships, as the convenience of the citizens may require, accurately defining the boundaries thereof, and may from time to time make such alterations in the number and boundaries of the townships as it may deem proper; but, when practicable, it is required to conform to the congressional townships. And no township shall be organized in which at the time of organization there shall not be at least ten legal voters: *Provided*, That each county shall have one civil township.

SEC. 2. The description of the boundaries of each township, and of all alterations in them, and of all new townships, shall be recorded in full in the records of the county, and of the township.

SEC. 3. When the board of supervisors has formed a new township, it shall call the first township election, to be holden on the day of the annual township elections, and at such place as it may name; other township meetings may be holden as provided hereafter.

SEC. 4. The auditor shall issue a warrant for such first election, stating
 2 the time and place of the same, the officers to be elected, and any other
 3 business which is to be attended to; and no other business shall be done
 4 than such as is so named.

SEC. 5. Such warrant may be directed to any constable of the county, or
 2 to any citizen of the same township by name, and shall be served by posting
 3 up copies thereof in three of the most public places in the township fifteen
 4 days before the day of the meeting; the original warrant shall be returned
 5 to the presiding officer of the meeting (to be returned to the clerk when
 6 elected) with a return thereon of the manner of service, verified by oath if
 7 served by any other than an officer.

SEC. 6. The electors when assembled at the time and place appointed,
 2 shall, by nomination or by ballot, elect a chairman for the time being, and
 3 then proceed to elect by ballot three persons having the qualification of
 4 voters, as judges of the election, who shall appoint two clerks of the elec-
 5 tion, and both judges and clerks shall be sworn faithfully to discharge the
 6 duties of their respective offices.

SEC. 7. The election shall be conducted as other township elections, and
 2 the electors shall proceed to elect the officers named in this chapter.

SEC. 8. The electors may, at this meeting, determine in what manner
 2 the future meetings of the township, other than for elections, shall be
 3 called; and such manner may be changed at any subsequent meeting regu-
 4 larly called.

SEC. 9. There shall be in each township three trustees, one clerk, one
 2 assessor, two constables, and two justices of the peace, except that where
 3 any township includes an incorporated town, either two, three, or four con-
 4 stable and justices, as the trustees may order, may be elected in such town-
 5 ship, two at least of whom shall reside in such town.

SEC. 10. The trustees are empowered to call meetings of the township,
 2 in which one of them shall preside; to direct the place of holding elections;
 3 to order the notifying of elections, in which they shall be the judges; and
 4 to cause any matter to be inserted in the notices of the meetings or elections
 5 for action at such meeting.

SEC. 11. They shall cause the clerk to keep a record of their pro-
 2 ceedings.

SEC. 12. The township trustees are the overseers of the poor and the
 2 fence viewers, and the township board of equalization and board of health.

SEC. 13. Any person elected to a township office, and refusing to qualify
 2 and serve, shall forfeit the sum of five dollars, which may be recovered by
 3 action in the name of the county, to the use of the school fund in the
 4 county, but no person shall be compelled to serve as a township officer two
 5 terms in succession.

SEC. 14. It is the duty of the township clerk to keep accurate records of
 2 the proceedings and orders of the trustees, and to perform such other acts
 3 as may be required of him by law.

SEC. 15. He is authorized to administer the oath of office to all the town-
 2 ship officers, and he shall make a record thereof, and also of all who file
 3 certificates of their having taken the oath before any other officer authorized
 4 to administer the same.

SEC. 16. The clerk, immediately after the election of justice of the peace
 2 in his township, shall send a written notice thereof to the county auditor,
 3 stating the names of the persons elected, and the time of the election, and

4 shall enter the time of the election of each justice in the township record.

2 SEC. 17. The constables shall serve all warrants, notices, and other pro-
3 cess, lawfully directed to them by the trustees or clerk of the township, or
4 any court, and perform such other duties as are or may be required by law.

2 SEC. 18. Constables are ministerial officers of justices of the peace, and
3 they shall attend upon the district or circuit courts when notified therefor by
4 the sheriff.

2 SEC. 19. There shall be elected at the general election in every year, a
3 township collector in and for each organized township in every county
4 except the township in which the county seat is located, who shall hold office
5 for one year, *provided*, The board of supervisors of the county shall order
6 the election of township collectors as provided in section thirty-one of this
7 chapter.

2 SEC. 20. He shall qualify at the next meeting of the board of supervi-
3 sors after his election by taking and subscribing the usual oath of office,
4 and giving a bond to the county in a penal sum equal to double the whole
5 amount of tax levied for the preceding year against the property of the
6 township in and for which he is elected, which shall be presented to and
7 approved by the board of supervisors of the county and recorded the same
8 as the bond of county officers.

2 SEC. 21. The clerk of the board of supervisors in counties where town-
3 ship collectors are elected, shall make out a duplicate tax-list of and for
4 each township in such county, and deliver the same, with the original, to
5 the county treasurer.

2 SEC. 22. The county treasurer shall, on or before the 1st day of January
3 in each year, deliver to each township collector in the county, such du-
4 plicate tax-list of his township, and take his receipt therefor, specifying the
5 total amount of the tax charged in such list, and charge the same over to
6 each township collector, in a book to be kept for that purpose; and such
7 duplicate tax-list, when so made out and delivered to the township collect-
8 ors, may be used as an execution and shall be sufficient authority for them
9 to collect the taxes therein charged in any township in the county, by dis-
10 tress and sale or otherwise, as now provided by law for the collection of
11 taxes by the county treasurer; and the county treasurer shall not receive or
12 collect any of the taxes charged in any duplicate tax-list so delivered, except
13 the tax of non-residents of the township, until the same has been returned
14 to him, as hereinafter provided. The said county treasurer shall procure
15 for and deliver to each township collector, with said tax-list, a tax receipt-
16 book, with a blank margin or stub, upon which the said township collector
17 shall enter the number and date of the tax receipt given to the tax-payer,
18 the amount of tax and by whom paid, which said tax receipt-book shall be
19 returned to the county treasurer, with the said duplicate tax-list as herein-
20 after provided.

2 SEC. 23. Upon the receipt of said tax-lists, each township collector im-
3 mediately shall cause the notice of the reception thereof to be posted up in
4 some conspicuous place in every school-district in the township and in every
5 ward of any city therein, and so located as will be most likely to give notice
6 to the inhabitants thereof, and also publish such notices for four weeks in
7 one or more weekly papers, if any published in the township, designating
8 in such notice a convenient place in such township, where he will attend,
9 from 9 o'clock A. M. to 4 o'clock P. M., at least once in each week, on a day
10 to be specified in said notice, until March 1, following, for the purpose of re-
ceiving payment of taxes, and it shall be the duty of each collector to attend

11 accordingly, and he shall proceed to collect and receipt for all taxes therein
 12 charged, in the same manner as now provided by law for the collection of taxes
 13 by the county treasurer, and all the laws which apply to and govern the col-
 14 lection of taxes therein, by county treasurer, shall apply to and govern the
 15 collection of taxes by said township collector, when not intonsistent with
 16 the provisions of this act.

SEC. 24. The county treasurer shall not appoint deputies, nor collect
 2 taxes by deputies in counties wherein township collectors are elected as pro-
 3 vided by this act.

SEC. 25. Every collector, after the first of March in each year, shall call
 2 at least once on each person whose tax remains unpaid, or at the place of
 3 his usual residence, if in the township for which such collector has been
 4 chosen, and shall demand the payment of the property charged to him on
 5 his property; in case any person shall attempt to remove from the township
 6 property on which tax is due without leaving sufficient to pay such tax, at
 7 any time after the duplicate comes into his hands, the collector shall be
 8 authorized, and it shall be his duty, to attach such property, and hold the
 9 same until the tax is paid, or make the tax out of such property. In case
 10 any person shall refuse or neglect to pay the tax, or shall have removed
 11 from said township, the collector shall levy the same by distress and sale of
 12 the goods and chattles of the person who ought to pay the same, or of any
 13 goods and chattels on which the said tax was assessed, wheresoever the same
 14 may be found within the county. The collector shall give public notice of
 15 the time and place of sale and of the property to be sold at least six days
 16 previous to the sale, by advertisements to be posted up in at least three
 17 public places in the township where such sale shall be made. The sale shall
 18 be made by public auction, and if the property shall be sold for more than
 19 the amount of the tax, penalty and costs, the surplus shall be returned to
 20 the person in whose possession such property was when the distress was
 21 made.

SEC. 26. The said township collector shall make monthly statements to
 2 the county treasurer, of the amount of tax collected by them on each fund,
 3 and pay the same over to the said county treasurer and take his receipt
 4 therefor; and they shall complete the collection of the tax charged in the
 5 said duplicate tax lists, by distress and sale or otherwise, on or before the
 6 first Monday in May next after the receipt of said duplicate tax list, and pay
 7 over the amount so collected to the county treasurer, and return to him the
 8 said tax-lists and receipt-books, and make a full and complete settlement
 9 for the taxes so collected with the county treasurer, which settlement shall
 10 be subject to the examination and correction of the board of supervisors of
 11 the county, to be had and made at its next session.

SEC. 27. Each township collector shall receive for his services the fol-
 2 lowing compensation: I. Two per cent. of all sums collected by him on the
 3 first two thousand dollars, and one per cent on all sums in excess thereof
 4 collected by him otherwise than by distress and sale, to be paid out of the
 5 county treasury; II. Five per cent upon all taxes collected by him by dis-
 6 tress and sale, which percentage and costs shall be collected of the delin-
 7 quent tax-payer, and the same fees in addition to the said five per cent. as
 8 constables are entitled to receive for the sale of property on execution.

SEC. 28. After the return of said duplicate tax-lists and settlement as
 2 provided above, the county treasurer may, and it shall be his duty to receive,
 3 receipt for, and collect any unpaid taxes in the county; and shall proceed
 4 to advertise and sell all the real estate in the county upon which the taxes
 5 have not been paid, for the unpaid taxes thereon, as provided by law.

2 Sec. 29. If any of the taxes mentioned in the tax-list shall remain
 3 unpaid, and the collector shall not be able to collect the same, he shall
 4 deliver to the county treasurer an account of the taxes so remaining due ;
 5 and upon making oath before the county auditor, or in case of his absence,
 6 before any justice of the peace, that the sums mentioned in such account
 7 remain unpaid, and that he has not, upon diligent inquiry, been able to dis-
 8 cover any goods or chattles belonging to or in the possession of the person
 9 charged with or liable to pay such sums, whereon he could levy the same,
 10 he shall be credited by the county treasurer with the amount thereof, but
 11 such oath and credit shall only be presumptive evidence of the correctness
 thereof.

2 Sec. 30. That in case of loss while in his possession of any funds col-
 3 lected by any such collector, by theft or otherwise, such collector and his
 4 sureties shall be liable for the amount so lost.

2 Sec. 31. The board of supervisors of each county in the state having a
 3 population exceeding four thousand inhabitants, as shown by the last pre-
 4 ceding census, are hereby authorized and empowered to order an election
 5 of a township collector in each organized township in their county, by a
 6 resolution to that effect, passed at their regular meeting in June in any year,
 7 by a two-thirds vote of the board, which shall be spread upon the records
 8 of the board, and the first election of township collectors in such county
 9 shall be held at the next general election after the passage of such resolu-
 10 tion, and every year thereafter, until the said resolution is repealed by the
 11 board, by a like vote, at their regular meeting in June in any year. They
 12 shall be voted for and elected in the manner of other township officers, and
 13 in all counties in the state where such resolution has not been adopted, or
 14 has been repealed as provided in this section, section 19 to 30, inclusive, of
 this chapter shall be inoperative and of no effect.

2 Sec. 32. Any township, town, or village, desirous of changing its name,
 3 may petition the board of supervisors of the county where such township,
 4 town, or village, is situated, and if it shall appear to said board that a major-
 5 ity of the actual resident voters of such township, town, or village, are in
 6 favor of such change, such board shall cause three notices to be posted up
 7 in three of the most public places of such township, town, or village, for at
 8 least thirty days previous to the next session of said board, which notice
 9 shall state the fact that a petition has been presented to said board by the
 10 citizens of said township, town, or village, praying for a change of the name
 11 of the same, and the name prayed for in said petition, and that unless those in-
 12 terested in the change of such name shall appear at the next regular session
 13 of said board, and show cause why said name shall not be changed, there
 14 will be an order made granting such change, which notice shall be attested
 by the clerk of said board.

2 Sec. 33. If at the time fixed for the hearing of said petition, said board
 3 is satisfied that there is a majority in favor of such change of name, said
 4 board shall make an order granting such change, which shall be attested by
 5 the clerk of said board and recorded in the office of the recorder of the
 county where such township, town, or village, is situated.

2 Sec. 34. The costs of such change and recording shall be paid by the
 3 petitioners. But should it appear to said board that a majority of the citi-
 4 zens of such township, town, or village, are opposed to such change, such
 5 petition shall be dismissed and the cost of the proceeding taxed against the
 petitioners.

2 SEC. 35. The trustees of any township not incorporated shall be a board
3 of health, and shall have power to make such regulations as they may deem
4 necessary for the public health and safety respecting nuisances, sources of
5 filth, and causes of sickness within their towns.

2 SEC. 36. Notice shall be given of all regulations made by publishing the
3 same in some newspaper of its town, or where there is no newspaper, by
4 posting in five public places in the town. Such notice shall be deemed legal
5 notice to all persons.

2 SEC. 37. The board shall examine into all nuisances, sources of filth, and
3 causes of sickness within its town, and shall take immediate measures to
4 abate, remove, or prevent the same, wherever found.

2 SEC. 38. The board shall order the owner or occupant, at his own ex-
3 pense, to remove any nuisance, source of filth or cause of sickness found on
4 private property within such time as it deems reasonable, and if such per-
5 son neglects to do so he shall forfeit a sum of not exceeding twenty-five
6 dollars for every day during which he knowingly permits such nuisance or
7 cause of sickness to remain after the time prescribed for the removal thereof.
8 The order shall be in writing, and served by any constable of the town, in
9 the usual way of serving notices in civil suits. If the owner or occupant
10 fails to comply with such order, the board may cause the nuisance, source of
11 filth, or cause of sickness to be removed, and all expenses incurred thereby
12 shall be paid by such owner or occupant.

2 SEC. 39. The board shall have power to make regulations in relation to
3 cleansing the streets, alleys and drains of the town, in relation to communi-
4 cation with houses where there is any contagious or infectious disease, to
5 establish pest-houses or hospitals, and when deemed expedient and necessary
6 to prevent the spread of any contagious disease, to remove to said pest-
7 house or hospital, any person sick with the Asiatic or malignant cholera, or
8 other malignant or infectious disease. To prohibit or prevent all communi-
9 cation or intercourse by and with all houses, tenements, and places, and the
10 persons occupying the same in which there shall be any person sick with
11 any contagious, malignant, or infectious disease. To employ all such per-
12 sons as shall be necessary to carry into effect the regulations adopted and
13 published according to the powers vested in the board, and to fix their com-
14 pensation, to employ physicians in case of poverty, and to take such general
15 precautions and actions as it may deem necessary for the public health.

2 SEC. 40. Any person who shall wilfully violate any of the regulations so
3 made and published by the board of health, shall be guilty of a misde-
4 meanor, and upon conviction thereof shall be subject to a fine or imprison-
5 ment, such fine not to exceed one hundred dollars, and such imprisonment
6 not to exceed thirty days.

2 SEC. 41. All expenses incurred by the several boards of health in the
3 execution of this act shall be a charge upon their respective towns, for the
4 purpose of defraying which a tax may be levied by such board of health
5 upon the property in such town, upon the valuation of property, at the last
6 assessment of such property, sufficient to defray all expenses so incurred.

2 SEC. 42. Ten days' notice of such levy shall be given in the manner pre-
3 scribed by law for the collection of taxes, when it shall be the duty of the
4 marshal or constable of such town to collect the same, and pay it into the
5 hands of the treasurer of the board of health.

CHAPTER 10. *Of Incorporated Towns and Cities.*

SEC. 1. No town or city shall hereafter be incorporated in any other manner than as herein provided. But the six following sections shall not apply to cities or towns incorporated prior to April 7, 1868; nor shall the provisions of this chapter apply to any city or town incorporated prior to the eighteenth day of July, 1858, unless the same be adopted as hereinafter provided.

SEC. 2. When the inhabitants of any part of any county not embraced within the limits of any city or incorporated town shall desire to be organized into a city or incorporated town, they may apply by petition in writing, signed by not less than thirty of the qualified voters of the territory to be embraced in the proposed city or incorporated town, to the circuit court of the proper county, which petition shall describe the territory proposed to be embraced in such city or incorporated town, and shall have annexed thereto an accurate map or plot thereof, and state the name proposed for such city, or incorporated town, and shall be accompanied with satisfactory proofs of the number of inhabitants within the territory embraced in said limits.

SEC. 3. When such petition shall be presented, the court shall forthwith appoint five commissioners, who shall at once call an election of all the qualified electors residing within the territory embraced within said limits, as described and platted, to be held at some convenient place within said limits, the notice for which shall be given by publication in some newspaper, published within said limits, (if any there be), for three successive weeks, and by posting notices in five public places within said limits: said posting and the first publication to be not less than three weeks preceding such election. Such notices shall specify the place and time of such election, and a description of the limits of said proposed town or city, and that a description and plot thereof are on file in the office of the county auditor. Said commissioners shall act as judges and clerks of the election, and shall qualify as required by law for judges and clerks of township elections, and shall report the result of the ballot to the court aforesaid. The ballot used at such election shall be, "For incorporation"—"Against incorporation."

SEC. 4. If at said election a majority of said ballots shall be cast for incorporation, the clerk of the court shall immediately give notice of the result in a newspaper (or if there be none by posting), as aforesaid, and shall state in such notice to which of the classes, as named in section, of this chapter, said incorporated town or city belongs; and said clerk shall indorse on said petition the substance of the last mentioned notice, and said petition so indorsed, together with the description and plat shall be filed and recorded in the recorder's office of the proper county; and also a copy of the same shall be deposited with the secretary of state.

SEC. 5. As soon as said record shall be made, and said copy deposited as required in section four, and the election and qualification of officers hereinafter provided shall have taken place, the inhabitants within the limits described in said petitions shall be deemed an incorporated town or city, as the case may be, and notice of its existence as such shall be taken in all judicial proceedings in the state.

SEC. 6. When the record mentioned in section four hereof shall have

2 been made, said commissioner shall immediately give public notice by pub-
 3 lication two consecutive weeks in some newspaper (if any there be) pub-
 4 lished within the limits of such town or city, and also by posting up notices
 5 in five public places in said town or city, of the time and place of holding
 6 the first election for officers thereof, said commissioners shall preside at
 7 said election in the same manner as judges and clerks of township elections,
 8 and said election shall be conducted and the officers elected and qualified in
 9 the manner prescribed by law for the election and qualification of township
 10 officers. The officers to be elected shall be the same required by this chap-
 11 ter for the class to which said town or city shall belong, as shown by the
 12 certificate and notices required by section four hereof, and they shall con-
 13 tinue in office only until the time of the regular election of said officers, and
 14 until their successors are elected and qualified.

2 SEC. 7. When the inhabitants of a part of any county contiguous and
 3 adjoining to any city or town, shall desire to be annexed to such city or
 4 town, they may apply, by petition in writing, to the circuit court of the
 5 proper county, signed by the inhabitants so applying, to be in number not
 6 less than a majority of the electors, which petition shall describe the terri-
 7 tory proposed to be annexed, and be accompanied by an accurate map or
 8 plat thereof, and shall name the person or persons prosecuting said petition.

2 SEC. 8. When any such petition shall be presented to the court, the
 3 same shall be filed, and like proceedings shall be had as prescribed in the
 4 3d, 4th, and 5th sections of this chapter, the election therein provided for
 5 being held in the territory proposed to be annexed, and notice thereof being
 6 given as above provided, and also by serving a copy of such notice on the
 7 mayor or other officer of the town or city to which the proposed annexation
 8 is to be made.

2 SEC. 9. The council or trustees of said city or town may give the con-
 3 sent thereof to such annexation or they may in their discretion provide by
 4 ordinance or resolution for submitting to the electors at the next annual elec-
 5 tion of municipal officers, the question whether such annexation shall be
 6 made; and if such consent be given, or if a majority of the electors of such
 7 city or town voting at such election shall vote in favor of annexation, then
 8 on the return of such vote to the proper authority of such city or town, a
 9 resolution or ordinance shall be adopted or passed declaring that the terri-
 10 tory described in the petition has been annexed to and is a part of such city
 11 or town; and it shall be the duty of the clerk or recorder of the said city or
 12 town to make out two copies of the petition, plat, orders of the circuit court,
 13 abstract of votes and resolutions or ordinances in relation to such annexation,
 14 with a certificate that the same are correct, attested by the seal of such city
 15 or town, and he shall deliver one of said copies to the recorder of the county,
 16 whose duty it shall be, having first made a record thereof in the proper
 17 books of record, to file and preserve the same, and the other of said copies shall
 18 be forwarded by the clerk or recorder of said city or town to the secretary
 19 of state.

2 SEC. 10. So soon as said resolution or ordinance declaring such annex-
 3 ation has been adopted, and the said copies transmitted, delivered, and
 4 recorded, the said territory shall be deemed and taken to be a part and par-
 5 cel of the said city or town, and the inhabitants residing therein shall have
 6 and enjoy all the rights and privileges of the inhabitants within the original
 7 limits of such city or town.

2 SEC. 11. When any municipal corporation shall desire to annex any con-
 3 tiguous territory thereto, not embraced within the limits of any city or town,

3 it shall be lawful for the trustees or council of the corporation, by an ordi-
 4 nance passed for that purpose, at least one month before the regular annaa
 5 election to submit the question of and annexation to the qualified voters of
 6 such corporation, and if a majority of the electors of the corporation, voting
 7 on the question, shall vote in favor of such annexation, the officers of said
 8 corporation shall present to the circuit court a petition praying for such
 9 annexation, which petition shall describe the territory proposed to be annexed
 10 to such municipal corporation, and have attached thereto an accurate map or
 11 plat thereof, and like proceedings shall be had upon said petitions, as are pro-
 12 vided in the third, fourth and fifth sections of this chapter, so far as the same
 13 may be applicable, but it shall be lawful for the voters resident upon the
 14 territory thus proposed to be annexed, or any of them, to appear at said hear-
 15 ing, and show cause why such annexation should not be made, and if it
 16 appears by remonstrance or otherwise that a majority of the legal voters in
 17 said district so proposed to be annexed are opposed to such annexation,
 18 said annexation shall not be allowed, or the court may order an election to
 19 be held in said district as heretofore provided, and if the result of such elec-
 20 tion be favorable to the proposed annexation, the same record shall be made
 21 as above provided, and thereupon the said contiguous territory proposed to
 22 be annexed, shall be in law deemed and taken to be included in, and shall
 23 be a part of said municipal corporation, and the inhabitants thereof shall, in
 24 all respects be citizens thereafter of the said municipal corporation.

SEC. 12. When any municipal corporation, the territory of which shall
 2 be contiguous to and adjoining that of another municipal corporation, shall
 3 desire to be annexed thereto, it shall be lawful for the trustees or council of
 4 the corporation proposing such annexation, to submit the question to the
 5 electors of the corporation, by an ordinance passed for the purpose, at least
 6 one month before the annual election the trustees or council of the munici-
 7 pal corporation to which the annexation is proposed to be made, may in
 8 like manner submit the question to its electors, if a majority of the electors
 9 of each of the two corporations voting on the question at the same general
 10 election, shall vote in favor of such annexation, the trustees or council of
 11 each corporation may appoint three commissioners who shall arrange the
 12 terms and conditions of the annexation, and submit the same to the trust-
 13 tees or council of the respective corporations, and the same being duly
 14 approved, by an ordinance passed for the purpose by each corporation, certi-
 15 fied copies thereof signed by the presiding officer of the trustees or council
 16 of each corporation, and the clerk or recorder, and attested by its corporate
 17 seal, shall be filed in the office of the clerk of the corporation to which such
 18 annexation shall be proposed to be made, and it shall be the duty of such
 19 clerk or recorder, under the direction of such corporation to make out and
 20 certify two transcripts of all ordinances, abstracts of the returns of the votes,
 21 and other papers relating to such annexation, one of which shall be filed in
 22 the office of the county recorder, who having made a record thereof, shall
 23 file and preserve the same, and the other of said copies shall be for-
 24 forwarded by said clerk or recorder, to the secretary of state.

SEC. 13. So soon as said transcripts shall be certified and delivered, and
 2 forwarded, the said annexation shall be deemed complete, and it shall be lawful
 3 for the corporation to which the annexation has been made, to pass such ordi-
 4 nances as will carry into effect the terms of such annexation, so far as the
 5 same shall not be inconsistent with this act, and with the regular and proper
 6 government of such corporation under the provisions thereof, and any part
 7 of such terms so inconsistent shall be deemed void, but their nulity shall in

8 no manner affect such annexation, and the two former corporations shall
 9 therefore be governed as one, embracing the territory, shall have equal rights
 10 and privileges: *provided*, such annexation shall not affect or impair any
 11 rights or liabilities existing at the time of such annexation either in favor of
 12 or against said corporations, and suits founded upon such rights and liabilities
 13 may be commenced, and pending suits prosecuted and carried to final
 14 judgment and execution, the same as though such annexation had not taken
 15 place.

2 SEC. 14. Any city or town incorporated by special charter, or in any
 3 other manner than that provided by this chapter, may abandon its charter
 4 and organize itself under the provisions of this chapter, with the same territorial
 5 limits, by pursuing the course hereinafter prescribed.

2 SEC. 15. Upon the petition of fifty legal voters in any such city or
 3 town, to the council or trustees thereof, praying that the question of abandoning
 4 its charter be submitted to the legal voters, it shall be the duty of
 5 said council or trustees immediately to direct a special election to be held,
 6 at which such question shall be decided, specifying at the same time, the
 7 time and place of holding the same, and appointing the judges and clerks
 8 of the election.

2 SEC. 16. It shall be the duty of the mayor, (or in case there is no
 3 mayor), of the president of the council or board of trustees, at once to issue
 4 a proclamation, giving notice of such election, of the question submitted to
 5 the electors, and of the time and place of holding the election; which
 6 proclamation shall be published for four consecutive weeks in some newspaper
 7 published in such city or town; and if there is none published
 8 therein, then such proclamation shall be published by posting a copy thereof
 9 in five public places within the corporate limits of such city or town, one of
 10 which shall be on the door of the mayor's office.

2 SEC. 17. At such election those who desire to vote in favor of the abandonment
 3 of the charter shall deposit a ballot with the words "in favor of abandonment;"
 4 those desiring to vote against the abandonment shall deposit a ballot with the
 5 words "against abandonment." The election shall be conducted in other respects
 6 as elections for city officers are conducted under the charter. The abstract of
 7 votes shall be returned to the city council or board of trustees, who shall
 8 canvass the same and declare the result, which shall be entered on the journal.

2 SEC. 18. If a majority of the votes cast at such election shall be in favor
 3 of the abandonment of the charter, the said charter shall without further
 4 proceedings be taken as abandoned, subject to the provisions of this chapter;
 5 and such city or incorporated town shall be considered organized, and shall
 6 have all the rights and be subject to all the limitations of a city of the
 7 first or second class, or of an incorporated town, according to the number of
 8 its population, under the general act for the incorporation of cities and
 9 towns.

2 In case a majority of the votes shall be against such abandonment, no
 3 further proceedings shall be taken under this chapter until after the expiration
 4 of one year from the time of such election.

2 SEC. 19. All rights and property of every description which were
 3 vested in any municipal corporation under its former organization shall be
 4 deemed and held to be vested in the same municipal corporation under the
 5 organization made by this chapter, and no right or liabilities either in favor
 6 of or against such corporation existing at the time, and no suit or prosecution
 7 of any kind shall be affected by such change; *provided*, That when a

7 different remedy is given by this chapter, which can properly be made
 8 applicable to any right existing at the time such change is made, the same
 9 shall be deemed cumulative to the remedies before provided, and may be
 10 used accordingly.

11 **SEC. 20.** When the inhabitants or a part of any city or town shall desire
 2 to have the part of the territory in such city or town in which they reside
 3 severed from or stricken out of the limits of such city or town, they may
 4 apply by petition in writing, signed by a majority of the resident property-
 5 holders of said part of the territory of such city or town as they desire to
 6 have so severed from or stricken out of the limits of such city or town, to
 7 the circuit court of the county, which petition shall describe the territory
 8 proposed to be thus severed or stricken out of the limits of such city or
 9 town, and have attached thereto an accurate map or plat thereof, and shall
 10 also name the person or persons authorized to act in behalf of the petition-
 11 ers in the prosecution of said petition.

2 **SEC. 21.** When any such petition shall be presented to the clerk of the
 3 circuit court, he shall file the same and docket the case in its proper place.
 4 Said petition shall be subject to the inspection of any person interested in
 5 the subject matter thereof, and notice of the filing of the same shall be
 6 given by publication in a newspaper published in said city or town, or by
 7 posting a notice of the same in five public places in said city or town, four
 8 weeks previous to the succeeding term of said court, which notice shall con-
 9 tain the substance of said petition, and state the term of court at which the
 10 hearing thereof will be had.

2 **SEC. 22.** The hearing of such petition may be had by the court, or either
 3 party may demand a jury, and the proper authorities of such city or town,
 4 or any person interested in the subject matter of said petition, may appear
 5 and contest the granting of the same, and affidavits in support of or against
 6 said petition which may be prepared and submitted, shall be examined by
 7 the court or jury, and the court may in its discretion permit the agent or
 8 agents named in the petition to amend or change the same, except that no
 9 amendment shall be permitted whereby the territory embraced in said peti-
 10 tion shall increase or diminish, without continuing the case to the next
 11 term, and requiring new motion to be given as above provided.

2 **SEC. 23.** If the court or jury, after hearing the petition and evidence
 3 bearing upon the subject matter thereof shall be satisfied that said petition
 4 has been signed by a majority of the property-holders residing within the
 5 limits of the part of the city or town described in the petition and plat, and
 6 that the limits have been accurately described and a correct map or plat
 7 thereof made and filed, and if the court or jury shall be further satisfied that
 8 justice and equity require that the prayer of the petitioners should be gran-
 9 ted, the court shall appoint three disinterested persons commissioners to set-
 10 tle and adjust the terms upon which such part shall be so stricken out as to
 11 any debts or liabilities of such city or town that have accrued during the
 connection of such part with such corporation.

2 **SEC. 24.** The commissioners so appointed shall take and subscribe an
 3 oath or affirmation that they will faithfully and impartially perform their
 4 duties as such, and shall at a time ascertained by them fixed, hear the agent
 5 or agents named in said petition, and also the proper authorities of the city
 6 or town, in regard to the subject matter to them submitted, and report to
 7 the next succeeding term of said court their doings and judgment in the
 8 premises, and upon the filing of said report the court shall order, adjudge and
 9 decree in accordance therewith and with the prayer of said petition: *pro-*
vided, that for good and sufficient cause and upon a proper showing, the

10 court may reject or set aside said report, and appoint new commissioners,
11 and continue the cause for further action to be had thereon.

SEC. 25. The clerk of said court, as soon as practicable, shall file a certified transcript of such decree, together with the petition and map or plat, in the office of the recorder of the county, and the same disposition shall be made thereof as is provided by section four of this chapter in the organization of a corporation under this chapter.

SEC. 26. So soon as said record shall be made, and said transcript certified and forwarded and delivered as provided in said section five, the inhabitants residing within the limits described in said petition and plat or map, shall be deemed and taken to be no part of such corporation, and the territory described in such petition and map shall be deemed no part of such city or town, the costs shall be paid by the petitioners, but when witnesses are called in such cases, each party shall pay their own witness fee.

SEC. 27. In no case shall territory which is not laid out into town or city lots or blocks, be annexed to, or retained as a part of a city or town without the consent of the majority of the resident owners thereof.

SEC. 28. Whenever one-fourth of the legal voters of any incorporated city or village in this state shall petition the circuit court of the county wherein such incorporation is situated, for the discontinuance of the same, it shall be the duty of said court to cause to be published for at least thirty days, a notice, stating that the question of discontinuing such incorporation shall be submitted to the legal voters of the same at the next annual corporation election, on the first Monday in March of any year.

SEC. 29. The form of the ballot shall be "For the incorporation," and "Against the incorporation."

SEC. 30. If a two-thirds majority of all the legal votes cast for and against such proposition shall be cast against it, then the same may be discontinued.

The vote provided for in this and the last two sections shall not be construed to discontinue any corporation until the said corporation shall have made ample provisions for the payment of all its indebtedness, and for the faithful performance of all its contracts and obligations, and shall have levied the requisite tax therefor.

SEC. 31. The vote for this purpose shall be taken, canvassed, and returned, in the same manner as other municipal elections, and all expenses of the same paid by the said corporation so voting.

SEC. 32. The books, documents, records, papers, and corporate seal, of any city, town, or village, so discontinued, shall all be deposited with the county auditor of the county for safe keeping and reference in future; and all court records of any mayor, or other officers, shall be deposited with the nearest justice of the township, who shall have authority to execute and complete all unfinished business standing on the same.

SEC. 33. Whenever the incorporation of any city, town, or village, shall have been discontinued under the provisions of the four preceding sections, it shall be the duty of the auditor of the county wherein such incorporations was situated to publish such fact for thirty days in a county paper, if one is published in the county—if not, to post three notices for the same length of time, and also to certify the fact to the secretary of state.

SEC. 34. For the payment of the indebtedness named in the thirtieth section of this chapter, the corporation shall issue warrants in cases where there is no money in the treasury, and the county treasurer shall collect the tax provided for in said section as he collects other taxes, and pay the said

5 warrants; and any surplus of this fund shall be passed over to the tempo-
6 rary school fund of the district where the same was levied.

2 Sec. 35. It shall be the duty of the secretary of state to receive and
3 preserve in his office, all papers transmitted to him in relation to the incor-
4 poration of cities or towns, or the annexation of territory to the same, or
5 the consolidation or the abandonment of municipal corporations, and to
6 keep an alphabetical list of said cities and towns in a book provided for
7 that purpose, in which shall be entered the name of the town or city, the
8 character of the same, whether town or city, and if a city, whether of first
9 or second class, the county in which situated, and the date of organization
under this chapter.

2 Sec. 36. Cities and towns, organized or to be organized under this
3 chapter, are hereby declared to be bodies politic and corporate under the
4 name and style of the city of _____, or town of _____, as the case
5 may be, capable to sue and be sued, to contract and be contracted with, to
6 acquire and hold property, real and personal, to have a common seal, and
7 to change and alter the same at pleasure, and to have such other privileges
8 as are incident to municipal corporations of like character or degree, not in-
consistent with the laws of the state.

2 Sec. 37. All municipal corporations organized or to be organized under
3 this chapter, shall have the general powers and privileges, and be subject
4 to the rules and restrictions granted and prescribed in the succeeding sec-
tions of this chapter.

2 Sec. 38. They shall have power to prevent injury or annoyance within
3 the limits of the corporation, from anything dangerous, offensive or un-
4 healthy, and to cause any nuisance to be abated, to regulate the transporta-
5 tion and keeping of gunpowder or other combustibles, and to provide or
6 license magazines for the same, to prevent and punish fast or immoderate
7 riding or driving of horses through the streets, to establish and regulate
8 markets, to provide for the measuring or weighing of hay, coal, or any
9 other article of sale, to prevent any riots, noise, disturbance, or disorderly
10 assemblages, to suppress and restrain disorderly houses, houses of ill fame,
11 billiard tables, nine or ten pin alleys, or tables and ball alleys, and to au-
12 thorize the destruction of all instruments or devices used for purposes of
13 gaming, and to protect the property of the municipal corporation and its
inhabitants, and preserve peace and order therein.

2 Sec. 39. They shall have power to make regulations for the pur-
3 pose of guarding against danger from accidents by fire, and on petition of
4 the owners of two-thirds of the grounds included in any square or block,
5 to prohibit the erection thereon of any building, or any addition to any
6 building, unless the outer walls thereof be made of brick and mortar, or of
7 iron and stone and mortar, and to provide for the removal of any building
or additions erected contrary to such prohibition.

2 Sec. 40. They shall have power to provide a supply of water by the
3 construction and regulation of wells, pumps, cisterns, reservoirs, or water
4 works. To prevent the unnecessary waste or the pollution of water, and
5 injuries to the water works, and for the purpose of establishing or supply-
6 ing water works, any municipal corporation may go beyond its territorial
7 limits, and its jurisdiction to prevent or punish any pollution or injury to
8 the stream or source of water, or to the water works, shall extend five
9 miles beyond its corporate limits, and they shall have power to assess and
collect from time to time, in such manner as they shall deem equitable,

10 upon each and every tenement supplied with water, a water-rent of suffi-
 11 cient amount to defray the expenses of conducting and repairing the water
 12 works, and for the creation of a sinking fund for the liquidation of the debts
 13 incurred by said corporation in the erection of the same, and the amount so
 14 collected shall be applied to the above named purpose, and none other.

2 SEC. 41. They shall have power to regulate the burial of the dead, to
 3 provide without the limits of the corporation, places for the interment of the
 4 dead, and to prevent any sub-interments within such limits, and to carry into
 5 effect any prohibition of interments within the limits of the corporation,
 6 may not only impose proper fines and penalties, but shall have power to
 7 cause any body interred contrary to such prohibition to be taken up and
 buried without the limits of the corporations.

2 SEC. 42. They shall have power to restrain and regulate the running at
 3 large of cattle, horses, swine, sheep and other animals within the limits of
 4 the corporation, and to authorize the distraining, impounding and sale of the
 5 same for the penalty incurred and costs of the proceeding, to prevent the
 6 running at large of dogs and injuries therefrom, and to authorize the destruc-
 tion of the same when at large contrary to any prohibition to that effect.

2 SEC. 43. They shall have power to regulate or prohibit all theatrical ex-
 3 hibitions of whatever name or nature, for which money or any other reward
 4 is in any manner demanded or received; but lectures on scientific, historical
 or literary subjects shall not come within the provisions of this section.

2 SEC. 44. They shall have power to regulate and license sales by auction-
 3 eers and transient merchants within their corporate limits, *provided*, that
 4 the exercise of their powers shall not interfere with the sales made by sher-
 5 iffs, constables, coroners, marshals, executors, guardians, assignees of insol-
 6 vent debtors or bankrupts, or any other person required by law to sell real
 or personal property.

2 SEC. 45. They shall have power to regulate or prohibit the sale of horses
 3 or other domestic animals at public auction, in the streets, alleys or high-
 4 ways, to regulate all carts, wagons, drays, coaches, omnibuses, and every
 5 description of carriage which may be kept for hire, to regulate taverns and
 6 houses for the public entertainment, and to regulate or prohibit the sale of
 intoxicating liquors not prohibited by the laws of the state.

2 SEC. 46. They shall have power to lay off, open, widen, straighten or to
 3 narrow or vacate, or to extend and establish, to improve, keep in order and
 4 repair, and to light streets, alleys, public grounds, wharves, landing places,
 5 and market places, to open and construct, keep in order and repair sewers
 6 and drains, to enter upon and take for such of the above purposes as may
 7 require it, land or material, and to assess and collect, or on the lots or
 8 lands through or by which a street, alley, or public highway may pass for
 9 the purpose of defraying the expenses of constructing, improving, repair-
 10 ing or lighting such street, alley or public highway in such proportion as to
 them shall seem just and equitable.

2 SEC. 47. They shall have power to provide by ordinance, for grading,
 3 constructing and repairing the sidewalk, in front of or upon the side of any
 4 lot, or any part thereof, for the grading, paving, or macadamizing of any
 5 street, avenue or alley, or any part of either of the same, and for the con-
 6 struction and repair of gutters and sewers, and to provide by ordinance for
 7 the levy of a special tax upon the lots, parcels of grounds, or any part of
 8 either of the same fronting upon, or lying along the street, avenue or alley
 9 which is to be improved, or is improved under the powers herein conferred,
 for the purpose of paying the expenses of the improvement.

2 Sec. 48. They shall have power to purchase lands within or without
3 their corporate limits for the public use as squares, parks, commons, or cem-
4 eteries, and may enclose, ornament and improve the same.

5 They shall have entire control of the same, and shall have power in case
6 such lands are deemed unsuitable or insufficient for the purpose for which
7 they were originally granted, to dispose of and convey the same, and con-
8 veyances executed in accordance with this chapter shall be held to
9 extinguish all rights and claims of any such town or city to such lands ex-
10 isting prior to such conveyance. But when such lands are so disposed of
11 and conveyed, enough thereof shall be reserved for streets to accommodate
adjoining property owners.

2 Sec. 49. Whenever it shall be deemed necessary by any city to enter
3 upon, take, appropriate, and hold any lands within or without the territo-
4 rial limits of such city, for the use of public squares, parks commons, ceme-
5 teries, hospital grounds, or any other proper and legitimate municipal use,
6 then such city may proceed to ascertain the damages to the owners of such
7 lands by reason of the appropriation thereof, as aforesaid, as provided by
8 law for the opening of streets, by proceeding to condemn private property,
9 and, upon the payment of the damages assessed, the fee simple title to any
10 lands so condemned shall rest in the city, *provided*, the same right of appeal
11 shall be preserved to the owners as in proceedings to appropriate lands for
opening streets.

2 Sec. 50. When it shall be deemed necessary by any municipal corpora-
3 tion to enter upon, or take private property for any of the above uses, an
4 application in writing, shall be made to the circuit court, which application
5 shall describe as correctly as may be the property to be taken, the object
6 proposed, and the owners of the property, and of each lot or parcel thereof
7 known. Notice of the time and place of such application shall be given,
8 either personally in the ordinary manner of serving legal process, or by
9 publishing a copy of the application with a statement of the time and place
10 at which it is to be made, for three weeks next preceeding the time of the
11 application in some newspaper of general circulation in the county. If it
12 shall appear to the said court, that such notice has been served five days
13 before the application, or has been published as above provided, the time
14 may be set for the inquiry into and assessment of compensation, and the
15 court shall appoint three disinterested persons who shall act as a jury, to
16 assess the compensation, which assessment shall be made at the time set as
17 above provided: the said jurors having first examined the premises or prop-
18 erty so proposed to be appropriated; unless for good cause continued to an-
19 other day to be specified. If at the time of such application, it shall ap-
20 pear that any of the owners of such property are infants or insane, a guar-
21 dian *ad litem* shall be appointed, and the municipal corporation may be re-
22 quired to file a more accurate description of the property to be taken, and
the object proposed, and maps, plats, and surveys if necessary or proper.

23 The assessment shall be made so that the amount payable to each owner
24 may be ascertained; either by allotting it to each owner by name, or on
25 each lot or parcel of land, and the inquiry and assessment shall in other re-
26 spects be made by the jurors under such instructions as shall be given by the
27 court. The jurors shall be sworn or affirmed to make the whole inquiry
28 and assessment, but may be allowed to return a verdict as to part, and be
29 discharged as to the rest in the discretion of the court, and in case they shall
30 be discharged from rendering a verdict in whole or in part, another jury

31 shall be empaneled, at the earliest convenient time, who shall make the
32 whole inquiry and assessment or the part not made as the case may be.

33 But in making said assessment the jury shall not take into consideration
34 any advantage that may result to said owner or owners, on account of the
35 improvement for which the property is taken.

2 Sec. 51. So soon as the amount of compensation which may be due to
3 the owners of the property to be taken, or any of them, shall be ascertained,
4 the court shall make such order as to its payment, or its deposit as shall be
5 deemed right and proper, and the proportion payable to each, and may re-
6 quire adverse claimants to any part of the money or property to interplead,
7 so as fully to settle their rights and interests according to equity and justice,
8 the court may direct the time and manner in which the possession of the
9 property, shall be taken or delivered, and may if necessary enforce any
10 order giving possession. But none of the property shall be actually taken
11 or occupied until the compensation thus ascertained shall have been paid or
12 secured to be paid. The costs occasioned by the inquiry and assessment
13 shall be paid by the corporation and as to the other costs, which may arise,
14 they shall be charged or taxed as the court in its discretion may direct, no
15 delay in making an assessment of compensation or in taking possession, shall
16 be occasioned by any doubt which may arise as to the ownership of the
17 property, or any part thereof, or as to the interest of the respective owners,
18 but in such cases the court shall require the deposit of the money allowed
19 as compensation for the whole of the property, or the part in dispute and in
20 all cases as soon as the corporation shall have paid the compensation assessed
21 or secured its payment by a deposit of money under the order of the court,
22 possession of the property may be taken, and the public work or improve-
ment progress.

2 Sec. 52. Any party interested in any such inquiry and assessment, who
3 shall feel aggrieved by the finding of the jury or the order of the court may
4 have the part thereof in which such party may be interested and feel ag-
5 grieved, reviewed in the district court, by filing a petition for that purpose
6 within ten days after the finding or decision complained of shall have been
7 made, and it shall be the duty of the court to report in the nature of a bill
8 of exceptions, the facts necessary to show the ground of the finding or de-
9 cision, and said petition and report shall be filed in the district court, on or
10 before the first day of the next term thereof, and the matter shall be heard
11 and determined by said court, and if the court shall find that right and jus-
12 tice has not been done, a new assessment may be ordered by a jury in said
13 court or the judgment of the court below affirmed. When such petition
14 shall be filed, the court may suspend the execution of any order which may
15 have been made, on such terms as may be deemed proper, and may require
16 a bond with security for the payment of any damages or costs which may
17 be thereby occasioned, but in all cases when the municipal corporation shall
18 pay or secure by deposit of money the compensation assessed, and shall give
19 such surety as shall be deemed adequate to pay any further compensation
20 and all damages and costs which may be adjudged in the district court the
21 right to take and hold the property condemned shall not be affected by such
22 review.

2 Sec. 53. Each municipal corporations may, by a general by-law
3 or ordinance, prescribe the mode in which the charge on the res-
4 pective owners of lots or lands, and on the lots or lands, shall be
5 assessed and determined for the purposes authorized by this chap-
ter; such charge when assessed shall be payable by the owner or

6 owners at the time of the assessment personally, and shall also be a lien up-
 7 on the respective lots or parcels of land in the possession of any owner
 8 from the time of the assessment. Such charge may be collected, and such
 9 lien enforced by a proceeding in law, or in equity, either in the name of the
 10 municipal corporation, or of any person whom the municipal corporation, or
 11 of any person to whom the municipal corporation shall have directed pay-
 12 ment to be made. In any such proceedings at law, where pleadings are re-
 13 quired, it shall be sufficient to declare generally for work and labor done,
 14 and materials furnished on the particular street, alley, or highway, and in
 15 proceedings in equity when the owner of any lot shall be a non-resident of
 16 the county, or unknown, notice shall be given by publication in the manner
 17 prescribed by law for notices upon absent defendants returned not found,
 18 but publication for one-half the usual time shall be deemed sufficient. Pro-
 19 ceedings at law or equity may be instituted against all the owners, or any of
 20 them, as to enforce the lien against all the lots or land, or each lot or parcel,
 21 or any number of them embraced in any one assessment, but the judgment
 22 or decree shall be rendered separately for the amount properly chargeable.
 23 Any proceeding may be severed in the discretion of the court for the pur-
 24 pose of trial, review, or appeal.

2 Sec. 54. In any such proceeding where the justice of the peace or the
 3 court trying the same shall be satisfied that the work has been done, or mate-
 4 rials furnished, which, according to the true intent of the act, would be
 5 properly chargeable upon the lot or land through or by which the street,
 6 alley, or highway, improved, repaired, or lighted, may pass, a recovery shall
 7 be permitted, or a charge enforced, to the extent of the proper proportion
 8 of the value of the work or materials which would be chargeable on such
 9 lot or land, notwithstanding any informality, irregularity, or defect in any
 10 such municipal corporation, or any of its officers.

11 But in such case the justice or court may adjudge as to costs, as may be
 12 deemed proper, and in cases where an assessment shall have been regularly
 13 made, and payment shall have been neglected or refused at the time when
 14 the same was required, any municipal corporation may be entitled to demand
 15 and recover in addition to the amount assessed and interest thereon at ten
 16 per cent., from the time of the assessment, five per cent., to defray the ex-
 17 penses of collection which shall be included in any judgment or decree
 which may be rendered.

2 Sec. 55. Municipal corporations shall have power to assess any lot of
 3 land within their limits, on which or part of which, water at any time be-
 4 comes stagnant, to be raised and filled up, or drained, and to cause all
 5 putrid substances, whether animal or vegetable, to be removed from such
 6 lot by the owner in such manner as may be directed by a resolution of the
 7 proper authority; and it shall be the duty of such owner, or his agent or
 8 attorney, after service of a copy of the same resolution, or after a publica-
 9 tion of the same in some newspaper of general circulation in such municipal
 10 corporation, for two successive weeks, to comply with the directions of such
 11 resolution within the time therein specified; and in case of a failure or
 12 refusal to do so, it may be done at the expense of said municipal corpora-
 13 tion, and the amount of money so expended shall be a debt due to said
 14 municipal corporation from the owner of said lot, according to the amount
 15 expended by him, to be recovered before a justice of the peace, or any other
 16 court of competent jurisdiction, and shall moreover from the time of the
 17 adoption of such resolution, be a lien on such lot or lots, which may be
 enforced if need be, either after or without a previous proceeding at law,

18 by a suit in equity in the district court of the proper county; and like pro-
 19 ceedings may be had as hereinafter directed in relation to the improvement
 20 of streets, or as in other cases at law or in equity.

SEC. 56. Any municipal corporation may, in addition to the means
 2 provided by the foregoing sections, if by ordinance it so elects, cause any or
 3 all delinquent charges, assessments, and taxes made or levied under and by
 4 virtue of, and for the purpose specified in said sections, or referred to
 5 therein, to be certified to the county auditor of the county, and be col-
 6 lected and paid over by the treasurer of the county, in the same manner as
 7 taxes are authorized to be by section — of this chapter.

SEC. 57. Municipal corporations shall have power to make and publish
 2 from time to time, by-laws or ordinances, not inconsistent with the laws of
 3 the state for carrying into effect, or discharging the powers and duties con-
 4 ferred by this chapter, and it is hereby made the duty of municipal
 5 corporations to make and publish such ordinances as shall be necessary to
 6 secure such corporation from injuries by fire, thieves, robbers, burglars, and
 7 all other persons violating public peace, for the suppression of riots and
 8 gambling, and indecent and disorderly conduct, for the punishment of all
 9 lewd and lascivious behavior in the streets and other places; and they shall
 10 have power to make and publish such ordinances as to them shall seem
 11 necessary and proper to provide for the safety, preserve the health, and
 12 promote the prosperity, and improve the morals, order, comfort, and conve-
 13 nience of such corporations and the inhabitants thereof.

SEC. 58. Ordinances of municipal corporations may be enforced by the
 2 imposition of fines, forfeitures, and penalties, on any person offending
 3 against or violating them, and the fines, penalties, or forfeiture may be pre-
 4 scribed in each particular ordinance, or by a general ordinance made for
 5 that purpose; and municipal corporations shall have power to provide in
 6 like manner for the prosecution, recovery, and collection of such fines, pen-
 7 alties and forfeitures.

SEC. 59. Fines, penalties and forfeitures which shall not exceed the sum
 2 of twenty dollars, for any one specified offense or violation of the ordinance,
 3 or double that sum for each repetition of such offense or violation, or which
 4 shall not exceed the sum of ten dollars for each day, when a thing prohib-
 5 ited or rendered unlawful is in its nature continuous in respect to time,
 6 shall be deemed reasonable and proper.

But where in any ordinance a greater fine, penalty or forfeiture is im-
 8 posed than as above specified, it shall and may be lawful in any suit or
 9 recovery thereof, to reduce the same to such amount as shall be deemed
 10 reasonable and proper, and to permit a recovery or render judgment
 11 accordingly.

SEC. 60. Fines, penalties and forfeitures may in all cases, and in addi-
 2 tion to any other mode provided, be recovered by suit or action before a
 3 justice of the peace, or other court of competent jurisdiction, in the name
 4 of the proper municipal corporation and for its use.

And in any such suit or action where pleading is necessary, it shall be
 6 sufficient to declare generally for the amount claimed to be due in respect
 7 to the violation of the ordinance, referring to its title, and the date of its
 8 adoption or passage, and showing as near as may be the facts of the alleged
 9 violation.

SEC. 61. Any city or town shall have power to provide by ordinance
 2 for the punishment of any person found guilty of violating any ordinance

3 of such city or town, by fine, penalty or forfeiture, not exceeding one hundred
4 dollars, or by imprisonment in jail not to exceed thirty days; but such
5 city or town using any county jail shall be liable to the county for the ex-
6 penses and costs of keeping such prisoners, which may be recovered by
7 action therefor.

2 SEC. 62. Whenever the fine and costs imposed for the violation of any
3 ordinance are not paid, the persons convicted may, by the officer having
4 jurisdiction of the case, be committed until fine and costs are paid; *pro-*
5 *vided*, however, that no imprisonment in such cases shall be for more than
6 thirty days.

2 SEC. 63. All suits or prosecutions for the recovery of any such fines,
3 penalties or forfeitures, or for the commission of any offense made punish-
4 able by any ordinance as herein provided, shall be commenced within one
5 year after the violation of the ordinance or commission of the offense, and
6 not afterwards.

2 SEC. 64. The printed copies of the ordinances of any municipal corpo-
3 ration, published by its authority, and transcripts of any ordinances, or of
4 any act or proceeding of a municipal corporation, recorded in any book, or
5 entries on any minutes or journals kept under the direction of such municipal
6 corporation and certified by its clerk, shall be received in evidence for any
7 purpose for which the original ordinances, books, minutes or journals would
8 be received, and with as much effect. It shall be the duty of the clerk to
9 furnish such transcripts, and he shall be entitled to charge therefor, at the
10 rate that the clerk of the district court is entitled to charge for transcripts of
11 records from that court.

Of the classes of municipal corporation.

2 SEC. 65. In respect to the exercise of certain corporate powers, and
3 duties of certain officers, municipal corporations are divided into cities of
4 the first and cities of the second class, and incorporated towns.

2 SEC. 66. Every city having a population of fifteen thousand and upwards
3 shall be a city of the first class; all other cities shall be of the second class;
4 and every incorporated town having a population of two thousand and over
5 shall be a city of the second class.

2 SEC. 67. It shall be the duty of the governor, auditor and secretary of
3 state, or any two of them, within six months after the returns of any cen-
4 sus have been filed in the office of the secretary of state, to ascertain what
5 cities of the second class are entitled to become cities of the first class, and
6 what incorporated towns are entitled to become cities of their proper class.

7 And the governor shall cause a statement thereof to be prepared by the
8 secretary of state, which statement he shall cause to be published in some
9 newspaper published in the city of Des Moines and also in some newspaper
10 printed in each of the cities and incorporated towns, the grade of which
11 shall have been so advanced, and a copy of said statement shall also be
12 transmitted by the secretary of state, to the next general assembly, and any
13 such city or incorporated town, shall at the next regular annual period for
14 the election of municipal officers, proceed to organize, according to its new
15 grade, by the election of officers properly belonging thereto, and on their
16 election and qualification the term of service of any former officer shall
17 expire.

SEC. 68. So soon as the statement shall be published as above provided, showing that any city or incorporated town, will be entitled at the next regular annual period for the election of municipal officers, to be organized into a city of the first or second class as the case may be, it shall be lawful for the proper authority of such city or incorporated town, to make and publish such ordinances as may be necessary to perfect such organization, in respect to the election, duties and compensation of officers or otherwise.

Of Incorporated Towns.

SEC. 69. The corporated authority of incorporated towns, organized or at all meetings of the council; the recorder shall also be clerk of the corporation, and shall attend all meetings of the council, and make a fair and accurate record of all their proceedings, laws, rules and ordinances made and passed by the council, and the same shall at all times be open for the inspection of the electors of the corporation.

SEC. 70. The mayor, or in case of his absence, the recorder shall preside at all meetings of the council; the recorder shall also be clerk of the corporation, and shall attend all meetings of the council, and make a fair and accurate record of all their proceedings, laws, rules and ordinances made and passed by the council, and the same shall at all times be open for the inspection of the electors of the corporation.

SEC. 71. The council shall have power to order special elections to fill vacancies which may happen in the board, from the qualified electors of the corporation, who shall hold their office until the next annual election, and in the absence of the mayor and recorder, from any meeting of the council, the council shall have power to appoint any two of their number to perform the duties of mayor and recorder for the time being.

SEC. 72. The council of any incorporated town shall have power to provide, by ordinance, for the election of a treasurer, marshal, and such subordinate officers as they may think necessary for the good government of the corporation, to prescribe their duties and compensation, or the fees they shall be entitled to receive for their services, and to require of them an oath of office, and a bond with surety for the faithful discharge of its duties. The election of any such officer, shall be at the regular annual election, and no appointment of any officer shall endure beyond one week after the qualification of the members of the succeeding council.

SEC. 73. The mayor of the corporation shall be a conservator of the peace throughout its limits, and shall have within the same all the power and jurisdiction of a justice of the peace, in all matters civil and criminal arising under the laws of this state, to all intents and purposes whatever, and for crimes and offenses committed within the limits of the corporation, his jurisdiction shall be co-extensive with the county, and the said mayor shall perform all the duties required of him by the laws and ordinances of the corporation, and appeals may be taken in the same manner as from decisions of justices of the peace, he shall keep a docket, and shall be allowed and receive the same fees that justices of the peace are, or may be allowed for similar services.

SEC. 74. The marshal shall be the principal ministerial officer of the corporation, and shall have the same power that constables have by law, co-extensive with the county, for offenses committed within the limits of the

4 corporation. He shall execute the process of the mayor, and receive the
5 same fees for his services that constables are allowed in similar cases.

2 SEC. 75. By the concurrent vote of five members of the council, the
3 mayor, recorder, or any member of the council, or any officer of the cor-
4 poration may be removed from office, but no such removal shall be made
5 without a charge in writing being made, and an opportunity of hearing
6 being given, unless the officer against whom the charge is made, shall have
7 removed out of the limits of the corporation, and when any officer shall
8 cease to reside within the limits of the corporation, it shall be deemed a
good ground for a removal from office.

2 SEC. 76. It shall be lawful for any council to provide for the immedate
3 arrest, by the proper officer of the corporation, of any person found viola-
4 ting the ordinances made to preserve the peace and good order of the
5 corporation, and any person so arrested shall be taken forthwith before the
6 mayor or some justice of the peace of the county, for trial, the council may
7 also provide, that when any fine is imposed for the violation of any ordi-
8 nance, the offender may be committed until the fine and costs of prosecu-
tion be paid or until there shall be a discharge in due course of law.

2 SEC. 77. The corporation shall be allowed the use of the jail of the
3 county for the confinement of such persons as may be liable to imprison-
4 ment under the laws and ordinances of the corporation; and all persons so
imprisoned shall be under the charge of the jailor as in other cases.

Of Cities.

2 SEC. 78. The corporate authorities of cities organized or to be organ-
3 ized under this act, shall be vested in one principal officer, to be styled the
4 mayor, in one board of trustees to be denominated the city council, together
5 with such officers as are in this act mentioned, or may be created under its
authority.

2 SEC. 79. The mayor shall be elected biennially in cities of the first
3 class, and annually in cities of the second class, by the qualified voters of
4 the city. He shall be a qualified voter and reside within the limits of the
5 city, and shall hold his office for the term for which he shall have been
6 elected and qualified. He shall keep an office at some convenient place in
7 the city, to be provided by the city council, and shall keep the corporate
8 seal of the city in his charge; he shall sign all commissions, licenses, and
9 permits, granted by the authority of the city council, and such other acts as
by the law or ordinances may require his certificate.

2 SEC. 80. In case of the mayor's death, disability, resignation, or other
3 vacation of his office, the city council shall order a special election as soon
4 as practicable to fill the vacancy for the remainder of the time of office, and
5 may appoint some qualified voter to act as mayor until such special elec-
6 tion.

6 The mayor of the city shall be its chief executive officer and conservator
7 of the peace, and it shall be his special duty to cause the ordinances and the
8 regulations of the city to be faithfully and constantly obeyed; he shall su-
9 pervise the conduct of all the officers of the city, examine the grounds of all
10 reasonable complaints made against any of them, and cause all the viola-
11 tions of their duty, or their neglect, to be promptly corrected, or reported
12 to the proper tribunal for punishment and correction; he shall have and
13 exercise within the city limits the powers conferred upon the sheriffs of

14 counties, to suppress disorders and keep the peace; he shall also perform
 15 such other duties compatible with the nature of his office, as the council
 16 may from time to time require; he shall receive such salary payable quar-
 17 terly out of the city treasury, as may be provided by ordinance; but the
 18 amount of such salary shall neither be increased nor diminished during any
 19 incumbent's term of office.

SEC. 81. The numbers, divisions, and boundaries, of the several wards
 2 of all cities heretofore incorporated, shall remain as fixed at the time when
 3 this code goes into operation, until changed by the city council, said council
 4 may at any time create new wards, or alter those now established, or the boun-
 5 daries thereof, as may be deemed expedient; but in cities of the second
 6 class, the number of wards now existing shall not be decreased, nor shall it
 7 be increased beyond seven.

SEC. 82. The qualified voters of each ward shall, on the first Monday in
 2 March of each year, elect, by a plurality of votes, one justice, who shall at
 3 the time be a resident of the ward and a qualified voter therein. His term
 4 of service shall be two years, so that there may always be in the council
 5 two trustees from the same ward whose terms of service shall expire in dif-
 6 ferent years; but at the first election held on the organization of a new city
 7 government under this chapter, two trustees shall be elected in each ward,
 8 and the city council shall determine by lot their terms of service, so that
 9 one trustee from each ward may serve for two years, and one for one year.

SEC. 83. The trustees elected for each city shall, on the second Monday
 2 after their election, assemble together and organize the city council. A ma-
 3 jority of the whole number of trustees shall be necessary to constitute a
 4 quorum for the transaction of business, they shall be judges of election re-
 5 turns, and qualification of their own members, they shall determine the rules
 6 of their own proceedings and keep a journal thereof, which shall be open to
 7 the inspection and examination of any citizen, and may compel the attend-
 8 ance of absent members, in such manner and under such penalties as they
 9 shall think fit to prescribe, they shall elect from their own body a president
 10 *pro tempore*; they shall also appoint from the qualified voters of the city, a
 11 city clerk, who shall have the custody of all the laws and ordinances of the
 12 city, and shall keep a regular and correct journal of the proceedings of the
 13 council, and shall perform such other duties as may be required by the ordi-
 14 nances of the city.

The clerk in office at the expiration of the term of service of any council,
 15 shall continue in office until his successor shall be appointed and qualified.

SEC. 84. Each city council shall cause to be provided for the clerk's office,
 2 a seal in the center of which shall be the name of the city, and around the
 3 margin the words "city clerk," which shall be affixed to all transcripts,
 4 orders, or certificates, which it may be necessary or proper to authenticate
 5 under the provisions of this chapter, or any ordinance of the city.

For all attested certificates and transcripts other than those ordered by the
 6 city council, the same fees shall be paid to the clerk, as are allowed to county
 7 officers for the same services.

SEC. 85. The city council shall possess all the legislative powers granted
 2 in this chapter, and other corporate powers of the city, not herein, or by
 3 some ordinance of the city council conferred on some officer of the city;
 4 they shall have the management and control of the finances, and all the
 5 property, real and personal, belonging to the corporation; they shall deter-
 6 mine the times and places of holding their meetings, which shall at all times
 7 be open to the public, and the mayor or any three trustees, may call special

8 meetings by notice to each of the members of the council, personally served
9 or left at his usual place of abode, they shall appoint, or provide by ordinance
10 that the qualified voters of the city, or of the wards or districts, as the
11 case may require, shall elect all such city officers, as may be necessary for
12 the good government of the city, and for the due exercise of its corporate
13 powers, and which shall have been provided for by ordinance, as to whose
14 election or appointment provision has not herein been made; and all city
15 officers whose term of service is not prescribed, and whose powers and duties
16 are not defined by this chapter, shall perform such duties, exercise such
17 powers and continue in office such term of time, not exceeding one year, as
18 shall be prescribed by ordinance; but all officers to be elected, shall be
19 elected at the regular annual election for municipal corporations.

20 The officers of all municipal corporations shall receive such compensa-
21 tion and fees, for their services as the trustees shall by ordinance prescribe:
22 *Provided*, that the compensation of the council or trustees shall not exceed
23 one dollar to each member, for every regular or special meeting of the
24 board, and not to exceed to each, fifty dollars in any one year.

25 SEC. 86. The city council shall constitute a board of health, and as such
26 board shall have all the powers and duties specified in sections 35 to 42, in-
27 clusive, of the ninth chapter of this title, and all such as shall be necessary
28 to secure the city and the inhabitants thereof from contagious, malignant
29 and infectious diseases, provide for the proper organization and the election
30 or appointment of the necessary officers thereof, and make such ordinances,
31 rules, and regulations for its government and support as shall be required for
32 the enforcing of the most prompt and efficient performance of
33 its duties and the lawful exercise of its powers; they shall have power to es-
34 tablish a city watch, or police, to organize the same under the general super-
vision of the mayor, marshal, or other officer of the police, prescribe its du-
ties and define its powers in such manner as will most effectually preserve
the peace of the city, secure the inhabitants thereof from personal violence,
and their property from fire and unlawful depredations; they shall es-
tablish and organize all such fire companies and provide them with proper
engines and such other instruments as may be necessary to extinguish fire
and preserve the inhabitants of the city from conflagration, and provide such
ordinances and regulations for the government of the same as they shall see
fit and expedient; they may erect, establish, and regulate the markets and
market places, for the sale of provisions, vegetables, and other articles nec-
essary for the sustenance, comfort, and convenience of the city and the in-
habitants thereof; no charge or assessment of any kind shall be made or
levied on any wagon or other vehicle, or the horses thereto attached or be-
longing, bringing produce or provisions to any of the markets in the city,
for standing in or occupying a place in any of the market spaces of the city,
or in the streets contiguous thereto on market days, and evenings previous
thereto, and no charge, assessment, or prohibition shall be imposed or made
on or against the owners of such wagons or vehicles, or the person using
the same, in respect of the use of market spaces and streets in the manner
and for the purpose aforesaid; but the city council shall have full power to
prevent forestalling, to prohibit or regulate huckstering in the markets, to
prescribe the kind and description of articles which may be sold, and the
stands or places to be occupied by the venders, and may authorize the imme-
diate seizure, and arrest or removal from the markets, any person violating

35 its regulations as established by ordinance, together with any article of pro-
 36 duce in their possession, and the immediate seizure and destruction of tainted
 37 or unsound meat, or other provisions.

2 Sec. 87. The city council shall have the care, supervision, and control
 3 of all public highways, bridges, streets, alleys, public squares, and commons
 4 within the city, and shall cause the same to be kept open and in repair, and
 5 free from nuisances: *Provided*, All public bridges exceeding forty feet in
 6 length, over any stream crossing a state or county road, shall be constructed
 7 and kept in repair by the county. No street or alley which shall hereafter
 8 be dedicated to public use, by the proprietor of ground in any city, shall be
 9 deemed a public street or alley, or to be under the use or control of the city
 10 council, unless the dedication shall be accepted and confirmed by an ordinance
 11 especially passed for such purpose.

12 They shall have power in cities of the first class to prescribe by ordinance
 13 the tires of all wagons, carts, drays, and other vehicles habitually used in
 14 the transportation of persons or articles from one part of the city to another,
 15 or in the transportation of coal, wood, stone, or lumber into the city; to es-
 16 tablish stands for hackney coaches, cabs, and omnibusses, and enforce the
 17 observance and use thereof; and to fix the rates and prices for the transpor-
 18 tation of persons and property in such coaches, cabs and omnibusses from
 one part of the city to another.

2 Sec. 88. It shall be lawful for the city council of any city to levy
 3 annually a tax not exceeding one half mill on the dollar of taxable property
 4 in such city, for the purpose of maintaining therein a free public library,
 5 and reading rooms: *Provided*, A suitable lot and building shall first be
 6 donated to such city for that purpose, and any city is hereby authorized to
 7 receive such donation in trust forever for the benefit of its citizens. The
 8 city council shall appoint, from time to time such trustees or officers, or both
 9 of said public library and reading rooms, as it shall deem proper, and confer
 10 upon them such authority including the power to enact such by-laws, as may
 11 be necessary for the government of, and as will conduce to render such
 library and reading-room of public utility.

2 Sec. 89. The mayor and city council of any city, shall have authority
 3 by city ordinances to declare and establish certain limits within such city,
 4 wherein no building or addition to any building shall, after the passage of
 5 such ordinance, be erected, except with outer walls composed of iron, stone,
 6 or brick and mortar, or other noncombustible material.

2 Sec. 90. The city council shall have power to establish and construct
 3 and regulate, landing places, wharves, docks, piers and basins, and to fix the
 4 rates of landing, wharfage and dockage, and to use for the purpose afore-
 5 said any public building or any property, belonging to, or under the control
 6 of the city, and the city council shall have the use and control for the above
 7 purpose, of the shore or bank of any lake or river, not the property of in-
 8 dividuals, to the extent and in any manner that the state can grant such use
 9 or control, the city council shall have power to appoint, or to provide that
 10 the qualified voters shall elect harbor masters, wharf masters, port wardens,
 11 and other officers usual and proper for the regulation of the navigation,
 12 trade or commerce of such city, to define their duties and powers, and fix
 13 their fees or compensation, copies of examination and surveys, and of the
 14 proceedings of any port warden in the usual discharge of the duties of such
 15 officers, certified under his hand and seal, shall be prima facie evidence of
 the facts therein duly stated.

SEC. 91. The city council of any city shall have the exclusive power to
 2 establish and to regulate and license ferries, from such city or any landing
 3 therein, to the opposite shore, or from one part of said city to another, and
 4 in granting such license, to impose such reasonable terms and restric-
 5 tions, in relation to the keeping of such ferries, and the time, manner, and
 6 rates of the carriage and transportation of persons and property, as the city
 7 council may prescribe, and the city council shall have power to provide for
 8 the revocation of any such license, and for the punishment by proper fines
 9 and penalties, of the violation of any ordinance prohibiting unlicensed fer-
 10 reries, or regulating those established and licensed.

SEC. 92. The city council shall have power to provide that when a fine
 2 shall be imposed for the violation of the ordinances of the city, or any of
 3 them, and the same is not paid, the party convicted shall by order of the
 4 mayor, or the proper authority, or on process issued for the purpose, be
 5 committed until such fine or the costs of prosecution shall be paid, or the
 6 party discharged by due course of law; they shall also have power to pro-
 7 vide that any person convicted of a repeated and wilful violation of any
 8 ordinance, who shall refuse or neglect to pay the fine imposed, and the
 9 costs of prosecution, shall by like order of process, be imprisoned and kept
 10 in confinement for any term not exceeding thirty days; they shall have
 11 power to provide that all vagrants, common street beggars, common prosti-
 12 tutes, and persons disturbing the peace of the city, shall on conviction
 13 thereof, be punished by imprisonment, not exceeding thirty days, and any
 14 city shall be allowed for the purpose of imprisonment, authorized under this
 15 act, the use of the jail of the proper county, and all persons so imprisoned
 16 shall be under the charge of the sheriff of the county, who shall receive and
 17 discharge such persons in such manner as shall be prescribed by the ordi-
 18 nances of the city, or otherwise by due course of law.

SEC. 93. Any member of the city council may be expelled or removed
 2 from office by a concurrent vote of two-thirds of all the trustees elected to
 3 the city council, but not a second time for the same cause; any officer ap-
 4 pointed by the city council may be removed from office by a concurrent
 5 vote of two-thirds of all the trustees elected to the city council, and provi-
 6 sions may be made by ordinance, as to the mode in which charges shall be
 7 preferred, and a hearing be had; in all cases of vacancies in the city council,
 8 they shall be filled by special election, and in case any office of elective
 9 officer, except trustees of the wards, shall become vacant before the regular
 10 expiration of the term thereof, the vacancy shall be filled by the city
 11 council, until a successor is elected and qualified, and such successor shall
 12 be elected for the unexpired term, at the first annual election that occurs
 13 after the vacancy shall have happened.

Of Cities of the Second Class.

SEC. 94. The mayor of cities of the second class shall be the presiding
 2 officer of the city council of the city in which he is elected, and shall consti-
 3 tute a member of such council, and shall have a casting vote where there is
 4 a tie.

SEC. 95. He shall have within the limits of the same, all the jurisdiction
 2 and powers of a justice of the peace, in all matters civil or criminal arising
 3 under the laws of this state, to all intents and purposes whatever, and for
 4 the crimes and offenses, his jurisdiction shall be co-extensive with the

5 county ; he shall give bond and security as is required of justices of the
6 peace, to be approved by the city council ; he shall have jurisdiction of all
7 prosecutions for violations of the ordinances of the city ; he may award and
8 issue any process or writ that may be necessary to enforce the administra-
9 tion of right and justice throughout the city, and for the lawful exercise of
10 his jurisdiction according to the usages and principles of law ; and he shall
11 in the discharge of his duties as justice of the peace, receive the fees and
12 compensation allowed by law in such cases.

SEC. 96. The qualified voters of each city of the second class, shall elect a
2 city marshal, who shall hold his office for one year, a city treasurer, who
3 shall hold his office for one year, and a city solicitor who shall hold his
4 office for two years : each of said officers shall have such powers and per-
5 form such duties as are prescribed in this chapter, or by any ordinance of
6 the city council, not inconsistent therewith.

SEC. 97. The marshal of the cities of the second class shall execute and
2 return all writs and process to him directed by the mayor, and in criminal
3 cases, or cases in violation of city ordinances, he may serve the same in any
4 part of the county, it shall be his duty to suppress all riots, disturbances
5 and breaches of the peace, to apprehend all disorderly persons in the city,
6 and to pursue and arrest any persons fleeing from justice in any part of the
7 state, to apprehend any person in the act of committing any offense against
8 the laws of the state or ordinances of the city, and forthwith to bring such
9 person before the mayor, or other competent authority, for examination and
10 trial ; he shall have power to appoint one or more deputies for whose official
11 acts he shall be responsible ; he shall have in the discharge of his proper
12 duties, like power, shall be subject to like responsibilities, and shall receive
13 the same fees as sheriffs and constables in similar cases.

Of Cities of the First Class.

SEC. 98. The mayor of the cities of the first class, shall at the first reg-
2 ular meeting of the city council in the month of April of every year, and at
3 such other times as he may deem expedient, report to the city council con-
4 cerning the municipal affairs of the city, and recommend such measures as
5 to him may seem advisable ; he shall appoint one chief of police and as
6 many subordinate officers and watchmen as the city council may deem nec-
7 essary, the watchman to be selected in equal numbers from each ward, who
8 shall hold their appointments during the pleasure of the mayor, he shall
9 have power in cases of emergency, to appoint as many special watchmen as
10 he may think proper, but such appointments shall be reported to, and sub-
11 ject to the action of the city council at its next meeting ; he shall have with-
12 in the county in which such city is situated, in all criminal cases, all the
13 powers of a justice of the peace, but in cases of emergency or necessity, the
14 mayor shall not be required to sit on the examination, or hearing of any
15 criminal charge or case, and warrants issued by him shall be made return-
16 able before some judge of the police court.

SEC. 99. The qualified voters shall elect a marshal, a civil engineer, a
2 treasurer, an auditor, a solicitor, police judge, and a superintendent of the
3 market who shall hold their offices for two years ; each of said officers shall
4 have such powers and perform such duties as are prescribed in this chapter,
5 or in any ordinance of the city, not inconsistent herewith, and not incom-
6 patible with the nature of their respective offices.

2 SEC. 100. The city marshal shall execute and return all process to him
 3 directed by the mayor or judge of the police court, and shall attend on the
 4 sittings of said court, he shall have power to execute any such process by
 5 himself or deputy, in any part of the county, it shall be his duty to suppress
 6 all riots and disturbances, and breaches of the peace, to apprehend all per-
 7 sons committing any offense against the laws of this state or the ordinances of
 8 the city, and then forthwith bring before the proper authority for examination
 9 or trial; he shall have power to pursue and arrest any person fleeing from
 10 justice in any part of the state, and to receive and execute any proper au-
 11 thority for the arrest and detention of criminals fleeing or escaping from
 12 other places or states, to appoint one or more deputies, for whose official acts
 13 he shall be responsible; he shall have, in the discharge of his proper duties
 14 like powers, be subject to like responsibilities, and shall receive the same
 fees as sheriffs and constables in similar cases.

2 SEC. 101. The city council shall by a general ordinance direct the num-
 3 ber of officers of the police and watchmen to be appointed. They shall also
 4 provide, in addition to the regular watch, for the appointment of a reserved
 5 watch, to consist of a suitable number of persons in each ward, to be called
 6 into duty as the council may prescribe, and by the mayor, or officers of po-
 7 lice under his direction, in special cases of emergency. The duty of the
 8 chief and other officers of the police, and of the watchmen, shall be under
 9 the direction of the mayor, and in conformity with the ordinances of the
 10 city, to suppress all riots and disturbances and breaches of the peace, to pur-
 11 sue and arrest any person fleeing from justice in any part of the state, to
 12 apprehend any and all persons in the act of committing any offense against
 13 the laws of the state or the ordinances of the city, and forthwith to bring
 14 such person or persons before the police court or other competent authority
 15 for examination, and at all times to diligently and faithfully enforce all such
 16 laws, ordinances and regulations for the preservation of good order and pub-
 17 lic welfare as the city council may ordain, and for such purposes they shall
 18 have all the power of constables. The mayor, marshal, chief of police, and
 19 watchman of the city, may, upon view, arrest any person or persons who
 20 may be guilty of a breach of the ordinances of the city, or of any crime
 21 against the laws of the state, and may, upon reasonable information, sup-
 22 ported by affidavits, procure process for the arrest of any person or persons
 23 who may be charged with a breach of any of the ordinances of the city.
 24 The city council shall have the power to prescribe by ordinance the width
 25 of the tires of all wagons, carts, drays, and other vehicles habitually used
 26 in the transportation of persons or articles from one part of the city to
 27 another, or in the transportation of coal, wood, stone or lumber into the city;
 28 to establish stands for hackney-coaches, cabs, and omnibusses, and enforce
 29 the observance and use thereof; and to fix the rates and prices for the trans-
 30 portation of persons and property in such coaches, cabs and omnibusses
 from one part of the city to another.

2 SEC. 102. The city council of any city of which water works are or may
 3 be constructed, shall establish a board of three trustees to be known as the
 4 trustees of the water works, who shall be elected by the qualified electors of
 5 the city, and hold their offices for the term of three years, but it shall be so
 6 provided that one of said trustees shall be elected annually. The trustees of
 7 water works shall manage, conduct, and control the city water works, fur-
 8 nish supplies of water, collect water rents, and appoint all necessary officers
 9 and agents under such rules and regulations as the city council shall pre-
 scribe.

10 When any city shall have contracted a debt in respect to water works,
 11 the rents and income which shall accrue therefrom shall be kept a separate
 12 and distinct fund, to be applied to the payment of the expenses of con-
 13 struction and repairing the works, the payment of such debts, or the creation
 14 of a sinking fund for its redemption.

SEC. 103. On the first organization of a city of the first class under this
 2 chapter there shall be elected three commissioners, the person having the
 3 highest number of votes cast to hold his office for the term of three years,
 4 the person having the next highest number to hold his office for the term of
 5 two years, and the person having the next highest number to hold his office
 6 for the term of one year, and thereafter one shall be elected annually who
 7 shall continue in office for the term of three years. It shall be the duty of
 8 the city commissioners to enforce the ordinances of the city, to superintend
 9 the cleaning and improvement and lighting of the streets, lanes and alleys,
 10 market spaces, commons, bridges, sewers and landings of the city, and per-
 11 form such other duties as the council by ordinance may provide; they
 12 shall, with the mayor of said city, and the city civil engineer, constitute the
 13 board of city improvements, and receive such compensation for their ser-
 14 vices as the council may determine. The board of city improvements
 15 shall exercise such powers and perform such duties in the superintendence
 16 and construction of public works, constructed by authority of the city
 17 council, or owned by the city, as said council may from time to time pre-
 18 scribe.

SEC. 104. The city council shall have power to establish and maintain
 2 an infirmary for the accommodation of the poor of the city, either within
 3 or without the limits of the city. The management and government of any
 4 such infirmary, and the granting of out-door relief to the poor, under such
 5 rules and regulations as the council may prescribe, shall be vested in a board
 6 of three directors to be elected by the qualified voters of the city, and to
 7 hold their office for the term of three years, but it shall be so provided that
 8 one of said directors shall be elected annually: the city council may pro-
 9 vide that its qualified electors of each ward of the city shall elect, or that
 10 the said directors shall appoint an overseer in each ward, who shall perform
 11 such duties in respect of the care of the poor, and their removal to said in-
 12 firmary, as the city council may provide.

SEC. 105. The city council shall have power to establish and maintain
 2 either within its limits, or within the county in which it is situated, a house
 3 of refuge, or a house of correction, and a workhouse, or either of them, and
 4 place the same under the management and control of such directors, superin-
 5 tendents, and other officers, as the council may by ordinance provide, all chil-
 6 dren, under the age of sixteen years, who shall be convicted of any offense
 7 made punishable by imprisonment under any ordinance of the city, or who
 8 shall be liable to be committed to prison under any such ordinance, may be
 9 confined in such house of refuge, and may be there kept or apprenticed out
 10 under such rules as the directors of the house of refuge may prescribe, until
 11 they arrive at the age of eighteen years; and it shall be lawful for the
 12 directors of any such house of refuge to receive and take charge of any
 13 children who may be committed to their custody by any court, or justice of
 14 the peace, or other office, under any law of the state.

15 Any person over the age of sixteen years convicted of the violation of any
 16 ordinance, and liable to be punished therefor by imprisonment, may, in lieu
 17 thereof, be committed to the house of correction, or to the workhouse, as
 18 may be provided by ordinance.

2 SEC. 106. The board of directors of any house of refuge established by
 3 any city, are authorized to appoint a committee of one or more of their own
 4 number, with power to execute and deliver, on behalf of said board, inden-
 5 tures of apprenticeship for any inmate of said institution whom they may deem
 6 a proper person for an apprenticeship to a trade or occupation, to such per-
 7 son as said committee on the board may select, and said indentures shall have
 8 the like force and effect as other indentures of apprenticeship, under the
 9 laws of Iowa; and said indentures shall be filed and kept in said institution
 10 by the superintendent thereof, and it shall not be necessary to file or record
 the same in any other place or office.

2 SEC. 107. When any boy or girl shall be convicted of any offense against
 3 the laws of this state, punishable with imprisonment in the penitentiary, or
 4 in the jail of the county where such house of refuge may be situated, and
 5 shall under existing laws be sent to the house of refuge, instead of the peni-
 6 tentiary or jail, if said boy or girl shall refuse to submit to the rules of said
 7 institution, and prove to be stubborn and irreclaimable in the opinion of the
 8 majority of said board, he or she may, by their order, be delivered into the
 9 custody of the sheriff of said county, with a written statement of the cause
 10 of his or her commitment, and of the conduct and character of such boy or
 11 girl as exhibited in said institution, which statement shall be prepared and
 12 signed by the superintendent of said institution; and it shall be the duty of
 13 the sheriff to receive such boy or girl into custody, and to file such state-
 14 ment in the office of the clerk of the district court, or in the office of the
 15 attorney thereof, and thereupon the district attorney shall cause such boy or
 16 girl to be brought before the district court, or before the court in which he
 17 or she may have been tried, to receive the sentence which the court shall
 18 deem just according to the law for the offense for which he or she may
 19 have been convicted.

2 SEC. 108. When any inmate of said institution shall have been appren-
 3 ticed, and prove untrustworthy and unreformed, he or she shall be re-com-
 4 mitted to the said institution, to be held in the same manner as before said
 4 apprenticeship.

2 SEC. 109. The city council shall have power to erect, establish and
 3 maintain a city prison, which shall be in the keeping of the city marshal,
 4 under such rules and regulations as the city council shall provide.

5 They shall provide one or more watch, or station houses; they shall also
 6 provide suitable rooms for holding the police court; they shall provide by
 7 ordinance for the election by the qualified voters of the city, or for the ap-
 8 pointment by the police judge, of a clerk of such police court, and for the
 9 selection, summoning, and impaneling its juries, and for all such matters
 10 touching said court as may tend to its efficiency, and the dispatch of busi-
 11 ness. No clerk of said court shall be in any way concerned as counsel or
 12 agent in the prosecution or defense of any person before such court.

13 It shall be the duty of the city marshal, by himself or deputy, to attend
 14 the sittings of the police court, to execute its orders and process, and pre-
 serve order.

2 SEC. 110. The police judge shall have in all criminal cases the powers
 3 and jurisdiction vested in justices of the peace of the county in all respects
 4 whatever; he shall also have power to take the acknowledgment of deeds
 5 and other writings; he shall have jurisdiction of all ordinances of the city
 6 and of all cases of petit larceny and other inferior offenses which do not
 require an indictment or presentment by the grand jury, with power to hear

7 and determine the same where a jury is not demanded in cases where it may
8 be properly claimed.

9 The police judge of any such city shall have power to hold court, to be
10 styled the "police court." Every such police court shall be deemed a court
11 of record, shall have a seal, to be provided by the city council, with the name
12 of the state in the center, and the style of the court around the margin, and
13 shall have like jurisdiction as a court as is or may be vested in the judge
14 holding the same, and shall also have jurisdiction and power to hear all
15 cases of violation of ordinances prosecuted in the name or in behalf of the
16 city; and all cases of petit larceny, or other inferior offenses of any descrip-
17 tion committed within the limits of the city, or within one mile thereof, and
18 which the constitution or some law of the state does not require to be prose-
19 cuted by indictment or presentment of a grand jury, and prosecutions for
20 such offenses shall be brought and conducted in the name of the state.

21 And for the proper exercise of such jurisdiction, such police court shall
22 have, in respect of the issuing of process, the preserving order and punish-
23 ing contempts, the administering oaths, the summoning and impaneling ju-
24 ries, or otherwise all the powers incident to the district courts in the hearing
25 and determining like cases.

SEC. 111. The police judge holding the police court shall be entitled to
2 receive in all criminal cases prosecuted in behalf of the state, the same fees,
3 to be collected in the same manner, as a justice of the peace in like cases;
4 and in cases prosecuted in behalf of the city, such fees not exceeding those
5 for services of the like nature in state prosecutions, as the council may by
6 ordinance prescribe; and shall also receive such salary or compensation
7 as the city council may in like manner prescribe.

SEC. 112. The police court shall always be open for the dispatch of
2 business, but may adjourn from day to day or from time to time; and the
3 mode in which cases shall be brought before the court shall be regulated by
4 the ordinance of the city council or rule of the court; the jurors in said
5 court shall have the qualifications of jurors in the district court; the police
6 judge shall adopt such rules of practice and proceeding as will give to all
7 the parties a proper statement of any charge against them and full oppor-
8 tunity of being heard, but dispatch the business of the court with conveni-
9 ent speed.

SEC. 113. Any final conviction or sentence of the police court may be
2 examined into by the district court on certiorari, to be allowed by such
3 court or judge thereof, for sufficient cause, and proceedings may be stayed
4 on such terms as may be deemed reasonable; such police judge or court
5 shall return on such certiorari all matter of record on file touching the pro-
6 ceedings, or a transcript thereof and any facts which may have been noted
7 by the judge, or certified in the nature of a bill of exceptions at the time of
8 trial, which it shall be the duty of the judge on the request of the party
9 to do, and on such return the district court shall make such order as right
10 and justice may require, and may either discharge the party, or set aside
11 the conviction, and order another trial, or dismiss the certiorari and order
12 a procedendo; but no conviction or sentence of any such judge shall be set
13 aside or disregarded for want of any technical averment that any matter or
14 thing is within his jurisdiction; and in like manner may a conviction for
15 the violation of any ordinance before the mayor of any corporation, be
16 examined and reversed.

SEC. 114. Until a police judge shall be elected and qualified the mayor
2 of any such city shall have all the powers and jurisdiction of such judge,

3 and shall hold the police court in such manner as required of the police
4 judge, and shall be entitled to demand and receive the same fees and com-
5 pensation as may be provided for the police judge or police court.

SEC. 115. All ordinances and all resolutions or orders for the appropriation or
2 payment of money, shall require for their passage or adoption the concurrence
3 of a majority of all the trustees of any municipal corporation; ordinances of a
4 general or permanent nature shall be fully and distinctly read on three dif-
5 ferent days, unless three-fourths of the council shall dispense with the rule,
6 no ordinance shall contain more than one subject, which shall be clearly ex-
7 pressed in its title, and no ordinance or section thereof shall be revised or
8 amended unless the new ordinance contain the entire ordinance or section
9 reviewed or amended, and the ordinance or section so amended shall be
10 repealed.

11 No trustee, or member of any council, shall, during the time for which he
12 has been elected, or for one year thereafter, be appointed to any municipal
13 office which shall be created, or the emoluments of which shall be increased
14 during the term for which he shall have been elected. No such trustee or
15 member shall be appointed to any municipal office, except in the cases pro-
16 vided in this chapter during the time for which he may have been elected;
17 nor shall any such trustee be interested, directly or indirectly, in the profits
18 of any contract or job for work or service to be performed for the corpo-
19 ration.

20 The emoluments of no officer whose election or appointment is required
21 by this chapter shall be increased or diminished for the term which he shall
22 have been elected or appointed; nor shall any change of compensation affect
23 any officer whose office shall be created under the authority of this chapter
24 during his existing term, unless the office be abolished; and no person who
25 shall have resigned or vacated any office shall be eligible to the same during
26 the time for which he was elected or appointed to serve when during the
27 same time the emoluments had been increased.

SEC. 116. The council, or trustees, as the case may be, of each municipi-
2 pal corporation is required to cause to be certified to the clerk of the
3 board of supervisors on or before the first Monday of September of each
4 year, the percentage, or number of mills on the dollar of tax levied for all
5 city purposes by them, on the taxable property within said corporation for
6 the year then ensuing, as shown by the assessment roll of said city, for said
7 year, and the said clerk is required to place the same on the tax books of
8 the county, in the same manner as county taxes are placed thereon, which
9 tax for municipal purposes shall be collected and paid over to the proper of-
10 ficer by the county treasurer with the same restrictions, powers and liabili-
11 ties, and under the same regulations as to power, mode and manner of pro-
12 ceeding in every respect as in relation to county taxes, and in all things re-
13 lating to the sale of real or personal property, he is authorized and required
14 to proceed according to the provisions of the statutes regulating the sale of
15 property for delinquent state and county taxes, and in all sales for such, or
16 any delinquent taxes for municipal purposes, if there be other delinquent
17 taxes due from the same person, or lien on the same property, the sale shall
18 be for all the delinquent taxes, and such sales, and all sales made under or
19 by virtue of this section or the provisions of law herein referred to, shall be
20 of the same validity, and in all respects be deemed and treated as though
21 such sales had been made for the delinquent state or county taxes exclu-
22 sively.

23 And in any city or town incorporated under or by special charters, which
 24 now is or hereafter may be regulated by or subject to the general incorpora-
 25 tion laws, all delinquent taxes (except such as were levied to pay indebted-
 26 ness created to take stock or aid in the building of railroads) remaining un-
 27 paid upon the tax books of such city or town, shall be certified at the time,
 28 collected and paid over as above directed.

29 And it shall be the duty of the county treasurer to include said delinquent
 30 taxes so certified with the delinquent state and county taxes on his books,
 31 and to collect the same by sale of real or personal property, in the same
 32 manner as is by statute required for delinquent state and county taxes, and
 33 all sales of property for such delinquent municipal taxes shall be as valid
 34 and in all respects be deemed and treated as though such sales had been
 35 made for delinquent state and county taxes.

SEC. 117. The amount which may be so certified, assessed and collected
 2 for an incorporated town, to defray its general and incidental expenses, shall
 3 not exceed ten mills on the dollar; for a city if a city of the second class,
 4 to defray its general and incidental expenses ten mills on the dollar.

SEC. 118. For the purpose of creating a sinking fund for the gradual
 2 extinguishment of the bonds and funded debt of any municipal corporation,
 3 the council thereof may in their discretion annually levy and collect, in ad-
 4 dition to the other taxes of said corporation, a tax of not more than two
 5 mills on the dollar upon the assessed value of said property appraised and
 6 returned as aforesaid, which shall be paid into said treasury and be applied
 7 by order of the city council towards the extinguishment of the said bonds
 8 and funded debt, and to no other purpose whatever.

SEC. 119. It shall be the duty of the treasurer of the county to pay over
 2 to the treasurer of any municipal corporation, all moneys received by him
 3 arising from taxes levied belonging to such municipal corporation, on or
 4 before the first day of March in each year, and such moneys as said county
 5 treasurer may receive after that time for delinquent taxes belonging to such
 6 corporation, he shall pay over to the treasurer thereof when demanded.

SEC. 120. In any municipal corporation where the power exists to impose
 2 taxes on lots when platted and recorded, the corporation shall also have
 3 power to impose taxes upon parcels of land laid off into lots, and sold or
 4 leased by metes and bounds, or other description, though the same shall not
 5 have been platted or recorded.

SEC. 121. The council of any municipal corporation shall have power,
 2 whenever in their opinion the interests of the corporation require it, to lay
 3 and collect a tax on dogs and other domestic animals, not included in the
 4 list of taxable property for the state and county purposes, which said tax
 5 shall be collected by the collector of such corporation, and paid into the
 6 treasury thereof.

SEC. 122. Loans may be made by any municipal corporation in antici-
 2 pation of the revenues thereof, but the aggregate amounts of such loans
 3 shall not exceed the sum of four per cent upon the taxable property of any
 4 city or town.

SEC. 123. The first Monday of March shall be the regular annual period
 2 for the election of municipal officers, and all officers whose election is pro-
 3 vided for in this chapter, or may be provided for by ordinance, shall be
 4 elected on that day; special election of members of the city council of any
 5 city shall be held at such time as the mayor may direct, so that ten days'
 6 notice thereof be given.

7 The trustees or council of every municipal corporation shall direct the
 8 place or places for holding elections for municipal officers.

9 In all cities there shall be a place appointed in each ward for holding all
 10 elections; any person who at the time of any election of municipal officers,
 11 would be a qualified voter under the laws of the state for county officers,
 12 and shall actually reside in the corporation or ward in which he offers to
 13 vote, shall be deemed a qualified voter, and all elections shall in all respects
 14 be held and conducted in the manner prescribed by law in case of township
 15 elections: *Provided*, that such voter shall have resided for the last sixty
 16 days in the county, and the last ten days in the ward in which he shall
 17 offer to vote.

2 SEC. 124. The returns of all municipal elections in cities and incorpor-
 3 ated towns, which are divided into election districts or wards, shall be made
 4 to the clerk or recorder of the corporation, and shall be opened by him with-
 5 in the time prescribed by law in the county elections.

6 He shall call to his assistance the mayor of the corporation, or if there be
 7 no mayor, or the mayor shall have been a candidate at such election, then
 8 any justice of the peace of the county, and shall in his presence make out
 9 an abstract, and ascertain the candidates elected in all respects as required
 10 by law for the canvass of returns of the county elections, and shall in
 11 like manner make out a certificate as to each candidate so elected, and cause
 12 the same to be delivered to him, or to be left at his place of abode. At all
 13 elections in cities and incorporated towns, which are not divided into elec-
 14 tion districts or wards, the mayor and trustees (any three of whom shall be a
 15 quorum), shall serve as judges, and the recorder shall serve as clerk, and
 16 after canvassing the votes which may be given at such election, they shall
 17 declare the result, and the recorder shall make out and deliver to each per-
 son elected to any office in such city or town, a certificate of such election.

2 SEC. 125. All officers elected or appointed in any municipal corporation,
 3 shall take an oath or affirmation to support the constitution of the United
 4 States, and the constitution of the state of Iowa, and the trustees or council
 5 of any municipal corporation may require from such officers as they may
 6 think proper, a bond with proper penalty and surety, for the faithful dis-
 7 charge of the duties of their office, and such trustees or council shall have
 8 the power to declare the office of any person appointed or elected to any
 9 office, who shall fail to take the oath of office, or give bond when required,
 10 for ten days after he shall have been notified of appointment or election,
 11 vacant, and proceed to appoint as in other cases of vacancy.

2 SEC. 126. All ordinances shall as soon as may be after their passage, be
 3 recorded in a book kept for that purpose and be authenticated by the signa-
 4 ture of the presiding officer of the council and the clerk, and all by laws of
 5 a general or permanent nature, and those imposing any fine, penalty or
 6 forfeiture, shall be published in some newspaper of general circulation in
 7 the municipal corporation, and it shall be deemed a sufficient defence to any
 8 suit as prosecution for such fine, penalty or forfeiture, to show that no such
 9 publication was made: *Provided*, however, that if no such newspaper is
 10 published within the limits of the corporation, then and in that case, such
 11 by-laws may be published by posting up three copies thereof, in three pub-
 12 lic places within the limits of the incorporation, two of which places shall
 13 be the postoffice and the mayor's office of such town or city; and such by-
 14 laws and ordinances shall take effect, and be in force at the expiration of
 five days after they have been published.

2 SEC. 127. On the passage or adoption of every by-law or ordinance, and
 3 every resolution or order to enter into a contract by any council of any mu-
 nicipal corporation, the yeas and nays shall be called and recorded; and to

4 pass or adopt any by-law or ordinance, or any such resolution or order, a
 5 concurrence of a majority of the whole number of members elected to the
 6 council shall be required; all appointments of officers by any council shall
 7 be made viva voce, and the concurrence of a like majority shall be required
 8 and the names of those, and for whom they voted, on the vote resulting
 9 in an appointment shall be recorded.

10 No money shall be appropriated by the council except by ordinance.

SEC. 128. No street or highway shall be opened, straightened or widened,
 2 nor shall any other improvement be made which will require proceedings to
 3 condemn private property, without the concurrence in the ordinance or reso-
 4 lution directing the same of two-thirds of the whole number of the mem-
 5 bers elected to the council, and the concurrence of a like majority shall be
 6 required to direct any improvement or repair of a street or highway, the
 7 cost of which is to be assessed upon the owners of the property, unless two-
 8 thirds of the owners to be charged therefor, shall petition in writing for the
 9 same.

SEC. 129. In all cities of the first class, where there shall be a board of
 2 city improvements, no improvements, or repairs in relation to streets, sew-
 3 ers or bridges, shall be ordered or directed by the city council, except on the
 4 report and recommendation of said board:

5 All petitions from the owners of property in relation to such improvements,
 6 shall be presented to such board, who shall report from time to time to the
 7 city council, when such improvement is necessary or proper, and when
 8 assessment is required, and the proper amount to be assessed; and the
 9 city council shall take such action thereon as may be deemed proper.

SEC. 130. All rights and property of every kind and description, which
 2 were vested in any municipal corporation under any former organization,
 3 shall be deemed and held to be vested in the same municipal corporation
 4 when organized under this chapter, and no right or liability either in favor
 5 of or against such corporation, and no suit or prosecution of any kind,
 6 shall in any manner be affected by such change, but the same shall stand or
 7 progress as if no change had been made; *provided*, That where a different
 8 remedy is given by this chapter which can properly be made applicable to
 9 any right existing at the time of such change, the same shall be deemed cum-
 10 ulative to the remedies before provided, and may be used accordingly.

SEC. 131. Any municipal corporation which under its former organiza-
 2 tion held or exercised any power or duty in ordering or directing the elec-
 3 tion of any justices of the peace, constables, or other township officers, shall
 4 continue to hold and exercise such power and duty until otherwise provid-
 5 ed by law.

SEC. 132. Any municipal corporation in which under its former organi-
 2 zation any law or charter regulating any literary, charitable, or benevolent
 3 institution, vested any power appointing officers of supervision or control,
 4 shall continue to hold and possess the like power and authority in every re-
 5 spect.

SEC. 133. The charter or act of incorporation of any city or town in this
 2 state may be amended in manner following, to-wit:

3 When one fourth of the qualified voters of said city or town, as shown by
 4 the vote at the charter election immediately previous, petition the legislative
 5 body of said city or town for the amendment of the charter or act of incor-
 6 poration, the said legislative body shall immediately propose sections amen-
 7 datory of said charter or act of incorporation as petitioned for, and submit
 8 them to the qualified voters of said city or town at the first ensuing charter

9 election, at least ten days before said election; the mayor or chief officer of
 10 said city or town shall issue his proclamation setting forth the nature and
 11 character of such amendment, and the said proclamation shall be immedi-
 12 ately published in some newspaper published in said town, and be posted up
 13 in some conspicuous place in the office of said mayor or chief officer, or if
 14 there is no such paper, then by posting copies of said proclamation in five
 15 conspicuous places in said city or town, one of which shall be the door of
 16 the office of said mayor or chief officer. On the day specified the said
 17 amendment shall be submitted to the qualified voters of the corporation for
 18 adoption or rejection, and the form of the ballots shall be "for the amend-
 19 ment," or "against the amendment."

2 SEC. 134. If the majority of the votes cast is in favor of said amend-
 3 ment, the mayor or chief officer shall forthwith issue his proclamation ac-
 4 cordingly; and the said amendment shall thereafter constitute a part of said
 5 charter, and be operative on the people.

2 SEC. 135. The legislative body of said city or town may submit any
 3 amendment to the vote of the people as aforesaid at any special election:
 4 *provided*, one-half the voters determine as aforesaid, petition for that pur-
 5 pose, and the proceedings shall be the same as at the general election.

2 SEC. 136. All acts and parts of acts passed subsequent to the 4th day of
 3 July, A. D. 1858, and prior to the taking effect of this code, relating to cities
 4 of the first and second class, and incorporated towns, or to any or either of
 5 said classes of municipal corporations, and applicable both to such corpora-
 6 tions as are acting under special charter, and to such as are incorporated un-
 7 der the general act of which this chapter is an amendment, are repealed by
 8 the code only so far as they affect the latter, and not as they affect corpora-
 9 tions acting under special charters.

10 And all rights, powers, privileges, duties, directions, and provisions, what-
 11 ever contained in and enacted by such acts and parts of acts, shall remain
 12 in full force and effect, so far as municipal corporations acting under special
 charters are concerned, anything in this code to the contrary notwithstanding.

CHAPTER 11. *Of Villages and Village Plats.*

2 SECTION 1. Whenever any portion of the surveyed public lands of the
 3 United States within any county has been or shall be settled upon and occu-
 4 pied as a town site, and therefore not subject to entry under existing pre-
 5 emptory laws, it may be lawful and shall be the duty (if required by the
 6 occupants of such land) of the corporate authorities of said town, if incor-
 7 porated, and if not, of the auditor of the county in which said town is situ-
 8 ated, if furnished by said occupants with money sufficient to enter at the
 9 proper land office the land so settled and occupied, in trust for the several
 10 use and benefit of the occupants thereof, according to their respective
 interests.

2 SEC. 2. After purchasing as above prescribed such land, it shall be the
 3 duty of said corporate authorities, or auditor as the case may be, to make
 4 out, execute, and deliver to each person who, as an occupant, may be en-
 5 titled to the same, a deed in fee-simple for such part or parcels, lot or lots of
 6 said lands as he or they may lawfully be entitled to, on the payment by
 7 said occupant of his proper and due proportion of the purchase-money of
 8 said land, together with his proportion of such sum as may be necessary to
 9 pay for so much of said land as may be occupied as streets, alleys, and
 public grounds, and also his proportion of the expense incurred in laying off

10 said town, together with the sum of one dollar for each deed, which last
 11 named sum shall be the only compensation of said corporate authorities or
 12 auditor for their or his services in performing the duties herein prescribed.

SEC. 3. Should any portion of the lands purchased in pursuance of this
 2 act, not be claimed or laid off by actual occupants or claimants, it shall be
 3 the duty of said corporate authorities, or auditor as the case may be, to lay
 4 off into lots such lands, making such streets, alleys, and public grounds, as
 5 may be required for said town, such unclaimed lots to be, by said authorities
 6 or auditor, sold to the highest bidder at a public sale after giving four
 7 weeks' public notice thereof, and the proceeds of the sale of said lots to be
 8 appropriated to building school houses in such town.

SEC. 4. The proprietor of a tract of land may lay out a village plat
 2 thereon in the manner herein prescribed.

SEC. 5. He must cause a survey to be made marking the lots by a stake
 2 placed in at least one corner of each, which corner shall be uniform through-
 3 out the plat so far as practicable, and fixing a stone of not less than one-
 4 fourth of a cubic foot in dimension in a permanent manner at some point in
 5 every street.

SEC. 6. An accurate map shall then be made of such plat designating
 2 the corners where the stakes are placed and the points where the stones are
 3 fixed and marking and describing the length and breadth of the lots as well
 4 as the breadth and courses of the streets and alleys, and the breadth shall
 5 be designated by feet and inches when practicable.

SEC. 7. All the owners of the land shall then acknowledge, before some
 2 officer authorized to take the acknowledgment of deeds, that the disposition
 3 of the land as shown by the map is with their free consent and in accord-
 4 ance with their desire, and such acknowledgment shall be certified upon
 5 the map.

SEC. 8. The plat and acknowledgment shall then be presented to the
 2 circuit or district judge, who if satisfied that the above requirements have
 3 been fully complied with shall enter thereon an order that the whole be
 4 recorded.

SEC. 9. The acknowledgment and recording of such plat is equivalent
 2 to a deed in fee simple of such portion of the land as is therein set apart for
 3 public use or is dedicated to charitable, religious, or educational purposes.

SEC. 10. Any land, adjoining or contiguous to any unincorporated town,
 2 may be platted by the owner thereof and recorded as an extension of, or an
 3 addition to such town, and for all legal and equitable purposes shall be
 4 deemed, taken and considered as a part of such town, by the township and
 5 county officers of the township and county in which such town is located in
 6 all matters pertaining to township or county organization, as fully as though
 7 it had been a part of the original plat thereof.

SEC. 11. Streets and alleys in unincorporated villages laid out and ded-
 2 icated to the public under the provisions of this, or any former law of this
 3 state shall be subject to be altered or vacated in the manner provided by
 4 law, for the alteration or discontinuance of county roads.

SEC. 12. Any town or village plat, or addition to or subdivision of any
 2 such plat may be vacated by the proprietors thereof at any time before the
 3 sale of any lot therein by a written instrument declaring the same to be
 4 vacated, duly executed, acknowledged or proved and recorded in the same
 5 office with the plat to be vacated, and the execution and recording of such
 6 writing shall operate to destroy the force and effect of the recording of the
 7 plat so vacated, and to divest all public rights in the streets, alleys, com-
 8 mons and public grounds laid out or described in such plat. And in cases

9 wherein any lots shall have been sold, the plat or addition or subdivision,
 10 in which said lot or lots so sold is situated, may be vacated as herein pro-
 11 vided, by all the owners of lots in such plat, or addition or subdivision,
 12 joining in the execution of the writing aforesaid.

2 SEC. 13. Any part of a town plat, or addition, or subdivision, may be
 3 vacated under the provisions and subject to the conditions of this chapter
 4 provided such vacating does not abridge or destroy any of the rights and
 5 privileges of other proprietors in said plat, addition or subdivision, and pro-
 6 vided further that nothing contained in this section shall authorize the
 closing or obstructing of any public roads laid out according to law.

2 SEC. 14. When any part of a plat, addition or subdivision, shall be va-
 3 cated as aforesaid, the proprietors of the lots so vacated may enclose the
 streets, alleys and public grounds adjoining said lots, in equal proportions.

2 SEC. 15. It shall be the duty of the county recorder in whose office the
 3 plats of the towns, additions or subdivisions aforesaid, are recorded, to
 4 write in plain legible letters across that part of said plat so vacated, the
 5 word "vacated," and also make a reference on the same to the volume and
 page in which the said instrument of vacation is recorded.

2 SEC. 16. For the purpose of assessing or conveying any of the lots de-
 3 scribed in any map or plat so vacated, the owner or owners of said lots may
 4 cause the same to be platted and numbered in accordance with section
 5 eighteen of this chapter. Said lots including the proportionate part of the
 6 adjacent streets, alleys and public grounds, all of which can be estimated
 and platted without re-survey by county surveyor.

2 SEC. 17. No such vacation shall have the effect to discharge any lands
 3 or town lots, or improvements lying or being within the limits of any addi-
 4 tion so vacated from any corporate tax legally levied upon the same before
 5 such vacation; but such addition and the property therein, shall remain
 6 liable for such corporate taxes the same as if no vacation had taken place.
 7 And nothing herein contained, shall be held to impair the liability of such
 8 addition or subdivision for its proportion of any existing debts, which may
 have been incurred by such village or town.

2 SEC. 18. In case any person owning land shall desire to subdivide the
 3 same into lots or parcels, other than the legal subdivision thereof, he may
 4 have the same surveyed by the county surveyor of the county in which the
 5 land lies: the said surveyor when required thereto, shall survey the same
 6 into lots of such size as the owner may desire and make a plat thereof, des-
 7 ignating appropriately the number of each lot and its contents, and the
 8 length and course of its lines, and certify that the same was so surveyed by
 him in conformity to law, and at the request of the owner, naming him.

2 SEC. 19. The proprietor of lands so surveyed, may have the same plat
 3 and certificate recorded in the recorder's office in the county where the land
 4 lies, for which service said recorder shall demand and receive fees, at the
 same ratio that he does for other services.

2 SEC. 20. It shall be the duty of the proper assessor to enter for taxation
 3 in his books all lands so platted and recorded by the numbers of the re-
 spective lots, designating the value and number of acres in each.

2 SEC. 21. In conveying any of the lots so subdivided and recorded, it
 3 shall be a sufficient description to designate the same by numbers and the
 original United States survey.

2 SEC. 22. Any person who shall dispose of, or offer for sale or lease any
 3 lots in any town or addition to any town or city, until the plat thereof has
 4 been duly acknowledged and recorded as provided in this chapter shall for-
 5 feit and pay fifty dollars for each lot and part of lot sold or disposed of,
 leased or offered for sale.



TITLE V. OF ELECTIONS.

CHAPTER 1. *Of the Election of Officers and their Terms.*

2 SEC. 1. There shall be held throughout the state, on the second Tues-
 3 day of October in each year an election for all officers required by law to
 4 be chosen at such election, to be called the general election, except the
 5 years of the presidential election, when the general election shall be held on
 6 the Tuesday next after the first Monday in November.

2 SEC. 2. Special elections are such as are held in pursuance of a special
 3 law, and such as are held to supply vacancies in any office, whether the
 4 same be filled by the vote of the qualified voters of the state, or any dis-
 5 trict, county, or township, and may be held at such time as may be desig-
 6 nated by such special law, or the proper officer duly authorized to order
 7 such election.

2 SEC. 3. All vacancies which are about to occur in office by the expira-
 3 tion of the full term thereof, shall be supplied at the general election next
 4 preceding the time at which such term will expire.

2 SEC. 4. The term of office, of all state, district, county, and township
 3 officers, chosen at a general election, shall commence on the first Monday of
 4 January next thereafter, except it be otherwise provided by the constitution
 5 or the provisions of this act; and except, also, a person be chosen to fill the
 6 vacancy in any public office, in which case his term of office shall commence
 7 as soon as he shall qualify for the performance of the duties of the office to
 8 which he may be elected.

2 SEC. 5. It shall be the duty of the governor, at least thirty days before
 3 any general election, to issue his proclamation designating all the offices to
 4 be filled by the vote of all the electors in the state, or by the electors of any
 5 judicial district, and to transmit a copy thereof to the sheriff of each county
 6 of the state.

2 SEC. 6. It shall be the duty of the sheriff to give at least ten days'
 3 notice thereof, by causing a copy of such proclamation to be published in
 4 some newspaper published in the county, if any be published therein, and
 5 if not, by posting a copy of the proclamation in not less than five of the
 6 most public places in the county.

2 SEC. 7. Whenever a special election shall be ordered by the governor,
 3 he shall issue his proclamation in like manner as provided in regard to
 4 general elections designating therein the time at which such special election
 5 shall be held; and the sheriff of each county in which such election is to be
 6 held, shall give notice thereof as required by the provisions of this act in
 7 relation to the general election.

2 SEC. 8. The governor and lieutenant-governor shall be chosen at the
 3 general election of the year one thousand eight hundred and seventy-three,
 4 and every second year thereafter; and shall hold their offices for the
 5 term of two years from the second Monday of January next after their
 6 election.

6 The superintendent of public instruction shall be chosen at the same time,
7 and shall hold his office for two years from the first day of January next
8 after his election.

2 SEC. 9. The secretary of state, auditor of state, treasurer of state, attor-
3 ney-general, register of state land office, shall be chosen at the general
4 election of 1872, and every second year thereafter, and shall hold their
5 offices for the term of two years from the first Monday of January next
after their election.

2 SEC. 10. One judge of the supreme court shall be chosen at the general
3 election in each odd numbered year, and a judge of said court shall also be
4 chosen at the general election in the year 1876, and each sixth year there-
after

2 SEC. 11. Judges of the district court and district attorneys shall be
3 chosen by the vote of the qualified voters of each judicial district at the
4 general election of one thousand eight hundred and seventy-four, and every
fourth year thereafter, for the term of four years.

2 SEC. 12. Circuit judges shall be chosen by the vote of the qualified vot-
3 ers of each judicial circuit, at the general election of 1872, and every fourth
year thereafter for the term of four years.

2 SEC. 13. Members of the house of representatives shall be chosen by
3 the vote of the qualified voters of the respective representative districts, at
4 the general election of one thousand eight hundred and seventy-three, and
every second year thereafter, for the term of two years.

2 SEC. 14. Senators in the general assembly to succeed those whose term
3 of office is about to expire, shall be chosen by a vote of the qualified voters
4 of the proper senatorial districts, at the same time that the members of the
house of representatives are chosen, and for the term of four years.

2 SEC. 15. Each county shall elect, by a vote of the qualified voters thereof,
3 at the general election in each even-numbered year, a clerk of the district
4 and circuit courts, and a recorder of deeds; and in each odd-numbered year
5 an auditor, a treasurer, a sheriff, a coroner, a county superintendent and a
6 surveyor; and each of said officers shall hold his office for the term of two
years from the first Monday in January next ensuing.

2 SEC. 16. Two justices of the peace shall be chosen by the qualified voters
3 of each township at the general election of each even-numbered year, who
shall hold their offices for the term of two years.

2 SEC. 17. Three township trustees, a township clerk and two constables,
3 one assessor and a supervisor of roads for each district, shall be chosen by
4 the qualified voters of each township at the general election annually, and
shall hold their offices for the term of one year.

2 SEC. 18. One or two additional justices of the peace and one or two
3 additional constables may be elected in each township if the trustees
4 so direct, by posting notices of the same in three of the most public places
in the township, at least ten days before election.

2 SEC. 19. Justices of the peace and constables shall be considered as
3 county officers under the provisions of this chapter, but they shall be voted
for by the voters of their respective townships.

CHAPTER 2. *Of Registration of Voters.*

2 SEC. 1. It shall be the duty of the township assessors at every annual
 3 assessment to record in a separate book of suitable size, to be provided by
 4 the board of supervisors, the full name and residence of every resident
 5 voter in the township who is or may become a qualified elector previous to
 6 the next general election. Said list, properly certified, shall be delivered to
 the township clerk on or before the first day of July in each year.

2 SEC. 2. The township trustees and clerk shall constitute a board of reg-
 3 istry for their respective townships, and shall meet annually, at the office of
 4 the township clerk, on the first Monday in September, at 9 o'clock A. M., for
 5 the purpose of making a list of all qualified electors in their respective
 6 townships. This list shall be known as the register of elections.

2 SEC. 3. The register of elections shall contain the names, alphabetically
 3 arranged, according to their surnames, so as to show in one column the
 4 name at full length, and in another column opposite, in cities and incorpora-
 5 ted villages, the residence by number of dwelling, if there be a number,
 6 and the name of the street or other location of the dwelling-place of each
 7 person. This register shall be made from the assessor's list, and from the
 8 poll-books of the next previous election. Said register shall be kept by the
 9 township clerk, who shall, within two days after the adjournment of the
 10 board, cause a certified copy of said register to be posted up in a conspicu-
 11 ous place in his office, which shall be accessible to any elector of the town-
 ship who may desire to examine the same.

2 SEC. 4. The board of registry shall hold a meeting at the place where the
 3 last general election was held, or, if from any cause it cannot be held at such
 4 place, then at some place to be designated by notice published in at least
 5 one paper printed in the township, or posted in at least three public places
 6 therein, on the Tuesday preceding the general election of each year, at
 7 which they shall revise, correct, and complete the register of elections, and
 8 they shall hear any evidence that may be brought before them in reference
 9 to such correction. They shall be in session for this purpose from 9 o'clock
 10 A. M. till 5 P. M., and from day to day thereafter until they shall deem the
 11 register properly completed.

12 But in no case shall the board of registry of any township or corporation
 13 correct their registry of electors by adding names thereto, within five days
 next preceding the day of election.

2 SEC. 5. In corporation elections, it shall be the duty of the clerk of the
 3 city or town to prepare, from the poll-books of the last preceding annual
 4 election of said corporation an alphabetical register of the electors as provi-
 5 ded in section three of this chapter, and he shall post up one copy thereof in
 6 each ward at the place where the last preceding election was held, one month
 7 preceding such election, and furnish the original to the board of registry at
 8 their next meeting. The board of registry for said cities and towns shall
 9 consist of the mayor, assessor, clerk, and marshal, who shall meet, for the
 10 purpose of correcting the registry, one week before such election, at the
 11 usual place of meeting of the city council or trustees, and after having cor-
 12 rected the registry of voters, in each ward, as contemplated in the general
 13 provisions of this act, said board shall cause a certified copy of said registry
 14 for each ward in said town or city to be delivered to the election board of
 15 such ward at or before the time of opening the polls. After the canvassing
 of the votes the registries shall be attached to the poll books and filed in the

16 office of the clerk of the city or town, for the use of the succeeding board
 17 of registry. The general provisions of this act shall extend to incorporated
 18 towns and cities as far as the same may be applicable. The names of all
 19 persons not qualified as electors shall be stricken from the register, and any
 20 person appearing to register his name may be challenged by any elector or
 21 member of the board, and in case of such challenge shall be examined on
 22 oath touching his qualifications as an elector, which examination may or
 23 may not, in the discretion of the board, be reduced to writing; and if it shall
 24 appear upon such examination that the person is entitled to be registered,
 25 in the opinion of the board, or if, after such examination, the said person
 26 will take an oath that he is, or will be, at the election for which the registry
 27 is made, a legal voter, stating the ward, district, or township, in which he
 28 resides, and complying in other respects with the oath now administered to
 29 an elector in case of his being challenged, then the board shall cause the
 30 name of said person to be registered.

SEC. 6. The register of election shall at all times be open to inspection
 2 at the office of the township clerk without charge.

SEC. 7. The board of registry may appoint a clerk, in the absence of
 2 the township clerk, and may administer oaths in all cases coming before
 3 them for action.

SEC. 8. It shall be the duty of judges of elections to designate one of
 2 their number to check the name of every person voting, whose name is on
 3 the register. No vote shall be received at any general or special election
 4 hereafter held from any person whose name does not appear on the register,
 5 unless the person offering to vote shall furnish the judges of election his affi-
 6 davit, showing that he is a qualified elector, and a proper reason for not
 7 appearing before said board on the day for correcting said register, and prove
 8 by the affidavit of a person who is a freeholder or householder whose name
 9 is on said register that he knows such person to be a resident of such town-
 10 ship, and, if in a city or incorporated village, giving the place of residence
 11 in the manner required to be entered on the register, which said affidavits
 12 shall be filed in the office of the township clerk.

SEC. 9. The members of the board of registry shall receive the same
 2 compensation as judges of election, for each day actually employed in mak-
 3 ing, completing, and posting said register. The necessary blanks and ma-
 4 terials to carry out the provisions of this act shall be provided as other elec-
 5 tion blanks and materials.

SEC. 10. Any person who shall cause his name to be registered, knowing
 2 that he is not, or will not become, a qualified voter in the township where
 3 his name is registered, previous to the next general election, or who shall
 4 wrongfully personate any registered voter, and any person causing, aiding,
 5 or abetting any person in any manner in either of said acts, shall be guilty
 6 of a felony, and upon conviction thereof shall be punished for each and
 7 every offense by imprisonment in the penitentiary not less than one year.

Any person who shall swear falsely before said board to material facts as
 8 to his qualifications as an elector, shall be deemed guilty of perjury, and on
 9 conviction thereof shall be punished as provided by law.

SEC. 11. After the canvass of votes at each election, one of the poll-
 2 books and register of elections shall be attached together and filed in the
 3 office of the township clerk for the use of the board of registry at their next
 4 annual election.

SEC. 12. In cases of special elections, the township clerk shall furnish to

2 the board of registry of their respective townships, ten days before such elec-
3 tion, a duly certified copy of the corrected registry for the last preceding
4 general election, at a meeting of said board, to be held at the usual place of
5 meeting, when they shall proceed to correct and perfect said registry as pro-
6 vided in this act.

2 SEC. 13. When the board of supervisors of any county have formed a
3 new township, the board of registry of the township or townships, from
3 which the territory for the new township was taken, shall furnish for the
4 judges of election of said new township a list of the registered legal voters
5 residing in said new township.

2 SEC. 14. Nothing in this chapter shall be construed to affect the right to
3 challenge as provided in the next chapter.

CHAPTER 3. *Of the General Election.*

2 SEC. 1. At the general elections a poll shall be opened at the place
3 of election in each township of each county. The trustees of each town-
3 ship are the judges of election in the same.

2 SEC. 2 The board of supervisors of any county are authorized and em-
3 powered to create if in their judgment deemed necessary, two or more elec-
3 tion precincts in any township if there had been cast at the the general elec-
4 tion last held in such township more than one thousand votes.

2 SEC. 3. When any such township shall be divided into election precincts,
3 the board of supervisors shall number or name the same, and shall cause
3 the boundaries of each precinct to be recorded in the record book of the
4 board. Notice of the establishment and boundaries of each precinct shall be
5 published in some newspaper of general circulation in the county, for three
6 consecutive weeks at least once in each week, the last publication to be made
7 at least thirty days before the next election.

2 SEC. 4. There shall be three judges and two clerks of election in each
3 of said precincts, who shall be appointed by the board of supervisors at
3 their meeting next preceding the election, *Provided* that the township trust-
4 tees and township clerks shall be judges and clerks of elections in those pre-
5 cincts in which they respectively reside.

2 SEC. 5. It shall be the duty of the judges of election in each of said pre-
3 cincts, by one of their number, within one day after the election, to deliver
3 to the township trustees of said township, the poll books and returns of the
4 election, who shall canvass the votes therein certified as having been cast for
5 township officers. The township trustees shall within two days after the
6 election by one of their number deliver to the county auditor the poll books
7 and returns of each of said precincts to be returned to the board of county
8 canvassers, who shall canvass and dispose of the same as provided by law
9 for the returns and poll books of other townships.

2 SEC. 6. When any township shall have been divided into election pre-
3 cincts, no person shall be entitled to vote in such township at any other
3 place than in the election precincts, in which he resides at the time he
4 offers his vote. And in no case is a person entitled to vote in any other
5 township than that in which he resides at the time.

2 SEC. 7. If any one of the trustees or other judges does not attend in
3 time, or refuses to be sworn, his place shall be filled by an elector to be
3 appointed by those who do attend; and if none of them attend at the time
4 for opening the polls the electors present shall choose three qualified per-
5 sons from their number to act as judges of election.

SEC. 8. There shall be two clerks of the election, one of whom shall be
 2 the township clerk, and the other some elector named by him and approved
 3 by the judges of election, and if the township clerk does not attend then
 4 the two clerks shall be appointed by the judges of election.

SEC. 9. Before opening the polls each of the judges and clerks shall take
 2 the following oath: I, A. B., do solemnly swear, that I will impartially and
 3 to the best of my knowledge and ability perform the duties of (judge or
 4 clerk) of this election, and will studiously endeavor to prevent fraud, deceit,
 5 and abuse, in conducting the same.

SEC. 10. The township clerk may administer the oath to each of the
 2 other persons, and one of the trustees if he be present (and if not present
 3 any one of the judges) may administer it to the clerk, and the oath shall be
 4 entered in the poll books, subscribed by the persons taking it, and certified
 5 by the officer administering it.

SEC. 11. The polls shall be opened at nine o'clock in the forenoon, unless
 2 vacancies have to be filled as above, in which case they are to be opened as
 3 soon thereafter as may be, and they shall be kept open until six o'clock in
 4 the afternoon; and if the judges deem it necessary for receiving the ballots
 5 of all the electors, they may keep them open until nine o'clock in the eve-
 6 ning. Proclamation thereof shall be made at or before the opening of the
 7 polls, and half an hour before closing them.

SEC. 12. Any constable of the township who may be designated by the
 2 judges of election is directed to attend at the place of the election, and he
 3 is authorized and required to preserve order and peace at and about the
 4 same; and if no constable be in attendance the judges of the election may
 5 appoint one specially by writing, and he shall have all the powers of a regu-
 6 lar constable.

SEC. 13. If any person conducts in a noisy, riotous, or tumultuous man-
 2 ner at or about the polls so as to disturb the election, or insults or abuses
 3 the judges or clerks of election, the constable may forthwith arrest him and
 4 bring him before the judges, and they, by a warrant under their hands,
 5 may commit him to the jail of the county for a term not exceeding twenty-
 6 four hours; but they shall permit him to vote.

SEC. 14. The board of supervisors shall provide for each township or
 2 precinct in the county, for the purpose of elections, one box with lock and
 3 key.

SEC. 15. The county auditor shall prepare and furnish to the judges of
 2 election in each township or precinct in his county two poll books having
 3 each of them a sufficient column for the names of the voters, a column for
 4 the number, and sufficient blank leaves to contain the entries of the oaths,
 5 certificates, and returns.

SEC. 16. The ballots shall designate the office for which the persons
 2 therein named are voted for.

SEC. 17. In voting, the electors shall deliver their ballots to one of the
 2 judges who shall deposit them in the ballot box.

SEC. 18. Any person offering to vote may be challenged as unqualified,
 2 by either of the judges or by any person who is an elector in this state, and
 3 it is the duty of each of the judges to challenge any person offering to vote
 4 whom he knows or suspects not to be duly qualified.

SEC. 19. When any person is so challenged, the judges shall explain to
 2 him the qualifications of an elector, and may examine him as to his qualifi-
 3 cations, and if the person insists that he is qualified and the challenge
 4 is not withdrawn, one of the judges shall tender to him the following oath :

5 " You do solemnly swear that you are a citizen of the United States, that
6 you are a resident of ———, (this town, township, or precinct), in this
7 county, that you are twenty-one years of age as you verily believe, that you
8 have been a resident of this county sixty days, and of this state six months,
9 next preceding this election, and that you have not voted at this election "

10 —and if he takes such oath his vote shall be received.

2 SEC. 20. The name of each person, when his ballot is received, shall be
3 entered by each of the clerks in the poll book kept by him, so that there
4 may be a double list of voters.

2 SEC. 21. When the poll is closed the judges shall proceed to canvass
3 and ascertain the result of the election, unless they determine to adjourn
4 the canvass to the next day—which they may do, but no longer—and if the
5 canvass be so adjourned, the opening in the lid of the ballot box shall be
6 closed and sealed, the box locked, and the key delivered to one of the
7 judges, and the box and poll books to one of the clerks, to be securely kept
8 until they meet on the next day.

2 SEC. 22. The canvass shall be public, and shall commence by a compari-
3 son of the poll lists from the beginning and a correction of any errors which
4 may be found therein, until they shall be found or made to agree. If two
5 or more ballots are found so folded together as to present the appearance of
6 a single ballot and to convince the judges that they were cast as one they
7 shall not be counted, but they shall have the words " rejected as double "

2 written upon them, be folded together again, and kept as herein directed.
3 SEC. 23. If the ballots for any officer are found to exceed the number of
4 the voters in the poll lists, that fact shall be certified with the number of the
5 excess in the return, and if it be found that the vote of the township where
6 the error occurred would change the result in relation to a county officer if
7 the person elected were deprived of so many votes, then the election shall
8 be set aside as to him and a new election ordered; but if the error occur
9 in relation to a township officer the trustees may order a new election
10 or not, in their discretion. If the error be in relation to a dis-
11 trict or state officer the error and the number of the excess are
12 to be certified to the canvassers, and if it be found that the error would
13 affect the result as above a new vote shall be ordered in the county where
14 the error happened and the canvass be suspended until such new vote is
15 taken and returned. When there is a tie vote and such an excess there
16 shall be a new election as above directed.

2 SEC. 24. If, at any stage of the canvass a ballot not stating for what
3 office the person therein named is voted for is found in the box when officers
4 of different kinds are to be elected, it is to be rejected.

2 SEC. 25. If a ballot be found containing the names of more persons for
3 an office than can be elected to that office and such ballot form an excess
4 above the number of voters, it shall be rejected as to that office (the cause
5 of rejection being endorsed thereon) and disposed of as hereafter directed;
6 and if it does not form such excess, so many of the names first in order, as
7 are required, shall be counted.

2 SEC. 26. As a check in counting, each clerk shall keep a tally list.

2 SEC. 27. A return in writing shall be made in each poll book setting
3 forth, in words written at length, the whole number of ballots cast for each
4 officer, (except those rejected,) the name of each person voted for, and the
5 number of votes given to each person for each different office, which return
6 shall be certified as correct, signed by the judges, and attested by the clerks.
7 Such return shall be substantially as follows:

7 At an election at the house of _____, in _____ township, (or in the _____
8 precinct of _____ township, as the case may be) in _____ county, state of
9 Iowa, on the _____ day of _____, A. D. _____ there were _____ ballots
10 cast for the office of (governor) of which
11 A_____ B_____, had, - - - - - votes.
12 C_____ D_____, had, - - - - - votes.
13 (and in the same manner for any other officer.)

14 A TRUE RETURN, L____ M____, }
15 N____ O____, } Judges of the election.
16 P____ Q____, }

17 ATTEST, R____ S____, }
18 T____ U____, } Clerks of Election.

SEC. 28. One of the poll books containing such return shall be delivered
2 to the township clerk and be by him filed and preserved in his office. The
3 other poll book with its return shall be enclosed, sealed, superscribed, and
4 delivered by one of the judges of election within two days after the day of
5 election to the county auditor, who, after the county canvass, shall file and
6 preserve the same in his office.

SEC. 29. When the result of the election is ascertained the judges shall
2 cause all the ballots, including those rejected, with the tally lists, to be placed
3 in some convenient condition for preservation and deposited with the town-
4 ship clerk, who is to keep them until the time is passed which is allowed for
5 contesting the election of any officer voted for.

SEC. 30. When there is a tie between two persons for a township office
2 the clerk shall notify them to appear at his office at a given time to deter-
3 mine the same by lot before one of the trustees and the clerk, and the cer-
4 tificate of election is to be given accordingly. If either party fail to appear
5 or to take part in the lot one of the trustees shall draw for him.

SEC. 31. The ballots for township officers having been canvassed, the
2 clerk shall within five days thereafter post up in three public places in the
3 township written notices, containing the names of persons elected to town-
4 ship offices at such election, and requiring each of them to appear before the
5 proper officer or officers and qualify according to law.

SEC. 32. If the returns from all the townships are not made to the board
2 of supervisors by the sixth day after the election, on the seventh day they
3 shall send messengers to obtain them from those townships whose returns
4 are wanting, the expense of which shall be paid out of the county treasury
5 on allowance.

SEC. 33. It shall be the duty of the board of county canvassers, at 12
2 o'clock m., on the first Monday after the election, to proceed publicly to open
3 and canvass the several returns, and to make and certify under their hands
4 respectively the abstracts and returns hereinafter required, and when the
5 canvass is concluded, the several township returns shall be delivered to the
6 county auditor to be kept and recorded as now required by law.

SEC. 34. As soon as the returns from all the townships are received, the
2 board of supervisors shall open and examine the several returns, and make
3 abstracts, stating, in words written at length, the number of ballots cast in
4 the county for each office, the name of each person voted for, and the num-
5 ber of votes given to each person for each different office.

SEC. 35. The abstract of the votes for each of the following classes shall
2 be made on a different sheet:

- 3 1. Governor and lieutenant governor.
- 4 2. All state officers not otherwise provided for.
- 5 3. Representatives in congress.
- 6 4. Senators and representatives in the general assembly from the county
- 7 alone.
- 8 5. Senators and representatives in the general assembly by districts com-
- 9 prising more than one county.
- 10 6. Judges of the district court, district attorneys.
- 11 7. Judges of the circuit court.
- 12 8. County officers.

13 Two abstracts of all the votes cast for any state or judicial district offi-
 14 cer shall be made, and one forwarded to the secretary of state, and the other
 15 filed by the county auditor.

2 SEC. 36. The person having the greatest number of votes for any office
 is to be declared elected.

2 SEC. 37. Each abstract of the votes for such officers as the county alone
 2 elects, shall contain a declaration of whom the canvassers determine to be
 3 elected, except when two or more persons receive an equal and the greatest
 4 number of votes.

2 SEC. 38. The board shall cause each of the abstracts mentioned in the
 2 preceding section to be recorded in a book to be kept for recording the result
 3 of county elections, and to be called the "election book."

2 SEC. 39. When any person thus elected has appeared and given bond
 2 and taken the oath of office as directed in this title, there shall be delivered
 3 him a certificate of election under the official seal of the county in substance
 4 as follows:

5 STATE OF IOWA, {
 6 ----- County, }

7 At an election holden in said county, on ----- day ----- A. D., ---.

8 A. B. was elected to the office of ----- of the above county, for the
 9 term of two years from that day (or if he was elected to fill a vacancy, say,
 10 until such an election,) and until his successor is elected and qualified, and
 11 he has qualified by giving bond and taking the oath of office as required by
 12 law.

13 { L. S. }
 14 {

C. D.

President of the Board of Canvassers.

16 Witness, E. F. Clerk of Board.

17 Which certificate shall be presumptive evidence of his election and qualifi-
 18 cation.

2 SEC. 40. The certificate of senators and representatives in the general
 2 assembly may vary from the foregoing according to the nature of the case
 3 and the requirements of this title in relation to their offices, and is to be de-
 4 livered to them on request.

2 SEC. 41. When the person elected is chosen to fill a vacancy, the cer-
 2 tificate shall state for what time he is elected.

2 SEC. 42. When two or more persons receive an equal and the highest
 2 number of votes for an office to be filled by the county alone, the auditor shall
 3 issue a notice to such persons of such tie vote, and require them to appear
 4 at the county office on a day named in the precept within twenty days from
 5 the election day and determine by lot which of them is to be declared elected.

2 SEC. 43. The county auditor shall notify the board of canvassers, or, in
3 case of their absence or inability, the recorder and sheriff, of such lot, and
4 on the day fixed the parties interested shall determine, by a lot fairly
5 arranged by the three officers, which of them is to be declared elected; and
6 the three officers shall certify such lot and its result under their official
7 names and the seal of the county, (to be fixed by the county auditor,) and
8 the certificate shall be recorded in the election book, and the auditor shall
9 deliver to the person elected his certificate of election on the terms pre-
scribed in this chapter.

2 SEC. 44. Within ten days after the election day, the county auditor shall
3 envelope and seal up by itself, one of the abstracts of votes for governor and
4 lieutenant governor, and indorse upon it in substance "abstract of votes for
5 governor and lieutenant governor, from ——— county," and address it to
6 the speaker of the house of representatives. The abstract of votes for
7 other state officers, and for such district officers as are to be returned to the
8 secretary's office, are to be enveloped, sealed, and indorsed in like manner,
9 and directed to the secretary of state. The several packages shall then be
placed in one envelope and addressed to the secretary.

2 SEC. 45. The above abstracts shall be transmitted to the secretary, which
3 may be done by mail, and in such case they shall be deposited in the post
4 office by the twelfth day after the election day; but if there be no regular
5 mail by which the returns may be safely sent, the county auditor may send
a special messenger to bear them.

2 SEC. 46. When a senator or representative in the general assembly is
3 elected by a district composed of more than one county, the board of county
4 canvassers shall, at the time of canvassing the home vote of the county,
5 make and certify under their hands respectively an abstract of the votes
6 cast in their county for such office similar to the abstract required by sec-
7 tion 34 of this chapter, and shall seal up, direct and transmit such abstract
8 to the secretary of state as provided in sections 44 and 45 of this chapter.
9 They shall also transmit a similar abstract to the county auditor of each
10 county in the district, who shall file and preserve the same in his office.

2 SEC. 47. The board of state canvassers shall open the abstracts trans-
3 mitted to the secretary of state as provided by the last section, and canvass
4 the votes therein returned, together with and at the time of canvassing the
5 state vote or at such other time as they may fix, and in all cases at least
6 twenty days prior to the time fixed by law for the meeting of the next gen-
7 eral assembly, and in case of a special election within five days after the
8 receipt of such abstracts, and shall immediately make out, certify and trans-
9 mit by mail to the county auditor of each county in such district to be by
10 him filed and preserved in his office, an abstract of such canvass of such
district similar to the abstract required by section 34 of this chapter.

2 SEC. 48. Said board of state canvassers shall, also, make and sign a cer-
3 tificate showing who is elected to the office of senator or representative in
4 such district, designating it by its number, and similar to the certificate re-
5 quired by section 55 of this chapter, and shall deliver such certificate to the
6 secretary of state, who shall deliver it to the person appearing by it to be
elected to such office, on his demanding it.

2 SEC. 49. If the abstracts from any county are not received at the office
3 of the secretary of state by the fourth Monday after the day of election, the
4 secretary is authorized to send a messenger to the auditor of such county,
5 who shall furnish such messenger with the abstracts (or, if they have been
6 sent, with a copy of them), and he shall return them to the secretary with-
out delay.

2 SEC. 50. The abstracts, when received by the secretary, shall be kept
3 in his office unopened until the day appointed for opening them, and shall
4 be opened only in the presence of the board of canvassers.

2 SEC. 51. The governor, the secretary, and auditor of state constitute a
3 board of canvassers for the state. In case of the absence or interest of any
4 of them, or his inability to act, the treasurer of state or clerk of the supreme
5 court shall act in his place.

2 SEC. 52. On the Thursday following the fourth Monday after the day of
3 the election, the board of state canvassers shall open and examine the
4 returns, if they are received from all the counties, and if not all received
5 they may adjourn to such day as they deem necessary, not exceeding twenty
6 days, for the purpose of obtaining the returns from all the counties, and
7 when received shall proceed with the canvass.

2 SEC. 53. They shall make an abstract stating the number of ballots cast
3 for each office, the names of all the persons voted for, for what office they
4 respectively received the votes, and the number of votes each received, in
5 words at length, and stating whom they declare to be elected to each office ;
6 which abstract shall be signed by the canvassers in their official capacity,
7 and as state canvassers, and have the seal of the state affixed by the govern-
8 or or secretary.

2 SEC. 54. The secretary shall record the abstract in a book to be kept by
3 him for recording the result of state elections and to be called the election
4 book, and also file the abstract.

2 SEC. 55. A certificate shall be prepared for each person elected, in sub-
3 stance as follows :

3 STATE OF IOWA.

4 At an election holden on the _____, A. B. was elected to the
5 office of _____ of said state, for the term of ____ years, (if to fill a vacancy
6 say, until such an election.)

7 Given at _____, this _____ day of _____, A. D. ____.

8 Which certificate shall be signed by the governor if present, if not, by the
9 secretary, with the seal of the state affixed in either case, and be attested by
10 the other two canvassers, but in the absence of the governor the secretary's
11 certificate shall be signed by the auditor.

2 SEC. 56. Such certificate of election shall be delivered to the person
3 elected when he has qualified as provided in this title.

2 SEC. 57. The governor is required to cause the persons elected to any
3 of the proper state offices to be notified thereof immediately by a sheriff or
4 constable, who shall return his doings to the secretary's office.

2 SEC. 58. The certificate of the election of a representative in congress
3 shall be signed by the governor, with the seal of the state affixed, and be
4 countersigned by the secretary of state, and the governor shall cause it to be
5 delivered to the person elected.

CHAPTER 4. *Of Electors of President and Vice President.*

2 SEC. 1. On the Tuesday next after the first Monday in the month of
 3 November in the year eighteen hundred and seventy-two, and every four
 4 years thereafter, (or on such day as the congress of the United States may di-
 5 rect,) a poll shall be opened in each of the townships of the state for the
 6 election of electors of president and vice president of the United States,
 7 the number of whom is to be equal to the number of senators and repre-
 sentatives in congress to which this state may be entitled.

2 SEC. 2. The names of all the electors to be chosen shall be written on
 3 each ballot, and each ballot shall contain the name of at least one inhabi-
 4 tant of each congressional district into which the state may be divided, and
 5 against the name of each person shall be designated the number of the
 congressional district to which he belongs.

2 SEC. 3. This election shall be conducted, and the returns made, as nearly
 3 as may be as directed in relation to the election of state officers and repre-
 sentatives in congress, except as herein otherwise expressed.

2 SEC. 4. The board of county canvassers shall examine the returns, make,
 3 sign, seal, envelope and seal up the abstracts and indorse and direct them as
 4 provided in other cases, and before ten o'clock A. M. of the eighth day after
 5 the day of the election shall deliver the same to the sheriff of the county,
 6 whose duty it is to deliver the abstract to the secretary of state within ten
 days including the day he receives it.

2 SEC. 5. On the twentieth day after the day of election, (or if that day
 3 be Sunday, then on the following day,) or before that time if the returns
 4 are received from all the counties, the board of state canvassers named in
 5 this title shall open and examine the returns and make an abstract as
 6 directed in regard to the general elections, which shall be recorded by the
 secretary in the election book.

2 SEC. 6. The canvass shall be public, and in canvassing the returns the
 3 persons having the greatest number of votes are to be declared elected ;
 4 and if more than the requisite number of persons are found to have the
 5 greatest and an equal number of votes, the election of one of them shall be
 6 determined by lot to be drawn by the governor in the presence of the can-
 vassers.

2 SEC. 7. The governor, or in his absence the secretary, shall issue a cer-
 3 tificate of election under his hand and the seal of the state and cause it to
 4 be served on each person elected, notifying him to attend at the seat of
 5 government at noon of the Tuesday preceding the first Wednesday of De-
 6 cember next after his election, and report himself to the governor as in
 attendance.

2 SEC. 8. The electors so attending shall meet at the earliest convenient
 3 hour after the noon of the said Tuesday, and the governor shall provide
 4 them a list of all the electors elected, and in case of the absence of any
 5 elector chosen, or if the proper number of electors shall for any cause be
 6 deficient, those present shall forthwith elect from the citizens of the state so
 many persons as will supply the deficiency.

2 SEC. 9. Such choice being certified to the governor he shall cause the
 person chosen to be notified immediately.

2 SEC. 10. The college of electors being full shall meet at the capitol at
 3 noon of the said first Wednesday of December, and proceed to the election
 in conformity with the constitution of the United States.

2 SEC. 11. The electors shall receive the same compensation for their
3 travel and attendance as the members of the general assembly.

CHAPTER 5. *Of Qualification for Office.*

2 SECTION 1. No civil officer, elected by the people, is empowered to enter
3 on the duties of the office to which he is elected until he has qualified him-
4 self as required in this chapter.

2 SEC. 2. The governor, by taking an oath in the presence of both houses
3 of the general assembly, administered by the presiding officer of such con-
4 vention, to the effect that he will support the constitution of the United
5 States and the constitution of the state of Iowa, and will faithfully, impar-
6 tially, and to the best of his knowledge and ability, discharge the duties in-
7 cumbent upon him as the governor of this state.

2 SEC. 3. Members of the general assembly by taking the oath prescribed
3 for them in the third article of the constitution.

2 SEC. 4. The judges of the supreme and district and circuit courts, by
3 taking and subscribing an oath to the effect that they will support the con-
4 stitution of the United States and that of the State of Iowa, and that, with-
5 out fear, favor, affection, or hope of reward, they will to the best of their
6 knowledge and ability administer justice according to the law equally to the
7 rich and the poor; and they shall likewise be commissioned by the gov-
8 ernor.

2 SEC. 5. Every civil officer not before mentioned in this chapter, (except
3 the members of congress,) is required to give bond with surety, and in a
4 penal sum as hereafter required, with a condition in substance as following:

3 That as ——— (naming the office) in ——— county (or state of Iowa) he
4 will render a true account of his office and of his doings therein to the proper
5 authority when required thereby or by law; that he will promptly pay over
6 to the person or officer entitled thereto all money which may come into his
7 hands by virtue of his office; that he will promptly account for all balances
8 of money remaining in his hands at the termination of his office; that he
9 will hereafter exercise all reasonable diligence and care in the preservation
10 and lawful disposal of all money, books, papers, securities, or other property
11 appertaining to his said office, and deliver them to his successor or to any
12 other person authorized to receive the same; and that he will faithfully and
13 impartially, without fear, favor, fraud, or oppression, discharge all other the
14 duties now or hereafter required of his office by law.

2 SEC. 6. The bonds of state and district officers shall be given to the state,
3 those of county officers to the county.

2 SEC. 7. The bond of the treasurer of state shall be in the penal sum of
3 fifty thousand dollars.

3 That of the auditor of state in the sum of ten thousand dollars;

4 That of the attorney-general in the sum of ten thousand dollars;

5 That of the superintendent of public instruction in the sum of two thou-
6 sand dollars;

7 That of the reporter of the supreme court in the sum of ten thousand dol-
8 lars;

9 Those of the secretary of state and clerks of the district court in the sum
10 of five thousand dollars each;

11 Those of district attorneys in the sum of ten thousand dollars each;

12 Those of recorders of counties in the sum of two thousand dollars each;
 13 Those of coroners and surveyors in the sum of one thousand dollars
 14 each.

SEC. 8. The bonds of county treasurers, and auditors, and of the sher-
 2 iffs, justices of the peace, and constables, shall each be in a penal sum to be
 3 fixed by the county board of supervisors, but those of the treasurer and sher-
 4 iffs shall not be in a less sum than five thousand dollars each, nor those of
 5 justices of the peace and constables in a less sum than five hundred dollars
 6 each.

SEC. 9. Each assessor shall give bond to be approved by the township
 2 trustees, in the sum of five hundred dollars, payable to said trustees, condi-
 3 tioned for the faithful and impartial discharge of the duties of his office.

SEC. 10. The bond of the treasurer of state and of each county treasurer
 2 shall be given with at least four sureties; and every other official bond shall
 3 be given with at least two sureties, who shall be freeholders.

SEC. 11. The bonds of the state officers are required to be approved by
 2 the governor before they can be filed; those of the district attorneys by the
 3 district judges of their own district, respectively, and those of the county
 4 officers by the county board of supervisors, which approval shall be en-
 5 dorsed upon the bond and signed by the approving officer.

SEC. 12. Every civil officer who is required to give bond shall take, and
 2 subscribe on the back of his bond or on a paper attached thereto, to be cer-
 3 tified by the officer administering it, an oath that he will support the consti-
 4 tution of the United States and that of the state of Iowa, and that to the
 5 best of his knowledge and ability he will perform all the duties of the office
 6 of (naming it) as provided by the condition of his bond within written.

SEC. 13. Those civil officers who are not required to give bond (except
 2 the governor, members of the general assembly and of congress, and judges
 3 of the supreme and district and circuit courts) are required to take and sub-
 4 scribe in like manner an oath the same in substance with the condition of the
 5 official bond before provided for.

SEC. 14. The bonds and oaths of the state officers shall be filed and kept
 2 in the office of the secretary of state, except those of the secretary, which
 3 shall be filed and kept in the office of the auditor; those of the county offi-
 4 cers in the county auditor's office, except that of the county auditor, which
 5 shall be kept in the county treasurer's office, and those of the township offi-
 6 cers in the township clerk's office, except as provided in the next section.

SEC. 15. It shall be the duty of the county auditor to file all official bonds
 2 of justices of the peace in the office of the clerk of the district court after
 3 the same have been approved.

SEC. 16. It shall be the duty of the clerk of the district court of each
 2 county to keep in his office a book to be known as the the record book of
 3 officers' bonds and to record in said book, the official bonds of all county
 4 officers including justices of the peace and constables, filed in his county.

SEC. 17. Each clerk shall keep an index to the book herein provided for,
 2 in which under the title of each office, shall be entered the names of each
 3 principal and his sureties, and the date of the filing of the bond.

SEC. 18. Any county officer who shall enter upon the discharge of the
 2 duties of his office, without first having caused his official bond to be re-
 3 corded, shall forfeit to the county of which he is an officer, the sum of five
 4 dollars for each official act by him performed prior to the recording of said
 5 bond, and the chairman of the board of supervisors of each county, is here-
 6 by required to bring suit for, or collect such penalty, or penalties, in the
 7 name of his county.

2 SEC. 19. The books hereby required to be kept shall be open to inspec-
3 tion of all persons, in the same manner, and at the same time, as other
4 county records and transcripts thereof shall be received in evidence, in all
5 transcripts of this state, in the same manner and with the same effect that
6 transcripts of other records now kept by the clerks of the district courts are
7 now received.

2 SEC. 20. The several officers shall qualify within the times herein men-
3 tioned. The secretary, treasurer, and auditor of state, attorney-general,
4 register of state land office, judges of the supreme, district, and circuit
5 courts, district attorneys, and all county and township officers, by the first
6 Monday of January following their election. The governor and lieutenant-
7 governor within three days after the result of the election shall be declared
8 by the general assembly, *Provided*, that should any person elected to any
9 of the above offices, not qualify within the time prescribed above or within
10 ten days thereafter, unless the person elected shall signify his acceptance
11 in writing, he shall be deemed as declining the office, and the office shall be
12 deemed vacant.

2 SEC. 21. When any election is contested, the person elected shall have
3 twenty days in which to qualify after the day of the decision.

2 SEC. 22. The bonds of officers shall be construed to cover duties required
3 by law subsequent to giving them.

2 SEC. 23. No official bond shall be void for want of compliance with the
3 statute, but it shall be valid in law for the matter contained therein.

2 SEC. 24. When the incumbent of an office is re-elected he shall qualify
3 as above directed, and when it is ascertained that the incumbent holds over
4 another term by reason of the non-election of a successor, or for the neglect
5 or refusal of the successor to qualify, he shall qualify anew within a time
6 to be fixed by the officer who approves of the bonds of such officers.

CHAPTER 6. *Of Contesting Elections.*

2 SEC. 1. The election of any person declared duly elected to a county
3 office may be contested by any elector of the county :

- 4 1. For mal-conduct, fraud, or corruption, on the part of the judges of
5 election in any township or precinct, or of any of the boards of
6 canvassers, or on the part of any member of either of those
7 boards ;
- 8 2. When the incumbent was not eligible to the office at the time of the
9 election ;
- 10 3. When the incumbent has been duly convicted of an infamous crime
11 before the election, and the judgment has not been reversed, an-
12 nulled, or set aside, nor the incumbent pardoned, at the time of
13 the election ;
- 14 4. When the incumbent has given or offered any elector, or any judge,
15 clerk, or canvasser of the election, any bribe or reward in money,
16 property, or thing of value, for the purpose of procuring his elec-
17 tion ;
- 18 5. When illegal votes have been received, or legal votes rejected, at the
19 polls, sufficient to change the result ;
- 20 6. For any error or mistake in any of the boards of canvassers in count-
21 ing the votes, or in declaring the result of the election, if the error
or mistake would affect the result ;

22 7. For any other cause (though not enumerated above) which shows that
23 another was the person legally elected.

2 SEC. 2. The term "incumbent," in this chapter, means the person whom
the canvassers declare elected.

3 SEC. 3. The matter contained in the first ground of contest above named
2 shall not be held sufficient to set aside an election, unless the mal-conduct,
3 fraud, or corruption, be such as to procure or cause the incumbent to be de-
4 clared duly elected when he has not received the highest number of legal
5 votes.

2 SEC. 4. When the misconduct complained of is on the part of the judges
of election in a township or precinct it shall not be held sufficient to set
3 aside the election, unless the rejection of the vote of that township or pre-
4 cinct would change the result as to that office.

2 SEC. 5. The court for the trial of contested county elections shall be
thus constituted: The president of the board of supervisors shall be the
3 presiding officer, and the contestant and incumbent may each name a per-
4 son who shall be associated with him.

2 SEC. 6. The county auditor shall be clerk of this court, and keep all
papers and record the proceedings in the election book, in manner similar to
3 the record of the proceedings of the district court. But when the county
4 auditor is a party the court shall appoint a suitable person as clerk for the
5 time being, whose appointment shall be recorded.

3 SEC. 7. The contestant shall file in the office of the county auditor, with-
2 in twenty days after the day when the votes are canvassed, a written state-
3 ment of his intention to contest the election, setting forth the name of the con-
4 testant and that he is an elector of the county, the name of the incumbent,
5 the office contested, the time of the election, and the particular causes of con-
6 test, which statement shall be verified by the affidavit of the con-
7 testant, or some other elector of the county, that the causes set forth are true
8 as he verily believes; but before the court above constituted is required to
9 take jurisdiction of the contest, the contestant must file with the county audi-
10 tor a bond, with security to be approved by said auditor, and conditioned to
11 pay all costs in case the election be confirmed, or the statement be dismissed,
12 or the prosecution fails. When the auditor is a party, the clerk of the dis-
13 trict court shall receive and approve such bond.

2 SEC. 8. When the reception of illegal, or the rejection of legal votes, is
alleged as a cause of contest, the names of the persons who so voted, or
3 whose votes were rejected, with the township where they voted or offered
4 to vote, shall be set forth in the statement.

2 SEC. 9. The president of the board of supervisors shall then issue a pre-
cept containing a copy of the statement, with a requisition that the incum-
3 bent file in the county office a written nomination of one of the judges of
4 the election within five days after service of the statement upon him.

2 SEC. 10. If either the contestant or the incumbent fail to nominate, the
presiding judge shall appoint for him.

2 SEC. 11. As soon as the judges are nominated, the presiding judge shall
fix a day for the trial not more than thirty, nor less than twenty, days from
3 the notice contemplated in this section, which notice, addressed to the usual
4 officers of the law, shall contain the names of the contestant and the incum-
5 bent, and of the judges named by each party, a brief statement of the causes
6 of contest, and the day set for trial.

2 SEC. 12. The notice shall be served on the incumbent within five days, and
on the two nominated judges within fifteen days, from the day it is issued.

2 SEC. 13. The testimony may be oral or by depositions, and depositions
3 may be taken on four days notice in the same manner, and for the same
4 causes, as in an action in the district court.

2 SEC. 14. Subpoenas for witnesses may be issued either by the clerk of
3 the district court, or by the county auditor, under the county seal.

2 SEC. 15. The trial shall proceed at the time appointed unless postponed
3 for good cause shown by affidavit, the terms of which postponement are in
4 the discretion of the court.

2 SEC. 16. The proceedings shall be under the control and direction of the
3 court, but shall be assimilated to the proceedings in an action as far as
4 practicable.

2 SEC. 17. The statement shall not be dismissed for want of form if the
3 particular causes of contest are alleged with such certainty as will sufficiently
4 advise the incumbent of the real ground of contest. If any part of the
5 causes are held insufficient they may be amended, but the incumbent will be
6 entitled to an adjournment if he state on oath that he has matter of answer
7 to the amended causes for the preparation of which he needs further time.
8 Such adjournment shall be upon such terms as the court deem reasonable;
9 but if all the causes are held insufficient, and an amendment is asked, the
10 adjournment shall be granted on motion and at the cost of the contestant.

2 SEC. 18. The style and form of process, the officers by whom served,
3 and the manner of service of process and papers, and the fees of officers and
4 witnesses, shall be the same as in the district court so far as the nature of the
5 case permits. The command to a witness may be, to appear at ——— on
6 ——— to testify in relation to a contested election wherein A. B. is contestant
7 and C. D. is incumbent.

2 SEC. 19. The trial of contested county elections shall take place at the
3 county seat, unless adjourned to some other place within the county by the
4 concurrence of the court and the parties, which may be done before the
5 commencement of the trial.

2 SEC. 20. This court shall have all the powers of the district court which may
3 be necessary to the right hearing, conduct, and determination, of the matter,
4 to compel the attendance of witnesses, to swear them and direct their exami-
5 nation, to punish for contempt in its presence, to adjourn from day to day,
6 and to make any order concerning intermediate costs and enforce it by at-
7 tachment.

2 SEC. 21. The court of the presiding judge may direct the attendance of
3 the sheriff or constable when deemed necessary.

2 SEC. 22. It shall be lawful to require any person called as a witness, who
3 voted at such election, to answer touching his qualifications as a voter; and
4 if he was not a qualified voter in the county where he voted, then to require
5 him to answer for whom he voted; and if the witness answer such questions,
6 no part of his testimony on that trial shall be used against him in any
7 criminal action.

2 SEC. 23. The court shall be governed, in the trial and determination of
3 contested elections, by the usual rules of law and evidence so far as appli-
4 cable, except as herein otherwise expressed, and may dismiss the proceed-
5 ings if all the causes of contest are insufficient and not amended, or for
6 want of prosecution.

2 SEC. 24. The court shall pronounce judgment whether the incumbent or
3 any other person was duly elected, and the person so declared elected will
4 be entitled to his certificate upon qualification. If the judgment be against

4 the incumbent and he has already received the certificate, the judgment
5 annuls it. If the the court find that no person was duly elected, the judg-
6 ment shall be that the election be set aside.

SEC. 25. The nominated judges shall be entitled to receive two dollars a
2 day for the time occupied by the trial.

SEC. 26. The contestant and the incumbent are liable to the officers and
2 witnesses for the costs made by them respectively. But if the election be
3 confirmed, or the statement be dismissed, or the prosecution fail, judgment
4 shall be rendered against the contestant for costs; and if the judgment be
5 against the incumbent, or the election be set aside, it shall be against him
6 for costs.

SEC. 27. A transcript of the judgment filed and recorded in the office of
2 the circuit court, as provided in relation to transcript from justices' courts
3 shall have the same effect as there provided, and execution may issue
4 thereon against real or personal estate.

SEC. 28. If notice of contesting the election of an officer is filed before
2 the certificate of election is delivered to him, it shall be withheld until the
3 determination of the contest.

SEC. 29. Wherein either the contestant or incumbent shall be in posses-
2 sion of the office, by holding over or otherwise, the presiding judge shall, if
3 the judgment be against the party so in possession of the office, and in favor
4 of his antagonist, issue an order to carry into effect the judgment of the
5 court, which order shall be under the seal of the county, and shall command
6 the sheriff of the county to put the successful party into possession of the
7 office without delay, and to deliver to him all books and papers belonging
8 to the same, and the sheriff shall execute such order as in cases of other
9 writs.

SEC. 30. The party against whom judgment is rendered may appeal to
2 the circuit court, but if he be in possession of the office, such appeal shall
3 not supersede the execution of the judgment of the court, as provided in the
4 preceding section, unless he give a bond with security, to be approved by
5 the circuit judge, in a sum to be fixed by the judge, and which shall be at
6 least double the probable compensation of such officer for six months,
7 which bond shall be conditioned that he will prosecute his appeal without
8 delay, and that if the judgment appealed from be affirmed, he will pay over to
9 the successful party all fees, salary, compensation and perquisites, received
10 by him while in possession of said office, and after the judgment appealed
11 from was rendered.

SEC. 31. If upon appeal the judgment of the contesting court be affirmed,
2 the circuit court may render judgment upon the bond, for the amount of
3 damages against the contestant and his sureties on the bond.

SEC. 32. The successful party shall be sworn into office as soon as judg-
2 ment is rendered in his favor by the contesting court, in order to qualify
3 him for taking possession in case an appeal is not perfected.

SEC. 33. The election of any person declared duly elected to the office
2 of secretary, treasurer, or auditor of state, attorney-general, register of the
3 state land office, superintendent of public instruction, judge, clerk, or re-
4 porter, of the supreme court, or any other state officer except that of gov-
5 ernor or lieutenant-governor, or to the office of district judge, circuit judge,
6 or district attorney, may be contested by an eligible person, who received
7 votes for the office contested, for any of the causes before contemplated.

SEC. 34. The court for the trial of contested state elections shall consist
2 of three judges, not interested, of either the supreme or district court, or
3 part from the one and part from the other as may be convenient.

2 SEC. 35. The secretary of state shall be the clerk of this court. But if
3 the person holding that office is a party to the contest, the clerk of the su-
4 preme court, or in case of his absence or inability a person appointed by the
5 auditor or treasurer of state, shall be clerk.

2 SEC. 36. The statement must be filed with the secretary of state within
3 thirty days from the day when the votes are canvassed. If the secretary be
4 a party it must be filed with the clerk of the supreme court, and if he be
5 absent or unable to act then with the auditor or treasurer, who shall imme-
6 diately appoint, in writing, some suitable person as clerk and file the state-
7 ment with him.

2 SEC. 37. The clerk shall, as soon as practicable, ascertain which three of
3 the judges residing nearest the seat of government can attend the trial, fix a
4 time therefor and notify the judges, and issue a notice of the time to the
5 sheriff of the county where the contestant resides who shall serve it upon
6 the contestant within three days after it is received; and the clerk shall
7 issue a precept, containing a copy of the statement and a notice of the time
8 fixed for trial, to the sheriff of the county where the incumbent resides
9 which the sheriff shall serve upon the incumbent, within three days after
10 receiving it. The sheriffs in these cases shall return their doings to the
11 officer or person who issues the precept. When convenient, the service of
12 the above papers may be made by the clerk of this court. The time for
13 the trial shall not be set beyond the last Monday of *January* following the
14 election.

2 SEC. 38. The secretary of state, the several clerks of the supreme and
3 district courts, under their respective seals of office, and either of the judges
4 of the supreme district or circuit courts under their hands, may issue sub-
5 pœnas for witnesses to attend this court; and disobedience to such process
6 may be treated as a contempt as if it had been issued by the court itself.
7 This section does not diminish the power of any officer to summon wit-
8 nesses before him to give his testimony by deposition.

2 SEC. 39. Process and papers may be issued to, and served by, the sheriff
3 of any county.

2 SEC. 40. The trial shall take place at the seat of government unless ad-
3 journed elsewhere by consent of court and both parties.

2 SEC. 41. The judges shall be entitled to receive, for their travel and at-
3 tendance, the highest compensation allowed to members of the general as-
4 sembly, to be paid from the state treasury.

2 SEC. 42. A transcript of the judgment rendered by such court filed in
3 the office of the clerk of the supreme court, shall have the like force and effect
4 of a judgment of the supreme court, and execution may issue therefrom in
5 the first instance, and against the party's property generally.

2 SEC. 43. The presiding judge of this court shall have authority to carry
3 into effect any order of the court, after the adjournment thereof, by attach-
4 ment or otherwise. ¶

2 SEC. 44. The provisions of this chapter in relation to contested county
3 elections are applied to contested state elections when applicable, except as
4 herein otherwise directed.

2 SEC. 45. The election of any person declared duly elected to a seat in the
3 senate or house of representatives of the general assembly may be contested
4 by any qualified voter of the county or district to be represented by such
5 senator or representative.

2 SEC. 46. The contestant shall, within thirty days after the declaration of
3 the canvassers, serve on the incumbent a statement as required in relation to

3 county officers, except the list of illegal votes which shall be served with
4 the notice of taking depositions relative to them, and if no such deposition
5 is taken then twenty days before the day of hearing.

2 **Sec. 47.** Any judge or clerk of a court of record may issue subpoenas
3 in the above cases as in those before provided, and when a witness is sum-
4 moned to give his deposition before such judge or clerk he shall have the
5 power to compel his attendance.

2 **Sec. 48.** The previous provisions of this chapter shall be applicable to,
3 and govern, similar cases in taking depositions in the cases now contem-
4 plated, except that the causes of taking depositions do not apply.

2 **Sec. 49.** A copy of the statement and of the notice for taking deposi-
3 tions with the service indorsed, and verified by affidavit if not served by an
4 officer, shall be returned to the officer taking the depositions, and then with
5 the depositions shall be sealed up and transmitted by mail or otherwise to
6 the secretary of state with an indorsement thereon showing the nature of
7 the papers, the names of the contesting parties, and the branch of the gen-
8 eral assembly before which the contest is to be tried.

2 **Sec. 50.** The secretary shall deliver the same unopened to the presiding
3 officer of the house in which the contest is to be tried, on or before the sec-
4 ond day of the session (regular or special) of the general assembly next after
5 taking the depositions, and the presiding officer shall immediately give
6 notice to his house that such papers are in his possession.

2 **Sec. 51.** Nothing herein contained shall be construed to abridge the right
3 of either branch of the general assembly to grant commissions to take
4 depositions, or to send for and examine any witness it may desire to hear
5 on such trial.

2 **Sec. 52.** The election of any person declared duly elected to the office
3 of governor or lieutenant-governor may be contested by an eligible person
4 who received votes for the office contested.

2 **Sec. 53.** The contestant shall, within thirty days after the proclamation
3 of the election, deliver to the presiding officer of each house of the general
4 assembly a notice of his intent to contest, and a specification of the grounds
5 of such contest as before directed.

2 **Sec. 54.** As soon as the presiding officers have received the notice and
3 specifications, they shall make out a notice directed to the incumbent, and
4 including a copy of the specifications, which shall be served by the sergeant-
5 at-arms.

2 **Sec. 55.** The presiding officers shall also immediately make known to
3 their respective houses that such notice and specifications have been
4 received.

2 **Sec. 56.** Each house shall forthwith proceed separately to choose seven
3 members of its own body in the following manner:

3 (1). The names of the members of each house, except the presiding offi-
4 cer, written on similar paper tickets, shall be placed in a box, the
5 names of the senators in their presence by their secretary, and the
6 names of the representatives in their presence by their clerk.

7 (2). The secretary of the senate in the presence of the senate, and the
8 clerk of the house of representatives in the presence of the house
9 shall draw from their respective boxes the names of seven members
10 each ;

11 (3). As soon as the names are thus drawn the names of the members
12 drawn by each house shall be communicated to the other, and the
13 fourteen names thus drawn shall be entered on the journal of each
14 house.

2 SEC. 57. The members thus drawn shall constitute a committee to try
3 and determine the contested election, and for that purpose shall hold their
4 meetings publicly at the place where the general assembly is sitting at such
5 time as they may designate; and may adjourn from day to day, or to a
6 day certain not more than four days distant, until such trial is determined;
7 shall have power to send for persons and papers, and to take all neces-
8 sary means to procure testimony, extending like privileges to the contes-
9 tant and the incumbent; and shall report their judgment to both branches
10 of the general assembly, which report shall be entered on the journals of
both houses.

2 SEC. 58. The testimony shall be confined to the matters contained in the
specifications.

2 SEC. 59. The judgment of the committee pronounced in the final deci-
3 sion on the election shall be conclusive.

2 SEC. 60. If the decision be that no person was duly elected, the office of
3 governor will be filled—in case of a vancancy—in the mode required by the
3 constitution.

2 SEC. 61. The provisions of this chapter in relation to contested county
3 elections are applied to a contested election for governor when applicable,
3 except as herein otherwise directed.

CHAPTER 7. *Of Removal and Suspension from Office.*

2 SEC. 1. All county officers, including justices of the peace, may be
3 charged, tried, and removed from office for official misdemeanors in the
3 manner and for the causes following:

- 4 1. For habitual or wilful neglect of duty;
- 5 2. For gross partiality;
- 6 3. For oppression;
- 7 4. For extortion;
- 8 5. For corruption;
- 9 6. For wilful mal-administration in office;
- 10 7. Conviction of a felony.

2 SEC. 2. Any person may make such charge, and the district court shall
3 have exclusive original jurisdiction thereof by the service of original notice.

2 SEC. 3. The proceedings shall be as nearly like those in other actions as
3 the nature of the case admits excepting where otherwise provided in this
3 chapter.

2 SEC. 4. The petition shall be by an accuser against the accused, and
3 shall contain the charges with the necessary specifications under them, and
3 be verified by the affidavit of any elector of the state that he believes the
4 charges to be true.

2 SEC. 5. It will be sufficient that the notice require the accused to ap-
3 pear and answer the petition of A. B. (naming the accuser) for "official
3 misdemeanors;" but a copy of the petition must be served with the notice.

2 SEC. 6. No answer or other pleading after the petition is necessary, but
3 the defendant may move to strike out the petition or demur thereto upon
3 any ground rendering such motion or demurrer proper, and he may answer
4 if he desires, but if their be an answer the provisions of the statute relating
5 to the pleadings in actions shall apply except that the answer need not be
6 sworn to.

SEC. 7. If the person who holds the office of clerk of the district and circuit court is the accused in either of those capacities, the complaint may be filed with the county auditor, and he may issue the summons and copy under the county seal, and both he and the clerk may issue subpoenas for witnesses, and the county auditor shall deliver the papers to the judge of the district court on its sitting.

SEC. 8. If a cotinuanance of the action take place beyond the return term the court may suspend the accused from the functions of his office until the determination of the matter, if sufficient cause appear from testimony or affidavits then presented; and if such suspension take place the board of supervisors shall temporarily fill the office by appointment similar to appointments provided for hereafter in this title.

SEC. 9. The question of fact shall be tried as in other actions, and if the accused is found guilty judgment shall be entered removing the officer from his office and declaring the latter vacant; and the clerk shall enter a copy of the judgment in the election book, or, if he be the accused, a copy of the judgment shall be certified to the county auditor whose duty it will be to cause it to be entered as above directed.

SEC. 10. The accuser and the accused are liable to costs as in other actions.

SEC. 11. When the accused is an officer of the court and is suspended, the court may supply his place by appointment for the term.

SEC. 12. The judges of the district and circuit courts in their respective districts shall have authority on their own motion, to suspend from office any clerk of that court or sheriff of a county for any of the causes mentioned in this chapter coming to their own knowledge, or manifestly appearing from the papers or testimony in any proceeding in court.

SEC. 13. Upon such suspension the court may direct the district attorney to file a complaint, which shall be in the name of the county upon the relation of the attorney, but it need not be verified by affidavit.

SEC. 14. Such order of suspension shall be entered in the election book by the clerk, or if he be the accused it shall be certified to the county auditor and be by him entered.

SEC. 15. Whenever in the judgment of the governor for the time being, the public service requires it, he shall appoint a commission of three competent and safe accountants who shall examine the books, papers, vouchers, moneys, securities, and other documents in the hands or possession or under the control of each and every executive officer of the state, including the state printer and state biuder, to make out a full, complete and specific statement of the transactions of each of said officers with, for, or on behalf of the state, showing the true balances in each and every case, and report the same to the governor with such suggestions as they may deem proper.

SEC. 16. Whenever any commission of investigation appointed as aforesaid, shall rspot to the governor that any officer has been guilty of any defalcation, misapplication, or misappropriation of public money, or that his accounts, papers, and books are improperly or unsafely kept, and that the state is likely or liable to suffer loss thereby, it shall be the duty of the governor to forthwith suspend such officer from the exercise of all the functions of his office, and to require him to deliver all the money, books, papers, documents, vouchers, furniture, and other property of the state to the governor, to be disposed of as shall hereinafter be provided.

SEC. 17. From and after the date of the suspension of any officer under the provisions of this act, it shall be unlawful for such officer to exercise or

3 attempt to exercise any of the functions of such office until such suspension
 4 shall be revoked, and any such exercise or attempt to exercise the rights, duties,
 5 or franchises of said office after such suspension, shall be deemed a misde-
 6 meanor, and shall subject the offender for each and every offense to the pen-
 7 alty of not more than one year imprisonment in the county jail, and not
 8 more than one thousand dollars fine, to be recovered and enforced as pro-
 9 vided for by the laws of the state.

2 SEC. 18. It shall be unlawful for any officer or person whatever to re-
 3 cognize the authority of any such suspended officer, after the date of such
 4 suspension, or to transact any public business with him for and on behalf of
 5 the state until such suspension shall be removed, and every person
 6 guilty of a violation of the provisions of this section, shall be deemed
 7 guilty of a misdemeanor and subject to a fine of not less than five hundred
 8 dollars, nor more than five thousand dollars, to be recovered as provided
 9 by law.

2 SEC. 19. In every case of suspension it shall be lawful, and it is hereby
 3 made the duty of the governor of the state to appoint some suitable person
 4 to fill temporarily the office from which such person has been suspended,
 5 before he enters upon the duties of the office, such person shall give bond
 6 as now required by law, to be approved by the governor, and when thus
 7 appointed and qualified shall have full power and authority to do and per-
 8 form all the duties and enjoy all the rights and franchises to the said office
 9 appertaining and belonging, until the removal of the suspension of his pre-
 2 decessor or the election of a successor.

2 SEC. 20. It shall be the duty of the governor of the state, whenever he
 3 shall suspend the functions of any such public officer, to direct the proper
 4 legal steps to be taken to indemnify the state from loss by instituting suit
 5 upon the official bond of said officer or otherwise as the governor may
 6 deem fit.

2 SEC. 21. The commissioners provided for in this act, shall each receive
 3 the sum of three dollars per day for each and every day they may be actually
 4 employed in the performance of their duties.

2 SEC. 22. Said commissioners shall have power when in session, to issue
 3 subpoenas to call any person or persons before them to testify in reference
 4 to any fact connected with their investigation; also to require such persons
 5 to produce any papers or books when by the laws of evidence the district
 6 court might require by rule to be produced.

CHAPTER 8. *Of Deputies.*

2 SEC. 1. The secretary, auditor and treasurer of state, the superintendent
 3 of public instruction, the register of the state land office, each clerk of the
 4 district and circuit courts, county auditor, treasurer, sheriff, surveyor and
 5 recorder may appoint a deputy for whose acts he shall be responsible, and
 6 from whom he shall require bond; which appointment must be in writing
 7 and be approved by the officer who has the approval of the principal's bond,
 8 and shall be revocable by writing under the principal's hand; and both the
 9 appointment and the revocation shall be filed and kept in the office of the
 2 secretary of state, and county auditor respectively.

2 SEC. 2. In the absence or disability of the principal, and in the cases
 3 provided for in the chapter relating to vacancies, the deputy shall perform
 4 the duties of his principal pertaining to his own office, but when any officer

4 is required to act in conjunction with, or in the place of, another officer, his
5 deputy can not supply his place.

2 SEC. 3. The secretary, treasurer, and auditor of state can neither of
3 them appoint either of the others his deputy; nor can either the clerk of
4 the district court, recorder, treasurer or sheriff of a county appoint either of
5 the others.

2 SEC. 4. The sheriff may appoint such number of deputies as he sees
3 fit.*

2 SEC. 5. Each deputy shall take the same oath as his principal (reciting
3 the condition of his principal's bond) which shall be indorsed upon and filed
4 with the certificate of his appointment.

2 SEC. 6. When a county officer receiving a salary is compelled by the
3 pressure of the business of his office to employ a deputy, the board of su-
4 pervisors may make a reasonable allowance to such deputy.

CHAPTER 9. *Of Additional Security and the Discharge of Sureties.*

2 SECTION 1. Whenever the executive of any state shall deem it advisable
3 or necessary that the bonds of any state officer should be increased, and the
4 security enlarged, or a new bond given, he shall notify said state officer of
5 the fact, the amount of new or additional security to be given, and the time
6 when the same shall be executed, which said new security shall be approved
7 by said executive, and filed as now provided by law.

2 SEC. 2. The officer who has the approval of another officer's bond, when
3 he is of opinion that the public security requires it and upon giving the of-
4 ficer ten days' notice to show cause to the contrary, may require such officer
5 to give such additional security by a new bond as may be deemed requisite
6 within a reasonable time to be prescribed.

2 SEC. 3. If a requisition made under either of the foregoing sections be
3 complied with, both the old and new security shall be in force; and if not
4 complied with, the office shall become and be declared vacant, and the pro-
5 ceeding be certified to the proper officer to be recorded in the election book
6 or township record.

2 SEC. 4. When any of the sureties on the bond of a civil officer conceives
3 himself in danger of suffering by remaining surety, and desires to be re-
4 lieved of his obligation he may petition the approving officer above referred
5 to for relief, stating the ground of his apprehension.

2 SEC. 5. The surety shall give the principal at least twenty-four hours no-
3 tice of the presenting and filing of the petition with a copy of the grounds
4 of his apprehension. At the expiration of twenty-four hours from the no-
5 tice the approving officer may hear the matter or may postpone the hearing,
6 as the case permits or requires.

2 SEC. 6. The testimony of both parties, as well as that of witnesses may
3 be heard in proceedings under this chapter.

2 SEC. 7. If, upon the hearing, there appears substantial ground for appre-
3 hension, the approving office may order the principal to give a new bond and
4 to supply the place of the petitioning surety within a reasonable time to be
5 prescribed, and upon such new bond being given the petitioning surety upon
6 the former bond shall be declared discharged from liability on the same for
7 future acts, which order of discharge shall be entered in the proper election
8 book, but the bond will continue binding upon those who do not petition for
9 relief.

2 SEC. 8. If the new bond is not given as required, the office of the princi-
3 pal shall be declared vacant, and the order to that effect entered as directed
4 in the preceding section.

2 SEC. 9. If the proceeding relate to a justice of the peace, and he is re-
3 moved from office, the county auditor shall notify the proper township trus-
4 tees or clerk of the removal.

2 SEC. 10. The approving officer herein contemplated shall possess all the
3 powers of a justice of the peace to issue subpoenas in his official name for
4 witnesses, to compel their attendance, and to swear them.

2 SEC. 11. Where an officer consents to give new security in the above
3 cases, it may be taken without farther proceeding, and with the same effect
4 as above provided.

CHAPTER 10. *Of Vacancies and Special Elections.*

2 SEC. 1. Every civil office shall be vacant, upon the happening of either
3 of the following events at any time before the expiration of the term of
4 such office, to-wit :

- 4 1. The resignation of the incumbent ;
- 5 2. His death ;
- 6 3. His removal from office ;
- 7 4. His refusal or neglect to take the oath of office, and also to give bond
8 (when a bond is necessary) in the time prescribed by law ;
- 9 5. The decision of a competent tribunal declaring his election or appoint-
10 ment void or his office vacant.
- 11 6. His ceasing to be a resident of the state, district, county or township,
12 in which the duties of his office are to be exercised, or for which
13 he may have been elected ;
- 14 7. A failure to elect at the proper election, there being no incumbent to
15 continue in office until his successor is elected and qualified nor
16 other provision relating thereto ;
- 17 8. A forfeiture of office as provided by any law of the state ;
- 18 9. Conviction of an infamous crime or of any public offense involving
19 the violation of his oath of office.
- 20 10. The acceptance of a commission to any military office, either in the
21 militia of this state, or in the volunteer service of the United
22 States, which requires the incumbent in the civil office to exercise
23 his military duties out of the state for a period not less than
24 sixty days.

2 SEC. 2. Resignation of public officers may be made as follows :

- 2 1. By the governor or lieutenant governor, to the general assembly, if
3 in session ; if not, to the secretary of state ;
- 4 2. By senators and representatives in congress, and by all state officers
5 elected by a vote of the qualified voters of the state at large ; the
6 judges of the supreme, district and circuit courts, and district
7 attorneys to the governor.
- 8 3. By senators and representatives in the general assembly, to the pre-
9 siding officer of their respective bodies, if in session, who shall
10 immediately transmit information of the same to the governor ;
11 if such bodies are not in session to the governor direct.
- 12 4. By all county officers to the board of supervisors and by members of
13 the board of supervisors to the county auditor.

14 5. By all township officers, to the township clerk ; and by the township
15 clerk to the township trustees, or any one of them.

16 6. By all officers holding by appointment, to the officer or body by
17 whom they were appointed.

SEC. 3. Vacancies, except in the office of governor, shall be filled as follows :

2 In state offices by the governor.

3 In county offices by the board of supervisors.

4 In township offices by the trustees ; but where the offices of the three
5 trustees are all vacant the clerk shall appoint, and if there be no clerk the
6 county auditor shall appoint.

SEC. 4 Every officer elected or appointed for a fixed term, or elected or
2 appointed to fill a vacancy until the next general election, shall hold office
3 until his successor is elected and qualified, unless the statute under which
4 he is elected or appointed expressly declares the contrary ; *Provided* that
5 this section shall not be construed in any way to prevent the removal or
6 suspension of such officer during or after his term, in cases provided by law.

SEC. 5. When a civil officer who is authorized or required to appoint a
2 deputy vacates, or is about to vacate, his office by resignation or by removal
3 he shall remain responsible for the performance of the duties, and may
4 receive the emoluments of his office until his successor by election or by ap-
5 pointment has qualified ; but he shall not be so responsible beyond the day
6 when the result of an election to fill his office is declared.

SEC. 6. In the case contemplated in the preceding section, if the vacancy
2 occurs within thirty days previous to an election day at which it may be
3 filled, no appointment shall be made.

SEC. 7. Appointments under the provisions of this chapter shall be made
2 in writing and made to continue until the next election at which the vacancy
3 can be filled and until a successor is elected and qualified, and be filed with
4 the secretary, or proper township clerk, or in the proper county office,
5 respectively.

SEC. 8. Persons appointed to office as herein provided shall qualify in
2 the same manner as is required of those elected, the time for which shall
3 be prescribed in their appointment ; and the provisions of the chapter re-
4 lating to qualification for office are extended to them.

SEC. 9. A person appointed as herein contemplated may be removed by
2 the officer appointing ; and no person can be appointed who has been re-
3 moved from office within one year.

SEC. 10. A vacancy in the office of senator in congress shall be filled
2 whenever the general assembly is in session after the vacancy occurs.

SEC 11. When a vacancy occurs in a public office except by the resig-
2 nation or removal from the territory of his office of an officer who is
3 authorized or required to appoint a deputy) possession shall be taken of the
4 office-room and of the books, papers, and all things pertaining to the office,
5 as follows, to be held until the election or appointment and qualification of
6 a successor :

7 Of the office of the county auditor, by the county clerk ;

8 Of that of the county clerk or treasurer, by the county auditor ;

9 Of any of the state officers, by the governor ; or in his absence or inability
10 at the time of the occurrence, as follows :

11 Of the secretary, by the treasurer ;

12 Of the auditor, register of the land office, or superintendent of public in-
13 struction, by the secretary ;

14 Of the treasurer, by the secretary and auditor; who shall make an inven-
 15 tory of the money and warrants therein, sign the same and transmit it to
 16 the governor if he be in the state, and the secretary shall take the keys of
 17 the safes and desks after depositing the books, papers, money, and warrants
 18 therein, and the auditor shall take the key of the office-room.

2 Sec. 12. Vacancies occurring in the township offices, ten days; in county
 3 offices, fifteen days; and in all other public elective offices, thirty days prior
 4 to the day of a general election; shall be filled at such general election;
 5 *provided*, that should a vacancy occur in the office of representative in
 6 congress, senator or representative in the general assembly, and the body in
 7 which the vacancy exists will convene in a general or extra session prior to
 8 such election, then it shall be the duty of the governor to order a special
 9 election to fill such vacancy, to be held at the earliest practicable time; and
 ten days notice of such election shall be given.

2 Sec. 13. Whenever a vacancy shall occur in the office of a senator or
 3 representative in the general assembly it shall be the duty of the clerk of
 4 the board of supervisors of the county in which such vacancy may occur to
 5 notify the governor of the state of such fact, and the cause of such vacancy;
 6 and if more than one county is represented in the district in which such va-
 7 cancy may occur then such notice shall be given by the clerk of the board
 8 of supervisors of the county in which the late member resided.

2 Sec. 14. The provisions relating to general elections shall govern special
 3 elections except where it may be otherwise provided by law.

2 Sec. 15. In all cases where special elections are held to fill vacancies in
 3 the offices of senator or representative, in the general assembly, or represen-
 4 tative in congress, it shall be the duty of the board of county canvassers to
 5 meet at 12 o'clock M., on the second day after said election, unless the sec-
 6 ond day be Sunday, in which case they shall meet on the following Monday,
 7 to canvass the votes cast at such elections, for which they shall receive one
 dollar per day and ten cents per mile, counting one way.

2 Sec. 16. The state board of canvassers shall canvass the votes cast at
 3 any special election to fill a vacancy in the offices mentioned in the preceding
 4 section, and it shall be the duty of the clerk of the board of supervisors,
 5 within four days after such election, to transmit to the secretary of state, an
 abstract of the votes cast at said election.

2 Sec. 17. Within fifteen days after said election the board of state can-
 3 vassers shall meet to canvass the votes cast to fill such vacancy, unless that
 4 day be Sunday, and if so they shall meet on the following Monday, and if
 5 the returns have not been received from all the counties composing said dis-
 6 trict, they may adjourn to such day as they deem necessary, not exceeding
 ten, for the purpose of receiving said returns.

2 Sec. 18. Whenever a vacancy occurs in the office of justice of the peace
 3 or constable, in any township, by resignation or otherwise, it shall be the
 4 duty of the clerk of the board of supervisors, whenever such vacancy
 5 occurs more than thirty days prior to any general election, to immediately
 6 notify the township clerk of the township in which such vacancy exists, by
 mail or otherwise.

2 Sec. 19. The township clerk, within five days after receiving such notice,
 3 shall notify each of the trustees of his township in writing, specifying the
 4 office that has become vacant, fixing the time and place that they shall meet
 5 for the purpose of filling such vacancy by appointment, which place of meet-
 ing shall be the usual place of holding township meetings. Such notice may

6 be served by any constable of the township, and shall be served at least five
7 days prior to such meeting.

2 SEC. 20. The trustees shall meet in accordance with such notice, and fill
3 such vacancy by appointment in writing of a competent person, who shall
4 hold office until the next general election, and shall qualify in the same
5 manner, and be liable to the same penalties as persons who are duly elected
6 to fill such offices, and all the provisions of law in relation to qualification
7 for office, shall apply to persons so appointed.

2 SEC. 21. Within five days after such appointment has been made it shall
3 be the duty of the township clerk to record it in the township record book,
4 and to cause a notice to be served upon the person so appointed, informing
5 him of his appointment to fill the office to which he was appointed, stating
6 the time, place, and by whom such appointment was made. Such notice
7 may be served by any constable in the township, in the manner prescribed
8 by law for the service of notices, and so appointed and notified to qualify
9 within ten days after such notice has been served upon him. The clerk of
10 the board of supervisors may approve of the bond of a justice of the peace
11 and constable so appointed, by the recommendation of the sufficiency of the
12 sureties upon such bond, signed by any member of the board of supervisors
of such township.

TITLE VI. OF REVENUE.

CHAPTER 1. *Of the Assessment of Taxes.*

SECTION 1. The board of supervisors of each county in this state shall annually, at their September session, levy the following taxes upon the assessed value of the taxable property in the county :

1. For state revenue, one and one half mills on a dollar when no rate is directed by the census board ; but in no case shall the census board direct a levy to be made exceeding two and one half mills on a dollar.
2. For ordinary county revenue, including the support of the poor, not more than four mills on a dollar, and a poll-tax of fifty cents.
3. For support of schools, not less than one nor more than two mills on a dollar.
4. For making and repairing bridges, not more than three mills on a dollar.

SEC. 2. The following classes of property are not to be taxed, and they may be omitted from the assessments herein required : The property of the United States and that of this state, including the university, agricultural college and school lands, and including all property leased to the state, during the existence of such lease ; the property of a county, township, incorporated town, or school district, when devoted entirely to the public use, and not held for pecuniary profit ; public grounds, by whomsoever devoted to the public, including all places for the burial of the dead ; fire engines, and all implements used for extinguishing fires, with the grounds used exclusively for their buildings and for the meetings of the fire companies ; all grounds and buildings of literary or scientific institutions incorporated under the laws of this state ; also, the grounds and buildings of benevolent, agricultural and religious institutions and societies devoted solely to the appropriate objects of these institutions not exceeding six hundred and forty acres in extent, and not leased or otherwise used with a view of pecuniary profit ; and all property leased to agricultural societies during the term of such lease ; *Provided*, The same is devoted solely to the appropriate objects of said societies.

1. The books, papers, and apparatus belonging to the above institutions, and used solely for the purposes above contemplated, and the like property of students in any such institution, used for their education.
2. Money and *credits* belonging exclusively to such institutions, and devoted solely to sustaining them, but not exceeding in amount or income, the sum prescribed by their charter.
3. All real and personal property situated in this state, belonging to any bible society or auxiliary of such society, where such property is received, owned, or held solely for benevolent purposes, and is devoted solely to such purposes : *Provided*, that all deeds or other writings by which such property is passed to and held by any such

31 society, shall first be duly filed for record in the office of the re-
 32 corder of deeds of the county wherein such real estate is situated,
 33 before the property therein described shall be omitted from the
 34 assessment now required by law.

- 35 4. Animals not specified in the next section, the wool shorn from sheep,
 36 belonging to the person giving the list, his farm produce harvested
 37 for one year previous to the listing, private libraries not exceeding
 38 one hundred dollars in value, family pictures, libraries of clergy-
 39 men, kitchen furniture of each family, beds and bedding requisite
 40 for each family, one bed and the bedding thereof for each single
 41 person not a member of another family, the apparel of every
 42 family and person actually used for wearing, and all food pro-
 43 vided for each family; but no person from whom a compensation
 44 for board or lodging is received, or expected, is to be considered a
 45 member of a family within the intent of this clause.
- 46 5. The polls or estates, or both of persons, who by reason of age or in-
 47 firmity may, in the judgment of the assessor, be unable to contrib-
 48 ute to the public revenue, such opinion being subject to reversal
 49 by the board of supervisors.
- 50 6. Mutual insurance companies incorporated under the laws of Iowa,
 51 and when the principal office of doing business is located in this
 52 state.
- 53 7. The farming utensils of any person who makes his livelihood by
 54 farming, and the tools of any mechanic, not in either case to ex-
 55 ceed one hundred dollars in value.
- 56 8. Government lands entered or located, or lands purchased from this
 57 state, shall not be taxed for the year in which the entry, location,
 58 or purchase is made.

3 Sec. 3. There shall be exempt from taxation, [of] the real or personal
 2 property of each tax-payer, who shall, within the state of Iowa, plant and
 3 suitably cultivate one or more acres of forest trees for timber, the sum of
 4 one hundred dollars, for ten years, for each acre so planted and cultivated:
 5 *Provided*, that the trees on said land shall not exceed eight feet apart, and
 6 shall be kept in a healthy and growing condition.

7 There shall be exempt from taxation [of] the real and personal property
 8 of each tax-payer, who shall within the state, plant and suitably cultivate
 9 one or more acres of fruit trees, the sum of fifty dollars for five years, for
 10 each acre so planted and cultivated: *Provided*, that the trees on said land
 11 shall not exceed thirty-three feet apart, and shall be kept in a healthy
 12 condition.

13 Persons claiming the benefit of such exemption shall at the time of mak-
 14 ing the annual assessment, upon showing, to the satisfaction of the assessor
 15 of the township in which he resides, that he has complied with the provis-
 16 ions of this section, be entitled to have deducted from the valuation of his
 17 real or personal property, by the said assessor, the amount as hereinbefore
 18 provided; and it is hereby made the duty of said assessor to make return to
 19 the board of supervisors of his county, the name of each person claiming
 20 exemption, the quantity of lands planted to timber, or fruit trees, and the
 21 amount deducted from the valuation of his property.

22 If any person claiming exemption under the provisions of this section
 23 shall feel himself aggrieved by the decision of the assessor in the rejection
 24 of his claim, then the said owner or applicant may apply to the board of

25 supervisors of his county at their meeting in June, to have the same cor-
 26 rected in the same manner as other erroneous assessments.

2 SEC. 4. The board of supervisors is empowered, at their January meet-
 3 ing in each year to exempt from taxation, except for state purposes, the
 4 real or personal property of each tax-payer, who shall within the county,
 5 within such year, plant and suitably cultivate or, having within such year
 6 or the two preceding years planted, shall suitably cultivate one or more
 7 acres of forest trees for timber, to an amount not exceeding \$500 for each
 8 acre: *Provided*, That said board may fix the minimum number of trees
 9 which shall be grown on each acre.

10 Such board is also empowered at the same time to make a similar exempt-
 11 ion, for every half mile of hedge, and for every mile of shade trees along
 12 the public highway, and for every acre of fruit trees so planted and culti-
 13 vated, and to establish the rules and regulations in reference to the planting
 14 and cultivating of hedges, shade and fruit trees, and the distance at which
 15 they shall be planted, which shall be complied with by persons asking such
 16 exemption.

17 Any person claiming the benefit of such exemption may appear before
 18 the board of supervisors of the county, at any regular meeting, and upon
 19 making proof by sworn evidence, showing to the satisfaction of said board,
 20 that he has complied with the requirements which entitle him to such ex-
 21 emption, he shall receive from the clerk of the board a certificate stating
 22 the amount of the exemption, which shall be received by the county treas-
 23 urer in satisfaction of the taxes exempted.

2 SEC. 5. In all cases where buildings may be destroyed by fire, tornado,
 3 or other unavoidable casualty after being assessed for the year, the board of
 4 supervisors on the application of any party interested may rebate from the
 5 taxes for that year, so much as may have been assessed on the part de-
 6 stroyed: *provided*, that said taxes have not been in default for thirty days
 7 at the time of destruction: and provided further, that the loss for which
 8 such rebate is allowed shall be such only as is not covered by insurance.

9 SEC. 6. All other property real and personal within the state, is subject
 2 to taxation in the manner directed, and this section is intended to embrace
 3 lands and lots in towns, including lands bought from the United States, and
 4 from this state, and whether bought on credit or otherwise. Ferry fran-
 5 chises and toll bridges which for the purposes of this act are considered as
 6 real property. Horses, cattle, mules, asses, sheep, swine, and money, wheth-
 7 er in possession or on deposit, and including bank bills, money, property or
 8 labor due from solvent debtors on contract or on judgment, mortgages and
 9 other like securities, and accounts bearing interest, property situated in this
 10 state, belonging to any bank, or company incorporated or otherwise, whether
 11 incorporated by this or any other state, public stocks or loans, household
 12 furniture, including gold and silver plate, musical instruments, watches and
 13 jewelry, private libraries, for their value exceeding one hundred dollars,
 14 carriages, stages, hacks, wagons, carts, drays, sleighs, sleds, and every de-
 15 scription of vehicle, farming utensils, machines and machinery, and me-
 16 chanics' tools for their aggregate value over one hundred dollars, boats and
 17 vessels of every description wherever registered or licensed, and whether
 18 navigating the waters of this state or not, if owned either wholly or in part
 19 by persons who are inhabitants of this state, to the amount owned in this
 20 state.

21 Annuities but not including pensions from the United States or any state,
 22 nor salaries or payments expected for services to be rendered.

23 Any and all lands in this state, which are owned or held by any other
 24 county or counties, claiming title under locations with swamp land inden-
 25 nity script, or otherwise, shall be taxed the same as other real estate within
 26 the limits of the county.

SEC. 7. The term "credit" as used in this title includes every claim and
 2 demand for money, labor, or other valuable thing, and every annuity or
 3 sum of money receivable at stated periods, and all money in property of
 4 any kind and secured by deed, mortgage, or otherwise ; but pensions from
 5 the United States, or any of them, and salaries or payments expected for
 6 services to be rendered are not included in the above term.

SEC. 8. Every inhabitant of this state of full age, and sound mind, shall
 2 assist the assessor in listing all property subject to taxation in this state of
 3 which he is the owner, or has the control or management in the manner
 4 hereinafter directed ; the property of a ward is to be listed by his guardian,
 5 of a minor by his father if living, if not, then by his mother if living, and
 6 if not, then by the persons having the property in charge ; of a married
 7 woman, by herself or husband ; of a beneficiary for whom property is held
 8 in trust, by the trustee, and the personal property of a decedent, by the ex-
 9 ecutor ; of a body corporate, company, society, or partnership, by its prin-
 10 cipal accounting officer, agent or partner. Property under mortgage or lease
 11 is to be listed by and taxed to the mortgagor or lessor unless it be listed by
 12 the mortgagee or lessee.

SEC. 9. Commission merchants and all persons trading and dealing on
 2 commission, and assignees authorized to sell, when the owner of the goods
 3 does not reside in the county, are for the purposes of taxation, to be deemed
 4 the owners of the property in their possession.

SEC. 10. Any person required to list property belonging to another, shall
 2 list it in the same county in which he would be required to if it were his own,
 3 (except as herein otherwise directed) but he shall list it separately from his
 4 own, giving the assessor the name of the person or estate, to whom it be-
 5 longs, but the undivided property of a person deceased belonging to his
 6 heirs, may be listed as belonging to his heirs without enumerating them.

SEC. 11. When a person is doing business in more than one county, the
 2 property and credits existing in any one of the counties shall be listed and
 3 taxed in that county, and the credits not existing in or pertaining especially
 4 to the business in any one county, shall be listed and taxed in that where the
 5 principal place of business may be. Any individual of a partnership is lia-
 6 ble for the taxes due from a firm.

SEC. 12. Every insurance company doing business in this state, shall, at
 2 the time of making the annual statement, as provided in chapter four, of title
 3 nine, of this code, pay into the state treasury, as taxes, two per cent of the
 4 premiums on risks in this state, taken during the preceding year, taking du-
 5 plicate receipts therefor, one of which shall be filed with the auditor of state,
 6 and upon the filing of said receipt, and not till then, the said auditor shall
 7 issue the annual certificate as provided in said chapter, and the said sum of
 8 two per cent shall be in full for all taxes upon the corporation, or its shares
 9 under the laws of this state, except taxes on real property.

SEC. 13. Each railroad company owning or operating a railroad in this
 2 state shall annually, on or before the fifteenth day of February, of each year,
 3 make out and file with the treasurer of state a sworn statement setting
 4 forth,

- 5 1. The amount of gross receipts for their railroad for the year ending
- 6 the thirty-first day of December preceding; second, the number of

- 7 miles of main track of their railroad in each county on the thirty-
 8 first day of December preceding, which statement shall be sworn
 9 to by the president and secretary of such company, and by the
 10 general superintendent of their railroad, or any two of them.
- 11 2. The state treasurer shall levy on said gross receipts a tax as follows,
 12 viz; on the first three thousand dollars or part thereof per mile
 13 one per centum, and on receipts of over three thousand dollars
 14 and under six thousand dollars per mile two per centum, and on
 15 the excess of receipts over six thousand dollars per mile three per
 16 centum, which taxes the said railroad companies shall pay on or
 17 before the first day of March, after which time said taxes, if not paid,
 18 shall become delinquent, and the same penalties and interest shall
 19 attach as on other taxes.
- 20 3. After the said taxes become delinquent the treasurer of state shall
 21 proceed to collect the same in the same manner, and with the
 22 same rights and powers as a sheriff under execution, except that
 23 no process shall be necessary to authorize the treasurer to seize and
 24 sell property for the collection of said taxes.
- 25 4. One-fifth of the taxes levied and collected as aforesaid shall remain
 26 in the state treasury to be used in the same manner as the several
 27 revenues of the state, and the other four-fifths of said taxes shall
 28 be apportioned by the treasurer of state to the several counties
 29 through which the said roads respectively run, in proportion to the
 30 number of miles of main track of road in each county, and shall
 31 be paid over by him to the treasurer of the county entitled
 32 thereto.
- 33 5. If any railroad company shall fail to furnish the sworn statement re-
 34 quired by this act on or before the time herein provided, the treas-
 35 urer of state shall on or before the first day of March, ascertain-
 36 as nearly as possible the gross earnings of such delinquent com-
 37 pany, and shall assess thereon the tax as herein provided, together
 38 with a penalty thereon of thirty per cent for such neglect, which
 39 tax and penalty shall be collected as provided above.
- 40 6. Where the treasurer of state has to incur any expense either in the
 41 assessment or collection of said taxes after they become delin-
 42 quent, he shall add one per centum on the amount of taxes due,
 43 which shall be his compensation for said assessment and collection.
 44 The taxes herein provided for shall be in lieu of all taxes for any
 45 and all purposes on the road-bed, right of way, track, rolling stock,
 46 and necessary buildings for operating their road, except as herein-
 47 after provided; but other property belonging to such company,
 48 whether personal or real, shall be taxed as property of individuals
 49 in the respective counties in which the same may be situated.
- 50 7. No provision of this section shall be held to apply to any railroad
 51 bridge across the Mississippi or Missouri river, but such bridges
 52 shall be assessed and taxed on the same basis as the property of
 53 individuals.

2 Sec. 14. All property, real and personal, owned by telegraph and ex-
 3 press companies, shall be listed and assessed for taxation, and shall be sub-
 4 ject to the same levies as property belonging to individuals.

2 Sec. 15. All personal property shall be listed, assessed and taxed in the
 3 name of the owner thereof, on the first day of January of the then current
 4 year, and each owner shall be required to pay taxes thereon; but if the

4 owner resides out of the county it shall be listed by the agent or person hav-
5 ing charge of the same.

2 SEC. 16. All taxable property shall be taxed each year, and personal
3 property shall be listed and assessed each year; real property shall be listed
4 and valued in the year 1873 and each second year thereafter, and shall be
5 assessed at its true cash value, having regard to its quality, location, natural
6 advantages, the general improvement of the vicinity, and all other elements
7 of its value, and in each year in which real estate is not regularly assessed
8 it shall be the duty of the assessor to list and value any real property not
9 included in the previous assessment.

2 SEC. 17. Depreciated bank notes and the stock of corporations and com-
3 panies shall be assessed at their cash value; credits shall be listed at such
4 sum as the person listing them believes will be received or can be collected
5 thereon, and annuities at the value which the person listing believes them
6 to be worth in money.

2 SEC. 18. In making up the amount of money and credits, which any
3 person is required to list or have listed and assessed, he will be entitled to
4 deduct from the gross amount all debts in good faith owing by him, but no
5 acknowledgment of indebtedness not founded on actual consideration, and
6 no such acknowledgment made for the purpose of being so deducted, shall
7 be considered a debt within the intent of this section, and so much only of
8 any liability of such person as security for another shall be deducted as the
9 person making the list believes he is equitably or legally bound to pay, and
10 so much only as he believes he will be compelled to pay on account of the
11 inability of the principal debtor, and if there are other sureties able to con-
12 tribute, then so much only as he in whose name the list is made will be
13 bound to contribute, but no person will be entitled to any deduction on
14 account of any obligation of any kind, given to any insurance company for
15 the premiums of insurance, nor on account of any unpaid subscription to
16 any institution, society, corporation, or company; and no person shall be en-
17 titled to any deduction on account of any indebtedness contracted for the
18 purchase of United States bonds, or other non-taxable property.

2 SEC. 19. Any person owning or having in his possession or under his
3 control within this state, with authority to sell the same, any personal prop-
4 erty purchased either in or out of this state, with a view of its being sold
5 at an advanced price or profit, or which has been consigned to him from any
6 place out of this state, for the purpose of being sold within the same, shall
7 be held to be a merchant for the purposes of this act; such property shall be
8 listed for taxation, and in estimating the value thereof, the merchant shall
9 take the average value of such property in his possession or under his con-
10 trol during the next year previous to the time of assessing, and if he has
11 not been engaged in the business so long, then he shall take the average dur-
12 ing such time as he shall have been so engaged, and if he be commencing,
13 he shall take the value of the property at the time of assessment.

2 SEC. 20. Any person who purchases, receives or holds personal property
3 of any description for the purpose of adding to the value thereof by any pro-
4 cess of manufacturing, refining, purifying, or by the combination of different
5 materials with the view of making gain or profit by so doing, and by selling
6 the same, shall be held to be a manufacturer for the purposes of this act, and
7 he shall list for taxation the average value of such property in his hands, es-
8 timated as directed in the preceding section; but the value shall be esti-
9 mated upon those materials only which enter into the combination or manu-
0 facture.

2 SEC. 21. Any person acting as the agent of another, and having in his
 3 possession or under his control or management, any money, notes, credits,
 4 assets or personal property, belonging to such other person, with a view to
 5 investing or loaning or in any other manner using the same for pecuniary
 6 profit, shall be required to list the same at the real value, and such agent
 7 shall be personally liable for the tax on the same, and if he refuse to render
 8 the list or swear to the same, the amount of such money, property, notes or
 9 credits may be listed, and valued according to the best knowledge and judgment
 of the assessor, subject to the provisions of section—

2 SEC. 22. There shall be elected at the general election in each year by
 3 the qualified voters of each township one township assessor, who shall hold
 4 his office for one year.

5 There shall also be elected in each city and incorporated town at the
 6 municipal election for city, village, or town officers, in each year, by the
 7 qualified votes of such city or town, a separate city or town assessor, who
 8 shall hold his office for one year from the first Monday of January following
 9 his election, and who shall be the assessor of all persons and property
 10 within the limits of such city or incorporated town, and in such cases the
 11 township assessor shall be restricted in his duties to the person and property
 12 of his township exclusive of the territory of such city or incorporated town,
 13 and the assessor of such city or town before entering upon the duties of his
 14 office, shall take and subscribe an oath as required of the township assessor,
 15 and shall give bond with two or more securities, to be approved by the
 16 council of his city or town, in the sum of five hundred dollars payable
 17 to the city or town, and conditioned for the faithful discharge of the
 18 duties of his office, which bond shall be filed and preserved by the clerk of
 19 said city or town; *Provided*, that should a vacancy occur in the office of
 20 city or town assessor, or any city or town become incorporated after the
 21 time provided by law for electing the same, the city or town council, or
 22 trustees, as the case may be, shall appoint a city or town assessor, who shall
 23 qualify in all respects like assessors elected and shall hold his office until the
 next election.

24 But this section shall not be construed to forbid the election of a city
 25 assessor for city purposes under any special charter in force March second,
 26 1864.

2 SEC. 23. The board of supervisors of each county shall at their meeting
 3 in January in each year, classify the several descriptions of property to be
 4 assessed, for the purpose of equalizing such assessment, and the clerk of said
 5 board shall deliver a certificate of such classification on or before the fifteenth
 6 day of January in each year to each assessor in the county.

2 SEC. 24. On or before the second Monday of January in each year,
 3 the board of supervisors shall furnish each assessor in their county with
 4 suitable books in duplicate, properly ruled and headed, in which to enter
 the following items:

- 5 (1.) The name of the individual, corporation, company, society, partnership
 6 or firm, to whom any property shall be taxable.
- 7 (2.) His or their lands by township, range, section, or part of section,
 8 and when such part is not a congressional division or sub-division,
 9 some other description sufficient to identify it; and town lots,
 10 naming the town in which they are situated, and their proper description
 11 by number and block or otherwise, according to the
 12 system of numbering in the town.

13 (3.) Personal property as follows: number of cattle, number of horses,
 14 number of mules, number of sheep, number of swine over six
 15 months old, number of carriages and vehicles of every description,
 16 with a separate column for the value of each; value of merchan-
 17 dize, amount of capital employed in manufacture, amount of money
 18 and credits, amount of taxable furniture, amount of stock or shares
 19 in any corporation or company not required by law to be other-
 20 wise listed and taxed, amount of taxable farming utensils or
 21 mechanics' tools, amount of all other personal property not enumer-
 22 ated, and the number of polls; and a column for remarks. But
 23 no entry shall be made on said books of any animal under the age
 24 of one year, except as above provided.

SEC. 25. Each assessor shall enter upon the discharge of the duties of
 2 his office within six days after the second Monday in January in each year
 3 and shall with the assistance of each person assessed, or who may be re-
 4 quired by law to list property belonging to another, enter in the books
 5 furnished him for that purpose, the several items specified in the preceding
 6 section; entering the names of the persons assessed in alphabetical order
 7 so far as practicable, by allotting to each letter its requisite number of pages
 8 in each of the said books. He shall also be furnished with a suitable plat
 9 of his township, on which to check the several parcels of land, and each
 10 town or city lot by him assessed, to avoid omissions or double assessments.
 11 He shall note opposite each piece or parcel of property by him assessed, in
 12 a column of his book prepared for that purpose, the number of the road
 13 and sub-district in which said property is situated.

SEC. 26. It shall be the duty of the assessor to list each and every per-
 2 son in his township, and to assess all the property, personal and real, there-
 3 in, and any person who shall refuse to assist in making out a list of his prop-
 4 erty, or of any property which he is required by law to assist in listing, or
 5 refuse to make the oath or affirmation required by this chapter, shall forfeit the
 6 sum of one hundred dollars, to be recovered in the name of the county for
 7 the use of the common schools therein, and when any person refuses to
 8 make out a list of his property, which by law he is required to do, the asses-
 9 sor shall assess such person according to the best information he can get, as
 10 to the amount of taxable property which such person has.

SEC. 27. The assessor is authorized and required to administer an oath or
 2 affirmation to each person assessed, to the effect that he has given in a full,
 3 true, and correct inventory of all the taxable property owned by him, and
 4 all property held by him as agent, guardian, or otherwise, and which he is
 5 required by law to list, to the best of his knowledge and belief; and in case
 6 any one refuses to make such oath or affirmation, the assessor shall note the
 7 fact in the column of remarks opposite such person's name, and should it
 8 afterwards appear that such person so refusing has not given a full list of
 9 his property or that under his control, and which he was by law required to
 10 list, any property so omitted shall be entered on the book at double its or-
 11 dinary assessable value, and taxed accordingly.

SEC. 28. Each assessor shall, on or before the third Monday in May, in
 2 each year, return one of the assessment books of his township to the office
 3 of the clerk of the board of supervisors, with the several columns of num-
 4 bers and values correctly footed up, and the amount of personal property
 5 of each person carried forward into a column under the head of total perso-
 6 nal property, and the other book he shall, on or before the second Monday
 7 in April, of each year, deliver to the township clerk of his township, to be

8 used by the trustees of the township as the township tax book, for the levy
 9 of taxes for township revenue and road purposes, and for the equalization of
 10 assessments.

SEC. 29. When the name of the owner of any real estate is unknown,
 2 and the assessor finds it impracticable to obtain the same, it shall be proper
 3 and lawful to assess such real estate without connecting therewith any
 4 name, but inscribing at the head of the page the words, "owners un-
 5 known;" and such property, whether lands or town lots, shall be listed as
 6 near as practicable in the order of the numbers thereof, and in assessing
 7 such real property, no one description shall comprise more than one town
 8 lot, or more than the sixteenth part of a section or other smallest subdivi-
 9 sion of the land, according to the government surveys, except in cases
 10 where the boundaries are so irregular that it cannot be described in the
 11 usual manner, in accordance with such surveys.

SEC. 30. If any assessor shall fail or neglect to perform any of the duties
 2 required of him by this chapter, at the time and in the manner specified, he
 3 shall be liable to a fine of not less than twenty nor more than five hundred
 4 dollars, to be recovered in an action brought in the district court by the
 5 board of supervisors; the judgment shall be against him and his bondsmen,
 6 and the proceeds of such fines shall go to the school fund of the county.

SEC. 31. The township trustees of each township shall constitute a
 2 board of equalization of assessments for their respective townships, and
 3 have power to equalize the assessment of property liable to taxation in the
 4 township, substantially the same, so far as is practicable, as is done by the
 5 board of supervisors between the several townships.

SEC. 32. Said board shall meet at the office of the township clerk on the
 2 first Monday in May of each and every year, and at such meeting they shall
 3 add to such assessment any taxable property in the township not included
 4 in the assessment, as returned by the assessors, placing the same to the name
 5 of the proper person, and shall assess the value thereof.

SEC. 33. Any person who may feel aggrieved at anything in the assess-
 2 ment of his property, may appear before said board of equalization in per-
 3 son or by agent, at the time and place mentioned in the preceding section,
 4 and have the same corrected in such manner as to the said board may seem
 5 just and equitable, and it shall be the duty of the township assessor to meet
 6 with said board and correct the assessment books as they may direct.

SEC. 34. The board of supervisors of each county shall constitute a board
 2 for the equalization of assessments, and have power to equalize the assess-
 3 ments of the several persons and townships of the county, substantially in
 4 the same manner as is required of the state board of equalization to equalize
 5 among the several counties of the state, so far as applicable, at their regular
 6 meeting in June, in each and every year; and at such meetings they
 7 shall add to said assessment any taxable property in the county not included
 8 in the assessment as returned by the assessors, placing the same in the list
 9 of the proper townships, and shall assess the value thereof.

SEC. 35. Each clerk of the county board of supervisor shall on or before
 2 the first day of July in each year, make out and transmit to the auditor of
 3 state by mail or otherwise, an abstract of the real property in his county in
 4 which he shall set forth:

- 5 (1.) The number of acres of land in his county, and the aggregate value
 6 of the same, exclusive of town lots, returned by the assessor, as
 7 corrected by the county board of equalization at their first
 8 meeting.

- 9 (2.) The aggregate value of real property in each town in the county, re-
 10 turned by the assessor as corrected at their first meeting by the
 11 county board of equalization.
 12 (3.) The aggregate value of personal property in his county.
 13 (4.) An abstract of the aggregate value and number of cattle, the aggre-
 14 gate value and number of horses, the aggregate value and number
 15 of mules, the aggregate value and number of sheep, the aggregate
 16 value and number of swine over six months old, as the same
 17 are returned to the clerk of said board of supervisors by the asses-
 18 sor of his county.

SEC. 36. The census board constitutes the state board of equalization,
 2 and shall meet at the seat of government on the first Monday of August in
 3 each year, in which real property is assessed, and shall take an oath, faith-
 4 fully and impartially to discharge the duties of their office.

5 The auditor of state shall be clerk of the board by virtue of his office, and
 6 shall lay before it the abstracts transmitted to him by the county clerk as
 7 required by the section preceding and then the board shall proceed to equal-
 8 ize the valuation of real property among the several counties and towns in
 9 the state in the following manner :

- 10 (1.) They shall add to the aggregate valuation of real property of each
 11 county, which they shall believe to be valued below its proper val-
 12 uation, such per centum in each case as will raise the same to its
 13 proper valuation.
 14 (2.) They shall deduct from the aggregate valuation of real property of
 15 each county, which they shall believe to be valued above its proper
 16 valuation, such per centum in each case as will reduce the same to
 17 its proper valuation.

SEC. 37. Said board shall keep a full record of their proceedings, and
 2 they shall finish their equalization on or before the third Monday of August,
 3 immediately after which the auditor of state shall transmit to each clerk of
 4 the board of supervisors a statement of the per centum to be added to, or
 5 deducted from, the valuation of real property in his county.

6 The clerk of the county board of supervisors shall add to, or deduct from,
 7 the valuation of each tract or parcel of real property in his county, the re-
 8 quired per centum on the same; and if the result shall in any case show a
 9 fraction of a dollar, such fraction, if less than fifty cents, shall be rejected,
 10 and if fifty cents or over shall be counted as one dollar; and in each year the
 11 state board shall determine the rate of state tax to be levied and collected,
 12 which shall not exceed two and one half mills on the dollar, and the auditor
 13 of state shall notify the several county clerks of such rate at the time here-
 14 inbefore mentioned.

SEC. 38. If any clerk of the county board of supervisors shall neglect or
 2 refuse to transmit to the auditor of state the abstract of the assessment of
 3 the real property in the county, or to add or deduct the per centum fixed by
 4 the state board of equalization, as required by this chapter, such county clerk
 5 shall be deemed guilty of misdemeanor, for which he shall be prosecuted by
 6 indictment in the district court, and if found guilty, shall be fined in any
 7 sum of not more than one thousand dollars, and shall also be liable to an
 8 action on his official bond to any injured person.

SEC. 39. The board of supervisors shall furnish to the auditor of each
 2 county a suitable book properly ruled and headed, with distinct columns in
 3 which to enter the names of tax payers, descriptions of lands, number of

4 acres and value, number of town lots and value, and value of personal prop-
 5 erty, and each description of tax ; a column for polls, and one for payments,
 6 into which book the clerk shall, after the equalization in June, as hereinafter
 7 provided, and before the first Monday of November, transcribe from the
 8 assessment books of the several townships the names of tax-payers, with
 9 the description of property ; but in cases where the owner is unknown, no
 10 one description shall contain more than one town lot, or more than the six-
 11 teenth part of a section, or other smallest subdivision of land according to
 12 the government surveys, except in cases where the boundaries are so singu-
 13 lar that it cannot be described in the usual manner in accordance with said
 14 surveys.

SEC. 40. All taxes which are uniform throughout any civil township or
 2 independent school district, in each and every county of this state shall be
 3 formed into a single tax, entered upon the tax list in a single column, and
 4 denominated a consolidated tax ; and each tax-receipt shall show the per-
 5 centum levied for each separate fund.

SEC. 41. At their regular meeting in September in each and every year,
 2 the board of supervisors shall levy the requisite tax for the current year in
 3 accordance with law, and shall record the same in the proper book, and it
 4 shall be the duty of the county auditor, as soon as practicable, to complete
 5 the tax list by carrying out in a column by itself the consolidated tax, road
 6 tax, poll, irregular tax, (if any be levied,) and total tax, and after adding up
 7 each column of said taxes, he shall apportion the consolidated tax among
 8 the respective funds to which it belongs, according to the number of mills
 9 levied for each of said funds, and shall carry forward the several amounts
 10 showing a summary of the total amount of each distinct tax.

SEC. 42. It shall not be lawful for the board of supervisors of any county,
 2 to levy taxes in any one year for the payment of bonded indebtedness, in-
 3 cluding judgments founded on such indebtedness, of more than three
 4 mills on the dollar, upon the last corrected assessed valuation of the taxable
 5 property in each county : *Provided*, Nothing herein contained shall be con-
 6 strued to reduce the rate of taxation below the rate fixed for one year
 7 in any county in which a specific rate was fixed by the vote of such county,
 8 authorizing the issue of such bonds.

SEC. 43. The clerk of the board of county supervisors may correct any
 2 clerical or other error in the assessment or tax book, and when such correc-
 3 tion, affecting the amount of tax, is made after the books shall have been
 4 passed into the hands of the treasurer, he shall charge the treasurer with
 5 all sums added to the several taxes, and credit him with all the deductions
 6 therefrom and report the same to the supervisors.

SEC. 44. An entry shall be made upon the tax list showing what it is, and
 2 for what county and year it is, and the clerk of the county board of super-
 3 visors, under their direction, shall attach thereto a warrant under his hand
 4 and the official seal of said board, in general terms, requiring the treasurer
 5 to collect the taxes therein levied, according to law, and no informality in
 6 the above requirements shall render any proceedings for the collection of
 7 taxes illegal.

8 The clerk of the county board of supervisors shall cause the tax book to
 9 be delivered to the treasurer of the county by the first Monday of Novem-
 10 ber, and his receipt taken therefor, and such list or book shall be full and
 11 sufficient authority for the collector to collect taxes therein contained. But
 12 if the list be delivered to the treasurer after the time above specified, the
 13 proceeding shall nevertheless be deemed regular, so far as affecting the va-
 14 lidity of taxes, or sales of lands under this title.

15 At the time of the delivery of said book to the treasurer, the clerk shall
 16 make to the auditor of state a certified statement showing the aggregate
 17 valuation of lands, town property and personal property in the county, each
 18 to itself, and also the aggregate amount of each separate tax as shown by
 19 said tax book.

2 SEC. 45. It shall be the duty of the clerk of the board of supervisors in
 3 each county, when making up the tax book of the county, and before said
 4 book is placed in the hands of the county treasurer, for collection of the
 5 taxes therein, to designate each piece or parcel of real estate sold for the
 6 piece of real estate so sold and unredeemed, the word "sold."

2 SEC. 46. The treasurer on receiving the tax book for each year, shall
 3 enter upon the same in separate columns, opposite each parcel of real prop-
 4 erty or person's name, on which or against whom any tax remains unpaid
 5 for either of the preceding years, the year or years for which such delin-
 6 quent tax so remains due and unpaid.

2 SEC. 47. The treasurer after making the above entry shall proceed to
 3 collect the taxes, and the lists and warrant shall be his authority, and justi-
 4 fication against any illegality in the proceedings prior to receiving the list :
 5 and he is required to attend at his office from the second Monday in Novem-
 6 ber, to the first day of February following ; and he is also authorized and
 7 required to collect so far as practicable, the taxes remaining unpaid on the
 8 tax books of previous years.

2 SEC. 48. All taxes upon real estate shall as between vendor and purch-
 3 aser, become a lien upon such real estate on and after the first day of No-
 4 vember in each year.

2 SEC. 49. It shall be the duty of each county treasurer, when any person
 3 offers to pay taxes on any real estate, marked "sold," to notify such person
 4 that such property has been sold for taxes, and to inform him for what year
 5 or years taxes said property was sold, and at what time said sale was
 6 effected.

2 SEC. 50. It shall be the duty of the county treasurer to assess any real
 3 property subject to taxation, which may have been omitted by the assessor
 4 or county clerk, and to collect taxes thereon, and in such cases he is required
 5 to note opposite the tract or lot assessed, the words, "by treasurer." *Pro-*
 6 *vided*, That such assessment shall be made within two years after the tax-
 7 list shall have been delivered to him for collection, and not afterwards.

2 SEC. 51. In all cases where real property subject to taxation, shall not
 3 have been assessed by the township assessor, or other proper officer it is
 4 hereby made the duty of the owner thereof, by himself or his agent, to have
 5 the same properly assessed by the treasurer and to pay the taxes thereon ;
 6 and no failure of the owner to have such property assessed, or to have the
 7 errors in the assessment corrected, and no irregularity, error, or omission in
 8 the assessment of such property, shall affect in any manner the legality of
 9 the taxes levied thereon, nor affect any right or title to such real property
 10 which would have occurred, to any party claiming or holding under and by
 11 virtue of a deed executed by the treasurer as provided for by this act, had
 12 the assessment of such property been in all respects regular and valid, and
 13 in cases where the assessment of any real property subject to taxation shall
 14 have been omitted, the assessment thereof may be made by the county treas-
 15 urer at any time before the sale of the property, and the taxes levied there-
 16 on : and in case it shall appear that the tax for which the property was sold
 17 was erroneous or irregular, the error or irregularity may be corrected as
 provided.

CHAPTER 2. *Of the Collection of Taxes.*

1 SEC. 1. Auditor's warrants shall be received by the county treasurer in
2 full payment of state taxes, and county warrants shall be received at the
3 treasury of the proper county for the ordinary county tax, but money only
4 shall be received for the school tax.

5 Road taxes may be discharged and road certificates of work done, received
6 as provided by law.

7 SEC. 2. The county treasurers of the several counties of this state are
8 authorized and required to receive in payment of all taxes by them collec-
9 ted, together with the interest and principal of the school fund, treasury
10 notes now issued, or that may be hereafter issued as legal tender by au-
11 thority of the government of the United States, and the notes now or that
12 may be hereafter issued by the banks organized or that may hereafter be
13 organized under and in accordance with the conditions of the act of the
14 congress of the United States, entitled "An act to provide a national cur-
15 rency secured by a pledge of United States stocks, and to provide for the
16 redemption thereof," approved February 25th, 1863.

17 SEC. 3. The treasurers of the several counties shall each keep an account
18 showing the amount of taxes received by him in specie, and the amount re-
19 ceived in paper currency, which shall be examined the same as other ac-
20 counts of said treasurers.

21 SEC. 4. Nothing in this act shall be so construed as in any way to allow
22 the several county treasurer in this state, or the state treasurer, to dispose
23 of the specie now on hand, or that may hereafter be collected by such treas-
24 urers, for the treasury notes above mentioned; and the said county treasurers
25 are required to pay to the treasurer of state such specie on hand heretofore,
26 or that may be hereafter collected for state taxes, except what is necessary
27 in making change; and any county treasurer violating the provisions of
28 this act shall be liable for all damages sustained by the state in consequence
29 of such exchange; and such treasurer shall be deemed guilty of a misde-
30 meanor, and upon conviction thereof, shall be liable to a fine of not less
31 than five hundred dollars, and imprisonment in the county jail not less than
32 six months.

33 SEC. 5. The treasurer of state is hereby required to receive of the sev-
34 eral county treasurers the above mentioned notes in payment of any claims
35 the state may now or hereafter have against any county in this state for any
36 part of the permanent school fund, or for any taxes due the state; and the
37 said state treasurer shall pay out said notes in redemption of outstanding
38 auditor's warrants.

39 SEC. 6. When a state or county warrant is received by the treasurer, he
40 shall indorse on the face of it the amount for which it was received, and the
41 date of reception, and from that date the warrant shall be regarded as can-
42 celed, and cannot be reissued; but when the warrant amounts to more than
43 is to be paid by the person presenting it, the treasurer shall give him a cer-
44 tificate of the remainder due him as directed in section —, of chapter
45 four, of title four, of this code.

46 SEC. 7. No demand of taxes shall be necessary, but it is the duty of
47 every person subject to taxation to attend at the office of the treasurer (un-
48 less otherwise provided), at sometime during the time mentioned in section
49 —, of the preceding chapter and pay his or her taxes; and if any one

5 neglects to pay them before the first day of February following the levy of
6 the tax, the treasurer is directed to make the same by distress and sale of his
7 or her personal property, excepting such as is exempt from taxation, and the
8 tax list alone shall be sufficient warrant for such distress.

9 SEC. 8. When the treasurer distrains goods he may keep them at the
2 expense of the owner, and shall give notice of the time and place of their
3 sale within five days after the taking, in the manner constables are required
4 to give notice of the sale of personal property under execution; and the
5 time of sale shall not be more than twenty days from the day of the taking,
6 but he may adjourn the sale from time to time not exceeding five days, and
7 shall adjourn at least once when there are no bidders, and in case of ad-
8 journment he shall put up a notice thereof at the place of sale.

9 Any surplus remaining above the taxes, charges of keeping, and fees for
10 sale, shall be returned to the owner, and the treasurer shall, on demand,
11 render an account, in writing, of the sale and charges.

2 SEC. 9. Immediately after the taxes become delinquent each county
3 treasurer shall proceed to collect the same by distress and sale of the per-
4 sonal property of the delinquent tax-payers in the manner prescribed in the
5 preceding section, and for this purpose he shall, within thirty days after the
6 taxes become delinquent, appoint one or more deputies to aid and assist him
7 in collecting the delinquent taxes in his respective county.

8 Each deputy so appointed shall receive as a compensation for his services
9 and expenses, the sum of five per cent on the amount of all delinquent taxes
10 collected by him, which percentage he shall collect from the delinquent, to-
11 gether with the whole amount of delinquent taxes and interest; and in the
12 discharge of his duties as such assistant collector, should it become necessa-
13 to make the delinquent taxes by distress and sale, he shall be entitled to re-
14 ceive the same compensation in addition to the five per cent. provided for in
15 this section, as constables are entitled to receive for the sale of property on
16 execution; and any county treasurer who shall wilfully refuse or neglect to
17 comply with any of the provisions of this section, shall forfeit the sum of
18 five hundred dollars, to be recovered in the name of the county, for the use
19 of the common schools therein. But this section shall not apply, so far as
20 it authorizes the appointment of deputies, to any county in which township
collectors of taxes are elected.

2 SEC. 10. If the treasurer or his deputy be resisted or impeded in the ex-
3 ecution of his office, he may require any suitable person to assist him therein,
4 and if such person refuse the aid, he shall forfeit a sum not exceeding ten
5 dollars, to be recovered by civil action in the name and to the use of the
6 county, and the person resisting shall be liable as in the case of resisting
the sheriff in the execution of civil process.

2 SEC. 11. In all cases of delinquent taxes in any county of this state,
3 where the person upon whose property the same was levied, shall have
4 removed into another county of the state, leaving no property within the
5 county where the taxes were levied, out of which the same can be made,
6 it shall be the duty of the treasurer of the county where said taxes are de-
7 linquent, to make out a certified abstract of said taxes as they appear upon
8 the tax book, and forward the same to the treasurer of the county in which
9 the person resides, or has property, who is owing said taxes, whenever the
10 treasurer transmitting said abstract has reason to believe that said taxes
can be collected thereby.

2 SEC. 12. The treasurer forwarding, and the one receiving said abstract,
3 shall each keep a record thereof, and upon the receipt and filing of said ab-
4 stract in the office of the treasurer to whom the same is sent, it shall have

4 the full force and effect of a levy of taxes in that county, and the collection
5 of the same shall be proceeded with in the same manner provided by law
6 for the collection of other taxes.

2 SEC. 13. The officer collecting taxes so certified into another county
3 shall, in addition to the penalties provided by law on delinquent taxes, as-
4 sess and collect the further penalty of twenty per cent on the whole amount
5 of such taxes, inclusive of the penalties thereon.

2 SEC. 14. The officer receiving said abstract is authorized and it is made
3 his duty, whenever in his opinion the taxes are uncollectable, to return the
4 abstract with the indorsement thereon of "Uncollectable," and in case said
5 taxes are collected, the officer receiving the same shall transmit the amount
6 to the treasurer of the county where said taxes were levied, less the penalty
7 provided by section — of this chapter.

2 SEC. 15. On the first day of February the unpaid taxes of whatever
3 description, for the preceding year, shall become delinquent and shall draw
4 interest as hereinafter provided, and taxes upon real property are hereby
5 made a perpetual lien thereon against all persons except the United States,
6 and this state, and taxes due from any person upon personal property, shall
7 be a lien upon any real property owned by such person or to which he may
8 acquire a title. The treasurer is authorized and directed to collect the
9 delinquent taxes by the sale of any property upon which the taxes are
10 levied, or any other personal or real property belonging to the person
11 against whom the taxes are assessed.

2 SEC. 16. The treasurer shall continue to receive taxes after they have
3 become delinquent until collected by distress and sale; but after they have
4 become delinquent he shall collect in addition to the tax of each tax-payer
5 so delinquent, as a penalty for non-payment, at the rate of one per cent a
6 month on the amount of the tax for the first three months, two per cent a
7 month for the second three months, three per cent a month for the third
8 three months, and four per cent a month for all after nine months. In
9 computing nothing shall be reckoned or collected therefor if the tax is paid
10 before the first day of March, nor after that time except for a full month.
11 But the penalty provided by this section shall not be construed to apply,
12 and shall not apply upon taxes levied by order of any court to pay judg-
13 ment on city or county bonded indebtedness, and upon such taxes no other
14 penalty than the interest which such judgments draw shall be collected.

2 SEC. 17. The treasurer shall in all cases make out and deliver to the tax-
3 payer a receipt for taxes paid, stating the time for payment, the description
4 of the land, the amount of each kind of tax, the interest on each, and costs,
5 if any, giving a separate receipt for each year, and shall make the proper
6 entries of such payments in the book of his office, and such receipts shall be
7 in full for his taxes for that year; *Provided*, that it shall be the duty of the
8 county treasurer to receive the full amount of any county, state, or school
9 tax, whenever the same is tendered, and give a separate receipt therefor.
10 The treasurer and collector of each county in this state shall, in his re-
11 ceipt to every person who pays taxes on any real estate, insert in said receipt
12 opposite to the description of each tract of land or town lot, the amount of
13 the assessed value of said tract of land or town lot.

2 SEC. 18. The treasurer of each and every county shall, on or before the
3 tenth day of each month, apportion the consolidated tax of each civil town-
4 ship, or independent school district in his county, collected during the pre-
5 ceding month, among the several funds to which it belongs, according to
6 the number of mills levied for each fund contained in said consolidated tax,

6 and having entered the amount of tax for each fund, including other taxes
7 collected during the preceding month, upon his cash account he shall report
8 the amount of each district tax to the county auditor, who shall charge him
9 up with the same.

SEC. 19. The clerk of the county board of supervisors shall keep full and
2 complete accounts with the county treasurer, with each separate fund or tax
3 to itself, in each of which accounts he shall charge him with the amounts in
4 his hands at opening, of such accounts, whether it be delinquent taxes, notes,
5 cash, or other assets belonging to such fund or tax, the amount of each re-
6 spective tax for each year when the tax-book is received by him, and all
7 additional to each tax or fund, whether by additional assessments, interests
8 on delinquent taxes, amount received for peddler's license or other items,
9 which are additions to the respective funds or taxes. In these several ac-
10 counts he shall credit the treasurer, by the proper vouchers, for money dis-
11 bursed belonging to each, by double and erroneous assessments, and unavail-
12 able taxes. The term double and erroneous assessments, include all im-
13 proper, incorrect, and illegal assessments, the correction or revision of which
14 causes a diminution of the respective tax, and unavailable taxes in-
15 clude such as have been properly and legally assessed, but which there is no
16 prospect of collecting.

SEC. 20. In all cases where any person shall pay any tax, interest or
2 costs, or any portion thereof that shall thereafter be found to be erroneous,
3 or if legal, whether the same be owing to erroneous or improper assess-
4 ments, to the improper or irregular levying of the tax, to clerical or other
5 errors or other irregularities, the board of supervisors shall direct the treas-
6 urer to refund the same to the tax payer, and in case any real property sub-
7 ject to taxation shall be sold for the payment of such erroneous tax, interest
8 or costs as above mentioned the error or irregularity in the tax may at any
9 time be corrected as above provided, and shall not affect the validity of the
10 sale or the right or title conveyed by the treasurer's deed; but the title so
11 conveyed shall be deemed legal and valid provided that the property was
12 subject to taxation for any of the purposes for which any portion of the
13 taxes for which the land was sold, was levied, and that the taxes were not
14 paid before the sale, and that the property had not been redeemed from
15 sale.

SEC. 21. On the first Monday in October in each year, the county treas-
2 urer is required to offer at public sale at the court house, or if there be no
3 court house, at the office of the county treasurer, all lands, town lots, or other
4 real property, on which taxes of any description for the preceding year or
5 years shall have been delivered, and remained due and unpaid, and such sale
6 shall be made for and in payment of the total amount of taxes interest and
7 costs due and unpaid on such real property.

SEC. 22. The county treasurer is required to give notice of the sale by
2 publishing an advertisement thereof in some newspaper printed in his county,
3 if any such there be, and if there be no such paper printed in his county,
4 then in the newspaper in this state nearest the county seat, and by posting
5 up a copy of said notice on the door of the court house in said county at
6 least four weeks before the day of sale, which publication is required to be
7 made once in each week for three successive weeks, the last of which pub-
8 lication is required to be at least three weeks prior to the day of sale.

9 It is required that such advertisement shall state the time and place of
10 sale, and contain a description of the several parcels of real property to be

11 sold for the delinquent taxes of the preceding year, and such real property
 12 as has not been advertised for the taxes of previous years, and on which the
 13 taxes remain due and delinquent, and the amount of taxes and amount of
 14 interest and costs against each tract, and the name of the owner when known
 15 or persons, if any, to whom taxed

16 The treasurer is directed to charge and collect in addition to the taxes and
 17 interest a sum not exceeding twenty cents on each tract of real property
 18 advertised for sale.

19 The county shall pay the costs of publication, but in no case shall the
 20 county be liable for more than the amount charged to the delinquent lands
 21 for advertising, and if the treasurer cannot procure the publication of said
 22 notice for that sum, or if for any other reason the treasurer is unable to pro-
 23 cure the publication of said notice in his county it shall be his duty to post
 24 up written notices of said sale in four of the most public places in his
 25 county four weeks before sale, and notice so given shall have the same force
 26 and effect as though the same had been published in a newspaper. In giv-
 27 ing notice of the sale of lands or town lots for taxes, it shall be the duty of
 28 the treasurer in cases where the name of the owner of any delinquent lands
 29 or town lots is unknown, to embrace the largest quantity practicable in each
 30 description of such lands.

2 SEC. 23. Whenever the county treasurer shall give notice of the sale of
 3 real property for delinquent taxes by posting up written notices of such
 4 sale, he shall, before making such sale, file in the office of the clerk of the
 5 board of supervisors of his county, a copy of said notice with his certificate
 6 endorsed thereon, setting forth that said notice had been posted up in four of
 7 the most public places in his county, four weeks before the sale, which said
 8 certificate shall be subscribed by him and sworn to before said clerk, and
 9 shall be presumptive evidence of the facts therein stated.

2 SEC. 24. In case there is no newspaper published in the county where
 3 such lands lie, then the treasurer shall cause the publication to be made in
 4 the nearest newspaper having a circulation in such county; *Provided*, that
 5 no newspaper shall be considered as one of general circulation unless it has
 6 two hundred regular weekly subscribers, and has been regularly printed and
 7 published for at least three months preceding the fifteenth of September, of
 8 said year, in the same county, and has had at least twenty actual subscri-
 9 bers in the county wherein the delinquent property is situated, for at least
 10 three months preceding the fifteenth of September, of that year. And in
 11 all cases where the treasurer may doubt the qualifications of any paper, as
 12 above fixed, he shall require proof thereof by the affidavit of the pub-
 13 lisher.

2 SEC. 25. The county treasurer shall attend at the court-house in his
 3 county, or at his own office, as herein before provided, on the day of sale,
 4 and then and there, at the hour of ten o'clock in the forenoon, proceed to
 5 offer for sale, separately, each tract or parcel of real property advertised for
 6 sale, on which the taxes and costs shall not have been paid.

2 SEC. 26. The person who offers to pay the amount of taxes due on any
 3 parcel of land for the smallest portion of the same is to be considered the
 4 purchaser, and when such portion constitutes a half or more of the parcel
 5 it shall be taken from the east side thereof, dividing it by a line running
 6 north and south, except that town or city lots are to be divided in such
 7 case lengthwise, by a line parallel with the proper lines of the lots.

7 If the portion taken be less than one-half of the tract, it is to be taken
8 from the southeast corner in a square form, as nearly as the form of the
9 land will conveniently permit. In all cases where the homestead is listed
10 separately as a homestead, it shall be liable only for the taxes thereon.

SEC. 27. The treasurer shall continue the sale from day to day as long
2 as there are bidders, or until the taxes are all paid.

SEC. 28. The person purchasing any tract of land or town lot, or any
2 part thereof shall forthwith pay to the treasurer the amount of taxes and
3 costs charged on said tract or lot, and on failure to do so, the said land or
4 lot shall at once again be offered for sale in the same manner as if no such
5 sale had been made. Such payment may be made in the same funds
6 receivable by law in ordinary payment of taxes.

SEC. 29. Any person owning or claiming lands or town lots, advertised
2 for sale as aforesaid, may pay the taxes and interest due thereon to the
3 county treasurer, at any time before the sale thereof; but in such case, such
4 person shall pay the cost of advertising, and all other costs which may have
5 accrued up to the time of such payment.

SEC. 30. In all advertisements for the sale of real property for taxes,
2 and in entries required to be made by the clerk of the board of supervisors,
3 treasurer, or other officer, letters and figures may be used as they have been
4 heretofore, to denote townships, ranges, sections, parts of sections, lots,
5 blocks, dates and the amounts of taxes, interest and costs.

6 And no irregularity, or informality, in the advertisements shall affect in
7 any manner the legality of the sale, or the title to any real property con-
8 veyed by the treasurer's deed under this act; but in all cases the provisions
9 of this act shall be deemed sufficient notice to owners of the sale of their
10 property.

SEC. 31. The treasurer shall obtain a copy of said advertisement, together
2 with a certificate of the due publication thereof, from the printer or pub-
3 lisher of the newspaper in which the same shall have been published, and
4 shall file the same in the office of the clerk of the board of supervisors, and
5 such certificate shall be substantially in the following form:

6 I, A. B., publisher (or printer) of the, a newspaper
7 printed and published in the county of, and state of Iowa, do hereby
8 certify that the forgoing notice and list were published in said newspaper
9 once in each week for three successive weeks, the last of which publications
10 was made prior to the first of, A. D. 18.., and that copies of
11 each number of said paper in which said notice and list were published,
12 were delivered by carrier, or transmitted by mail, to each of the subscribers
13 to said paper, according to the accustomed mode of business in this office.

A. B.,

Publisher (or printer) of the

16 STATE OF IOWA, }
17 COUNTY. } ss.

18 The above certificate of publication, subscribed and sworn to before me by
19 the above named A. B., who is personally known to me to be the identical
20 person described in the above certificate, on the day of, A. D.
21 18... C. D.,

Clerk of the Board of Supervisors of County, Iowa.

2 SEC. 32. The clerk of the board of supervisors is required to attend all
 3 sales of real property for taxes made by the treasurer, and make a record
 4 thereof in a book to be kept by him for that purpose, therein describing the
 5 several parcels of real property on which the taxes and costs were paid by
 6 the purchaser, as they are described in the list or advertisement on file in
 7 his office, stating in separate columns the amount as obtained from the treas-
 8 urer's tax list, of each kind of tax, interest and costs for each tract or lot,
 9 how much and what part of each tract or lot was sold, to whom sold and
 10 date of sale.

11 The treasurer shall also keep a book of sales in which, at the time of sale,
 12 he shall make the same records which the clerk is required to make by the
 13 provisions of this section.

14 He shall also note in the tax list,, opposite the description of the property
 sold, the fact and date of such sale.

2 SEC. 33. When all the parcels of real property advertised for sale shall
 3 have been offered for sale as provided for in this act, and a portion thereof
 4 shall remain unsold for want of bidders, it shall be the duty of the treasurer
 5 to adjourn the sale to some day not exceeding two months from the time of
 6 adjournment, due notice of which day shall be given at the time of adjourn-
 7 ment, and also by keeping a notice thereof posted in a conspicuous place in
 8 the treasurer's office. On the day fixed for the re-opening of the sale, the
 9 same proceedings shall be had as provided for by this act in relation to the
 10 sales commencing on the first Monday of October. And further adjourn-
 11 ments shall be made from time to time not exceeding two months as pro-
 12 vided in this section, and the sales shall be thus continued until the next
 regular annual sale, or until all the taxes shall have been paid.

2 SEC. 34. If any treasurer or clerk shall fail to attend any sale of lands
 3 as required by this act, either in person or by competent deputy, he shall be
 4 liable to a fine of not less than fifty nor more than three hundred dollars, to
 5 be recovered by an action in the district court, by the board of supervisors,
 6 the judgment shall be against the treasurer or clerk as the case may be, and
 7 his bondsmen, and the proceeds go to the school fund.

8 And if such officer or deputy shall sell or assist in selling any real prop-
 9 erty knowing the same to be not subject to taxation, or that the taxes for
 10 which the same is sold have been paid, or shall knowingly and willfully sell
 11 or assist in selling, any real property for payment of taxes, to defraud the
 12 owner of such real property, or shall knowingly and willfully execute a deed
 13 for property so sold, he shall be liable to a fine of not less than one thous-
 14 and nor more than three thousand dollars, or to imprisonment not exceeding
 15 one year, or to both fine and imprisonment, and to pay the injured party all
 damages sustained by any such wrongful act, and all such sales shall be void.

2 SEC. 35. If any clerk of the county board of supervisors, or county treasurer
 3 shall fail or neglect to perform any of the duties required of him by this
 4 chapter, he shall be liable to a fine of not less than fifty nor more than five
 5 hundred dollars, to be recovered in an action brought in a court of record by
 6 the board of supervisors, or by the party injured thereby. The judgment
 7 entered shall be against him and his bondsmen, and the proceeds of such
 fine, to go, one part to the school fund, and one part to the party injured.

2 SEC. 36. If any county treasurer or clerk shall be hereafter either direct-
 3 ly or indirectly concerned in the purchase of any real property sold for the
 4 payment of taxes, he shall be liable to a penalty of not more than one thou-
 5 sand dollars, to be recovered in an action in the district court, brought by
 the board of supervisors. The judgment shall be against such treasurer or

6 clerk, as the case may be, and his bondsmen; and the proceeds shall go to
7 the school fund, and all such sales shall be void.

2 SEC. 37. If, from neglect of officers to make returns, or from any other
3 good cause, real property cannot be duly advertised and offered for sale on
4 the first Monday of October, it shall be the duty of the treasurer to make
5 the sale on the first Monday of the next succeeding month in which it can
6 be made, allowing time for the publication as provided in this act.

2 SEC. 38. The county treasurer shall make out, sign and deliver to the
3 purchaser of any real property sold for the payment of taxes as aforesaid, a
4 certificate of purchase, describing the property on which the taxes and costs
5 were paid by the purchaser, as the same was described in the record of sales,
6 and also how much and what part of each tract or lot was sold, and stating
7 the amount of each kind of tax, interest and costs for each tract or lot, for
8 which the same was sold, as described in the record of sales, and that pay-
9 ment had been made therefor.

10 If any person shall become the purchaser of more than one parcel of
11 property, he may have the whole included in one certificate. For each cer-
12 tificate so delivered the purchaser shall pay a fee of fifteen cents to the clerk
13 of the board of supervisors, and thirty-five cents to the county treasurer.

2 SEC. 39. The county treasurer shall also make out, sign, and deliver to
3 the purchaser of any real property sold for taxes aforesaid, duplicate re-
4 cepts for any taxes, interest, and costs, paid by said purchaser, after the
5 date of said purchase for any subsequent year or years, one of which re-
6 cepts said purchaser shall present to the clerk of the county board of super-
7 visors, to be by him filed in his office, and a memorandum thereof entered
8 on the register of sales. And if he neglect to file such duplicate receipt
9 with the clerk before the redemption, such tax shall not be a lien upon the
10 land, and the person paying such tax shall not be entitled to recover the
11 same of the owner of such real estate.

2 SEC. 40. Such certificate of purchase shall be assignable by indorse-
3 ment, and an assignment thereof shall vest in the assignee or his legal repre-
4 sentatives all the right and title of the original purchaser; and the statement
5 in the treasurer's deed of the fact of the assignment, shall be presumptive
6 evidence of such assignment.

2 SEC. 41. Real property, sold under the provisions of this chapter, may
3 be redeemed at any time before the expiration of three years from the date
4 of the sale, by the payment to the clerk of the board of supervisors of the
5 proper county, to be held by him subject to the order of the purchaser, of
6 the amount for which the same was sold, and thirty per centum of such
7 amount immediately added as a penalty, with ten per cent interest per
8 annum on the whole amount thus made from the day of sale, and also the
9 amount of all taxes, interest, and costs paid for any subsequent year, or
10 years, and a similar penalty of thirty per centum added as before on the
11 amount of the payment for each subsequent year, with ten per cent interest
12 per annum on the whole of such amount, or amounts, from the day or days
13 of payment, unless such subsequent taxes shall have been paid by the per-
14 son for whose benefit the redemption is made, which fact may be shown by
15 the treasurer's receipt; and provided further that such penalty for the non-
16 payment of the taxes of any such subsequent year or years, shall not attach,
17 unless such subsequent tax or taxes shall have remained unpaid until the
18 first day of February after they become due, so that they have become de-
19 linquent; nor shall any of said penalties apply in the cases mentioned in
20 the sixteenth section of this chapter.

2 Sec. 42. The clerk of the board of supervisors shall, upon application
3 of any party to redeem any real property sold under the provisions of this
4 chapter, and being satisfied that such party has a right to redeem the same,
5 and upon the payment of the proper amount, issue to such party a certifi-
6 cate of redemption, setting forth the facts of the sale substantially as con-
7 tained in the certificate of sale, the date of the redemption, the amount paid
8 and by whom redeemed, and he shall make the proper entries in the book
9 of sales in his office, and shall immediately give notice of such redemption
10 to the county treasurer.

11 Such certificate of redemption shall then be presented to the treasurer,
12 who shall countersign the same, and make the proper entries in the books of
13 his office, and no certificate of redemption shall be held as evidence of
such redemption without such signature of the treasurer.

2 Sec. 43. If real property of any minor or lunatic is sold for taxes, the
3 same may be redeemed at any time within one year, after such disability is
4 removed, upon the terms specified in the foregoing section, which redemp-
5 tion may be made by the guardian as legal representative.

2 Sec. 44. Any person authorized, under the laws of this state, to redeem
3 lands sold for taxes after the expiration of three years from sale, may redeem
4 the same by an equitable action in the district court in which all persons
5 claiming an interest in the land derived from the tax sale, as shown by the
6 record, shall be made defendants.

7 Said action shall be commenced, tried, and determined, in the same man-
8 ner as other equitable actions.

9 The court shall determine the rights, claims, and interest, of the several
10 parties to the land, including liens for taxes and claims for improvements
made on the land by the person claiming under the tax-title.

2 Sec. 45. Immediately after the expiration of the term of three years
3 from the date of the sale of any land for taxes under the provisions of this
4 chapter the treasurer then in office shall make out a deed for such lot or parcel
5 of land sold and remaining unredeemed, and deliver the same to the pur-
6 chaser upon the return of the certificate of purchase.

2 Sec. 46. The treasurer is required to demand twenty-five cents for each
3 deed made by him on such sales, but any number of parcels of land bought
4 by one person may be included in one deed, as may be desired by the pur-
5 chaser.

2 Sec. 47. Deeds executed by the treasurer shall be substantially in the
3 following form:

4 Know all men by these presents, that whereas, the following described
5 real property, viz: [here follows the description] situated in the county of
6, and state of Iowa, was subject to taxation for the year [or years]
7 A. D.; and whereas the taxes, assessed upon said real property
8 for the year [or years] aforesaid remained due and unpaid at the date of
9 the sale hereinafter named; and whereas, the treasurer of the said county
10 did, on the . . . day of, A. D. 18. ., by virtue of the authority in
11 him vested by law, at [an adjourned sale of] the sale begun and public'y
12 held on the first Monday of, A. D. 18. ., expose to public sale at
13 the court house [or office of the county treasurer] in the county aforesaid
14 in substantial conformity with all the requisitions of the statute in such
15 case made and provided, the real property above described, for the pay-
16 ment of the taxes, interest and costs then due and remaining unpaid on
17 said property; and whereas, at the time and place aforesaid, A. B. of the
county of and state of, having offered to pay the sum of

18 dollars and cents, being the whole amount of taxes, interest and
19 costs then due and remaining unpaid on said property, for [here follows the
20 description of the property sold] which was the least quantity bid for; and
21 payment of said sum having been by him made to the said treasurer, the
22 said property was stricken off to him at that price, [and whereas, the said
23 A. B. did on the day of A. D., 18.., duly assign the certificate of
24 the property as aforesaid and all his right, title and interest to said prop-
25 erty to E. F., of the county of and state of] and whereas,
26 three years have elapsed since the date of said sale and the said property
27 has not been redeemed therefrom as provided for by law.

28 Now, therefore, I, C. D., treasurer of the county aforesaid, for and in
29 consideration of the said sum to the treasurer paid as aforesaid, and by
30 virtue of the statute in such case made and provided, have granted, bar-
31 gained and sold, and by these presents do grant, bargain and sell, unto the
32 said A. B. [or E. F.] his heirs and assigns, the real property last herein-
33 before described to have and to hold unto him the said A. B. [or E. F.] his
34 heirs and assigns forever: subject however, to all the rights of redemption
35 provided by law. In witness whereof I, C. D., treasurer as aforesaid by
36 virtue of the authority aforesaid, have hereunto subscribed my name on
37 this day of 18...

38 C. D. Treasurer.

39 STATE OF IOWA, }
40 COUNTY. } ss.

41 I hereby certify that before me in and for said county, person-
42 ally appeared the above named C. D., treasurer of said county, personally
43 known to me to be the treasurer of said county at the date of the execution
44 of the above conveyance, and to be the identical person whose name is
45 affixed to and who executed the above conveyance as treasurer of said
46 county and who acknowledged the execution of the same to be his voluntary
47 act and deed as treasurer of said county, for the purposes therein expressed.
48 Given under my hand [and seal] this day of A. D., 18..

49
50

2 Sec. 48. The deed shall be signed by the treasurer in his official ca-
3 pacity, and acknowledged by him before some officer authorized to take
4 acknowledgments of deeds; and when substantially thus executed and
5 recorded in the proper record of titles to real estate, shall vest in the pur-
6 chaser all the right, title, interest and estate of the former owner in and to
7 the land conveyed, and also all the right, title, interest and claim of the
8 state and county thereto, and shall be presumptive evidence in all the courts
9 of this state, in all controversies, and suits in relation to the rights of the
10 purchaser, his heirs or assigns, to the land thereby conveyed, of the follow-
11 ing facts:

- 11 1. That the real property conveyed was subject to taxation for the year
12 or years stated in the deed.
- 13 2. That the taxes were not paid at any time before the sale.

- 14 3. That the real property conveyed had not been redeemed from the
 15 sale at the date of the deed, and shall be conclusive evidence of
 16 the following facts:
- 17 1. That the property had been listed and assessed at the time and in the
 18 manner required by law.
- 19 2. That the taxes were levied according to law.
- 20 3. That the property was advertised for sale in the manner and for the
 21 length of time required by law.
- 22 4. That the property was sold for taxes as stated in the deed.
- 23 5. That the grantee named in the deed was the purchaser.
- 24 6. That the sale was conducted in the manner required by law.
- 25 7. That all the pre-requisites of the law were complied with by all the
 26 officers who had, or whose duty it was to have had, any part or
 27 action in any transaction relating to or affecting the title conveyed,
 28 or purporting to be conveyed by the deed, from the listing and
 29 valuation of the property up to the execution of the deed, both
 30 inclusive, and that all things whatsoever, required by law to make
 31 a good and valid sale, and to vest the title in the purchaser were
 32 done, except in regard to the three points named in this section,
 33 wherein the deed shall be presumptive evidence only.

34 And in all controversies and suits involving the title to real property
 35 claimed and held under and by virtue of a deed executed substantially as
 36 aforesaid by the treasurer, the person claiming title adverse to the title con-
 37 veyed by such deed, shall be required to prove, in order to defeat the said
 38 title, either that the said real property was not subject to taxation for the
 39 year or years named in the deed—that the taxes had been paid before the
 40 sale, or that the property had been redeemed from the sale according to the
 41 provisions of this chapter, and that such redemption was had or made for
 42 the use and benefit of persons having the right of redemption under the
 43 laws of this state, but no person shall be permitted to question the title
 44 acquired by a treasurer's deed without first showing that he or she, or the
 45 person under whom he or she claims title, had title to the property at the
 46 time of the sale or that the title was obtained from the United States,
 47 or this state, after the sale, and that all taxes due upon the property have
 48 been paid by such person, or the person under whom he or she claims title
 49 as aforesaid: *Provided*, that in any case where a person had paid his taxes
 50 and through mistake in the entry made in the treasurer's books or in the
 51 receipt, the land upon which the taxes were paid was afterwards sold the
 52 treasurer's deed shall not convey the title: *provided further*, that in all cases
 53 where the owner of lands sold for taxes shall resist the validity of such tax
 54 title such owner may show and prove fraud committed by the officer selling
 55 the same or in the purchaser to defeat the same, and if fraud is so established
 56 such sale and title shall be void.

2 **Sec. 49.** When by mistake or wrongful act of the treasurer, land has
 3 been sold on which no tax was due at the time, or whenever land is sold in
 4 consequence of error in describing such land in the tax receipt, the county is
 5 to hold the purchaser harmless by paying him the amount of principal and
 6 interest and costs to which he would have been entitled had the land been
 7 rightfully sold, and the treasurer and his sureties will be liable to the county
 8 for the amount of his official bond, or the purchaser, or his assignee may
 9 recover directly of the treasurer in action brought to recover the same in
 10 any court having jurisdiction of the amount, and judgment shall be against
 11 him and his bondsmen: *provided always*, that the treasurer or his sureties
 shall be liable only for his own or his deputies' acts.

1 SEC. 50. Whenever any school or university land, bought on a credit, is
 2 sold for taxes, the purchaser at such tax sale shall only acquire the interest
 3 of the original purchaser in such lands, and no sale of any such lands for
 4 taxes shall prejudice the rights of the state or university therein, or preclude
 5 the recovery of the purchase money or interest due thereon, and in all cases
 6 where real estate is mortgaged or otherwise encumbered to the school or
 7 university fund of this state, the interest of the person who holds the fee
 8 title shall alone be sold for taxes, and in no case shall the lien or interest of
 9 the state be affected by any sale of such encumbered real estate made for
 10 taxes.

 SEC. 51. In all suits and controversies involving the question of title to
 2 real property held under and by virtue of a treasurer's deed, all acts of as-
 3 sessors, treasurers, clerks of board of supervisors and other officers *de facto*
 4 shall be deemed and construed to be of the same validity as acts of officers
 5 *de jure*.

 SEC. 52. No sale of real property for taxes shall be considered invalid
 2 on account of the same having been charged in any other name than that of
 3 the rightful owner, if the said property be in other respects sufficiently
 4 described.

 SEC. 53. The books and records belonging to the offices of the clerk of
 2 the board of supervisor and the county treasurer, or copies thereof, properly
 3 certified, shall be deemed sufficient evidence to prove the sale of any real
 4 property for taxes, the redemption thereof or the payment of taxes thereon.

 SEC. 54. Whenever it shall be made to appear to the satisfaction of the
 2 county treasurer, either before the execution of a deed for real property sold
 3 for taxes, or if the deed be returned by the purchaser, that any tract or lot
 4 was sold which was not subject to taxation, or upon which the taxes had
 5 been paid previous to the sale, he shall make an entry opposite such tract
 6 or lot on the record of sales, that the same was erroneously sold, and such
 7 entry shall be evidence of the fact therein stated. And in such cases the
 8 purchase money shall be refunded to the purchaser as provided by this
 9 chapter.

 SEC. 55. No action for the recovery of real property sold for the non-
 2 payment of taxes shall lie, unless the same be brought within five years
 3 after the date of the sale thereof for taxes as aforesaid, (anything in the
 4 statutes of limitation to the contrary notwithstanding:) *provided*, that
 5 where the owner or owners of such real property sold as aforesaid, shall at
 6 the time of such sale, be minor or minors, or insane, five years, after such
 7 disability is removed shall be allowed such person or persons, their heirs or
 8 legal representatives, to bring their suit or action for recovery of the real
 9 property so sold.

 SEC. 56. A tax for state purposes shall be levied upon peddlers of watches,
 2 jewelry and clocks, dry goods, fancy articles, notions, patent medicines or
 3 other merchandise not manufactured in this state; for a license to peddle
 4 throughout the state for one year as follows: upon each peddler of watches
 5 or jewelry, or either of them, thirty dollars; upon each peddler of clocks,
 6 fifty dollars; upon each peddler of dry goods, fancy articles, notions, or
 7 patent medicines, as follows: upon each peddler thereof, ten dollars; upon
 8 each peddler who pursues his occupation with a vehicle drawn by one ani-
 9 mal, twenty-five dollars; if drawn by two and less than four animals, fifty
 10 dollars; if drawn by four or more animals, seventy-five dollars.

 SEC. 57. Such license may be obtained from the clerk of the board of

2 supervisors of any county, upon paying the proper tax to the treasurer there-
 3 of, and license may issue for a less period than one year, for the proportion-
 4 ate amount of tax, and all such licenses shall state the date of the expiration
 5 of the same, and any person so peddling without a license, or after the ex-
 6 piration of his license, is guilty of a misdemeanor, and the person actually
 7 peddling is liable, whether he be the owner of the goods or not. Upon
 8 conviction of peddling without a license as aforesaid, the offender shall for-
 9 feit and pay to the county treasurer, in addition to the fine imposed upon
 10 him for the misdemeanor, double the amount of license which he would have
 11 been required to pay for one year, as fixed by section 56 of this chapter.

CHAPTER 3. *Provisions for the Security of the Revenue.*

SECTION 1. Each county is responsible to the state for the full amount of
 2 tax levied for state purposes, excepting such amounts as are certified to be
 3 unavailable, double, or erroneous assessments, as hereinafter provided.

SEC. 2. If any county treasurer prove to be a defaulter to any amount of
 2 state revenue, such amount shall be made up to the state within the next
 3 three coming years, by additional levies, in such manner as to annual amounts
 4 as the board of supervisors may direct.

5 In such cases the county can have recourse to the official bond of the treas-
 6 urer for indemnity.

SEC. 3. When interest is due and allowed by the treasurer of any county
 2 or the state treasurer on the redemption of auditors' warrants, or county
 3 warrants, the same shall be receipted on the warrants by the holder of the
 4 same, with the date of the payment, and no interest shall be allowed by the
 5 auditor of state or board of supervisors except such as is thus receipted.

SEC. 4. If the state treasurer or any county treasurer discount auditors'
 2 warrants at less than the amount due thereon, either directly or indirectly,
 3 or through third persons, they shall be liable to a fine not exceeding one
 4 thousand dollars for the benefit of common schools, to be prosecuted as
 5 other fines, and the payee of the warrant may be a witness on the trial.

SEC. 5. County treasurers shall be liable to a like fine for loaning out, or
 2 in any manner using for private purposes, state or county funds in their
 3 hands, and the state treasurer shall be liable to a fine of not more than ten
 4 thousand dollars for a like misdemeanor, to be prosecuted by the attorney-
 5 general in the name of the state, for the benefit of common schools.

SEC. 6. At their regular meetings in January and June of each year,
 2 the board of supervisors shall make a full and complete settlement with the
 3 county treasurer, and they shall make and certify to the auditor of state, all
 4 credits to the treasurer for double or erroneous assessments, and unavailable
 5 taxes, also all dues for state revenue, interest, or delinquent taxes, sales of
 6 land, peddler's licenses, and other dues, if any; also the amounts collected
 7 for these several items, and revenues still delinquent, each year to itself.
 8 Said reports shall be forwarded by mail.

SEC. 7. The treasurer of each and every county shall, on or before the
 2 tenth day of each month, prepare a sworn statement of the amount of
 3 money remaining in his hands on the first day of that month received by
 4 him and belonging to the state treasury, and he shall, on said tenth day of
 5 each month, deposit a copy of such statement with the postmaster at the
 6 county seat of his county, duly sealed and directed to the auditor of state,
 7 and he shall each year unless otherwise directed by the state auditor, pay

8 into the state treasury, on or before the tenth day of February, all the
 9 money due the state remaining in his hands on the first day of February;
 10 and on or before the tenth day of November, all the money due the
 11 state remaining in his hands on the first day of November; he shall
 12 also at any time when directed by the auditor of state, forthwith
 13 pay into the state treasury, or to the treasurer of any county, or to any
 14 bank incorporated under the laws of this state, any or all the money due the
 15 state and remaining in his hands.

16 In case the treasurer of any county shall fail to prepare and deposit the
 17 statement required in this section, he shall forfeit and pay for each and
 18 every failure a sum not less than one hundred nor more than five hundred
 19 dollars, to be recovered in an action brought in the name of the state audi-
 20 tor, to recover the same in any court having jurisdiction of the amount.
 21 The judgment shall be against the treasurer and his bondsmen, and the
 22 amount recovered shall go into the state treasury.

SEC. 8. The state auditor may require any county treasurer to make his
 2 payment through any other county treasurer, or through any bank chartered
 3 by the laws of this state, or any national bank in this state; but no charge
 4 shall be made against the state by said bank on said amounts to exceed
 5 one fourth of one per cent for transportation, but any payments made in pur-
 6 suance of such requirements by the auditor shall be a release to the county
 7 of its liabilities to the state, to the amount so paid.

SEC. 9. The state auditor shall make and transmit to each clerk of the
 2 board of supervisors on the first day of May, of each year, a statement of
 3 the county treasurer's account with the state treasurer, which account shall
 4 be submitted by the said clerk to the board of supervisors at their first meet-
 5 ing, and if they find the same to be incorrect in any particular, they shall
 6 forthwith certify the facts in relation to the same to the auditor of state.

SEC. 10. When a county treasurer goes out of office he shall make a full
 2 and complete settlement with the board of supervisors, and deliver up all
 3 books, papers, moneys, and all other property appertaining to the office, to
 4 his successor, taking his receipt therefor. The board of supervisors shall
 5 make a statement (so far as state dues are concerned) to the auditor of state,
 6 showing all charges, for whatever purposes, which have been created against
 7 the treasurer during his term of office, and all credits which have been made,
 8 the delinquent taxes and other unfinished business charged over to his suc-
 9 cessor, and the amount of money paid over to his successor, showing to
 10 what year and to what account the amount so paid over belongs.

11 They shall also see that the books of the treasurer are correctly balanced
 12 before being passed into the possession and control of the treasurer elect.

SEC. 11. When any officer or other person pays the state treasurer any
 2 sum of money for revenue, or school purposes, he shall take duplicate re-
 3 cepts therefor, one of which he shall file with the auditor of state, who
 4 shall charge the same to the treasurer in account of the proper fund.

SEC. 12. The state treasurer shall keep each distinct fund coming into his
 2 possession as public money, in a separate apartment of the safe, and at each
 3 quarterly settlement with the state auditor, he shall count each fund in the
 4 presence of the auditor to see if the same agrees with the balance found on
 5 the books.

6 The total amount acknowledged to belong to each fund shall be exhibited
 7 before the court, and county treasurers shall account with such persons as
 8 the board of supervisors may direct in like manner, and a report of such

9 accounting shall be made to the board at their next meeting, by the person
10 so appointed by them.

2 Sec. 13. Any officer neglecting or refusing to comply with any of the
3 provisions of this title, for whose negligence no other penalty is provided
4 by the same, shall be liable to a fine in any sum not exceeding one thousand
5 dollars, to be prosecuted by the attorney-general, or district attorney, for
the benefit of common schools.



TITLE VII. OF ROADS, FERRIES, AND BRIDGES.

CHAPTER 1. *Of the opening of Roads, etc.*

SEC. 1. The board of supervisors has the general supervision over the
2 highways in the county, with power to establish and change them as
3 herein provided, and to see that the laws in relation to them are carried
4 into effect.

SEC. 2. County and state roads hereafter established must be sixty-six
2 feet in width, unless otherwise specially directed, but the board of
3 supervisors may for good reasons fix a different width, not less than thirty-
4 three feet.

SEC. 3. A county road may, within the limits aforesaid, be increased
2 or diminished in width, or it may be altered in direction or discontinued,
3 by pursuing substantially the steps herein prescribed for opening a new
4 road.

SEC. 4. Bridges are parts of the public highways, and must not be less
2 than sixteen feet in breadth.

SEC. 5. The board of supervisors may prohibit any person from riding
2 or driving faster than a walk across any bridge maintained at the public
3 charge, and whose entire length is twenty-five feet or upwards, under the
4 following penalties, to-wit :

5 When the bridge is twenty-five feet in length, and does not exceed one
6 hundred feet, the sum of one dollar for each offense; when the bridge is
7 over one hundred feet in length, and does not exceed two hundred feet, the
8 sum of three dollars for each offense; when the bridge is over two hundred
9 feet in length, and does not exceed three hundred feet, the sum of five dol-
10 lars for each offense, and the further additional sum of one dollar for each
11 offense, for every one hundred feet in length thereafter.

12 The penalty herein may be recovered by civil action before any justice of
13 the peace, in the name and for the use of the county in which said bridge is
14 wholly or partly situated.

SEC. 6. The preceding section shall be so construed as to include all
2 bridges owned by any private corporation, company, or individual, and
3 maintained at their expense, whenever the owner or owners thereof shall
4 make application to the board of supervisors of the county in which the
5 bridge is wholly or in part situated, and when the prohibition is granted,
6 and the penalty annexed by the board as herein provided, it shall be lawful
7 for such owner or owners to recover before any justice of the peace in his
8 or their own name, and for his or their benefit, the penalty so fixed.

SEC. 7. Notices prohibiting any person from riding or driving faster
2 than a walk, and the amount of the penalty attached, must be conspicuously
3 posted at each end of such bridge.

SEC. 8. Previous to the presentation of a petition for the establishment
2 of a county road four weeks' notice thereof must be given by being posted
3 up at the court house door and in three public places in each township

4 through which it is to pass and in the neighborhood of the proposed road.

2 SEC. 9. Such notice must state the principal points through which it
3 will pass if any such are contemplated, and state the time at which applica-
4 tion will be made to the board of supervisors or county auditor for the
5 appointment of a commissioner to examine and report upon the same.

2 SEC. 10. Security must be given to the satisfaction of the auditor condi-
3 tioned that all the expenses growing out of the application will be paid by
4 the obligors in case the contemplated road is not finally established.

2 SEC. 11. If the road is less than five miles in length the security given
3 shall be for the absolute payment of such expenses.

2 SEC. 12. The board of supervisors at the time of the application specified in
3 the notices aforesaid (which must be on some of its regular days of session) or
4 at some other time to be then fixed, shall proceed to the consideration of the
5 case, and if satisfied that the above mentioned prerequisites have been com-
6 plied with, shall appoin some suitable and disinterested inhabitant of the
7 county a commissioner to examine into the expediency of the proposed road
8 and to report accordingly.

2 SEC. 13. The time for the commencement of such examination shall be
3 fixed by the board of supervisors, and should the commissioner for any
4 cause fail to commence on the day, the board may fix another for that pur-
5 pose.

2 SEC. 14. The commissioner is not confined to the precise matter of the
3 petition, but may inquire and determine whether that or any road in the
4 vicinity answering the same purpose and in substance the same be required,
5 but such road must not be laid out through any burying ground which is by
6 law exempt from execution; nor through any garden, orchard, or ornamental
7 ground contiguous to any dwelling-house, so as to cause the removal of any
8 dwelling-house or other building, without the consent of the owner: *Pro-*
9 *vided,* That such garden, orchard or grounds are of more than two years'
10 establishment or growth

2 SEC. 15. In forming his judgment he must take into consideration both
3 the public and private convenience and inconvenience and also the expense
4 of the proposed road.

2 SEC. 16. After a general examination, if he should not be in favor of
3 establishing the proposed road he will so report and no further proceedings
4 shall be had thereon.

2 SEC. 17. If he deems such establishment expedient he may proceed at
3 once to lay out the road as hereinafter directed and may report accordingly
4 if the circumstances of the case are such as to enable him to do so without
5 pursuing the course pointed out in the next section.

2 SEC. 18. But if the precise location of the road cannot be otherwise given
3 he must call to his aid a competent surveyor and the necessary assistants and
4 cause the line of the road to be accurately surveyed and plainly marked
5 out.

2 SEC. 19. The commissioner, surveyor and assistants must be sworn by
3 some officer authorized to administer oaths, to the faithful and impartial dis-
4 charge of their several duties, except that where the county surveyor is em-
5 ployed he need not be sworn.

2 SEC. 20. Mile posts must be set up at the end of every mile, and the dis-
3 tance marked thereon, and stakes must be set at each change of direction,
4 on which shall be marked the bearing of the new course. Stakes must also
5 be set at the crossing of fences, and streams, and at intervals in the prairie
6 not exceeding a quarter of a mile each; in the timber the course must be
7 indicated by trees suitably blazed.

2 SEC. 21. Bearing trees must, when convenient, be established at each
3 angle and mile post, and the position of the road relative to the corners of
4 sections, the junction of streams, or any other natural or artificial monu-
5 ment or conspicuous object must as far as convenient be stated in the field
6 notes and shown on the plat.

2 SEC. 22. A correct plat of the road, together with a copy of the field-
3 notes of the surveyor, (if one has been employed) must be filed as a part of
4 the commissioner's report.

2 SEC. 23. Upon the filing of the report in favor of the proposed road, the
3 auditor must appoint a day when the matter will be acted upon, which shall
4 not be less than sixty or more than ninety days distant, except in cases
5 where no meeting of the board of supervisors will take place within ninety
6 days, and in such cases at the next regular meeting of said board.

2 SEC. 24. Within thirty days after the appointment of the day all claims
3 for damages in consequence of the establishment of the road must be made,
4 if at all, but where a sufficient excuse for not filing such claim within the
5 time aforesaid is shown by affidavit the claim may be considered if made at
6 any time before final action upon the road, and the time for such final
7 action may thereupon be postponed to a future day if necessary.

2 SEC. 25. Such claims must be in writing and filed in the county office.

2 SEC. 26. Upon the filing of such claim the auditor must appoint three
3 suitable and disinterested voters of the county as appraisers to view the
4 ground on a day fixed by him, and report upon the amount of damages sus-
5 tained by the claimant.

2 SEC. 27. The auditor shall cause notice of their appointment to be given
3 to each of these appraisers, fixing the hour at which they are to meet at the
4 office of the auditor or of some justice of the peace therein named.

2 SEC. 28. If the appraisers are not all present within one hour of the
3 time thus fixed, the auditor or the justice, as the case may be, may fill the
4 vacancy by the appointment of others.

2 SEC. 29. The number being completed they must be sworn to discharge
3 their duty faithfully and impartially.

2 SEC. 30. They must file their report before the day appointed as afore-
3 said for final action upon the establishment of the road.

2 SEC. 31. Should the report not be filed in time or should any other good
3 cause for delay exist, the auditor may postpone the time for final action on
4 the subject and may if expedient appoint other appraisers.

2 SEC. 32. The appraisers shall each receive one dollar and fifty cents a
3 day for the time actually employed in the performance of their duties.

2 SEC. 33. Should no damages be awarded to the applicant, the whole of
3 the costs growing out of the application for damages shall be paid by him.

2 SEC. 34. When the time for final action in relation to the road arrives,
3 whether application for damages has been made or not, the board of super-
4 visors may hear testimony and receive petitions for and against the estab-
5 lishment of such road. It may establish or reject the road absolutely or it
6 may make such establishment conditional upon the payment in whole or
7 in part of the damages awarded or the expenses incurred in relation thereto,
8 as the public good may seem to require.

2 SEC. 35. In the latter case, if the condition is not performed by the
3 time appointed, the subject shall come up for a rehearing and new action
4 thereon.

2 SEC. 36. If money is thus advanced to secure the opening of a road,
3 a memorandum thereof must be made in the record, and the person, so ad-
4 vancing it shall receive from the clerk a certificate of such fact. The road

4 shall not thereafter be discontinued without refunding to him or his legal
5 representatives the amount so advanced, without interest.

2 SEC. 37. When damages have been paid by the county or by an indi-
3 vidual for injury to land in consequence of the establishment of a road, the
4 amount must be refunded whenever the road is discontinued, and the claim
5 for such refunding is a lien upon the land for the taking of which damages
were given, which may if necessary be sold to liquidate such claim.

2 SEC. 38. After the road has been finally established, the plat and field-
3 notes must be recorded by the clerk, and the supervisor of roads shall be
directed to have the same opened and worked according to law

2 SEC. 39. A reasonable time must be allowed to enable the owners of
3 land to erect the necessary fences adjoining the new road.

2 SEC. 40. Where crops have been sowed or planted before the road is
3 finally established the opening thereof shall be delayed until the crop is
harvested.

2 SEC. 41. Roads may be established without the appointment of a com-
3 missioner, provided the written consent of all the proprietors of the land to
be used for that purpose be first filed and recorded.

2 SEC. 42. If a survey be necessary to give the road a precise location, the
3 expense thereof shall be borne by the county if the road be more than three
miles in length.

2 SEC. 43. The rights of married women and the interests of minors and
3 insane persons are in such cases and for such purposes under the control of
their husbands or guardians.

2 SEC. 44. The establishment of a road either along or across a county line
3 may be effected by the concurrent action of the respective boards of super-
4 visors in the mode above prescribed: the commissioners in such cases must
5 act in concert and the road will not be deemed established in either county
until it is so in both.

2 SEC. 45. State roads shall hereafter be established by petition to the board
3 of supervisors, as hereinafter provided.

2 SEC. 46. All petitions for any state road shall specify the place of begin-
3 ning, the intermediate points, if any, and the place of termination of said
roads.

2 SEC. 47. On application by petition, signed by at least twenty freehold-
3 ers of each county through which it is proposed to establish any state road,
4 the board of supervisors of each of said counties shall appoint one disinter-
5 ested freeholder of his county as commissioner to view and survey said
road.

2 SEC. 48. Previous to granting an order on any petition presented as
3 aforesaid, one of the parties in each county through which such road may
4 pass shall execute a bond with two or more responsible freeholders in said
5 county, as securities, to the satisfaction of the county auditor, payable to
6 the state of Iowa, and conditioned for the payment of all expenses which
7 may accrue in the location of said road, in case the same shall not be estab-
lished a public highway.

2 SEC. 49. On the filing of a petition and bond agreeable to the provisions
3 of this chapter, which shall be at the same term of the board of supervisors
4 in all the counties interested in the location of the road, the board of super-
5 visors of each county shall issue an order directing the commissioner by
6 them appointed to meet the commissioners of the other counties or county,
7 (as the case may be) at the place of the beginning of said road, on the first
Wednesday of the month then next ensuing, and the commissioners, when

8 met as before directed, shall employ a competent surveyor, chain-carriers,
 9 and a marker, and other assistants, if necessary, and proceed to discharge
 10 the duties of their appointments respectively. And each commissioner, sur-
 11 veyor, and chain-carrier shall, before entering on the duties of his appoint-
 12 ment, take an oath or affirmation to discharge his duties faithfully, and ac-
 13 cording to law.

2 SEC. 50. Each state road shall be laid out from the place of beginning to
 3 the place of termination, on the most practicable route, always having regard
 4 to suitable ground, improvements already existing, section lines, and inter-
 5 mediate points, if any, and all state roads that shall hereafter be established,
 6 agreeable to the provisions of this chapter, shall be opened and considered
 7 public highways, sixty-six feet wide; but no road shall be laid out through
 8 any garden, orchard, or ornamental grounds, contiguous to a dwelling-house,
 9 or so as to cause the removal of any dwelling-house, or other building, with-
 10 out the consent of the owner; *Provided*, That such garden, orchard, or
 grounds are of more than two years establishment or growth.

2 SEC. 51. The commissioners appointed to lay out and establish any state
 3 road shall cause the same to be correctly surveyed and marked through the
 4 whole distance, and at each angle of the same, and note the courses and
 5 distances thereof, and at the crossing of each road or stream, and at the end
 6 of each mile, shall mark the number thereof, on a tree or monument erected
 7 by them for that purpose. And the commissioners and surveyor shall make
 8 a certified return of the survey and plat of the whole length of said road,
 9 specifying in said return the distance the same may have been laid out in
 10 each county, and whether, in their opinion, the public convenience requires
 11 the establishment of said road or any part thereof. One complete copy of
 12 which return shall be signed by a majority of the commissioners and sur-
 13 veyor, and immediately deposited in the office of the county auditor of each
 14 county in which any part of said road shall be laid out, and the auditor of
 the said county shall file the same in his office.

2 SEC. 52. In case the commissioners report in favor of the establishment
 3 of such road, the board of supervisors of the respective counties shall, at
 4 their next regular term after the filing of said report, cause a notice thereof
 5 to be published in one or more newspapers published in the county, or hav-
 6 ing a general circulation therein, for six consecutive weeks before the term
 7 at which the matter will be heard, notifying all the parties interested in the
 8 establishment of the same, that the respective boards of supervisors of said
 9 counties will hear the parties in favor of or against the establishment of said
 10 road, and the application for damages of any person on account of the loca-
 11 tion of said road through his or their lands. Written notices posted in one
 12 or more of the most public places near the line of said road, in each town-
 13 ship through which the road may pass, and one such on the door of the
 14 court-house of said county, shall be given in all cases of publication under
 this chapter, where no newspaper is established within the county.

2 SEC. 53. If any person or persons shall consider themselves aggrieved
 3 by the location of said road through his or their lands, such person or per-
 4 sons shall file with the county auditor of the proper county, a petition in
 5 writing, setting forth the premises on which they claim damages before the
 6 term designated in the publication of the notice provided in the preceding
 7 section, and said auditor shall appoint a jury of three disinterested freehold-
 8 ers of the county, whose duty it shall be, after having taken an oath or
 9 affirmation, to faithfully and impartially discharge the duties imposed upon
 them hereby, to proceed to view the said road the entire distance, the

10 same may have been located through the premises of the complainant or
 11 complainants, and of minors, idiots, lunatics or insane persons, and to assess
 12 the compensation to be paid in money for the property sought to be appro-
 13 priated, without regard to the benefits resulting from the location of said
 14 road, and they shall report to the next regular term of the board of super-
 15 visors their doings in the premises, setting forth the amount of damages by
 16 them adjudged due to each person or company, and the description of such
 17 person or company's land so damaged.

SEC. 54. If the board of supervisors shall all be satisfied the amount so
 2 assessed and determined by the jury aforesaid be just and equitable, and
 3 that said road or any part thereof, will in their opinion, be of sufficient im-
 4 portance to the public to cause the damages to be paid by the county,
 5 they shall order the same to be paid the petitioner, from the county treasury,
 6 but if in their opinion the said road is not of sufficient importance to the
 7 public to justify the payment of the same by the county, they may refuse
 8 to establish the same a public highway, unless the damages and expenses
 9 are paid by the petitioners. But if there be no application for damages or
 10 the damages are paid by the county or petitioners, then and in either case,
 11 the board shall establish the same a public highway, and record the same in
 12 the proper record.

SEC. 55. An appeal from the final decision of the board of supervisors on
 2 any petition for damages sustained by the location of any state road, as provi-
 3 ded by this chapter, shall be allowed to the circuit court of the county in which
 4 the land lies ; but notice must be given of such appeal within twenty days
 5 after said decision was made, and no appeal shall be allowed until the ap-
 6 pellant shall have filed a bond, with sufficient security, approved by the
 7 county auditor, for the payment of all costs occasioned by such appeal, in
 8 case he does not obtain a better or more favorable judgment in said court
 9 than he obtained of the board of supervisors; and the county auditor shall,
 10 within ten days from the time such appeal was taken, deliver to said court a
 11 full transcript of all proceedings had before the board of supervisors, and
 12 on the receipt of such transcript, the court or clerk shall notify four of the
 13 petitioners whose name appear first upon the petition asking said road, that
 14 can be found in the county, and such notices may be served in the same
 15 manner as notices of appeal in other cases, and in such suits the appellant
 16 shall be plaintiff, and if the board of supervisors has ordered the damages
 17 to be paid from the county treasury, then the county shall be defendant, if
 18 not then the four petitioners above mentioned shall be defendants, and the
 19 final decision of said court shall be certified to the county auditor, and by
 20 him recorded, which decision shall be final except as hereinafter provided.

SEC. 56. In all cases of appeal from the final decision of the board of
 2 supervisors as provided in the section preceding, the appellant or appellants
 3 shall pay all costs that may accrue in consequence of said appeal, unless the
 4 judgment in the circuit court shall exceed in amount the award rendered by
 5 the jury appointed by the county auditor.

SEC. 57. If upon the reception of the decision obtained in the circuit
 2 court, the board of supervisors shall not deem such road of sufficient impor-
 3 tance to cause the expenses incurred and damages assessed in the circuit
 4 court, to be paid by the county, they may refuse to establish the same unless
 5 the parties interested in the location of said road, shall pay or cause to be
 6 paid, before the opening of said road, to the satisfaction of the board of su-
 7 pervisors, in case said road is established a highway, all expenses incurred
 8 and damages assessed. But it shall be lawful for the board, if in their

9 opinion a part only of said road will be of public utility, to record and es-
 10 tablish such useful part, and reject the residue, in case it be capable of
 11 division.

2 SEC. 58. In case such expense and damages are paid or secured to be paid
 3 as aforesaid, or the board of supervisors order the same to be paid out of
 4 the county treasury, then, and in either case they shall enter an order that
 5 said road be established a public highway.

2 SEC. 59. It shall be lawful for the board of supervisors of any county in
 3 this state, on notice given in one or more newspapers in general circulation
 4 in the county, for four consecutive weeks, and on petition being presented
 5 to the board, signed by at least twelve freeholders of the county, for lessening
 6 or reducing the width of any state road, which now is or hereafter
 7 may be laid out and established, if the board shall deem just and proper so
 8 to do, to reduce the width of any such road or part thereof, to any width not
 9 less than thirty-three feet, and the board make a record of the same: *Pro-*
 10 *vided*, That the board shall, previous to making an order lessening or reduc-
 11 ing the width of any state road as provided by this section, appoint three
 12 disinterested citizens of the county, to view and report to them under oath
 13 or affirmation, and at the expense of the petitioners, as to the utility or inu-
 14 tility of such proposed change, and also the width which in their opinion is
 necessary.

2 SEC. 60. The portion of a state road lying within any county, shall, from
 3 the time the same is established, be regarded and treated in all respects as a
 4 county road, and may be changed or altered in the same manner as provided
 5 by law in case of county roads, and may be discontinued by the concurrent
 6 action of the board of supervisors of the several counties in which the same
 7 may be situated.

2 SEC. 61. When by reason of the loss or destruction of the field notes of
 3 the original survey, or in cases of defective surveys or record, or in cases of
 4 such numerous alterations of any public highway since the original survey,
 5 that its location can not be accurately defined by the papers on file in the
 6 proper office, the board of supervisors of the proper county may, if they
 7 deem it necessary, cause such road or roads to be re-surveyed, platted, and
 8 recorded as hereinafter provided.

2 SEC. 62. A copy of the field notes together with a plat of any highway
 3 surveyed under the provisions of this chapter, shall be filed in the office of the
 4 county auditor, and thereupon he shall give public notice by publication in
 5 some newspaper published within the county, or if no paper is published in
 6 his county, by posting such notice in five of the most public places in the
 7 vicinity of such survey, that such survey has been made and that at some
 8 term of the board of supervisors not less than twenty days from the publi-
 9 cation, they will, unless good cause be shown against so doing, approve of
 10 such survey and plat, and order them to be recorded as in cases of the orig-
 inal establishment of a public highway.

2 SEC. 63. In case objections shall be made by any person claiming to be
 3 injured by the survey made, the board of supervisors shall have full power
 4 to hear and determine upon the matter, and may, if deemed advisable, order
 5 a change to be made in the survey, upon the final determination of the board,
 6 or in case no objection be made at the term named in the notice of the sur-
 7 vey, they shall approve of the same, and cause the field notes and plat of the
 8 highway to be recorded as in cases of the establishment or alteration of
 9 highways, and thereafter such record shall be received by all courts as con-
 10 clusive proof of the establishment and existence of such highway, according
 to such survey and plat.

2 SEC. 64. All public streets of towns or villages not incorporated are a
3 part of the public highway, and it is made the duty of all road supervisors
4 or persons having charge of the public highways in the respective districts of
5 such towns or villages to work the same as provided by law for the working
6 and keeping in repair of roads and highways.

2 SEC. 65. Such portions of all county and state roads as lie within the
3 limits of any incorporated town or city, shall conform to the direction and
4 grade, and be subject to all the regulations of other streets in such town or
5 city.

2 SEC. 66. It shall not be lawful to lay out, establish, or open any public
3 road or street, by any authority whatever, without the express consent of the
4 general assembly, across the lands reserved by the state for its various in-
5 stitutions, or either of them, and lying adjacent thereto.

2 SEC. 67. Any public road, which has been heretofore established or laid
3 out across the property of the state mentioned in the preceding section, is
4 hereby vacated.

CHAPTER 2. *Of working the Roads.*

2 SEC. 1. The township trustees of each township shall meet on the first
3 Monday of October in each year, and divide their respective townships
4 into such number of road districts as they may deem necessary for the pub-
5 lic good.

2 SEC. 2. There shall be elected at the general election annually one su-
3 pervisor for each road district, who shall hold his office for one year.
4 Said supervisor must reside in the district for which he was elected;
5 and in the election of said supervisor no elector shall vote for more
6 than one supervisor, or any other than the one residing in the district
7 where such elector resides; but no person shall be required to serve as
8 supervisor who is exempt by this chapter from performing labor on the
9 highway.

2 SEC. 3. Said election shall be conducted as other elections, and it shall
3 be the duty of the township clerk to notify said supervisor elect, within five
4 days after said election; and said supervisor elect, thus notified, shall
5 appear before the township clerk within ten days thereafter, and give
6 bond and take the oath of office, as required by the constitution of the
7 state of Iowa.

2 SEC. 4. Any supervisor elect, notified as required in section three of this
3 chapter, who shall fail to appear before said township clerk (unless pre-
4 vented by sickness), within the specified time, and give bond and take the
5 oath of office as required by this chapter, shall forfeit and pay the sum of
6 five dollars, and in case of his failing or refusing to pay the same, it shall
7 be the duty of his successor in office to collect the said amount by suit or
8 otherwise, and apply the same to the repairing of roads in his district.

2 SEC. 5. Each supervisor so elected shall be required to give bond in such
3 sum and with such security as the township clerk may deem requisite, con-
4 ditioned that he will faithfully and impartially perform all the duties de-
5 volving upon him, and appropriate all moneys that may come into his hands
6 by virtue of his office according to law, which bond shall be kept by the
7 township clerk among the papers of his office. And in the event of a va-
8 cancy occurring in any road district within his township, it shall be the duty
9 of the township clerk to fill such vacancy by appointment as soon as notified
of the same.

2 SEC. 6. Each supervisor shall require all the able-bodied male residents
 3 of his district, between the ages of twenty-one and fifty, to perform two
 4 days' labor upon the public highway, between the first day of April and the
 5 first day of August of each year.

2 SEC. 7. The supervisor shall be required to give at least three days' no-
 3 tice previous to the day or days designated to work the roads, to all persons
 4 in his district subject to work, as required in section six of this chapter,
 5 what day he will superintend the work on the roads within his district,
 6 and all persons so notified must meet said supervisor at such time and place,
 7 and with such tools, implements, and teams as said supervisor may desig-
 8 nate, and shall labor diligently under the direction of the supervisor for eight
 9 hours each day, and for such two days' labor performed, the supervisor shall
 10 give to the person a certificate, which certificate shall be evidence that such
 11 person has performed labor on the public highway as required by section six
 12 of this chapter, and shall exempt such person from performing labor in pay-
 13 ment of road-poll tax in that or any other road district within this state for
 14 the same year: Any person furnishing a good team, consisting of two
 15 horses or their equivalent, shall be allowed the same for the team that is
 allowed for able-bodied men per day.

2 SEC. 8. Each person made liable to perform labor on the public highway by
 3 section six of this chapter, who shall fail or neglect to attend either in person or
 4 by satisfactory substitute at the time and place appointed with the designated
 5 tool, implement or team, having had three days' notice thereof, or having at-
 6 tended, shall spend his time in idleness, or disobey the supervisor, or fail to
 7 furnish to said supervisor within five days thereafter some satisfactory
 8 excuse for not so attending, shall forfeit and pay to said supervisor
 9 the sum of one dollar and twenty-five cents for each day's delin-
 10 quency, and in case of a failure to pay such forfeit within ten days, it
 11 is hereby made the duty of such supervisor to recover the same by action of
 12 debt in the name of the supervisor, before any justice of the peace in the
 13 proper township, which money when collected shall be immediately ex-
 tended on the public highway.

2 SEC. 9. The supervisor shall perform the same amount of labor as is re-
 3 quired of an able-bodied man, for which he shall be allowed the sum of one
 4 dollar and fifty cents per day, including the time necessarily spent in notify-
 5 ing the hands and making out his returns, which sum shall be paid out of
 6 the road fund after deducting his two days' work required by section six of
 7 this chapter, and road tax for that year. When there is no money in the hands
 8 of the clerk with which to pay the said supervisor, he shall be entitled to
 9 receive a certificate for the amount of labor performed, after deducting as
 10 above required, which certificate shall be received in payment of his own
 road tax for any succeeding year.

2 SEC. 10. For the purpose of enabling the supervisors to determine the
 3 precise location of the various roads in their respective districts, it is
 4 hereby made the duty of the county auditor of each county to furnish each
 5 of the township clerks of his county within three months after the taking
 6 effect of this act, with a map on a scale of not less than two inches to the
 7 mile, of their respective townships, on which map shall be plainly marked
 8 all roads which are at the time of making such maps legal roads, which map
 9 shall be carefully preserved among the papers of his office. And it is further
 10 made the duty of the county auditor immediately after the establishing of
 any new road, to notify the township clerks of the townships in which said

11 road has been located, of the location of the same, and also to furnish a copy
 12 of the field notes thereof, and the clerk shall immediately mark the same
 13 on the map in his office.

SEC. 11. The township clerk shall furnish each supervisor of his town-
 2 ship with a map of his district, which map shall contain all the legal roads
 3 in said district, and when any new road shall have been established, it
 4 shall be the duty of the township clerk to notify each of the supervisors
 5 whose district is affected by said new road, and also to furnish a copy of the
 6 field notes of the same, which new road shall be immediately marked on
 7 the map of said district in his possession.

SEC. 12. The township trustees of each organized township shall, at an
 2 annual meeting to be held on the second Monday in April in each year, or
 3 as soon thereafter as the assessment book is received by the clerk, deter-
 4 mine upon the amount of property tax to be levied for roads, bridges, guide
 5 boards, plows, scrapers, tools, and machinery adapted to the construction
 6 and repairs of roads, and for the payment of any indebtedness previously
 7 contracted by such township for road purposes, and levy the same,
 8 which shall not be less than one nor more than five mills on the
 9 dollar, on the amount of the township assessment for that year: and
 10 said trustees shall at the same time determine whether any of said
 11 tax shall be paid in labor, and if they determine that any part may
 12 be paid in labor, determine what part may be so paid; said trustees
 13 shall at the same time also determine whether any part of said tax
 14 shall be a general township fund, for the purpose of purchasing plows,
 15 scrapers, or other implements, or machinery adapted to the construc-
 16 tion of roads, and for general work in the township, and if they determine
 17 that any of said tax be appropriated for that purpose, they shall determine
 18 what amount of said tax shall be so appropriated: *provided*, that when in-
 19 corporated towns or cities are, by act of incorporation heretofore passed,
 20 made road districts, this chapter shall not interfere with such districts, but
 the same shall be under the control of such city.

SEC. 13. The township clerk shall, within four weeks after such levy,
 2 make out a tax list for each road district in his township, which list shall
 3 be in tabular form and in alphabetical order, having distinct columns for
 4 lands, town lots, and personal property, and carry out in a column the
 5 amount of the tax on each piece of land and town lot, and on the amount
 6 of personal property belonging to each individual; and he shall carry out
 7 the amount of tax to be paid in money due from each individual in a
 8 column by itself; and to enable the township clerk to make out such tax
 9 list, it is hereby made the duty of the assessor to furnish the township clerk
 10 of each township on or before the first day of April of each year, with a
 11 correct copy of the assessment lists of said township for that year, which
 12 list shall be the basis of such tax list. It shall be the duty of the county
 13 auditor to furnish the several township clerks of his county with printed
 14 blanks necessary to carry into effect the provisions of this chapter.

SEC. 14. The township clerk shall make an entry upon such tax list
 2 showing what it is, for what road district, and for what year, and shall
 3 attach to the list his warrant under his hand, in general terms, requiring
 4 the supervisor of such district to collect the taxes therein charged as herein
 5 provided, and no informality in the above requirements shall render any
 6 proceedings for the collection of such taxes illegal. The clerk is hereby
 7 required to cause such lists to be delivered to the proper supervisors of his

5 township by the first day of May next after the levy, take his receipt there-
 9 for, and such list shall be full and sufficient authority for the supervisor to
 10 collect all taxes therein charged against resident property-holders in his
 11 district.

2 SEC. 15. The supervisor shall within ten days after receiving the tax-
 3 list specified in sections thirteen and fourteen, post up, in three conspicu-
 4 ous places within his district, written notices of the amount of road tax
 5 assessed to each tax-payer in said district, and in case of a failure to pay said
 6 tax by the first Monday in October, in each year, the supervisors shall re-
 7 port the same to the township trustees, the same as tax on non-resident
 8 lands, and the tax thereon shall be collected in the same manner, and with
 the same penalties, as in the case of non-resident lands.

2 SEC. 16. The township trustees shall at their annual meeting on the
 3 second Monday of April in each year, determine the sum that will be
 4 allowed for a day's labor, and also the sum that will be allowed for a man
 5 and team per day, and the township clerk shall immediately notify each of
 the supervisors in his township of such determination.

2 SEC. 17. The supervisors shall be required to give at least three days'
 3 notice previous to the day designated to work the roads to all persons in his
 4 district charged with a road tax, of the day or days he will superintend the
 5 work on the roads within his district, and all persons so notified must meet
 6 said supervisor at such time and place, with such tools, implements, and
 7 teams, as said supervisors may designate, having such tools and implements
 8 in his possession, and in case of a failure to attend either in person or by
 9 satisfactory substitute at such time and place, or send a reasonable excuse
 10 within five days thereafter for not so doing, the supervisor shall immediately
 11 commence suit for the collection of the tax which such person is liable to
 12 pay, and expend the same as soon as collected on the public highway in his
 district.

2 SEC. 18. The supervisors of the several districts of each township shall
 3 report to the township clerk on the first Monday of October in each year,
 4 which report shall embrace the following items:

- 5 1. The names of all persons in his district required by section six of this
 6 act to perform labor on the public highway, and the amount per-
 7 formed by each.
- 8 2. The names of all persons against whom suits have been brought as re-
 9 quired by section seventeen of this act, and the amount collected of
 each.
- 10 3. The names of all persons who have paid their property road tax in
 11 labor, and the amount paid by each.
- 12 4. The names of all persons against whom suits have been brought for
 13 the collection of road taxes, and the amount collected from each.
- 14 5. The names of all persons who have paid their road tax in money, and
 15 the amount paid by each.
- 16 6. A correct list of all non-resident lands and town lots on which the
 17 road tax has been paid, and the amount paid on each.
- 18 7. A correct list of all non-resident lands and town lots on which the
 19 road tax has not been paid, and the amount of tax on each piece.
- 20 8. The amount of all moneys coming into his hands by virtue of his
 21 office, and from what sources.
- 22 9. The manner in which the moneys coming into his hands by virtue
 23 of his office have been expended, and the amount, if any, in his pos-
 24 session.

25 10. The number of days he has been faithfully employed in the discharge
26 of his duty.

27 11. The condition of the roads in his district, and such other items and
28 suggestions as said supervisor may wish to make, which report shall
29 be signed and sworn to by said supervisor and filed by the town-
30 ship clerk among the papers of his office.

SEC. 19. The township clerk shall, on or before the second Monday of
2 October in each year, make out a correct list of all non resident land and
3 town lots, on which the road-tax has not been paid, and the amount of tax
4 charged on each piece of land or town-lot, designating the district in which
5 said land or town-lot is situated, and transmit a certified copy of the same to
6 the clerk of the board of supervisors of the proper county, who shall enter
7 the amount of tax on each piece of land and town-lot respectively, in the
8 column ruled for that purpose, the same as other taxes, and deliver the same
9 to the county treasurer, charging him with the same, which shall be col-
10 lected by such treasurer in the same manner that county taxes are collected ;
11 and in case the township clerk shall fail or neglect to make such return, he
12 shall forfeit and pay to the use of the township, for road purposes, a sum
13 equal to the amount of tax on said land, which may be collected by suit on
14 his official bond, commenced in the name of the township by the trustees
15 thereof, before any court having competent jurisdiction.

SEC. 20. The supervisor shall cause all tax collected by him to be exp-
2 ended for the purposes specified in section twelve of this chapter, on or
3 before the first day of October of that year, except the portion set apart for
4 a general township fund, as provided in said section, which shall be by the
5 supervisor paid over to the township clerk from time to time as collected,
6 and his receipt taken therefor.

SEC. 21. The money tax levied upon the property in each road district,
2 except that portion set apart as a general township fund, whether collected
3 by the supervisor or the county treasurer, shall be expended for road pur-
4 poses in that district, and no part thereof shall be paid out or expended for
5 the benefit of another road district.

SEC. 22. Any supervisor failing or neglecting to perform the several
2 duties required by this chapter, shall forfeit and pay for the use of the road
3 fund in his district, the sum of ten dollars ; and it is hereby made the duty
4 of the township clerk in case of such failure or neglect, to commence suit in
5 his name for the collection of the same before any justice of the peace
6 within the proper township.

SEC. 23. The supervisor is authorized to take timber or other material
2 for the use of the road from any unenclosed lands in the neighborhood of
3 which the road passes, but he is not permitted to cut down or injure any
4 tree growing by the wayside which does not obstruct the road, and which
5 stand in front of any town lot or enclosure or cultivated field, or any ground
6 reserved for any public use, where such tree is intended to be preserved for
7 shade or ornament by the proprietor of the land on or adjacent to which the
8 tree is so standing ; and the person owning such timber or material thus
9 taken, shall be paid out of any of the road fund in the hands of the super-
10 visor, a fair value therefor, and in case there be no money in the hands of
11 such supervisor, then such supervisor shall give him a certificate stating the
12 amount, kind, and value of such material taken, which certificate shall be
13 received for the payment of his road tax for that or any succeeding year, to
14 the amount thereof.

SEC. 24. When notified in writing that any bridge or other portion of

2 the public road is unsafe or impassable, the supervisor thus notified shall be
 3 liable for all damage resulting from the unsafe or impassable condition
 4 of the road or bridge, after allowing a reasonable time for repairing the
 5 same.

2 **SEC. 25.** For making such extraordinary repairs, the supervisor may
 3 call out any or all the able-bodied men of the district in which they are to
 4 be made, but not more than two days at one time without their consent,
 5 and persons so called out shall be entitled to receive a certificate from the
 6 supervisor certifying the number of days of labor performed, which certifi-
 7 cate shall be received for road tax for that or any succeeding year, at the
 rate per day established for that year.

2 **SEC. 26.** If any able-bodied man, when duly summoned for any such
 3 purpose, fail to appear and labor diligently by himself or his substitute, or
 4 send satisfactory excuse therefor, he is liable to a fine of ten dollars, to be
 5 recovered by suit before any justice of the peace in the name of the district,
 6 and for the use of the road fund of said district : *Provided*, in all cases, the
 7 person so notified shall have the privilege of paying the value of such work
 immediately in money.

2 **SEC. 27.** It is the duty of the supervisor to remove obstructions in
 3 the public highways caused by fences or otherwise, but he must not throw
 4 down or remove fences which do not directly obstruct the travel upon the
 5 highway, until not to exceed six months' notice has been given to the owner
 6 of the land enclosed in part by such fence.

2 **SEC. 28.** Where any owner or occupant of land adjoining or abutting
 3 upon any road or highway may desire to plant a hedge upon the line of any
 4 road, he shall be allowed to build or remove his fence upon such road or
 5 highway : *Provided*, he shall not build or remove his fence more than five
 6 feet within the outer line of said road, and said fence may be removed and
 7 so built on both sides of all roads of fifty feet or more in width at the same
 8 time. Such owner or occupant shall not be allowed to occupy such high-
 9 way as aforesaid for more than ten years, and not more than one year before
 10 such hedge shall be planted, and at the expiration of such time he shall re-
 11 move such fence upon the order of the supervisor of the district where such
 road is situated.

2 **SEC. 29.** It shall be the duty of the supervisor to keep the roads in as good
 3 condition as the funds at his disposal will permit, and to place guide-boards
 4 at cross-roads and at the forks of the roads in his district; said boards to be
 5 made out of good timber, the same to be well painted and lettered, and
 6 placed upon good substantial hard wood posts, to be set four feet in the
 ground, and to be at least eight feet above ground.

2 **SEC. 30.** The supervisors shall present their accounts on final settlement
 3 with township trustees for putting up the same, and shall be paid as speci-
 4 fied in section thirty-three of this chapter.

2 **SEC. 31.** Should there be no money in the treasury on final settlement of
 3 the supervisors with the township trustees, said trustees shall order the
 4 township clerk to issue road orders for the amount due the supervisors with
 5 whom they have settled.

2 The orders so issued shall be numbered with the number of the district to
 3 which they belong receiving the same, and shall be received the same as
 4 money in the payment of road tax in the road district to which they are
 5 issued.

2 **SEC. 32.** Persons meeting each other on any of the public highways of
 3 this state, shall give one half of the same by turning to the right. All per-
 4 sons failing to observe the provisions of this section shall be liable to pay

4 all damages resulting therefrom, to be appropriated to the repairing of roads
5 in the district where the violation occurred.

2 SEC. 33. The supervisors are hereby required to meet the township
3 trustees at their regular meeting on the first Monday in October of each
4 year, and have a final settlement of all their accounts connected with the
5 road fund and with the affairs of their office as supervisor; and after the
6 payment of the supervisor the trustees shall order the distribution of the
7 fund in the hands of the township clerk as they may deem expedient for
8 road purposes, and the township clerk shall pay the same out as ordered by
9 the trustees. The township clerk shall be entitled to five per cent on all
10 moneys coming into his hands by virtue of his office, and shall be required
11 at least once in each year to make settlement with the county auditor, pro-
12 ducing vouchers for all moneys paid out by him, specifying for what and to
whom paid.

2 SEC. 34. The township clerk of each township shall be required by the
3 county auditor of his county to give bond, to be approved by the auditor,
4 in the sum of twice the amount of the road tax in his township, when the
5 county auditor shall give an order to said clerk on the county treasurer, for
6 all moneys collected by him as road taxes upon all property within and for
7 his township, upon the payment of which by the treasurer, he shall take
8 from such township clerk duplicate receipts for the sum thus paid him, one
9 of which receipts said treasurer shall deliver over to the county auditor, to
10 be filed by him among the papers of his office, and said auditor shall
charge the same to the account of said clerk upon the road-book.

2 SEC. 35. In every township where the township trustees shall set apart a
3 portion of the road-tax as a general township fund, for the purchase of plows,
4 scrapers, implements, and machinery, to be used in the construction and re-
5 pairs of roads, the trustees shall require the township clerk to give bond
6 in such additional sum as they may deem proper to secure the safe keeping
7 of such fund, and shall appoint one of their number, or the township clerk,
8 to take charge of and properly preserve and keep in repair such tools, im-
9 plements, and machinery; and such person shall have authority to determine
10 at what time the supervisors of the several road districts may have the cus-
11 tody and use of the same or any part thereof, and shall be responsible for
12 the safe-keeping of the same, when not in the custody of some one of the
13 supervisors, for use in working the roads of his district, and shall receive
such compensation for his services as the township trustees shall provide, to
be paid out of such general road fund.

2 SEC. 36. The township clerk shall be allowed at the rate of one dollar
3 for every six hours necessarily engaged in official services, but before he
4 shall be entitled to such compensation, he shall file in the office of the clerk
5 of the board of supervisors a bill of items, which account after being signed
6 and sworn to, shall be audited and paid out of the county treasury, as other
accounts are audited and paid.

CHAPTER 3. *Plank Roads.*

2 SEC. 1. The several county boards of supervisors shall have the super-
3 vision of any and all plank roads, which have been, or may hereafter be
4 constructed within their respective counties under any license granted under
5 the provisions of chapter 54, of the revision of 1860, or of this code, and it is
6 hereby made the duty of such board of supervisors at each meeting to in-
7 quire and ascertain the condition of any plank road within the county, and
8 if the same is found not to be in good condition, to proceed to have it re-
9 paired or vacated as required in the next section.

2 SEC. 2. If it be ascertained by such board of supervisors, that any such
3 plank road is not in good condition and repair, it shall be the duty of the
4 board to notify the person, corporation or company, owning or having pos-
5 session of such plank road, by notice in writing, signed by the chairman and
6 clerk of the board, notifying such person, company or corporation, to put
7 such road in complete repair and in good condition within a certain time,
8 (which shall be a reasonable time), to be fixed by said board and stated in
9 said notice, and that on failure to make such repairs and put such road in
10 good condition, the license therefor will be revoked, and such plank road va-
11 cated and opened for travel to the public free of charge.

2 SEC. 3. If after receiving such notice, the owner or proprietor of any
3 such plank road shall fail to make the necessary repairs, and to place such
4 plank road in good condition as required, the said board of supervisors may
5 revoke the license under which such plank road has been established, and
6 constructed, and may order that such road be opened to travel free of charge,
7 and that it be kept in repair thereafter as other roads.

2 SEC. 4. When an order is made as provided in the preceding section, the
3 board of supervisors shall cause the owner or proprietor of such road to be
4 notified by written notice, of the fact that such order has been made.

2 SEC. 5. In case such owner or proprietor shall fail or refuse to comply
3 with such order, and shall continue to demand toll of persons traveling
4 over such plank road, it shall be the duty of the board of supervisors to
5 order suit to be brought in the name of the county, in the district court to
6 enforce such order, and to require such owner or proprietor to open such
7 road for travel, free of charge, and the district court upon being satisfied
8 that such owner or proprietor has failed to keep the road in repair, and to
9 comply with the orders of the board of supervisors, as hereinbefore pro-
10 vided, shall issue an order commanding the opening of such plank road to
11 the public for travel free of charge, and shall enforce such order by the
12 proper writ, and such court may, if necessary, enjoin any or all persons
from collecting any toll upon such road.

2 SEC. 6. No person shall be liable to pay any toll for traveling on such
3 road, after an order of the board of county supervisors revoking the license
4 of such road and declaring it free of travel.

CHAPTER 4. *Of Ferries and Bridges.*

2 SEC. 1. The several boards of supervisors have power to grant such ferry
3 licenses as may be needed within their respective counties, for a period not
4 less than three nor more than ten years.

2 SEC. 2. The board may prescribe the rates of ferriage as well as the
3 hours of the day or night during which the ferry must be attended, both of
4 which may from time to time be changed at the discretion of the board.

2 SEC. 3. In granting a ferry license the board of supervisors has power to
3 make the privilege granted exclusive for a distance not exceeding one mile
4 in either direction from said ferry, in which case no person shall keep a pub-
5 lic ferry within the prescribed distance, unless after twenty days notice
6 to the person who has obtained such privilege it is made to appear to the
7 board, that the public good requires both ferries, and a new license is issued
8 for the second ferry accordingly. The notice herein required must be
9 served personally on the owner, or on the person in charge of the ferry
0 boat.

2 SEC. 4. In granting a ferry license preference must be given to the keeper
3 of a previous ferry at the same point, and if it be a new ferry, preference
4 shall be given to the owner of the land, but if there is no such, or if after
5 giving the same notice as is required by the last section, he fails to make
6 application for such license, or if in the opinion of the board he is an im-
7 proper person to receive the same, it may be conferred on any other proper
8 applicant.

2 SEC. 5. Where the opposite shores of the stream are in different counties
3 a license from either is sufficient, and the board of supervisors first exercising
4 jurisdiction by granting a license retains that jurisdiction during the life-
5 time of such license.

2 SEC. 6. Where but one side of a river is within this state the board of
3 supervisors possesses the same power, so far as the shore of this state is con-
4 cerned, as though the river lay wholly within the jurisdiction of this state.

2 SEC. 7. Before a license can be granted, notice of the intended applica-
3 tion therefor must be posted up in at least three public places on each side
4 of the river (if both sides of the river are within this state) in the township
5 and neighborhood in which the ferry is proposed to be kept, at least twenty
6 days next prior to the making of such application.

2 SEC. 8. The board of supervisors upon being satisfied that the above re-
3 quirements have been complied with, that a ferry is needed at such place,
4 and that the applicant is a suitable person to keep it, must grant the license,
5 which however shall not issue until the applicant files a bond with sureties
6 to be approved by the board in a penalty not less than one hundred dollars,
7 with a condition that he will keep the ferry in proper condition for ferrying,
8 and attend the same at all times fixed by the board for running the same,
9 that he will neither demand nor take any illegal tolls, and that he will per-
10 form all other duties which are or may be enjoined on him by law, which
11 bond shall be filed in the county office.

2 SEC. 9. The license together with the rates of toll established must be
3 entered upon the records of the board of supervisors, and the certificate of
4 license shall contain the rates of toll allowed.

2 SEC. 10. Every ferryman must transport the public expresses of the Uni-
3 ted States and of this state and also the United States mail at any hour of
4 the day or night.

SEC. 11. He must keep a list of the rates of toll allowed him posted up
2 on his boat, or on the door of his ferry house, or at some other conspicu-
3 ous place near the ferry.

SEC. 12. The failure to have such list posted up as aforesaid, justifies any
2 person in refusing the payment of tolls, and where such failure is habitual,
3 the proprietor of the ferry is liable to pay twenty-five dollars in a suit
4 brought on his bond, and the proceeds shall be paid into the county
5 treasury.

SEC. 13. When it is made to appear to the board of supervisors, after
2 ten days' notice to the person licensed, that such person fails substantially to
3 perform his duties according to law, the board may revoke his license.

SEC. 14. The board of supervisors is also authorized to grant licenses
2 for the erection of toll-bridges, across any stream or other obstruction which
3 justifies the establishment of such bridge, and which calls for an expendi-
4 ture greater than can be met, without serious inconvenience, by the revenues
5 of the county, but the navigation of no navigable river must be thereby ob-
6 structed. And in all cases of granting a license to build such bridge, pref-
7 erence shall be given to the owner of the land on which said bridge is pro-
8 posed to be located, provided he be in other respects a competent person to
9 erect such bridge.

SEC. 15. When any corporation organized under the laws of this state,
2 or any individual, has obtained or shall hereafter obtain from the board of
3 supervisors license for the construction of a toll-bridge across any of the
4 rivers or streams of this state, such corporation or individual may take and
5 appropriate so much private property in the line of such bridge as shall be
6 necessary for a right of way therefor in such width as such corporation or
7 individual may desire, not exceeding sixty feet. Said right of way shall
8 not only extend from one terminus of the bridge to the other, but continu-
9 ously from and to the points of the roads or streets which said bridge is
10 to accommodate and thus connect.

SEC. 16. If the owner of the property over which such way extends shall
2 refuse to grant the same, and the damages therefor cannot be settled by
3 agreement, all damages which the owner or any person having an interest
4 in or improvement upon the property to be taken, will sustain by reason of
5 the appropriation of such property, shall be assessed, and the right of way
6 taken, on the application of either party, under the provisions of chapter
7 two, of title ten, of this code.

SEC. 17. Where the extremities of the bridge lie in different counties, a
2 license must be procured from each of such counties, and if different rates of
3 toll are fixed by the different boards of supervisors, each has power to fix
4 the rates of travel which is going from its own county. A similar princi-
5 ple shall be observed where only one of the extremities of the bridge is
6 within this state.

SEC. 18. Such licenses may be granted to continue for any period not
2 exceeding fifty years, and the rate of toll may be fixed in the first instance
3 in such a manner as to be unalterable within any stipulated period not exceed-
4 ing ten years; after that time the rate of toll will be under the control of
5 the board of supervisors, in the same manner as is provided in the case of
6 ferries.

SEC. 19. The board of supervisors is also authorized to stipulate in the
2 license to the effect that no other toll bridge or ferry shall be permitted
3 across the same obstruction within any distance not exceeding two miles of

4 such bridge, and for a period not exceeding ten years; any violation of the
5 terms of such stipulation is a nuisance, and he who causes it is guilty of a
6 misdemeanor.

2 Sec. 20. Before granting a license to build a toll bridge the board must
3 be satisfied that the same general notice has been given as is required in
4 the case of an application for a ferry.

2 Sec. 21. The rates of toll must be conspicuously posted up at each
3 extremity of the bridge, under the same penalty as is provided in the case
4 of ferries.

2 Sec. 22. Any proprietor of a toll bridge established and kept up accord-
3 ing to law, may make and enforce a regulation prohibiting any person,
4 under a penalty not exceeding two dollars, from travelling across such
5 bridge faster than on a walk, but such regulation must be conspicuously
6 posted up at each end of the bridge; and suit may be brought for the
7 penalty before a justice of the peace in the name of the proprietor and for
8 his benefit.

2 Sec. 23. All toll bridges must be so regulated as to allow persons to
3 pass at any hour of the night or day, but the board of supervisors may in its
4 discretion, in fixing the rates of toll, permit a greater amount to be collected
5 during certain hours of the night time.

2 Sec. 24. The board of supervisors may also grant licenses for the con-
3 struction of any canal or railroad or any macadamized or plank road, or any
4 other improvement of a similar character, or any telegraph line, to keep the
5 same up for a period not exceeding fifty years, and to use for this purpose
6 any portion of the public highway or other property public or private if nec-
7 essary: *provided*, such use shall not obstruct the highway; and where a
8 road thus authorized is of such a character as to admit of its being used for
9 the same purpose as an ordinary highway, the board in its discretion may
0 discontinue a highway thus rendered unnecessary.

2 Sec. 25. The board in its discretion may at the time of granting the
3 license fix the maximum rates of toll to be charged on any such work, and
4 may render the same unalterable for a period not exceeding twenty years
5 from the time tolls are begun to be charged thereon, after the expiration of
6 which time the rate of tolls shall be under the direction of the board in the
7 same manner as those of ferries and bridges.

2 Sec. 26. The time for the commencement of taking tolls as contemplated
3 in the preceding section must be notified to the board of supervisors and
4 entered on its records before any such tolls are collectable.

2 Sec. 27. The rates of toll established as above contemplated must be
3 conspicuously posted up at every gate or other place where tolls are required
4 to be paid, under the same penalty as is hereinbefore fixed in the cases of
5 ferries.

2 Sec. 28. From the decision of the board of supervisors in refusing or
3 granting any of the licenses authorized in this chapter an appeal lies to the
4 people of the county as hereinafter regulated, at any time within thirty days
5 after the making of such decision, which appeal may be taken by any citi-
6 zen of the county.

2 Sec. 29. The board of supervisors may also in the first instance cause
3 any question, growing out of an application for any of the licenses author-
4 ized herein, to be submitted at once to the popular vote of the county.

2 Sec. 30. Neither the appeal nor the vote contemplated by the preceding
3 two sections shall be allowed until money is deposited or security given
4 sufficient to indemnify the county against the payment of any of the ex-
5 penses growing out of the taking of such vote or appeal.

2 **SEC. 31.** Where the license has been granted, and the appeal above au-
 3 thorized is for the purpose of setting aside such grant, the license as granted
 4 must be published in the ordinary manner provided for publishing questions
 thus to be submitted to vote.

2 **SEC. 32.** If the appeal be from the order refusing the license, the appel-
 3 lant shall draw up and cause to be thus published, a license such as he
 4 desires to have submitted.

2 **SEC. 33.** If, where a license has been granted, the appellant is dissatisfied
 3 with the terms thereof, he must cause to be published both the license grant-
 4 ed and that which he desires to obtain.

2 **SEC. 34.** The board of supervisors must make the necessary arrange-
 3 ments for carrying the above regulations in relation to taking a vote of the
 4 people into full effect, and it shall grant or withhold the license in accord-
 ance with the result of such vote.

2 **SEC. 35.** In none of the above cases shall the license issue until a bond
 3 be filed such as is required in the case of ferry licences and in such increased
 4 penalty as the board directs.

2 **SEC. 36.** The board of supervisors, as a consideration or bonus for any of
 3 the licenses herein contemplated, may require the licensee to pay money or
 4 do acts for the purpose of promoting the public convenience in connection
 with the subject of his license, but for no other purpose.

2 **SEC. 37.** The taking illegal toll by the grantees of any of the licenses
 3 herein contemplated subjects the offender to the penalty of twenty-five dol-
 4 lars for every such offense, to be recovered by suit on the bond of such
 5 license, by the person who paid the illegal toll and for his own benefit, or
 6 he may bring suit in the name of the county, in which latter case he is a
 competent witness but the proceeds shall go into the county treasury.

2 **SEC. 38.** A failure in other respects to comply substantially with the
 3 terms fixed by the board, in accordance with the above provision, works a
 4 forfeiture of any of the licences herein authorized, and also subjects the
 5 party guilty of such failure to damages for all the injury resulting there-
 6 from, for which he is also liable on his bond.

2 **SEC. 39.** Any person who refuses to pay the regular tolls established and
 3 posted up in accordance with the provisions of this chapter, or who shall run
 4 through or pass around their toll gates with a view of avoiding the payment
 5 of just tolls or dues, forfeits the sum of five dollars for every offense, which
 6 together with costs of suit may be recovered by the person entitled to such
 7 toll by civil action before the proper justice of the peace; but nothing here-
 8 in contained shall prevent a person from fording a stream across which a toll
 bridge has been constructed.

2 **SEC. 40.** The proprietor of any canal, road, bridge, or ferry authorized
 3 by this chapter may establish rules for the regulation of passengers, travel-
 4 ers, teams, and freight passing or traveling thereon and may enforce those
 5 rules by penalties not exceeding five dollars for any one offense; which pen-
 6 alties may be recovered by civil action before a justice of the peace in the
 7 name of the proprietor aforesaid, but such rules must be published by being
 8 conspicuously posted up before they can be thus enforced.

2 **SEC. 41.** Any of the franchises contemplated in this chapter are subject
 3 to execution, and shall be sold as real property, and be subject to the same
 4 rights and consequences except that the purchaser may take immediate pos-
 session of the property.

2 **SEC. 42.** The sale of any such franchise carries with it all the material,
 3 implements, and works of whatever kind, necessary for or ordinarily used
 in the exercise of such franchise.

2 SEC. 43. In the sale of such franchise he who will satisfy the execution
3 and costs thereon and take the franchise for the shortest period of time, to
4 receive during that time all the tolls to which the defendant in execution
5 was entitled, keeping the same in ordinary reasonable repair, is the highest
bidder.

2 SEC. 44. The officer's deed transfers to the purchaser all the privileges
3 and immunities of the corporation or other holder of the franchise, necessary
4 for demanding and receiving tolls during the time therein specified, and the
5 officer must immediately after the sale deliver to the purchaser possession
6 of the toll houses and gates of the defendant, and the purchaser may there-
7 upon demand and receive all tolls accruing during the time limited by
8 the terms of the purchase in the same manner and under the same regula-
tions as the defendant might.

2 SEC. 45. In case of destruction or extraordinary injury happening to
3 the works thus temporarily in possession of the purchaser, without any fault
4 or negligence on his part, he shall not be compelled to repair the injury,
5 provided he will abandon his interest in the franchise so held by him and
6 will yield possession thereof to the owner without delay.

2 SEC. 46. Nothing in this chapter contained shall be so construed as to
3 prevent any person, incorporated city, town or village from establishing a
4 free ferry at any point where a license to keep a ferry has been granted
5 under the provisions of this chapter, provided that where said free ferry is
6 established said person or company shall pay a reasonable compensation to
7 the persons owning said ferry for all boats, ropes and other material, if the
8 same be fit for use: and when said free ferry is established at a point at or
9 near where a license has been granted to an individual, such individual
10 shall be exonerated from any further obligation in relation to the ferry.
11 Bond and security shall be given in like manner by the person or company
establishing the free ferry as required in this chapter.

2 SEC. 47. Nothing in this chapter shall be so construed as to prevent
3 owners of mills from crossing themselves or customers free of charge, nor
4 so as prevent footmen from passing through toll gates, on incorporated roads
free of charge.

2 SEC. 48. When any corporation or person shall wish to construct a
3 bridge across any navigable river in this state, said corporation or person
4 shall give notice of the same in some newspaper published in the county
5 in which said bridge is to be constructed, for four consecutive weeks, or if
6 there is no such paper published in said county, then by posting up notices
7 in five conspicuous places in said county, one of which shall be on
the door of the court-house where the last district court was held.

2 SEC. 49. Said notice shall state where the said bridge is to be built, the
3 name or names of the owners of the land on both sides of said river, where
4 the bridge is to be erected, the corporation or person intending to erect the
same, and the time necessary for the completion of the structure.

2 SEC. 50. Said notice shall inform the public, that at the next term
3 of the district court in and for the county in which said bridge is to be
4 built, provided four weeks intervene from the first publication or posting,
5 the said corporation or person will petition the district court for authority
to build said bridge.

2 SEC. 51. Said petition shall be filed with the clerk of the district court
3 at least ten days before the term at which it is to be heard, and shall con-
4 tain the names of the owners of the land as in the notice, the place where
the bridge is to be built, the name of the corporation or person designing

5 to build the same, a description of said bridge, and a prayer for authority
6 to proceed.

2 SEC. 52. Any person supposing himself about to be aggrieved, may be-
3 come a party to the proceeding on application, and make defense.

2 SEC. 53. The court shall render such a decree as may seem proper under
3 the circumstances, and shall fix the rate of toll: *Provided*, that no bridge
4 shall be constructed without a suitable draw, or that shall in any way inter-
5 fere with the navigation of the river, and *provided*, that no rate of toll shall
6 be established higher than the highest rates allowed by law to corporations
7 or persons under legislative charters heretofore granted for the construction
8 of bridges over the navigable waters of the state: and *provided*, that this
9 section, so far as it provides for a draw, shall not be held to apply to the
10 Iowa river at a point two miles below the junction of the Cedar and Iowa
11 rivers, nor to the Cedar river above said point, said rivers not being deemed
12 navigable above said points, nor to the town of Wapello in Louisa county,
said rivers not being deemed navigable above said points.

2 SEC. 54. Said decree shall fully authorize the construction of said
3 bridge, the power being herein conferred on said court, and shall be equal
4 in force and obligation to bridge charters heretofore granted by the legisla-
5 ture.

2 SEC. 55. Said court shall have full power and authority to require of
3 the petitioner a bond to be executed to the county in which the proceeding
4 is had, in such penalty as the court may fix, conditioned to the payment of
5 any damage that any person may sustain by reason of the construction of
6 said bridge, which bond shall be filed in the office of the recorder of the
7 county, and any person damaged as aforesaid, shall be privileged to in-
8 stitute suit on the same, unless such person shall have made himself a
9 party to the original petition, and no damage shall have been decreed, or
10 unless said damage was sustained before the notice was given as afore-
11 said, and the person damaged failed to make himself a party to the original
12 petition.

2 SEC. 56. Where the extremities of said bridge lie in different counties,
3 the proceeding may be commenced in either county, but the same notice
4 shall be given in both counties, stating where and when the proceeding will
5 be heard.

2 SEC. 58. Any railroad company now organized or hereafter to be organ-
3 ized, or bridge company incorporated in pursuance of the laws of this state,
4 is hereby authorized and empowered to construct a railroad bridge across
5 the Mississippi river connecting with the eastern terminus of the railroad of
6 any such company, and abutting on the Iowa bank of said river at such
7 place as shall be designated therefor by the board of the county wherein
8 said abutting is to be made, and extending toward any point of the oppo-
9 site bank that may be selected by such company.

2 SEC. 59. Any railroad company or bridge company that now is or hereafter
3 may become incorporated in pursuance of the laws of this state, is hereby
4 authorized and empowered to construct a railroad bridge across the Missouri
5 river connecting with the western terminus of the railway of any such com-
6 pany, and abutting on the Iowa bank of said river at such place as shall be
7 designated therefor by the board of supervisors of the county wherein said
8 abutting is to be made, and extending toward any point on the opposite
9 bank that may be selected by such company.

2 SEC. 60. No bridge shall be built under the provisions of sections 58 and
3 59 until the plan thereof shall first be submitted to and approved by the said
4 board of supervisors.

2 SEC. 61. The provisions of said sections, so far as practical or applicable,
3 shall apply and be extended to any railroad company incorporated in pur-
4 suance of the laws of the state of Wisconsin, Illinois, Kansas, or the terri-
5 tory of Nebraska, where such railroad extends to the bank of said rivers
6 opposite the state of Iowa.

2 SEC. 62. Any such railroad corporation or bridge company shall have
3 authority to issue its bonds or obligations for an amount not exceeding the
4 cost of any such bridge, and of its railroad in the state of Iowa, and to
5 secure the payment thereof by a mortgage on the same, and shall also have
6 authority to issue certificates of common and preferred stock, the preferred
7 stock to be issued only on condition that the holders of four-fifths of the
8 common stock give their written consent thereto.

2 SEC. 63. Any such railroad or bridge companies are hereby authorized
3 with the consent of said board of supervisors to construct the said bridges
4 with suitable roads and footways for teams and foot passengers, with per-
5 mission to charge toll for the same at rates to be approved by said board of
6 supervisors.

2 SEC. 64. Any of said companies are hereby authorized to establish a
3 ferry across either of said rivers at or near the terminus of said roads, to
4 be used solely for the use of said companies for railroad freight and pas-
5 sengers until said bridges are constructed and ready for use.

2 SEC. 65. Each company acting under the provisions of this chapter shall
3 elect at least one director of such company, who shall be a citizen of and
4 reside in the state of Iowa.

2 SEC. 66. Each foreign railroad company, acting under the provisions of
3 this chapter, shall be liable to be sued in any court of competent jurisdic-
4 tion in this state, and the service of the original notice on the resident
5 director mentioned in the preceding section shall be sufficient to give the
6 court jurisdiction of such company.

2 SEC. 67. No bridge erected under and by virtue of any law of this state
3 shall be so located or constructed as unnecessarily to impede, injure, or ob-
4 struct the navigation of either of said rivers.

2 SEC. 68. All cities within this state, through or into which any river
3 or stream of water may flow, are hereby authorized and empowered to build
4 and maintain any number of toll-bridges over and across any such rivers or
5 streams, as in the discretion of the city council of any such city, shall seem
6 best for the public interests: *Provided*, The power herein conferred shall
7 not be construed in any way to effect the vested rights of any person or
8 corporation now existing in or to any toll-bridge franchise.

2 SEC. 69. For the purpose of carrying into effect the power above con-
3 ferred upon cities, it shall be lawful for any city to issue its bonds with
4 coupons attached, bearing interest at a rate not exceeding ten per cent per
5 annum, for the payment of the cost of building and maintaining any such
6 bridge or bridges: *Provided*, That the indebtedness so created shall not at
7 any one time exceed in amount five per cent of the assessed valuation of
8 the taxable property within said city, and that such bonds shall not run for
9 a longer term than twenty years.

2 SEC. 70. It shall be lawful for any such city, and the duty thereof, to set
3 aside and pledge, and keep as a separate fund for the liquidation and pay-
4 ment of any such bonds and coupons, all the tolls received from all persons
5 for travel or passage of animals, teams, or freight, over or upon any such
6 bridge or bridges, after deducting the necessary expenses of operating and
7 maintaining any such bridge or bridges, and such additional revenue of the
8 city as may be necessary

2 SEC. 71. Any ordinance which may be passed in pursuance of the au-
3 thority conferred by this chapter, for the building of any such bridge or bridges,
4 and the payment therefor, shall provide the rates of toll which shall be
5 charged and collected, for the passage of persons, teams, animals, and
6 freights, and such rates shall not be changed until the indebtedness on ac-
7 count of the building, operating, and maintaining of such bridge or bridges,
8 is liquidated, and when such indebtedness is liquidated such bridge shall be
9 free to the public.

2 SEC. 72. It shall be lawful for any city wherein any such toll-bridge is
3 situate, to regulate the manner of riding and driving thereon of all teams
4 and animals, and to enforce such regulations by declaring the violation of
5 the same a misdemeanor, and imposing therefor such penalties as are author-
6 ized by law, to be imposed in the case of other misdemeanors, and to impose
7 such penalties for a willful refusal to pay lawful toll, and the rates of toll
8 shall be conspicuously posted at the ends of such bridges.



TITLE VIII. OF THE MILITIA.

CHAPTER 1. *Organization and Discipline.*

2 SEC. 1. The entire militia of the state is required to organize into com-
 2 panies of infantry, cavalry or artillery.

2 SEC. 2. All the able-bodied male citizens of the state between the ages of
 2 eighteen and forty-five years who are not exempt from military duty agree-
 3 ably to the laws of the United States constitute the effective military force
 4 of this state.

2 SEC. 3. All officers, non-commissioned officers, and privates who have and
 2 served in the United States service for the period of two years, or more,
 3 have been honorably discharged therefrom, are exempt from all duty under
 4 the military laws of this state. *Provided*, that nothing in this section shall
 5 be so construed as to prohibit the executive of the state from calling upon
 6 such persons so exempt in times of public danger to the state or national
 7 government.

2 SEC. 4. Assessors in each civil township are required to take and return
 2 to the clerk of the board of supervisors of their respective counties, at the
 3 time of taking the annual assessment, a correct list of persons subject to
 4 military duty, and to post up in at least two public places in their respective
 5 townships, written or printed lists containing the names of all persons sub-
 6 ject to military duty, and returned as aforesaid

2 SEC. 5. The board of supervisors of each county are hereby required, at
 2 every regular meeting thereof, to act as a board of review on said lists, and
 3 may order the addition thereto of the names of any persons subject to mili-
 4 tary duty and not found on the lists, and may also order the name of any
 5 person improperly enrolled to be stricken from the lists. The clerk of said
 6 board shall keep a book in his office, to be called the militia register, in
 7 which he shall record, by townships, in alphabetical order, the name and
 8 age of every person subject to military duty, and he shall annually, and
 9 within ten days after the June meeting of said board, certify to the adju-
 10 tant-general of the state, three copies of said list; and any clerk neglecting or
 11 refusing to make the returns to the adjutant-general, as provided in this
 12 section, shall forfeit and pay a fine of not less than twenty-five nor more
 13 than one hundred dollars, to be recovered before any court having jurisdic-
 14 tion, for the benefit of the school fund.

2 SEC. 6. The adjutant-general, on or before the first Monday in January
 2 after the taking of each state census, must report to the president of the
 3 United States the aggregate number of such military force.

2 SEC. 7. It is the duty of the governor to cause the militia of the state to
 2 be organized into companies, and he is vested with full power and authority
 3 to make all necessary orders, rules, and regulations for the enrolment of the
 4 militia, and carrying out the provisions of this chapter.

SEC. 8. The companies organized under the provisions of chapter 17, of

2 the acts of the extra session of the ninth general assembly, approved, Sep-
 3 tember 11th, 1862, are hereby continued, and constituted company organi-
 4 zations, and are authorized to retain their arms and accoutrements, subject
 5 to such orders as the governor may from time to time issue; *Provided*, such
 6 companies shall execute such bond as is required by this chapter.

2 SEC. 9. Each company organized and to be organized under this chapter
 shall be composed of not less than forty men.

2 SEC. 10. The governor may order and direct companies to form into bat-
 3 talions or regiments. The order for this purpose shall designate the com-
 4 panies and the number of companies to be formed into any such battalion
 5 or regiment, and fix the time and place for the election of officers, including,
 6 if a battalion, one major, one battalion quartermaster, and one battalion adj-
 7 tant. The company officers shall be one captain, one first lieutenant, one
 8 second lieutenant, four sergeants and four corporals. All company officers
 9 shall be elected by the members of the company. The regimental officers
 10 shall be one colonel, one lieutenant-colonel, and one major, and such staff
 11 officers as are necessary, to conform, as near as may be, with the volunteer
 12 regiments in the United States service. All regimental officers shall be
 13 elected by the members of the companies composing the regiment. The
 14 returns of any election, company or regimental, shall be made to the office
 15 of the adjutant-general within ten days after said election. Company and
 16 regimental officers shall be commissioned by the governor, except sergeants
 17 and corporals, who shall receive warrants of rank from the commanders of
 their respective regiments.

2 SEC. 11. The particular place and hour for opening the polls at any such
 election, as well as the judges and clerks thereof, shall be fixed and appointed
 3 by the officer in temporary command at the place of rendezvous.

2 SEC. 12. Companies shall meet for drill and discipline two days in each
 year; the first meeting to be on the first Tuesday in June, at 1 o'clock, P.
 3 M., at such place as the company commander shall fix. The other meeting
 4 to be held at such time and place as the commander of the company may
 5 designate. And when arms, ammunition or military stores have been deliv-
 6 ered to any company, as provided in this chapter, the said companies shall
 7 meet at such other times and places as may be agreed upon by a majority
 8 of said company, for drill, discipline and the inspection of arms and public
 9 property in their hands.

2 SEC. 13. Arms, ammunition, munitions of war and military stores be-
 3 longing to the state, shall be distributed under the direction of the quarter-
 4 master-general, or acting-quartermaster-general, to the commanders of com-
 5 panies, battalions, regiments or batteries, and when so distributed shall be
 and remain under the charge of such commander.

6 *Provided*, That when any arms, ammunition, munitions or military stores,
 7 are delivered to any such commander, he shall make and deliver to the
 8 quartermaster-general a good and sufficient bond with sureties, to be ap-
 9 proved by the quartermaster, conditioned for the proper use and return
 10 when required by the quartermaster-general, or other proper officers, of all
 11 such arms, ammunition, or military stores, in good order, wear, use and un-
 12 avoidable loss excepted.

2 SEC. 14. The governor shall, as the commander-in-chief of the militia,
 in case of alarm, insurrection, invasion or war, order out, for actual service,
 3 from time to time, as many of the militia, whether organized into compa-
 4 nies, battalions, regiments or not, as he may think the case demands; and
 5 the militia, when so called into actual service, shall receive the same pay

6 and subsistence as is provided for like troops in the service of the United
 7 States. The commanders of companies, battalions or regiments shall, in
 8 case of sudden invasion or insurrection, and when life, liberty or property
 9 of the inhabitants of the state is in imminent peril, call out their respective
 10 commands, in whole or part, for the purpose of repelling any invasion, sup-
 11 pressing any insurrection, or preserving the lives, liberties or property of
 12 the inhabitants of this state; but in no case when troops are called out by
 13 any authority other than upon the order of the governor, shall there be any
 14 pay or subsistence allowed, unless the necessity for such service shall first
 15 be duly shown to the satisfaction of the adjutant-general. The militia,
 16 whether organized or not, may be called out by the civil powers of the
 17 state, but in such case shall receive neither pay nor subsistence, under the
 18 provisions of this chapter.

2 SEC. 15. It is the duty of every person liable to perform military duty,
 3 to enroll himself as a member of some company, and to obey the orders of
 4 his commander while on drill or in the actual service; and company com-
 5 manders may compel, by force, the attendance and service of any such per-
 6 son to suppress an insurrection or repel an invasion.

2 SEC. 16. Any person liable to perform military duty, who shall wilfully
 3 neglect or refuse to enroll himself as a member of some organized company,
 4 or who shall wilfully disobey the orders of the commander of his company,
 5 battalion or regiment, in time of insurrection or invasion, or who shall
 6 neglect or refuse to meet at the place of rendezvous, for the purpose of drill
 7 and discipline, shall be liable to pay a fine of not less than one dollar nor
 8 more than one hundred dollars, to be recovered in the name of the state of
 9 Iowa, before any civil court, for the benefit of the school fund.

2 SEC. 17. The governor may appoint on his staff, one adjutant-general,
 3 who shall perform the duties of inspector-general, with the rank of briga-
 4 dier-general, and shall perform the duties of paymaster-general of the
 5 state; one quartermaster-general, who shall perform the duties of commis-
 6 sary-general, with the rank of colonel of cavalry; and four special aids-de-
 7 camp, with the rank of lieutenant-colonel of cavalry, and one military sec-
 8 retary, with the rank of captain of cavalry.

2 SEC. 18. The duties of the adjutant-general and inspector-general shall
 3 be as follows, to-wit:

- 4 (1.) He shall issue, sign and transmit all orders of the commander-in-
 5 chief, relative to the carrying into execution the laws of the United
 6 States, or of this state, and perfecting the military discipline
 7 established by law.
- 8 (2.) He shall be charged with all the correspondence relating to the mil-
 9 itary affairs of the state, and keep a record or file of each corres-
 10 pondence.
- 11 (3.) He shall keep a record of all general and special orders and
 12 regulations, and cause the same to be published whenever the
 13 commander-in-chief shall direct.
- 14 (4.) He shall keep a roll of the commissioned officers of the militia of
 15 the state, with their residence, rank and corps to which they
 16 belong and the number and date of their commissions and pro-
 17 motions.
- 18 (5.) He shall provide the necessary books, forms, and blanks requisite to
 19 carry out the provisions of the laws of this state, and distribute
 the same to the officers entitled thereto, upon proper requisition.

- 20 (6.) He shall make returns in duplicate of the number of enrolled militia,
21 with the arms, accoutrements and ammunition, one copy of
22 which he shall deliver to the commander-in-chief on or before the
23 first day of January, and transmit the other to the president of
24 the United States, on or before the first day of January, annually.
25 (7.) He shall perform all the duties of the quartermaster-general until the
26 government deems it best for the public service to appoint that
27 officer.

2 SEC. 19. The quartermaster-general shall keep in good repair, and
3 attend to the due preservation, safe keeping, and cleaning and transportation
4 of the ordnance, arms, accoutrements, ammunition and munitions of war,
5 and military supplies and stores, the property of the state.

6 (2.) He shall dispose of, to the best advantage, under the direction of the
7 governor, all powder, arms, ammunition, accoutrements, tools, im-
8 plements and warlike stores of every kind, the property of the
9 state, that shall be deemed unsuitable for the use of the state, and
10 from time to time render a just and true account of all sales made
11 by him, and shall pay the proceeds of such sales into the state
12 treasury.

13 (3.) He shall report annually, on or before the first day of January, to
14 the commander-in-chief, the condition and disposition of the ordi-
15 nance, with the security therefor of all arms, ammunition and
16 other munitions of war, which appertain to his department.

2 SEC. 20. In all cases not herein otherwise directed, the duties of general
3 and staff officers, and all other commissioned and non-commissioned officers
4 of the militia of this state, shall be made to conform, as nearly as possible,
5 to the duties of the corresponding positions in the United States service ;
6 and questions of rank and the government of the militia, while on drill or
7 in the actual service of the state, shall be determined and made to conform,
8 as far as applicable, and not inconsistent with this chapter, to the rules and
9 regulations provided for the government of the United States army.

2 SEC. 21. Nothing contained within the provisions of this chapter shall
3 be construed as fixing the compensation of any officer herein named.

TITLE IX. OF CORPORATIONS.

CHAPTER 1. *Of Corporations for Pecuniary Profit.*

2 SEC. 1. Any number of persons may associate themselves and become
3 incorporated for the transaction of any lawful business, including the estab-
4 lishment of ferries, the construction of canals, railways, bridges, or other
5 works of internal improvement; but such incorporation confers no power
or privilege not possessed by natural persons except as hereinafter provided.

SEC. 2. Among the powers of such body corporate are the following :

- 2 1. To have perpetual succession ;
- 3 2. To sue and be sued by its corporate name ;
- 4 3. To have a common seal which it may alter at pleasure ;
- 5 4. To render the interests of the stockholders transferable ;
- 6 5. To exempt the private property of its members from liability for
7 corporate debts, except as herein otherwise declared ;
- 8 6. To make contracts, acquire and transfer property, possessing the
9 same powers in such respects as private individuals now enjoy :
- 10 7. To establish by-laws and make all rules and regulations deemed ex-
11 pedient for the management of their affairs, in accordance with
12 law, and not incompatible with an honest purpose.

2 SEC. 3. Previous to commencing any business except that of their own
3 organization they must adopt articles of incorporation, which must be re-
4 corded in the office of the recorder of deeds of the county where the princi-
5 pal place of business is to be, in a book kept therefor, and in the office of
the secretary of state, in a book kept for that purpose.

2 SEC. 4. Such articles of incorporation must fix the highest amount of
3 indebtedness or liability to which the corporation is at any time to be subject,
4 which must in no case, except in that of the risks of insurance companies,
exceed two-thirds of its capital stock.

2 SEC. 5. A notice must also be published for four weeks in succession in
3 some newspaper as convenient as practicable to the principal place of busi-
ness.

SEC. 6. Such notice must contain :

- 2 1. The name of the corporation and its principal place of transacting
3 business ;
- 4 2. The general nature of the business to be transacted ;
- 5 3. The amount of capital and stock authorized, and the times and condi-
6 tions on which it is to be paid in ;
- 7 4. The time of the commencement and termination of the corporation ;
- 8 5. By what officers or persons the affairs of the company are to be con-
9 ducted, and the times at which they will be elected ;
- 10 6. The highest amount of indebtedness or liability to which the corpora-
11 tion is at any time to subject itself ;

12 7. Whether private property is to be exempt from the corporate debts.

SEC. 7. The corporation may commence business as soon as the articles
2 are filed in the office of the recorder of deeds, and their doings shall be
3 valid if the publication in a newspaper is made, and the copy filed in the
4 office of the secretary of state, within three months from such filing in the
5 recorder's office.

SEC. 8. No change in any of the above matters shall be valid unless
2 recorded and published as the original articles are required to be.

SEC. 9. Corporations for the construction of any work of internal im-
2 provement, or for the business of life insurance, may be formed to endure
3 fifty years; those formed for other purposes cannot exceed twenty years in
4 duration; but in either case they may be renewed from time to time for
5 periods not greater respectively than was at first permissible, provided
6 three-fourths of the votes cast at any regular election for that purpose be in
7 favor of such renewal, and provided also that those thus wishing a renewal
8 will purchase the stock of those opposed to the renewal at its fair current
9 value.

SEC. 10. Corporations for agricultural and horticultural purposes, and
2 cemetery associations may be formed to endure any length of time that may
3 be provided by the articles of incorporation thereof; *provided*, such corpo-
4 ration shall not own to exceed nine sections of land, and the improvements
5 and necessary personal property for the management thereof; *and provided*
6 *further*, that the articles of incorporation shall provide a mode, by which
7 any member thereof may, at any time withdraw from such incorporation,
8 and also the mode of determining the amount to be received by such mem-
9 ber upon withdrawal; and also for the payment thereof to such member, sub-
10 ject only to the right of creditors of such incorporation; *and provided*
11 *further*, that nothing in this section shall be so construed as to prohibit the
12 general assembly at any session, from fixing a time when any or all corpora-
13 tions formed under the provisions of this chapter shall be dissolved.

SEC. 11. The corporation can not be dissolved prior to the period fixed
2 in the articles of incorporation except by unanimous consent, unless a dif-
3 ferent rule has been adopted in their articles.

SEC. 12. The same period of newspaper publication must precede any
2 such premature dissolution of a corporation as is required at its creation.

SEC. 13. A copy of the by-laws of the corporation with the name of all
2 its officers appended thereto must be posted in the principal places of busi-
3 ness and be subject to public inspection, and a copy thereof must be filed in
4 in the office of the secretary of state.

SEC. 14. A statement of the amount of the capital stock subscribed, the
2 amount of capital actually paid in, and the amount of indebtedness of the
3 company in a general way, must also be kept posted up in like manner,
4 which statement must be corrected as often as any material change takes
5 place in relation to any part of the subject matter of such statement.

SEC. 15. Intentional fraud in failing to comply substantially with the
2 articles of incorporation or in deceiving the public or individuals in relation
3 to their means or their liabilities, shall subject those guilty thereof to fine
4 and imprisonment or both at the discretion of the court. Any person who
5 has sustained injury from such fraud may also recover damages therefor
6 against those guilty of participating in such fraud.

SEC. 16. The diversion of the funds of the corporation to other objects
2 than those mentioned in their articles and in the notices published as afore-
3 said (provided any person be thereby injured,) and the payment of

4 dividends which leave insufficient funds to meet the liabilities of the cor-
5 poration, shall be deemed such frauds as will subject those therein con-
6 cerned to the penalties of the preceding section, and such dividends or
7 their equivalent in the hands of individual stockholders shall be subject to
8 said liabilities.

2 Sec. 17. Dividends by insurance companies, made in good faith before
3 their knowledge of the happening of actual losses, are not intended to be
4 prevented or punished by the provisions of the preceding section.

2 Sec. 18. A failure to comply substantially with the foregoing requisition
3 in relation to organization and publicity renders the individual
4 property of all the stockholders liable for the corporate debts. But this
5 section shall not be deemed applicable to railroad corporations and corpora-
6 tors, and stockholders in said railroad companies shall be liable only for the
7 amount of stock held by them in said companies.

2 Sec. 19. Either such failure or the practice of fraud in the manner
3 hereinbefore mentioned shall cause a forfeiture of all the privileges hereby
4 conferred, and the courts may proceed to wind up the business of the cor-
5 poration by an information in the manner prescribed by law.

2 Sec. 20. The intentional keeping of false books or accounts by any cor-
3 poration whereby any one is injured is a misdemeanor on the part of those
4 concerned therein whose duty it was to see that the books and accounts
5 were correctly kept.

2 Sec. 21. The transfer of shares is not valid, except as between the
3 parties thereto, until it is regularly entered on the books of the company, so
4 far as to show the name of the persons by and to whom transferred, the
5 numbers or other designation of the shares, and the date of the transfer;
6 but such transfer shall not in any way exempt the person or persons making
7 such transfer from any liability or liabilities of said corporation which were
8 created prior to such transfer. The books of the company must be so kept
9 as to show intelligibly the original stockholders, their respective interests,
10 the amount which has been paid in on their shares, and all transfers thereof;
11 and such books, or a correct copy thereof so far as the items mentioned in
12 this section are concerned, shall be subject to the inspection of any person
desiring the same.

2 Sec. 22. Any corporation organized or attempted to be organized in
3 accordance with the provisions of this chapter shall cease to exist by the
4 non-user of its franchises for two years at any one time, but such body
5 shall not forfeit its franchises, by reason of its omission to elect officers
6 or to hold meetings at any time prescribed by the by-laws, provided such
7 act be done within two years of the time appointed therefor.

2 Sec. 23. Corporations whose charters expire by their own limitation or
3 by the voluntary act of the stockholders, may nevertheless continue to act
4 for the purpose of winding up their concerns, but for no other purpose.

2 Sec. 24. Neither anything in this chapter contained, nor any provisions
3 in the articles of corporation, shall exempt the stockholders of any corpora-
4 tion from individual liability to the amount of the unpaid instalments on the
5 stock owned by them or transferred by them for the purpose of defrauding
6 creditors, and execution against the creditors may to that extent be levied
7 upon the private property of any such individual.

2 Sec. 25. In none of the cases contemplated in this chapter can the pri-
3 vate property of the stockholders be levied upon for the payment of corpo-
4 rate debts while corporate property can be found with which to satisfy the

4 same, but it will be sufficient proof that no property can be found if an exe-
 5 cution has issued on a judgment against the corporation and a demand there-
 6 on made of some one of the last acting officers of the body for property on
 7 which to levy, and if he neglects to point out any such property.

8 SEC. 26. The defendant in any stage of a cause may point out corporate
 2 property subject to levy, and upon his satisfying the court of the existence
 3 of such property by affidavit or otherwise the cause may be continued or exe-
 4 cution against the defendant stayed until the property can be levied upon
 5 and sold, and the court may subsequently render judgment and order exe-
 6 cution for any balance which there may be after disposing of the corporate
 7 property, according to the stage of the cause; but if a demand of property
 8 has been made as contemplated in the preceding section, the cost of such
 9 proceedings shall in any event be paid by the company or by the defend-
 10 ant.

SEC. 27. When the private property of a stockholder is taken for a cor-
 2 porate debt, he may maintain an action against the corporation for indem-
 3 nity and against any of the other stockholders for contribution.

SEC. 28. For the purpose of repairs, rebuilding, or enlarging, or to meet
 2 contingencies, or for the purpose of a sinking fund, the corporation may
 3 establish a fund which they may loan and in relation to which they may
 4 take the proper securities.

SEC. 29. When the franchise of a corporation has been levied upon un-
 2 der an execution and sold, the incorporators shall not have power to dissolve
 3 the corporation so as to destroy the franchise, and if they neglect to keep
 4 up an organization sufficient to enable the business to proceed, the purchaser
 5 thereupon becomes vested with all the powers of the corporation requisite
 6 therefor; and when it becomes impracticable for an individual so to con-
 7 duct them, and in cases where doubts or difficulties not herein provided for
 8 arise, the purchaser may apply by petition to the district court, which is here-
 9 by vested with authority to make any orders requisite for carrying into
 10 effect the intent of this chapter in this respect.

SEC. 30. In any proceedings by or against a corporation or against a
 2 stockholder to charge his private property or the dividends received by him
 3 the court is invested with power to compel the officers to produce the books
 4 of the corporation on the motion of either party upon a proper cause being
 5 shown for that purpose.

SEC. 31. A single individual may entitle himself to all the advantages
 2 of this chapter, provided he complies substantially with all its requirements,
 3 omitting those which from the nature of the case are inapplicable.

SEC. 32. Persons acting as a corporation under the provisions of this
 2 chapter will be presumed to be legally incorporated until the contrary is
 3 shown; and no such franchise shall be declared actually null or forfeited
 4 except in a regular proceeding brought for that purpose.

SEC. 33. No body of men acting as a corporation under the provisions of
 2 this chapter shall be permitted to set up the want of a legal organization as
 3 a defense to an action against them as a corporation, nor shall any person
 4 sued on a contract made with such a corporation or sued for an injury to
 5 its property or a wrong done to its interests be permitted to be set up a
 6 want of such legal organization in his defense.

CHAPTER 2. *Corporations other than those for Pecuniary Profit.*

2 SEC. 1. Associations for the establishment of seminaries of learning,
 3 churches, lyceums, libraries, lodges of odd fellows, or masons, and other in-
 4 stitutions of a benevolent or charitable character, agricultural societies, and
 5 associations for the detection of horse-thieves, and of other depredators
 6 upon property, may become incorporated in the manner directed in the pre-
 7 ceeding chapter, so far as applicable, and shall thereby become vested with
 8 all the powers and privileges, and subject to all the liabilities provided by
 that chapter, except as herein modified.

2 SEC. 2. Their articles of incorporation shall be recorded by the recorder
 3 of deeds of the county, where the principal place of business is kept only ;
 4 but a newspaper publication is not requisite.

2 SEC. 3. No dividend nor distribution of property among the stockholders
 3 shall be made until the dissolution of the corporation.

2 SEC. 4. Corporations of an academical character are invested with au-
 3 thority to confer the degrees usually conferred by such institutions.

2 SEC. 5. Any three or more persons of full age, citizens of the United
 3 States, a majority of whom shall be citizens of this state, who desire to as-
 4 sociate themselves for benevolent, charitable, scientific, religious or mission-
 5 ary purposes, may make, sign and acknowledge before any officer authorized
 6 to take the acknowledgments of deeds in this state, and have recorded in
 7 the office of the recorder of the county, in which the business of such so-
 8 ciety is to be conducted, a certificate in writing, in which shall be stated
 9 the name or title by which such society shall be known in law, the particu-
 10 lar business and objects of such society, the number of trustees, directors or
 11 managers to manage the same, and the name of the trustees, directors or
 managers of such society, for the first year of its existence.

2 SEC. 6. Upon filing for record the certificate as aforesaid, the persons who
 3 shall have signed and acknowledged such certificate, and their associates
 4 and successors shall thereupon, by virtue hereof be a body politic and corpo-
 5 rate by the name stated in such certificate, and by that name they and their
 6 successors shall and may have succession and shall be persons in law capable
 7 of suing and being sued, and they and their successors may have and use a
 8 common seal and the same may alter or change at pleasure ; and they and
 9 their successors, by their corporate name shall in law be capable of
 10 taking, receiving, purchasing and holding real and personal estate, to make
 11 by-laws for the management of its affairs, not inconsistent with the consti-
 tution and laws of this state or of the United States, to elect and appoint
 the officers and agents of such society for the management of its business.

2 SEC. 7. The society so incorporated may annually or oftener elect from
 3 its members its trustees, directors or managers at such time and place and
 4 in such manner as may be specified in its by-laws, who shall have the con-
 5 trol and management of the affairs and funds of said society, a majority of
 6 whom shall be a quorum for the transaction of business, and whenever any
 7 vacancy shall happen among such trustees, directors or managers, by death,
 8 resignation or neglect to serve, such vacancy shall be filled in such manner
 9 as shall be provided by the by-laws of such society. *Provided*, That when
 10 the body corporate consists of the trustees, directors, or managers of any
 11 benevolent, charitable, literary, scientific, religious or missionary institution,
 which is or may be established in the state of Iowa, and which is or may

12 be under the patronage, control, direction or supervision of any synod, con-
 13 ference, association or other ecclesiastical body in the state of Iowa, es-
 14 tablished agreeably to the laws of said state, such ecclesiastical body may
 15 nominate and appoint said trustees, directors or managers, according to
 16 usages of the appointing body; and may fill any vacancy which may occur
 17 among such trustees, directors or managers. *And provided further,* That
 18 when any such institution may be under the patronage, control, direction or
 19 supervision of any two or more of such synods, conferences, associations or
 20 other ecclesiastical bodies such bodies may severally nominate and appoint
 21 such proportion of such trustees, directors or managers as shall be agreed upon
 22 by the ecclesiastical bodies immediately concerned. And any vacancy oc-
 23 curring among such appointees last named, shall be filled by the synod, con-
 24 ference, association, or body having appointed the last incumbent.

SEC. 8. In case it shall at any time happen that an election of trustees,
 2 directors or managers shall not be made on the day designated by the by-
 3 laws, said society for that cause shall not be dissolved, but it shall and may be
 4 lawful on any other day to hold an election for trustees, directors or mana-
 5 gers, in such manner as may be directed by the by-laws of such society.

SEC. 9. The provisions of this chapter shall not extend or apply to any
 2 association or individual who shall in the certificate filed with the recorder
 3 use or specify a name or style the same as that of any previously existing
 4 incorporated society in the county.

SEC. 10. Any corporation formed under this chapter shall be capable of
 2 taking, holding or receiving any property real or personal, by virtue of any
 3 devise or bequest contained in any last will or testament of any person what-
 4 soever: *provided,* no person leaving a wife or children or parent shall devise
 5 or bequeath to such institution or corporation more than one fourth of his or
 6 her estate, after the payment of his or her debts, and such devise or bequest
 7 shall be valid to the extent of such one-fourth.

SEC. 11. The trustees, directors or stockholders of any existing benevo-
 2 lent, charitable, scientific or missionary or religious corporations may, by
 3 conforming to the requirements of the third section of this chapter, re-incor-
 4 porate themselves or continue their existing corporate powers, and all the
 5 property and effects of such existing corporation shall vest in and belong to
 6 the corporation so re-incorporated or continued.

CHAPTER 3. *Of State and County Agricultural Societies.*

SEC. 1. There shall be held at the capital of the state, on the second
 2 Wednesday of January in each year, an annual meeting of the board of
 3 directors of the Iowa State Agricultural Society, together with the president
 4 of each county society in the state, or other delegate therefrom, duly auth-
 5 orized in writing, who shall for the time being, be members of the board,
 6 and entitled to all the rights and privileges of any other member; and at
 7 such annual meeting, officers and directors shall be chosen, the place for
 8 holding the next annual exhibition shall be determined, premiums on essays
 9 and field crops shall be awarded, and all questions relating to the agricultura-
 10 ral development of the state may be considered

SEC. 2. The officers chosen at such annual meeting shall be a president,
 2 vice-president, secretary, treasurer, and five directors. The president, vice-
 3 president, secretary, and treasurer, shall serve one year, and shall be direct-
 4 ors by virtue of their office. The other directors shall serve two years, so

5 that the entire number of such directors in the board shall always be ten,
6 one half of whom shall be chosen annually. Any five members of the
7 board shall constitute a quorum, when regularly convened: and the presi-
8 dent of the society shall have power to call meetings of the board whenever
9 he may deem it expedient.

2 SEC. 3. The sum of two thousand dollars is appropriated annually for
3 the benefit of the Iowa State Agricultural Society, and shall be paid by the
4 auditor of state upon the order of the president of said society, in such sums
5 and at such times as may be for the interests of said society.

2 SEC. 4. The premium list and rules of exhibition shall be determined
3 and published by the board of directors prior to the first of April in each
4 year.

2 SEC. 5. It shall be the duty of said board of directors to make an annual
3 report to the general assembly or to the governor, in the alternate years
4 when the general assembly may not be in session, embracing the proceedings
5 of said society and board of directors for the past year, and an abstract of
6 the proceedings of the several county societies, as well as a general view of
7 the condition of agriculture throughout the state, accompanied with such
8 essays, statements and recommendations as they may deem interesting and
9 useful, which reports shall be published by the state, under the supervision
10 of the society. The number of copies to be published shall be limited to
11 three thousand, all of which shall be bound in a manner and style uniform
12 with those bound by the state for the year 1859, and 1860; *provided*, said
13 binding shall not cost more than thirty cents per copy.

2 SEC. 6. The secretary of state shall distribute the reports as follows :
3 Ten copies to the state university, ten copies to the state library, ten copies
4 to the state agricultural college, one copy to each member of the general
5 assembly, the remainder to the secretary of state agricultural society, by him
6 to be distributed to the county agricultural societies: *Provided*, That one
7 copy shall be sent to the board of supervisors of each organized county in
8 which there is no agricultural society.

2 SEC. 7. It shall be the duty of all county agricultural societies annually
3 to offer and award premiums for the improvement of domestic industry, and
4 such other articles and improvements as they may deem proper. And it
5 shall also be their duty so to regulate the amount of premiums and the dif-
6 ferent grades of the same, that it will be competent for small as well as large
7 farmers and artizans to compete therefor.

2 SEC. 8. It shall be the duty of each county society to publish annually a
3 list of the awards, and an abstract of the treasurer's account, in one or more
4 newspapers of the county or adjoining counties, and to make a report of their
5 proceedings during the year, and a synopsis of the awards. And also make a
6 report of the condition of agriculture in their county to the board of direct-
7 ors of the Iowa state agricultural society; which shall be forwarded by mail
8 or otherwise to the secretary of said society, on or before the first of Decem-
9 ber of each year; and a failure to make such report shall forfeit twenty per
10 cent upon the amount said society is entitled to draw from the state treasury,
11 and the secretary shall be liable to the society for that amount. And it
12 shall be the duty of the auditor of state, before issuing his warrant in favor of
13 said societies for any amount, to demand the certificate of the secretary of
the state society that such report has been made.

2 SEC. 9. The aid extended to county and district agricultural societies
3 shall be withheld in each year in which the receipts of any of such societies
4 shall exceed the sum of five hundred dollars; *provided*, that donations and

4 appropriations to aid in purchasing and fitting up fair grounds, and the ap-
5 propriations from the state shall in no case be construed to be part of the
6 annual receipts of such society.

SEC. 10. When any county or district agricultural society, composed of
2 one or more counties, have made their report to the state society as provided
3 in section 8 of this chapter, and raised during the year any sum of money
4 for actual membership, they shall be entitled to an equal sum, not exceeding
5 two hundred dollars, from the state treasury, upon affidavit of the president,
6 secretary, or treasurer of said society, that such sum was raised for the
7 legitimate purposes of the society during the current year, accompanied by
8 the certificate of the secretary of the state agricultural society, that they have
9 reported according to law.

SEC. 11. Whenever any county agricultural society, organized according
2 to law, shall have procured in fee simple, free from incumbrance, land for
3 fair grounds, not less than ten acres in extent, the board of supervisors of
4 said county may appropriate and pay to such society a sum not exceeding one
5 hundred dollars for every thousand inhabitants in said county, to be ex-
6 pended by such society in fitting up such fair grounds, but for no other
7 purposes: *Provided*, that no appropriation be made unless a majority of all
8 the supervisors in such county shall ask for the same, and not more than
9 one thousand dollars shall in the aggregate be appropriated to any one
10 society.

SEC. 12. Each society receiving such appropriation shall, through its
2 secretary, make to the board of supervisors a detailed statement, with
3 vouchers, showing the legal disbursement of all the moneys so received.

SEC. 13. No person shall be permitted to sell any intoxicating liquors
2 of any kind, or be engaged in any gambling or horse-racing, either inside
3 the enclosure where any county or district agricultural society fair is held,
4 or within one hundred and sixty rods thereof during the time of holding
5 such fair, and any person found guilty of any of the offenses herein enume-
6 rated, shall be fined in a sum not less than five nor more than fifty dollars
7 for every such offense.

SEC. 14. It shall be lawful for the president of any district or county
2 agricultural society to grant a written permit to such persons as he may
3 deem necessary, to sell fruit, provisions, and other necessaries, to such per-
4 sons as may be in attendance at any such fair, under such regulations and
5 restrictions as the board of directors may prescribe.

SEC. 15. The president of any such society shall be empowered to arrest
2 or cause to be arrested any person or persons engaged in violating any of
3 the provisions contained in section 13 of this chapter, and cause them forth-
4 with to be taken before some justice of the peace, there to be dealt with as
5 provided for in said section, and he may seize or cause to be seized all in-
6 toxicating liquors of any kind, with the vessels containing the same, and all
7 tools or other implements used in any gambling, and may remove or cause
8 to be removed all shows, swings, booths, tents, carriages, wagons, vessels,
9 boats, or any other nuisance that may obstruct or cause to be obstructed,
10 (by collecting persons around or otherwise) any thoroughfare leading to any
11 entrance to the enclosure in which such agricultural fair is held, and any per-
12 son owning or occupying any of the causes of obstructions herein specified,
13 who may refuse or fail to remove such obstructions or nuisance, when
14 ordered so to do by the president of such society, shall be liable to a
15 fine of not less than five and not more than twenty dollars for every such
16 offense.

CHAPTER 4. *Of Insurance Companies.*

1 SEC. 1. When any number of persons associate themselves together for
 2 the purpose of forming an insurance company, for any other purpose than
 3 life insurance, under the provisions of chapter one of this title, they shall
 4 publish a notice of such intention once in each week four weeks in some
 5 public newspaper in the county in which such insurance company is pro-
 6 posed to be located; and they shall also make a certificate, under their
 7 hands, specifying the name assumed by such company, and by which it
 8 shall be known, the object for which said company shall be formed, the
 9 amount of its capital stock, and the place where the principal office of said
 10 company shall be located, which certificate shall be acknowledged before
 11 and certified by some notary public or clerk of a court of record, and for-
 12 warded to the auditor of state, who shall submit the same to the attorney-
 13 general for examination, and if it shall be found by the said attorney-
 14 general to be in accordance with the provisions of this chapter, and not in
 15 conflict with the constitution and laws of the United States and of this
 16 state, he shall make a certificate of the fact and return it to the auditor of
 17 state, who shall reject the name or title applied for by any company when
 18 he shall deem the same too similar to any one already appropriated by any
 19 other company, or likely to mislead the public.

2 SEC. 2. When the certificate of said company shall have received the
 3 approval of the attorney-general and auditor of state, the company shall
 4 cause the same to be recorded as required by law for recording articles of
 5 incorporation, and said persons, when incorporated, and having in all re-
 6 spects complied with the provisions of this chapter, are hereby authorized
 7 to carry on the business of insurance, as named in such certificate of incor-
 8 poration, and by the name and style provided therein, and shall be deemed
 9 a body corporate with succession; they and their associates, successors, and
 10 assigns to have the same general corporate powers, and be subject to all the
 11 obligations and restrictions of said chapter one of this title, except as may
 be herein otherwise provided.

2 SEC. 3. No joint stock company shall be incorporated under the provi-
 3 sions of this chapter with a smaller capital than fifty thousand dollars, or a
 4 larger one than one million dollars, as may be specified in the certificate of
 5 incorporation, which stock shall be divided into shares of one hundred dol-
 6 lars each, of which capital not less than twenty-five per cent. and in no case
 7 less than twenty-five thousand dollars, shall be paid up in cash. The bal-
 8 ance of the capital of said company may consist of the bonds or notes of
 9 the stockholders; nor shall any company, on the plan of mutual insurance,
 10 commence business in this state until agreements have been entered into
 11 for insurance with at least two hundred applicants, the premiums upon
 12 which shall amount to not less than twenty-five thousand dollars, of which
 13 at least five thousand dollars shall have been paid in actual cash, and for the
 14 remainder of which notes of solvent parties, founded upon actual applica-
 15 tion for insurance made in good faith, shall have been received. No one of
 16 the notes received as aforesaid shall amount to more than five hundred dol-
 17 lars; and no two thereof shall be given for the same risk, or made by the
 same person or firm, except where the whole amount of such notes does not

18 exceed the sum of five hundred dollars; nor shall any note be regarded or
 19 represented as capital stock, unless a policy be issued upon the same within
 20 thirty days after the organization of the company taking the same, upon a
 21 risk which shall be for no shorter period than twelve months. Each of said
 22 notes shall be payable, in whole or in part, at any time when the directors
 23 shall deem the same requisite for the payment of losses by fire or inland
 24 navigation, and such incidental expenses as may be necessary for transacting
 25 the business of said company. And no note shall be accepted as part of
 26 such capital stock unless the same shall be accompanied by a certificate of a
 27 justice of the peace, notary public, or clerk of the district court of the
 28 county in which the person executing such note shall reside, that the person
 29 making the same is, in his opinion, pecuniarily good and responsible for the
 30 same in property not exempt from execution by the laws of their state; and
 31 no such note shall be surrendered while the policy for which it was given
 32 continues in force.

SEC. 4. Having published the notice and filed the publishers' affidavit of
 2 the publication thereof with the auditor of state, together with the certifi-
 3 cate required by the first section of this chapter, the persons named in the
 4 certificate of incorporation, or a majority of them, shall be commissioners to
 5 open books for the subscription of stock to the company at such times and
 6 places as to them may seem convenient and proper, and shall keep the same
 7 open until the full amount specified in the certificate is subscribed; or, in
 8 case the business of such company is proposed to be conducted on the plan
 9 of mutual insurance, then to open books to receive propositions and enter
 10 into agreements in the manner and to the extent specified in the third sec-
 11 tion of this chapter.

SEC. 5. The affairs of any company, organized under the provisions of
 2 this chapter, shall be managed by not more than twenty-one nor by fewer
 3 than five directors, all of whom shall be stockholders. Within thirty days
 4 after the subscription book shall have been filled, a majority of the sub-
 5 scribers shall hold a meeting for the election of directors—each share en-
 6 titling the holder thereof to one vote; and the directors then elected shall
 7 continue in office until their successors have been duly chosen and have ac-
 8 cepted the trust.

SEC. 6. It shall be lawful for any insurance company organized under
 2 this chapter, to invest its capital and the funds accumulated in the course of
 3 its business, or any part thereof, in bonds and mortgages on unencumbered
 4 real estate within the state of Iowa, worth double the sum loaned thereon,
 5 exclusive of buildings, unless such buildings are insured in some respon-
 6 sible company, and the policy transferred to said company, and also in stocks
 7 of this state, or stocks or treasury notes of the United States,—in the stocks
 8 or bonds of any county or incorporated city in this state which may have
 9 been heretofore authorized to be issued by the legislature of this state; and
 10 to lend the same, or any part thereof, on the security of such stocks or bonds,
 11 or treasury notes, or upon bonds and mortgages as aforesaid and not other-
 12 wise; and to change and re-invest the same in like securities as occasion
 13 may from time to time require; but any surplus money over and above the
 14 paid-up capital stock of any such company organized under this chapter, or
 15 incorporated under any law of this state—may be invested in or loaned
 16 upon the pledge of the public stock or bonds of the United States, or any
 17 one of the states, or the stocks, bonds, or other evidences of indebtedness
 18 of any solvent, dividend-paying institutions incorporated under the laws of
 19 this state or of the United States, except their own stock: *Provided*, That

20 the current market value of such stock, bonds, or other evidences of indebt-
 21 edness, shall be at all times, during the continuance of such loans, at least
 22 ten per cent. more than the sum loaned thereon.

2 SEC. 7. Upon receiving notification that the requirements of the prece-
 3 ding sections have been complied with, the auditor of state shall make an
 4 examination, or cause one to be made by some disinterested person officially
 5 appointed by him for that purpose: and if it shall be found that the capital
 6 herein required of the company named, according to the nature of the busi-
 7 ness proposed to be transacted by such company, has been paid in and is
 8 possessed by it in money, or in such stock, notes, bonds, and mortgages as
 9 are required by the third and sixth sections of this chapter, then he shall so
 10 certify; and if the examination be made by any other than the auditor, then
 11 the finding shall be certified under oath; or, if it is proposed to be a mutual
 12 insurance company, such certificate shall be to the effect that it has received
 13 and is in actual possession of the capital, premiums, or actual engagements
 14 of insurance or other securities, as the case may be, to the extent and value
 15 required by the third and sixth sections of this chapter. The name and
 16 residence of the maker of each premium note forming part of the capital of
 17 any such proposed mutual insurance company, and the amount of such note,
 18 shall be returned to the auditor.

19 The corporators or officers of any such company or proposed company,
 20 shall be required to certify under oath to the auditor of state that the
 21 capital exhibited to the person making the examination directed in this
 22 section, was actually and in good faith the property of the company so ex-
 23 amined. The certificates above contemplated shall be filed in the office of
 24 said auditor, who shall thereupon deliver to such company a certified copy
 25 of the same—with his written permission for them to commence the busi-
 26 ness proposed in their written certificate of incorporation—which on being
 27 placed on record in the office of the recorder of the county in which the
 28 company is to be located, by the recorder in a book prepared by him for
 29 that purpose, shall be their authority to commence business and issue poli-
 30 cies; and such certified copy of said certificates may be used in evidence for
 or against said company with the same effect as the originals.

2 SEC. 8. It shall be lawful for any company organized under this chapter
 3 or doing business in this state: First, to insure houses, buildings, and all
 4 other kinds of property against loss or damage by fire, or other casualty,
 5 and to make all kinds of insurance on goods, merchandise, or other property
 6 in the course of transportation whether on land or on water, or any vessel
 7 or boat, wherever the same may be; second, to make insurance on the health
 8 of individuals, and against the personal injury, disablement and death re-
 9 sulting from traveling, or general accidents by land or water; Third, to in-
 10 sure the fidelity of persons holding places of private or public trust; Fourth,
 11 to receive on deposit and insure the safe-keeping of books, papers, moneys,
 12 stocks, bonds, and all kinds of personal property; Fifth, to insure horses,
 13 cattle, and other live stock against loss or damage by accident, theft, or any
 14 unknown or contingent event whatever which may be the subject of legal
 15 insurance: to lend money on bottomry or respondentia, and to cause itself
 16 to be insured against any loss or risk it may have incurred in the course of
 17 its business, and upon the interest which it may have in any property by
 18 means of any loan which it may have made on mortgage, bottomry, or re-
 19 spondentia, and generally to do and perform all other matters and things
 20 proper to promote these objects: *Provided*, That no company shall be or-
 ganized to issue policies of insurance for more than one of the above five

21 mentioned purposes, and no company that shall have been organized for
 22 either one of said purposes shall issue policies of insurance for any other;
 23 and no company organized under this chapter, transacting business in this
 24 state, shall expose itself to loss on any one risk or hazard to an amount ex-
 25 ceeding ten per cent. on its paid-up capital, unless the excess shall be rein-
 26 sured by the same in some other good and reliable company: *And pro-*
 27 *vided*, That the restrictions as to the amount of risk any company shall as-
 28 sume, shall not apply to any companies organized to guarantee the fidelity
 29 of persons in places of public or private trust, nor to companies that receive
 30 on deposit and guarantee the safe-keeping of books, papers, moneys, and
 31 other personal property.

2 SEC. 9. The annual meetings for the election of directors shall be holden
 3 during the month of January, at such time as the by-laws of the company
 4 may direct: *Provided, however*, That if for any cause the stockholders shall
 5 fail to elect at any annual meeting, then they may hold a special meeting
 6 some day subsequent thereto for that purpose, by giving thirty days' notice
 7 thereof in some newspaper in general circulation in the county in which the
 8 principal office of the company shall be located, and the directors
 9 chosen at an such annual or special meeting shall continue in office until the
 10 next annual meeting and until their successors, duly elected, shall have
 accepted.

2 SEC. 10. The directors shall choose by ballot a president from their own
 3 number, and shall fill all vacancies which shall arise in the board or in the
 4 presidency thereof; and the board of directors thus constituted or a major-
 5 ity of them when convened at the office of the company shall be competent
 to exercise all the powers vested in them by this chapter.

2 SEC. 11. The directors of any such company shall have power to appoint
 3 a secretary, and any other officers or agents necessary for transacting the
 4 business of the company, paying such salaries and taking such securities as
 5 they may deem reasonable; they may ordain and establish such by-laws and
 6 regulations not inconsistent with this chapter or with the constitution and
 7 laws of the United States and of this state, as shall appear to them neces-
 8 sary for regulating and conducting the business of the company; and it
 9 shall be their duty to keep full and correct entries of their transactions,
 10 which shall at all times be open to the inspection of the stockholders, and
 to the inspection of persons invested by law with the right thereof.

2 SEC. 12. All policies or contracts of insurance made or entered into by
 3 the company, may be made either with or without the seal of said company;
 4 but said policies shall be subscribed by the president or such other officer as
 5 may be designated by the directors for that purpose, and shall be attested by
 the secretary thereof.

2 SEC. 13. Transfers of stock may be made by any stockholder, or his
 3 legal representative, subject to such restrictions as the directors shall from
 time to time establish in their by-laws, except as hereinafter provided.

2 SEC. 14. Whenever any company organized under this chapter, with less
 3 than the maximum capital limited in section three hereof, shall, in the opin-
 4 ion of the directors thereof, require an increased amount of capital, they
 5 shall, if authorized by the holders of a majority of the stock to do so, file
 6 with the auditor of state a certificate setting forth the amount of such de-
 7 sired increase, not exceeding said maximum, and thereafter such company
 8 shall be entitled to have the increased amount of capital fixed by said cer-
 tificate, and the examination of securities composing the capital stock thus

9 increased shall be made in the same manner as provided in section seven of
10 this chapter, for the capital stock first paid in.

2 SEC. 15. It shall not be lawful for the directors, trustees, or managers of
3 any insurance company, organized under this chapter, or incorporated un-
4 der any law of this state, to make any dividends, except from the surplus
5 profit arising from their business; and in estimating such profits, there shall
6 be reserved therefrom a sum equal to forty per cent of the amount received
7 as premiums on unexpired risks and policies, which amount so reserved is
8 hereby declared to be unearned premiums; and there shall also be reserved
9 all sums due the corporation on bonds and mortgages, bonds, stocks and
10 book account, of which no part of the principal or interest thereon has been
11 paid during the year preceding such estimate of profits, and upon which suit
12 for foreclosure or collection has not been commenced, or which, after judg-
13 ment has been obtained thereon, shall have remained more than two years
14 unsatisfied, and on which interest shall not have been paid; and in case of
15 any such judgment the interest due or accrued thereon, and remaining un-
16 paid, shall also be reserved. Any dividends made contrary to these pro-
visions shall subject the company making it to a forfeiture of their charter.

2 SEC. 16. No company organized under this chapter shall purchase, hold,
3 or convey any real estate save for the purposes, and in the manner herein
4 set forth, to-wit: First—such as shall be requisite for its convenient accom-
5 modation in the transaction of its business; Second—such as shall have
6 been mortgaged to it in good faith, by way of security for loans previously
7 contracted, or for money due; Third—such as shall have been conveyed to
8 it in satisfaction of debts previously contracted in the legitimate business of
9 the company, or for money due; or, Fourth—such as shall have been pur-
10 chased at sales upon judgments, decrees, or mortgages obtained or made for
11 such debt; and it shall not be lawful for any such company to purchase,
12 hold, or convey real estate in any other case or for any other purpose, or ac-
13 quired in any other manner, except that it may convey real estate which
14 shall be found in the course of its business not necessary for its conven-
15 ient accommodation in the transaction thereof; and all such last-mentioned
16 real estate shall be sold and conveyed within three years after the same have
17 been deemed by the auditor of state unnecessary for such accommodation,
18 unless the company shall procure a certificate from the said auditor, that the
19 interest of said company will materially suffer by a forced sale, in which
20 event the sale may be postponed for such a period as the said auditor shall
direct in said certificate.

2 SEC. 17. All notes deposited with any mutual insurance company at the
3 time of its organization, as provided in section three hereof, shall remain as
4 security for all losses and claims until the accumulation of the profits in-
5 vested as required by the sixth section of this chapter, shall equal the
6 amount of cash capital required to be possessed by stock companies organ-
7 ized under this chapter, the liability of each note decreasing proportionately
8 as the profits are accumulating; but any note which may have been deposited
9 with any mutual insurance company subsequent to its organization, in addi-
10 tion to the cash premiums on any insurance effected with such company,
11 may, at the expiration of the time of such insurance, or upon the cancella-
12 tion by the company of the policy, be relinquished and given up to the
13 maker thereof, or his legal representatives, upon his paying his proportion
14 of losses and expenses which may have accrued thereon during such term.
15 The directors or trustees of any such company shall have the right to deter-
mine the amount of the note to be given in addition to the cash premium

16 by any person insured in such company; and every person effecting insur-
 17 ance in any mutual company, and also his heirs, executors, administrators,
 18 and assigns, continuing to be so insured, shall thereby become members of
 19 said company during the period of insurance, and shall be bound to pay for
 20 losses and such necessary expenses as aforesaid, accruing to said company,
 21 in proportion in his or their deposit note or notes: *Provided*, That any per-
 22 son insured in any mutual company, except in the case of notes required by
 23 this chapter to be deposited at the time of its organization, may at any time
 24 return his policy for cancellation, and upon payment of the amount due at
 25 such time upon his premium note shall be discharged from further liability
 26 thereon.

SEC. 18. The directors shall, as often as they deem necessary, after re-
 2 ceiving notice of any loss or damage, settle and determine the sums to be
 3 paid by the several members thereof, as their respective portion of such
 4 loss, and publish the same in such manner as they shall deem proper, or
 5 the by-laws shall have prescribed; but the sum to be paid by each mem-
 6 ber shall always be in proportion to the original amount of his deposit note
 7 or notes, and shall be paid to the officers of the company within thirty days
 8 after the publication of said notice; and if any member shall, for the space
 9 of thirty days after personal demand or by letter for payment shall have
 10 been made, neglect or refuse to pay the sum assessed upon him as his pro-
 11 portion of any loss aforesaid, the directors may sue for and recover the
 12 whole amount of his deposit note or notes, with costs of suit; but execution
 13 shall issue for assessments and costs as they accrue only, and every such exe-
 14 cution shall be accompanied by a list of losses for which the assessment was
 15 made. If the whole amount of deposit notes shall be insufficient to pay
 16 the loss occasioned, the sufferers insured by said company shall receive,
 17 toward making good their respective losses, a proportionate share of the
 18 whole amount of said notes, according to the sums to them respectively
 19 insured; but no member shall ever be required to pay for any loss more
 20 than the whole amount of his deposit note or notes.

SEC. 19. Every insurance company hereafter organized as provided in
 2 this chapter, shall, if it be a mutual company, embody the word "mutual"
 3 in its title, which shall appear upon the first page of every policy and re-
 4 newal receipt; and every company doing business as a cash stock company
 5 shall, upon the face of its policies, express in some suitable manner that
 6 such policies were issued by stock companies.

SEC. 20. It shall be the duty of the president, or the vice president and
 2 secretary of each company organized under this chapter, or incorporated
 3 under any law of this state, or doing business in this state, annually, on the
 4 first day of January of each year, or within thirty days thereafter, to pre-
 5 pare under oath, and deposit in the office of the auditor of state a full, true
 6 and complete statement of the condition of such company on the last day of
 7 the month preceding that in which such statement is filed, which last state-
 8 ment shall exhibit the following items and facts in the following form, viz:

9 *First*—The amount of capital stock of the company.

10 *Second*—The name of the officers.

11 *Third*—The name of the company and where located.

12 *Fourth*—The amount of its capital stock paid up.

13 *Fifth*—The property or assets held by the company, specifying,

14 1st. The value, as nearly as may be, of the real estate owned by
 15 such company.

16 2d. The amount of cash on hand and deposited in banks to the credit
 17 of the company, and in what bank the same is deposited.

18 3d. The amount of cash in the hands of agents and in the course of
19 transmission.

20 4th. The amount of loans secured by first mortgage on real estate
21 with the rate of interest thereon.

22 5th. The amount of all other bonds and loans and how secured, with
23 the rate of interest thereon.

24 6th. The amount due the company on which judgment has been
25 obtained.

26 7th. The amount of stocks of this state, of the United States, of
27 any incorporated city of this state, and of any other stocks owned
28 by the company, specifying the amount, number of shares, and
29 par and market value of each kind of stock.

30 8th. The amount of stock held by such company as collateral security
31 for loans, with amount loaned on each kind of stock, its par and
32 market value.

33 9th. The amount of assessments on stock and premium notes, paid
34 and unpaid.

35 10th. The amount of interest actually due and unpaid.

36 11th. All other securities and their value.

37 12th. The amount for which premium notes have been given on which
38 policies have been issued.

39 *Sixth*—The liabilities of such company, specifying :

40 1st. The losses adjusted and due.

41 2d. The losses adjusted and not due.

42 3d. Losses unadjusted.

43 4th. Losses in suspense and the cause thereof.

44 5th. Losses resisted and in litigation.

45 6th. Dividends, either in scrip or cash, specifying amount of each,
46 declared but not due.

47 7th. Dividends declared and due.

48 8th. The amount required to reinsure all outstanding risks on the
49 basis of 40 per cent of the premium on all unexpired risks.

50 9th. The amount due banks or other creditors.

51 10th. The amount of money borrowed and the security therefor.

52 11th. All other claims against the company.

53 *Seventh*—The income of the company during the previous year, speci-
54 fying :

55 1st. The amount received for premiums exclusive of premium notes.

56 2d. The amount of premium notes received.

57 3d. The amount received for interest.

58 4th. The amount received for assessments or calls on stock notes, or
59 premium notes.

60 5th. The amount received from all other sources.

61 *Eighth*—The expenditures during the preceding year, specifying :

62 1st. The amount of losses paid during said term, stating how much
63 of the same accrued prior, and how much subsequent, to the date
64 of the preceding statement, and the amount at which losses were
65 estimated in such preceding statement.

66 2d. The amount paid for dividends.

67 3d. The amount paid for commissions, salaries, expenses, and other
68 charges of agents, clerks, and other employees.

69 4th. The amount paid for salaries, fees, and other charges on officers
70 and directors.

71 5th. The amount paid for local, state, national, internal revenue, and
72 other taxes and duties.

73 6th. The amount paid for all other expenses, expenditures, including
74 printing, stationery, rents, furniture, etc.

75 *Ninth*—The largest amount insured in any one risk.

76 *Tenth*—The amount of risks written during the year then ending.

77 *Eleventh*—The amount of risks in force, having less than one year to
78 run.

79 *Twelfth*—The amount of risks in force, having more than one and not
80 over three years to run.

81 *Thirteenth*—The amount of risks having more than three years to run.

82 *Fourteenth*—The following question must be answered, viz.: Are divi-
83 dends declared on premiums received for risks not terminated?

84 *Fifteenth*—Each accident insurance company, or company insuring
85 against accident in this state, shall keep a register of tickets sold by its
86 officers or agents, which register shall show the name and residence of the
87 person insured, the amount of such insurance, the date of issue of such
88 ticket, and the time the same will be and remain in force, and it shall be
89 the duty of every such company to file in the office of the auditor of state,
90 in January in each year, a report, sworn to by the president or secretary
91 of the company, showing the above items of the business of such company
92 during the preceding year, and the auditor of state shall withhold the cer-
93 tificate of authority from any such company neglecting or failing to com-
94 ply with the provisions of this section.

2 **SEC. 21.** The auditor of state is hereby authorized and empowered to
3 address any inquiries to any insurance company in relation to its doings and
4 condition, or any other matter connected with its transactions, which he may
5 deem necessary for the public good, or for a proper discharge of his duties,
6 and it shall be the duty of any company so addressed to promptly reply in
writing thereto.

2 **SEC. 22.** The statement of any company, the capital of which is com-
3 posed in whole, or in part, of notes, shall, in addition to the foregoing, ex-
4 hibit the amount of notes originally forming the capital, and also what
5 proportion of said notes is still held by such company and considered capital.

2 **SEC. 23.** It shall not be lawful for any insurance company, association,
3 or partnership, organized or associated for any of the purposes specified in
4 this chapter, incorporated by or organized under the laws of any
5 other state or any foreign government, directly or indirectly, to
6 take risks or transact any business of insurance in this state, unless pos-
7 sessed of one hundred thousand dollars of actual paid-up capital, exclu-
8 sive of any assets of any such company deposited in any other states
9 or territories for the special benefit or security of the insured therein; and
10 any such company desiring to transact any such business as aforesaid, by an
11 agent or agents in this state, shall file with the auditor of state a written
12 instrument, duly signed and sealed, authorizing any agent or agents of such
13 company in this state, to acknowledge service of process for and in behalf of
14 such company in this state, consenting that service of process, original, mean-
15 or final, upon any such agent or agents, shall be taken and held as valid as
16 if served upon the company according to the laws of this or any other state,
17 and waiving all claim or right of error, by reason of such acknowledgment
18 or service; and also a certified copy of their charter or deed of settlement,
19 together with a statement, under oath of the president or vice president, or
other chief officer, and the secretary of the company for which they may

20 act, stating the name of the company and the place where located ; the
 21 amount of its capital, with a detailed statement of the facts and items
 22 required from companies organized under the laws of this state, as per sec-
 23 tion twenty hereof ; also a copy of the last annual report, if any, made un-
 24 der any law of the state by which such company was incorporated ; and no
 25 agent shall be allowed to transact business for any company whose capital is
 26 impaired by liabilities as stated in section twenty of this chapter, to the
 27 extent of twenty per cent thereof, while such deficiency shall continue.

2 Sec. 24.* It shall not be lawful for any agent or agents to act for any
 3 insurance company or companies referred to herein, directly or indirectly, in
 4 taking risks or transacting business of insurance in this state without pro-
 5 curing from the auditor of state a certificate of authority stating that such
 6 company has complied with all the requisitions of this chapter.

2 Sec. 25. The statements and evidences of investment required of fore-
 3 ign companies as above, shall be renewed annually in such manner and
 4 form as required hereby, and as said auditor may direct, with any additional
 5 statement of the amount of the losses incurred or premium received in this
 6 state, during the preceding period, so long as such agency continues. And
 7 the said auditor, on being satisfied that the capital, securities, and invest-
 8 ments remain secure, as hereinbefore provided, shall furnish a renewal of
 9 his certificates as aforesaid.

2 Sec. 26. Every insurance company organized under the laws of, or doing
 3 business in this state, shall conform to all the provisions of this chapter
 4 applicable thereto, and, when necessary, any existing company shall change
 5 its charter and by-laws so as to conform hereto, by a vote of a majority of
 6 its board of directors, and any president, secretary, or other officer of any
 7 company organized under the laws of Iowa, or any officer or person doing,
 8 or attempting to do, business in this state for any insurance company organ-
 9 ized without this state, failing to comply with any of the requirements of
 10 this chapter, or violating any of the provisions thereof, shall be deemed
 11 guilty of a misdemeanor, and upon conviction thereof, shall be fined in a
 12 sum not exceeding one thousand dollars, and be imprisoned in the county
 13 jail for a period not less than thirty days nor more than six months.

2 Sec. 27. Every agent of any insurance company shall, in all advertise-
 3 ments of such agency, publish the location of the company, giving the name
 4 of the city, town, or village in which the company is located, and the state
 5 or government under the laws of which it is organized. The term agent or
 6 agents used in the foregoing sections shall include an acknowledged agent
 7 or surveyor or any other person or persons who shall, in any manner,
 8 directly or indirectly transact or aid in transacting the insurance business of
 9 any insurance company not incorporated by the laws of this state. The
 10 provisions of the foregoing sections relative to foreign companies shall apply
 11 to all such companies, partnerships, associations, or individuals, whether in-
 12 corporated or not.

2 Sec. 28. It shall be the duty of the auditor of state, whenever he shall
 3 deem it expedient so to do, to appoint one or more persons, not officers,
 4 agents, or stockholders of any insurance company doing business in this
 5 state, to examine into the affairs and condition of any insurance com-
 6 pany incorporated or doing business in this state, or to make such
 7 examination himself; and it shall be the duty of the officers or agents
 8 of such company or companies to cause their books to be opened

8 for the inspection of the auditor or the person or persons so ap-
 9 pointed, and otherwise facilitate such examination so far as may be in their
 10 power so to do ; and, for the purpose of arriving at the the truth in such case,
 11 the auditor, or the person or persons so appointed by him, shall have power
 12 to examine, under oath, the officers or agents of any company, or others, if
 13 necessary, relative to the business and condition of said company ; and when-
 14 ever the auditor shall deem it best for the interest of the public so to do, he
 15 shall publish the result of such investigation in one or more papers in this
 16 state ; and whenever it shall appear to the said auditor, from such exam-
 17 ination, that the assets and funds of any company incorporated in this state
 18 are reduced or impaired by the liabilities of said company, as described un-
 19 der the head of liabilities in the statement required by this chapter, more
 20 than twenty per cent. below the paid-up capital stock required hereby, he
 21 may direct the officers thereof to require the stockholders to pay in the
 22 amount of such deficiency, within such a period as he may designate in such
 23 requisition, or he shall communicate the fact to the attorney-general, whose
 24 duty it shall then become to apply to the supreme court, or, if in vacation,
 25 to one of the judges thereof, for an order requiring said company to show
 26 cause why their business should not be closed ; and the court, or judge, as
 27 the case may be, shall thereupon proceed to hear the allegations and proofs
 28 of the respective parties ; and in case it shall appear to the satisfaction of
 29 said court, or judge, that the assets and funds of said company are not suffi-
 30 cient, as aforesaid, or that the interest of the public requires it, the said
 31 court, or judge, shall decree a dissolution of said company and a distribu-
 32 tion of its effects. The said court, or judge, shall have power to refer the
 33 application of the attorney-general to a referee, to inquire into and report
 34 upon the facts stated therein.

SEC. 29. Any company receiving the aforesaid requisition from the
 2 said auditor, shall forthwith call upon its stockholders for such amounts as
 3 will make its paid-up capital equal to the amount fixed by this chapter or
 4 the charter of said company ; and in case any stockholder shall refuse or
 5 neglect to pay the amount so called for, after notice personally given, or by
 6 advertisement in such time and manner as said auditor shall approve, it
 7 shall be lawful for the said company to require the return of the original
 8 certificate of stock held by such stockholder, and in lieu thereof to issue
 9 new certificates for such number of shares as the said stockholder may be
 10 entitled to in the proportion that the ascertained value of the funds of the
 11 said company may be found to bear to the original capital of the said com-
 12 pany ; the value of such shares for which new certificates shall be issued
 13 to be ascertained under the direction of the said auditor, the company pay-
 14 ing for the fractional parts of shares ; and it shall be lawful for the directors
 15 of such company to create new stock and dispose of the same, and to issue
 16 new certificates therefor, to an amount sufficient to make up the original
 17 capital of the company. And in the event of any additional losses accru-
 18 ing upon new risks, taken after the expiration of the period limited by the
 19 said auditor in the aforesaid requisition for the filling up of the deficiency
 20 shall have been made up, the directors shall be individually liable to the
 21 extent thereof.

SEC. 30. If upon such examination it shall appear to the said auditor,
 2 that the assets of any company, chartered upon the plan of mutual insurance
 3 under this chapter, are insufficient to justify the continuance of such com-
 4 pany in business, it shall be his duty to proceed, in relation to such
 5 company, in the same manner as herein required in regard to joint-stock

6 companies ; and the trustees or directors of such company are hereby made
 7 personally liable for any losses which may be sustained upon risks taken
 8 after the expiration of the period limited by the said auditor for filling up
 9 the deficiency in the capital, and before such deficiency shall have been
 10 made up. Any transfer of the stock of any company, organized under this
 11 chapter, made during the pending of any investigation required above, shall
 12 not release the party making the transfer from his liability for losses, which
 13 may have accrued previous to such transfer.

SEC. 31. The auditor of state shall be authorized to examine into the
 2 condition and affairs of any insurance company, as provided for in this
 3 chapter, doing business in this state, not organized under the laws of this
 4 state, or cause such examination to be made by some person or persons ap-
 5 pointed by him, having no interest in any insurance company ; and whenever
 6 it shall appear to the satisfaction of said auditor that the affairs of any
 7 such company are in an unsound condition, he shall revoke the certificates
 8 granted in behalf of such company, and shall cause a notification thereof to
 9 be published in some newspaper of general circulation, published in the city
 10 of Des Moines, and the agent or agents of such company are, after such
 11 notice, required to discontinue the issuing of any new policy, or the renewal
 12 of any previously issued.

SEC. 32. There shall be paid by every company, association, person or
 2 agents, to whom this chapter shall apply, the following fees: For filing and
 3 examination of the first application of any company, and the issuing of the
 4 certificate of license thereon, ten dollars, five dollars of which shall go to the
 5 attorney general, and five dollars to the auditor; for filing each annual state-
 6 ment herein required, two dollars; for each certificate of authority, fifty
 7 cents; for every copy of paper filed as herein provided, the sum of ten cents
 8 per folio, and fifty cents for certifying the same and affixing the seal of office
 9 thereto, all of which fees shall be paid to the officer required to perform the
 10 duties.

SEC. 33. Whenever the existing or future laws of any other state of the
 2 United States shall require of insurance companies, incorporated by or or-
 3 ganized under the laws of this state, having agencies in such otherstate, or
 4 of the agents thereof, any deposit of securities in such state, for the protec-
 5 tion of policy-holders, or otherwise, or any payment for taxes, fines, penal-
 6 ties, certificate of authority, license fees, or otherwise, greater than the
 7 amounts required for such purposes from similar companies of other states
 8 by the then existing laws of this state, then, and in every such case, all com-
 9 panies of such states establishing or having theretofore established an
 10 agency or agencies in this state, shall be, and are hereby required to make
 11 the same deposit for a like purpose with the auditor of this state, and to pay
 12 to said auditor for taxes, fines, penalties, certificates of authority, license fees,
 13 or otherwise, an amount equal to the amount of such charges and payments,
 14 imposed upon or required by the laws of such state, of the companies of this
 15 state or the agents thereof.

SEC. 34. It shall be the duty of every insurance company of the kind pro-
 2 vided for in this chapter, doing business in this state, organized under the
 3 laws of this state or any other state or country, to publish annually, in two
 4 newspapers of general circulation, one of which newspapers shall be pub-
 5 lished at the capital of this state, and in case of companies organized in the
 6 state of Iowa, one of which shall be published in the county where the
 7 principal office is located, a certificate from the auditor of state that such
 8 company has, in all respects, complied with the laws of this state relating

9 to insurance. Said certificate shall also contain a statement, under the oath
 10 of the president or secretary of such insurance company, of the actual
 11 amount of paid-up capital, the aggregate amount of assets and liabilities
 12 at the date of such certificate, together with the aggregate income and
 13 expenditures of such company for the year preceding the date of such cer-
 14 tificate.

2 SEC. 35. The necessary expenditure of any examination, made or order
 3 ed to be made by the auditor of state under this chapter, shall be certified
 4 to by him, and paid, on his requisition, by the company which is the sub-
 5 ject of such examination. *Provided*, such examination be not required of
 6 companies organized outside of this state doing business in states where an
 7 insurance department is established, and who furnish, whenever required to
 8 do so by the auditor, the certificate of such insurance department exhibiting
 the solvency of such company.

2 SEC. 36. It shall be the duty of the auditor of state to cause to be pre-
 3 pared and furnished to each of the companies organized under the laws of
 4 this state, and to the attorneys or agents of companies incorporated by other
 5 states and foreign governments who may apply for the same, printed forms
 6 of statements required by this chapter, and he may from time to time make
 7 such changes in the forms of these statements as shall seem to him best
 8 adapted to elicit from the companies a true exhibit of their condition in
 respect to the several points hereinbefore enumerated.

2 SEC. 37. It shall be the duty of the auditor of state to cause the inform-
 3 ation contained in the statements required of the companies organized in
 4 this state, to be arranged in a tabular form, and prepare the same in a single
 5 document for printing. Such report shall be made on or before the first
 6 day of March, and five hundred copies shall be printed for the use of the
 auditor, and the same number for the use of the legislature.

2 SEC. 38. It shall not be lawful for any company organized upon the
 3 mutual plan to do business and take risks upon the stock plan, neither for
 4 a company organized as a stock company to do business upon the plan of a
 mutual insurance company.

2 SEC. 39. Nothing in this act shall be so construed as to prevent any
 3 number of persons, not exceeding seven hundred, from making mutual
 4 pledges and giving valid obligations to each other for their own insurance
 5 from loss by fire or death; but such association of persons shall in no case
 6 insure any property not owned by one of their own number, and no life ex-
 7 cept that of their own members, nor shall the provisions of this chapter be
 8 applicable to such associations or companies; *Provided*, such associations
 9 or companies shall in no case pay any salaries or compensation to officers,
 10 agents, or any other employees, except the secretary, and shall receive no
 premiums nor make any dividends.

CHAPTER 1. *Of Life Insurance Companies.*

2 SEC. 1. Every company formed for the purpose of insuring the lives of
3 individuals, whether organized under the laws of this state or of any other
4 state, or foreign country, shall, before issuing any policies on lives within
5 this state, comply with the conditions and restrictions of this chapter.

2 SEC. 2. Joint-stock companies organized under the laws of this state
3 shall have not less than one hundred thousand dollars of capital stock sub-
4 scribed, twenty-five per cent of which shall be paid up and invested in
5 stocks of the United States, or of this state, or in bonds and mortgages
6 upon unencumbered real estate in the state of Iowa, worth, exclusive of
7 improvements, at least double the sum loaned thereon, which said securities
8 shall be deposited with the auditor of state, and upon said deposit and sat-
9 isfactory evidence to the auditor, that the capital stock is all subscribed in
10 good faith, he shall issue to said company the certificate hereinafter provided
11 for: *Provided*, No part of the twenty-five per cent. aforesaid shall be
12 loaned to any stockholder or officer of the company; the remainder of such
13 stock shall be paid in such time as the directors or trustees of the company
14 may direct, and the same shall be secured by the notes of the stockholders
15 of said company. And no note shall be accepted as part of such capital
16 stock unless the same shall be accompanied by a certificate of a justice of
17 the peace, notary public, or clerk of the district court of the county in which
18 the person executing such note shall reside, that the person making the
19 same is, in his opinion, pecuniarily good and responsible for the same in
20 property not exempt from execution by the laws of this state.

2 SEC. 3. Companies organized under the laws of this state upon the mu-
3 tual plan, shall, before issuing any policies, have actual applications on at
4 least two hundred and fifty individual lives for an average amount of one
5 thousand dollars each, a list of which applications, giving the name, age,
6 residence, amount of insurance, and annual premium of each applicant, shall
7 be filed with the auditor of state, and a deposit made with said auditor of an
8 amount equal to three-fifths of the whole annual premium on said applica-
9 tions, either in cash or the securities required by the foregoing section, and
10 on compliance with said provisions, the auditor shall issue to said mutual
11 company the certificate hereinafter prescribed.

2 SEC. 4. It shall not be lawful for any person to act within this state as
3 agent, or otherwise, in receiving or procuring applications for insurance, or
4 in any manner to aid in transacting the business of insurance referred to in
5 the first section hereof, for any company or association incorporated by, or
6 organized under the laws of any state or government, unless such company is
7 possessed of the amount of actual capital required of companies in this state,
8 and the same is invested in stocks or treasury notes of the United States, or
9 of the state of Iowa, or of interest-paying bonds of the state in which said
10 company is located, or where said deposits are made, or in bonds and mort-
11 gages on unencumbered real estate within the state where such company is
12 located; but all mortgages deposited by any company under this section,
13 shall be upon unencumbered real estate worth double the amount loaned
14 thereon; which stocks and securities shall be deposited with the auditor,
15 controller, or chief financial officer of the state by whose laws said company
16 is incorporated, or some other state, and the auditor of this state furnished

16 with a certificate of such auditor, controller, or chief financial officer afore-
 17 said, under his hand and official seal, that he, as such auditor, controller, or
 18 chief financial officer of such state, holds in trust and on deposit, for the
 19 benefit of all the policy-holders of such company, the security before men-
 20 tioned, which certificate shall embrace the items of security so held, and that
 21 he is satisfied that such securities are worth one hundred thousand dollars;
 22 but nothing herein contained shall be construed to invalidate the agency of
 23 any company incorporated in another state, by reason of such company hav-
 24 ing from time to time exchanged the securities so deposited with the auditor,
 25 controller, or chief financial officer of the state in which such company is
 26 located for other stock or securities authorized by this chapter, or by reason
 27 of such company having drawn its interest and dividends from time to time,
 28 for such stocks and securities.

SEC. 5. Such company shall also appoint an attorney or agent in each
 2 county in this state, in which the company has an agency, on whom process
 3 of law can be served, and such company shall file with the auditor of state
 4 a certified copy of the charter or articles of incorporation of said company,
 5 and also a certified copy of the certificate of appointment of such agent or
 6 agents, which appointment shall continue until another agent or attorney be
 7 substituted. And in case any such insurance corporation shall cease to
 8 transact business in this state according to the laws thereof, the agents last
 9 designated, or acting as such for such corporation, shall be deemed to continue
 10 agents for such corporation for the purpose of serving process for commencing
 11 actions upon any policy or liability issued or contracted while such corpora-
 12 tion transacted business in this state, and service of such process for the
 13 causes aforesaid, upon any such agent, shall be deemed a valid personal
 14 service upon such corporation, and such company shall also file a statement
 15 of its condition and affairs in the office of the auditor of state, in the same
 16 form and manner required for the annual statements of similar companies
 17 organized under the laws of this state.

SEC. 6. It shall not be lawful for any agent to act for any company
 2 referred to in the foregoing section, directly or indirectly, in taking risks,
 3 collecting premiums, or in any manner transacting the business of life in-
 4 surance in this state without procuring from said auditor a certificate of
 5 authority, stating that the foregoing requirements have been complied with,
 6 and setting forth the name of the attorney for such company, a certified
 7 copy of which certificate shall be filed in the county recorder's office of the
 8 county where the agency is to be established, and shall be the authority of
 9 such company and agents to commence business in this state, and such com-
 10 pany, or its agents or attorneys shall, annually, in the month of January,
 11 within thirty days thereafter, file with the auditor of this state a statement
 12 of its affairs for the preceding year, in the same manner and form provided
 13 for similar companies in this state.

SEC. 7. It shall be the duty of the president or vice-president, and secre-
 2 tary or actuary, or a majority of the trustees or directors of each company
 3 organized under this chapter, or doing business in this state, annually on the
 4 first day of January, or within thirty days thereafter, to prepare under oath,
 5 and deposit in the office of the auditor of state, a statement, showing—

6

FIRST—NAME AND CAPITAL.

- 7 1st. The name of the company and where located.
 8 2d. The names of the officers.
 9 3d. The amount of capital stock.
 10 4th. The amount of capital stock paid in.

11

SECOND—ASSETS.

- 12 1st. The value of real estate owned by such company.
 13 2d. The amount of cash on hand.
 14 3d. The amount of cash deposited in bank, giving name of bank or
 15 banks.
 16 4th. The amount of cash in the hands of agents, and in the course of
 17 transmission.
 18 5th. The amount of bank stocks, with the name of each bank, giving
 19 par and market value of the same.
 20 6th. The amount of stocks and bonds of the United States, and all other
 21 bonds, giving names and amounts, with the par and market value
 22 of each kind.
 23 7th. The amount of loans secured by first mortgage on real estate.
 24 8th. The amount of all other bonds and loans, and how secured, with
 25 the rate of interest.
 26 9th. The amount of premium notes on policies in force.
 27 10th. The amount of notes given for unpaid stock, and how secured.
 28 11th. The amount of assessments unpaid on stock or premium notes.
 29 12th. The amount of interest due and unpaid.
 30 13th. All other securities.

31

THIRD—LIABILITIES.

- 32 1st. The amount of losses due and unpaid.
 33 2d. The amount of losses adjusted, but not due.
 34 3d. The amount of losses unadjusted.
 35 4th. The amount of claims for losses resisted.
 36 5th. The amount of money or evidences of investment borrowed.
 37 6th. The amount of dividends unpaid.
 38 7th. The amount required to safely reinsure all outstanding risks.
 39 9th. All other claims against the company.

40

FOURTH—INCOME DURING THE YEAR.

- 41 1st. The amount of net cash premiums received.
 42 2d. The amount of premium notes received.
 43 3d. The amount of interest received from all sources.
 44 4th. The amount received from all other sources.

45

FIFTH—EXPENDITURES DURING THE YEAR.

- 46 1st. The amount paid for losses.
- 47 2d. The amount of dividends paid to policy-holders, and amount to
- 48 stockholders.
- 49 3d. The amount of commissions and salaries paid to agents.
- 50 4th. The amount paid to officers for salaries and other perquisites.
- 51 5th. The amount paid for taxes.
- 52 6th. The amount of all other payments and expenditures.

53

SIXTH—MISCELLANEOUS.

- 54 1st. The greatest amount insured on any one life.
- 55 2d. The amount deposited in other states or territories as security for
- 56 policy-holders therein, stating the amount in each state or territory.
- 57 3d. The amount of premiums received in this state during the year.
- 58 4th. The amount paid for losses in this state during the year.
- 59 5th. The whole number of policies issued during the year, with the
- 60 amount of insurance effected thereby, and total amount of risk.
- 61 6th. All other items of information necessary to enable the auditor to
- 62 correctly estimate the cash value of policies, or to judge of the cor-
- 63 rectness of the valuation thereof.

SEC. 8. The auditor of state is hereby authorized to amend the form
 2 of annual statement, and to propose such additional inquiries as he may
 3 think necessary to elicit a full exhibit of the standing of companies doing
 4 business in the state.

SEC. 9. As soon as practicable after the filing of said statement of any
 2 company organized or doing business under the laws of this state, in the
 3 office of the auditor of state, he shall proceed to ascertain the net cash value
 4 of each policy in force, upon the basis of the New York standard of valua-
 5 tion of life policies, it being Dr. Farr's English Life Table number three,
 6 for males, with interest at five per cent, or Actuary's Combined Experience
 7 Table of Mortality, with interest at four cent; but in case such valuation
 8 has been made in New York, or any other state, upon the basis above speci-
 9 fied, a certificate of the auditor, controller, or chief financial officer of such
 10 state, shall be taken by the auditor of this state as sufficient evidence of the
 11 valuation of such policies, and of the amount so required for such re-insu-
 12 rance. And for the purpose of making such valuations, when not already
 13 done as aforesaid, the auditor may employ a competent actuary to do the
 14 same, who shall be paid by the company for which the service was ren-
 15 dered; but nothing herein shall prevent any company from making said
 16 valuation herein contemplated, which shall be received by the auditor upon
 17 such proof as he may determine. Upon ascertaining the net cash value of
 18 policies in force in any company organized under the laws of this state, or
 19 doing business in this state, and which has not made the deposit required
 20 in section four of this chapter, the auditor shall notify said company of
 21 the amount, and within thirty days after the date of such notification, it
 22 shall be the duty of the officers of such company to deposit with the auditor
 23 the amount of such ascertained valuation of all policies within this state in
 24 stocks of the United States or of this state, or any other state of this union,

25 or in bonds and mortgages on real estate within the limits of this state, or
 26 within the state where such company is located, of at least double the value
 27 loaned thereon: *Provided*, that no joint stock company organized under the
 28 laws of this state, or doing business therein, shall be required to make such
 29 deposit until the cash value of the policies in force, as ascertained by the
 30 auditor exceeds the amount deposited by said company under section two
 31 hereof: And *Provided*, that foreign companies doing business in this state
 32 are not required to make a deposit in this state, provided such deposit has
 33 been made in the state where located, or in any other state, when they shall
 34 have complied with section four of this chapter.

SEC. 10. On the receipt of the deposit and statement from any company
 2 as provided in the preceding sections, and the statement and evidences of
 3 investment according to law of foreign companies, which shall be renewed
 4 annually, the auditor shall issue a certificate setting forth the corporate
 5 name of the company; its principal office or agency in the state; that it had
 6 fully complied with the laws of this state in relation to life insurance compa-
 7 nies, and is authorized to transact the business of life insurance for twelve
 8 months from the date of such certificate, or until the expiration of the thirty
 9 days' notice given by the auditor of the next annual valuation of its policies.
 10 The certificate shall be recorded in the recorder's office in the county in
 11 which such principal office is located, in a book prepared for that purpose.
 12 A copy of the certificate, certified by the auditor, shall be, by the general
 13 agent of said company, furnished to each of its local or travelling agents,
 14 and said copy shall be their authority for soliciting applications for policies.

SEC. 11. Upon the failure of any company to make the deposit, or file
 2 the statement in the time stated herein, the auditor shall notify the attorney-
 3 general of the default, who shall at once apply to the supreme or district
 4 court, if in session, or if in vacation to any judge thereof, for an order re-
 5 quiring said company to show cause why its business shall not be closed;
 6 and if upon hearing the company shall fail to show sufficient cause for neg-
 7 lecting to make the deposit, or file the certificate required by this chapter,
 8 then if said company was organized under the laws of this state, the court
 9 shall decree its dissolution, and if organized and chartered by the laws of
 10 any foreign state or country, shall enjoin said company perpetually from
 11 transacting business of any life insurance within this state.

SEC. 12. The auditor may at any time make a personal examination of
 2 the books, papers, and securities of any life insurance company doing busi-
 3 ness in this state, or may authorize or empower any other suitable person,
 4 to make such examination, and for the purpose of securing a full and true
 5 exhibit of its affairs, he or the person selected by him to make such
 6 examination shall have power to examine, under oath, any officer or
 7 agent of said company, or others if necessary, relative to its business
 8 and management. If upon such examination the auditor is of opinion
 9 that the company is insolvent, or that its condition is such as to render its
 10 further proceedings hazardous to the public or to the holders of its policies,
 11 he shall communicate the facts to the attorney-general, who shall at once
 12 apply to a judge of the supreme or district court to issue an injunction restrain-
 13 ing such company from transacting further business (except the payment of
 14 losses already ascertained and due) until a full hearing can be had. It
 15 shall be discretionary with the judge either to issue the injunction forthwith,
 16 or to give notice to the company, and cause a hearing to be had as in ordi-
 17 nary proceedings for an injunction. Upon the final hearing of the cause,

18 he may dissolve or modify the injunction, or make it perpetual, and if made
 19 perpetual, shall also decree what disposition shall be made of the deposit of
 20 the company in the hands of the auditor, subject to the provisions of the fol-
 21 lowing section: *Provided*, The certificate of the auditor, controller, or chief
 22 financial officer of any state having an insurance department, as to the solv-
 23 ency of any company doing business in this state, shall be taken by the
 24 auditor of this state as evidence of such solvency.

SEC. 13. The securities of a defaulting or insolvent company, on deposit
 2 with the auditor of state, shall vest in the state for the benefit of the poli-
 3 cies on which such deposits were made, and the proceeds of the same shall,
 4 upon the order of the court, be divided among the holders of said policies
 5 in the proportions of the last annual valuation of the same, or applied to
 6 the purchase of re-insurance for the benefit of the policy-holders.

SEC. 14. Companies shall have the right at any time to change their
 2 securities on deposit by substituting for those withdrawn a like amount in
 3 other securities of the character provided for in this chapter, and whenever
 4 the annual valuation of policies outstanding and in force against any com-
 5 pany, is less than the amount of security then on deposit with the auditor,
 6 said company shall have the right to withdraw such excess: *Provided*,
 7 \$25,000 shall remain on deposit.

SEC. 15. The auditor shall permit companies, having on deposit with
 2 him stock or bonds as security, to collect the interest accruing on such de-
 3 posits, delivering to their authorized agents respectively the coupons or
 4 other evidences of interest as the same become due, but upon default by
 5 any company to deposit additional security as called for by the auditor, or
 6 pending any proceedings to close up or enjoin it, he shall collect the inter-
 7 est as it becomes due, and add the same to the securities in his hands belong-
 8 ing to such company.

SEC. 16. At the earliest practicable date after the returns are received
 2 from the several insurance companies, the auditor shall make a report to
 3 the general assembly of the general conduct and condition of the corpora-
 4 tions visited by him since his last annual report, and shall include therein an
 5 aggregate of the calculated value of all outstanding policies of life insurance,
 6 and in connection therewith shall prepare an abstract of all the returns and
 7 statements made to him by insurance companies and agents.

SEC. 17. Any company doing business in this state without the certifi-
 2 cate required by section ten of this chapter, shall forfeit one hundred
 3 dollars for every day's neglect to procure said certificate. Any agent
 4 making insurance, or soliciting applications for any company having no
 5 certificate from the auditor, shall forfeit the sum of three hundred dollars,
 6 and any person acting for a company authorized to transact business in this
 7 state, without having a certified copy of the company's certificate, issued by
 8 the auditor of state, in his possession, shall be liable to pay twenty-five dol-
 9 lars for each day's neglect to procure such copy.

SEC. 18. A policy of insurance on the life of an individual, in
 2 the absence of an agreement or assignment to the contrary, shall inure to
 3 the separate use of the husband or wife and children of said individual, in-
 4 dependently of his or her creditors; and an endowment policy, payable to
 5 the assured on attaining a certain age, shall be exempt from liability for any
 6 of his or her debts.

SEC. 19. The auditor shall charge the following fees: For filing each
 2 annual statement, including the first application of any company, the sum of

3 five dollars. For each certificate of authority to do business under this chap-
 4 ter, one dollar. For annual valuation of policies, five cents on every thou-
 5 sand dollars insured on lives; and this fee shall cover all charges by the
 6 state for the safe-keeping of deposits made by the companies. For chang-
 7 ing securities, by withdrawing one and substituting another, the sum of
 8 twenty-five cents for each thousand dollars or fractional part thereof. For
 9 making personal examinations of the books, papers, and officers of a com-
 10 pany, the sum of five dollars a day for each day so employed, and actual
 11 traveling expenses. County recorders shall be permitted to charge the usual
 12 fees for recording the original certificate.

2 SEC. 20. Whenever the existing or future laws of any other state of the
 3 United States shall require of insurance companies incorporated by or or-
 4 ganized under the laws of this state, any payment of fines, penalties, cer-
 5 tificate of authority or license-fees greater than the amounts required for
 6 such purposes from similar companies of other states by the then existing
 7 laws of this state, then, and in every such case, all companies of such states
 8 establishing or having theretofore established an agency or agencies in this
 9 state shall be and are hereby required to pay to said auditor for fines, penal-
 10 ties, certificate of authority, or license-fees, an amount equal to the amount
 11 of such charges and payments imposed upon or required by the laws of such
 12 state of the companies of this state or the agents thereof.

2 SEC. 21. The penalties provided for in this chapter shall be sued for and
 3 recovered, in the name of the state of Iowa, by the district attorney in the
 4 district or circuit court of the county in which the company or agent violat-
 5 ing shall be situated or reside. Three-fourths of said penalty, when recov-
 6 ered shall be paid into the county treasury for the use of the school-fund,
 7 and one-fourth to the informer of such violation. In case of non-payment
 8 of the penalty, the individual offending shall be liable to imprisonment in
 9 the county jail for a period not exceeding three months.

2 SEC. 22. It shall not be lawful for any company organized under the
 3 provisions of this chapter to invest its funds in any other manner than in the
 4 stocks of the United States, of this state, or any other state of this Union
 5 if at or above par, in bonds and mortgages on unencumbered real estate
 6 within this state, or in the state in which such company is located, worth at
 7 least twice the amount loaned thereon, exclusive of improvements; and
 8 all stocks, bonds, or mortgages owned or held by any company doing busi-
 9 ness under the provisions of this chapter, whether organized under the laws
 10 of this state or not, shall be equal or made to be equal to six per cent. stocks.

2 SEC. 23. No company organized under this chapter shall be permitted to
 3 purchase, hold, or convey real estate, except for the the purposes and in the
 4 manner herein set forth, to-wit: 1st. Such as shall be requisite for its im-
 5 mediate accommodation in the transaction of its business, or, 2d. Such as
 6 shall have been mortgaged to it in good faith by way of security for loans
 7 previously contracted, or for moneys due; or 3d. Such as shall have been
 8 conveyed to it in satisfaction of debts previously contracted in the course of
 9 its dealings; or, 4th. Such as shall have been purchased at sales upon judg-
 10 ments, decrees, or mortgages obtained or made for such debts; and it shall
 11 not be lawful for any company, incorporated as aforesaid, to purchase, hold
 12 or convey real estate in any other case, or for any other purpose.

2 SEC. 24. All such real estate as may be acquired as aforesaid, and which
 3 shall not be necessary for the accommodation of such company in the con-
 4 venient transaction of its business, shall be sold and disposed of within five
 5 years after such company shall have acquired title to the same, and it shall

5 not be lawful for such company to hold such real estate for a longer period
6 than that above mentioned, unless the said company shall procure a certifi-
7 cate from the auditor of state that the interests of the company will suffer
8 materially by a forced sale of such real estate, in which event the time for
9 the sale may be extended to such time as the said auditor shall direct in
10 said certificate.

Sec. 25. Life insurance companies organized under the laws of this
2 state, whether on the stock or mutual plan, may be formed to endure for
3 fifty years, and may be renewed from time to time for a period no greater
4 than at first.

TITLE X.

CHAPTER 1. *Of Mill-Dams and Races, and of Drainage.*

2 SEC. 1. Any person owning lands on one or both sides of a stream or
3 water course, and being desirous of building a mill, or erecting other ma-
4 chinery, to be propelled by water, on said stream, and of erecting a dam
5 or constructing a race thereon, may have a writ of inquest as to the damage
6 to be issued by the district court of the proper county, to be proceeded on
7 as hereafter provided.

2 SEC. 2. An applicant for said writ shall file his petition in the office of
3 the clerk of the district court of the proper county, which peti-
4 tion shall set forth the locality with sufficient certainty, and also the
5 names of the owners of lands to be affected by said dam or race, and he shall
6 give ten days' notice of his said petition, by serving a copy thereof on each
7 of said persons, or on his or their agents, if to be found, and make proof of
8 such service by affidavit to be filed with his said petition.

2 SEC. 3. The clerk of said court shall thereupon issue said writ, directed
3 to the sheriff of said county, in which the lands proposed to be affected may
4 lie, commanding him to summon twelve good and lawful men of his county,
5 to meet on a day certain upon the lands in said writ named, and ten days'
6 notice shall be given by the sheriff to the owners or agents as aforesaid, of
7 the execution of said writ.

2 SEC. 4. The jury so summoned shall be sworn by the sheriff, impartially
3 and to the best of their skill and judgment to view the lands in said writ
4 described, and the lands both above and below said proposed dam or race,
5 and ascertain and appraise the damages as by said writ directed, to each of
6 the proprietors of said land proposed to be affected by said dam or race, and
7 also to ascertain whether the dwelling-house, out-house, orchard, or garden,
8 of such proprietor, will be overflowed, or otherwise injuriously affected, and
9 they shall further enquire and take testimony if necessary, to ascertain
10 whether such dwelling-house, out-house, orchard, or garden has been placed
11 there for the purpose of having the same injuriously affected by the build-
12 ing of such dam or race, and if they do so find that the dwelling-house, out-
13 house, orchard, or garden has been placed there for the purpose aforesaid, it
14 shall not be considered any bar or hindrance to the construction or building
15 of said dam or race.

2 SEC. 5. In all such cases the jury may, in addition to examinations,
3 take the testimony of witnesses. And testimony may be taken to be
4 introduced on the final hearing before the court in the same manner that
5 the testimony is taken in equitable actions triable by the first method.
6 The inquisition shall be signed by the jurors aforesaid, and returned
7 with the writ aforesaid to the court whence it issued.

SEC. 6. When said inquest shall have been filed, the clerk of the court
 2 issuing said writ shall issue an order to the parties in said inquisition men-
 3 tioned, to appear at the next term of the district court, and show cause, if
 4 any they have, why leave should not be granted to construct said dam or
 5 race, which notice shall be served and proved as before directed.

SEC. 7. If on such inquest it shall appear to said district court that
 2 neither the dwelling-house, out-house, garden nor orchard, of any proprietor,
 3 will be overflowed, or injuriously affected, and if said court shall judge it
 4 reasonable, and for the public benefit, license shall be granted to construct the
 5 same, on the applicants paying to the proper parties the damages decreed
 6 by said court, from the inquisition aforesaid; and if the applicant shall not
 7 within one year thereafter begin to construct said dam or race and finish
 8 and have in operation the mill and machinery in three years thereafter, and
 9 afterwards keep it in good repair, for the accommodation of the public, or
 10 in case said dam or race, or mill or machinery, be destroyed, he shall not
 11 begin to repair or rebuild it in one year, and finish it in three years, then
 12 said license shall be forfeited.

SEC. 8. If the writ shall not be executed by the sheriff on the day therein
 2 mentioned, said sheriff may, from time to time, appoint a day, at least ten
 3 days' notice thereof being given to the parties interested, as hereinbefore
 4 provided; and if the inquest can not be completed in one day, the sheriff
 5 shall adjourn the jury, from day to day, until its completion; and if a por-
 6 tion of the lands to be affected be in another county, the sheriff may act
 7 notwithstanding; and if the owner of any of the lands to be affected by
 8 any of these proceedings be a minor, service on the guardian of his estate
 9 shall bind him.

SEC. 9. No inquest under this chapter, nor any judgment thereon, shall
 2 bar any action which could have been maintained if this chapter had not
 3 been enacted, unless the prosecution or action was actually foreseen, and
 4 estimated upon the inquest.

SEC. 10. Any owner of land affected by any proceedings hereunder,
 2 who may not have been made party thereto, by reason of want of notice,
 3 or from any other cause, may be made party thereto by proper proceedings,
 4 at any time thereafter.

SEC. 11. The fees of the sheriff, jurors and witnesses, hereunder, shall
 2 be the same as in other cases in the district court, and shall in all cases be
 3 paid by the applicant.

SEC. 12. This chapter shall apply as well to dams already in existence,
 2 and to the heightening of the same, as to those hereafter to be erected.

SEC. 13. Where the water backed up by any dam belonging to any mill
 2 or machinery, is about to break through or over the banks of the stream or
 3 race, or to wash a channel, so as to turn the water of such stream or race,
 4 or any part thereof, out of its ordinary channel, whereby such mills or
 5 machinery will be injured or affected, the owner or occupier of such mill or
 6 machinery, if he do not own such banks, or the lands lying contiguous
 7 thereto, may, if necessary, enter thereon, and erect and keep in repair such
 8 embankments and other works as shall be necessary to prevent such water
 9 from breaking through or over the banks of such stream or race, or wash-
 10 ing a channel as aforesaid, such owner or occupier committing thereon no
 11 unnecessary waste or damage.

SEC. 14. Nothing contained in the last section shall be so construed as
 2 to bar the owner of such bank or banks, or lands lying contiguous thereto,

3 from recovering the amount of any injury which he may actually sustain
4 by the erection and repair of such embankments or other works.

2 SEC. 15. If any person shall injure, destroy, or remove any such em-
3 bankment, fortification, or other works, the owner or occupier of such mill
4 or machinery may recover of such person all damages he may sustain by
5 reason of such injury, destruction, or removal.

2 SEC. 16. Any person owning or possessing any swamp, marsh, or wet
3 land, who shall desire to drain the same, and shall deem it necessary in
4 order thereto that a ditch or ditches should be opened through lands belong-
5 ing to other persons, in case the owners of any such land shall refuse to per-
6 mit the opening of such ditch or ditches through the same, or if the parties
7 cannot agree upon the terms thereof, may make application in writing to the
8 trustees of the township where such marsh or swamp lands shall be situ-
9 ated, to inquire and determine whether such lands are a source of disease to
10 the inhabitants, and whether the public health would be promoted by drain-
11 ing the same, and to inquire and determine whether such ditch or drain is
12 necessary for the proper cultivation of the same, and whether the perma-
13 nent assessed value of said lands will be increased by such drain. Said
14 application shall be filed with the township clerk.

2 SEC. 17. Such application shall state through whose premises, if known,
3 it is necessary for said ditch or ditches to pass, and shall also describe said
4 lands. Ten days notice shall be served upon the owners of said lands, in
5 like manner as notices are required to be served in commencement of actions
6 before justices of the peace, and said notice shall state at what time said
7 application will be filed, and in case any owner of said land shall be un-
8 known to the applicants or a non-resident of the county, then three written
9 notices shall be posted for ten days, in three public places in the neighbor-
10 hood of the said land, and in the township in which it is situated.

2 SEC. 18. Upon the filing of said application, the trustees shall agree upon
3 a time and place when and where they will hear and determine upon said
4 application. They shall give five days' notice of such time and place of
5 meeting to all persons interested, by posting up three written notices there-
6 of in three public places in said township, and upon the day set for hearing
7 said application, said trustees or such of them as may be present shall,
8 have power to hear and determine the matters contained in said application,
9 or may adjourn the hearing thereof not more than ten days. And upon the
10 final hearing, said trustee or trustees shall determine whether it is necessary
11 to pass through said land, and if they find it necessary they shall also deter-
12 mine the direction in which said drain shall run, and the depth and width
13 thereof as near as may be, and said trustees may employ the county sur-
14 veyor to assist them if necessary, the fees of the surveyor being paid in the
15 same manner as the other costs of this proceeding.

2 SEC. 19. If the trustees shall be of the opinion that the drain will be of
3 damage to the land through which it is to pass then they shall assess the
4 amount of damage to be paid to the owner thereof, and after payment of the
5 amount so assessed, the person making the application may enter upon said
6 land and construct the same, and if no damages be assessed, then the appli-
7 cant shall have full powers to enter upon the land through which said drain
8 passes, with the necessary implements to accomplish said work.

2 SEC. 20. The trustees, after having decided in favor of, or against said
3 application, shall reduce their decision to writing, and file the same with the
4 township clerk.

2 SEC. 21 Either party feeling aggrieved by the decision of the trustees
3 in the assessment of damages, may appeal to the circuit court of the county
4 in which the court is situated, and the said court may hear and determine
5 all matters relating to said assessment; but so much of the decision of said
6 trustees as relates to the location width and depth of said drain shall be final.
7 An appeal-bond shall be required as in cases of appeal from justices of the
8 peace, and the same shall be filed with the township clerk, who shall ap-
9 prove it, and immediately thereafter shall certify all original papers to the
 clerk of the circuit court.

2 SEC. 22. After said drain is completed it shall be kept in repair under
3 the direction of the township trustees, and when applied to in writing by
4 any person owning land through which such drain shall run, said trustees
5 shall examine the same and may make such orders in regard to the repair
6 thereof, and cleansing the same, as they may deem just and equitable, but
7 they shall not be empowered to order any person to repair or cleanse the
 same, except the owners of land through which the drain runs.

2 SEC. 23. The township trustees shall receive for their duties under this
3 chapter the sum of one dollar and fifty cents per day, and the township
4 clerk shall receive for filing each application the sum of fifty cents. The
5 trustees shall make such orders in regard to the payment of costs as they
6 may think just, and they may require their costs to be paid in advance in the
 first instance, by the person making the application.

2 SEC. 24. If said drain shall cross a highway it shall be bridged at the
 expense of the applicant.

2 SEC. 25. Any person who shall dam up, obstruct, or in any way injure
3 any ditch or ditches so opened, shall be liable to pay to the person owning
4 or possessing the swamp, marsh or other low lands for the draining of which
5 such ditch or ditches shall have been opened, double the damages that shall
6 be assessed by the jury for such injury, and in case of a second or other
 subsequent offense by the same person, treble such damages.

2 SEC. 26. Any person owning or possessing any land underlaid with coal
3 mines, who is desirous of mining the said coal, and who shall deem it neces-
4 sary thereto to have a coal yard and wagon road or railway track upon, and
5 entry and drain through and under the surface of any land be-
6 longing to any other person, may apply to any justice of the peace residing
7 in the township where the lands are located, or if there be no justice in said
8 township, to any justice in an adjoining township, for such summons as is
 herein specified.

2 SEC. 27. The justice to whom such application shall be made, shall
3 thereupon issue a summons, directed to an constable of the said township,
4 requiring the owner of said land to appear before him at the time named
5 therein, which shall be in not less than six nor more than fifteen days, to
6 answer said application. Said summons shall designate the land upon
7 which said coal yard and wagon road or railway track are desired to be laid
8 out, and through and under which the said entry and drain are proposed to
9 be made, and shall be served by the constable in the same manner that
10 civil process issued by a justice is now served; and should it be made
11 to appear to said justice that the owner of said land is non-resident, then
12 said owner shall be served by publication in the same manner as parties
 defendant in justice's courts, that are non-residents, are now served.

2 SEC. 28. On the appearance day a jury of six disinterested persons, pos-
3 sessed the necessary qualifications of jurors of the district court, shall be
 selected as follows, viz: two by each of the parties: *Provided*, that in case

4 the owner of the lands, his agent or attorney, shall neglect or refuse to ap-
 5 pear, or the owner of said lands shall appear to be a non-resident, then the
 6 applicant shall select three jurors, and the justice three, and the justice shall
 7 thereupon issue his precept to some constable of the township, directing
 8 him to summon the jurors selected as aforesaid, to appear forthwith before
 9 him. The said justice shall administer to said jurors an oath or affirmation
 10 to well and truly examine into the necessity for the coal yard, and wagon
 11 road or railway track, and entry and drain applied for; and that if they
 12 shall deem the same necessary, they shall proceed to lay out the same
 13 and certify the damages resulting therefrom.

2 Sec. 29. The jury thus qualified and sworn shall personally examine the
 3 premises, and after hearing any reasons which may be offered by the parties
 4 in regard to the opening of said entry or drain, and making said coal-yard
 5 and wagon-road or railroad-track, if they shall thereupon be satisfied that
 6 the opening of the entry and drain, and the making of said coal-yard and
 7 wagon-road or railway-track are necessary and proper in order to mine said
 8 coal, they shall proceed to lay out the same by proper metes and bounds;
 9 and if they shall deem it necessary they may call to their aid a competent
 10 surveyor. But in no case shall the entry and drain be more than twenty-
 11 five feet in breadth.

2 Sec. 30. The jury shall make a written report which shall be signed by
 3 at least four of the jurors, precisely defining the boundaries of said entry
 4 and drain, and coal-yard and wagon-road, or railway track, accompanied by
 5 a plat of the same, and file the same with the justice. The jury shall also
 6 certify the amount of damages in writing, signed by at least four of the
 7 jurors, which shall also be filed with the justice.

2 Sec. 31. Either party may appeal from the decision of the jury to the
 3 circuit court in the county in which the premises are situated, by filing with
 4 the justice, within ten days after the jury shall file their report, a bond with
 5 two or more sufficient sureties, to be approved by the justice, in a sum dou-
 6 ble the amount assessed by the jury, conditioned that the appellant will
 7 abide the judgment of the court, and pay all costs and damages awarded
 8 against him therein, or if the appeal be dismissed, that he will pay all sums
 9 for which he would have been liable if no appeal had been taken. The
 10 proceedings in the circuit court shall be the same as on an appeal in a civil
 11 action from a justice of the peace, as near as practicable; and costs shall be
 12 awarded for or against either party upon the same rules and conditions as in
 13 such appeal of a civil action.

2 Sec. 32. Upon the expiration of ten days, if no appeal has been taken
 3 as herein provided, the justice shall return a certified transcript of the re-
 4 port of the jury to the clerk of the board of supervisors, who shall record
 5 the same in the record of roads and highways of the county.

2 Sec. 33. Upon the payment of the damages assessed by the jury, and
 3 of the costs of the proceedings allowed to the justice, constable, jurors,
 4 surveyor and clerk of the board of supervisors, allowing the same fees, as
 5 nearly as may be, as are allowed in other civil cases, it shall be lawful for
 6 the person applying for such summons to enter upon the lands examined by
 7 the jurors, and upon which they have assessed said damages, with all neces-
 8 sary implements, to open said entry and drain, and make said coal yard and
 9 wagon road or railway track; provided that if the owner of said lands be
 10 a non-resident, the applicant aforesaid shall be permitted to enter upon said
 11 premises aforesaid, upon his depositing the amount of damages assessed,

11 with the clerk of the circuit court, subject to the order of said non-resident
12 owner.

2 **SEC. 34.** After such entry and claim are opened, and said coal yard and
3 wagon road or railway track are made, it shall be lawful for the applicant to
4 use them for his exclusive benefit, and any person obstructing or in any way
5 injuring said entry and drain, wagon road or railway track, or coal yard,
6 shall be liable to treble damages in an action brought by the applicant.

2 **SEC. 35.** Any person, company, or corporation, who shall by machinery,
3 such as engines or pumps, or by making drains or edit levels or in any other
4 way rid any lead bearing mineral lands or lead mines of water, thereby en-
5 abling the mines and the owners of the mineral interest in said lands to
6 make them productive and available for mining purposes, shall be entitled
7 to receive one tenth of all the lead mineral taken from said lands as com-
8 pensation for said drainage.

2 **SEC. 36.** It shall be the duty of the owners of the mineral interest in
3 said lands and of the persons mining upon and taking lead mineral from
4 said lands jointly and severally, to set apart and deliver from time to time,
5 when demanded, the said one tenth part of said mineral taken from said
6 lands to the person, company or corporation entitled thereto, as compensation
7 for drainage. And it shall also be the duty of the owners of the mineral
8 interest in said lands, to allow the party entitled to such compensation, and
9 his agents, at any and all times to descend into and examine said mines and
10 to enter any building occupied for mining purposes upon any of said lands
11 and to examine and weigh the mineral taken therefrom.

2 **SEC. 37.** Upon the failure or refusal of any owner of the mineral inter-
3 est in said lands, or of any person taking the mineral therefrom to comply
4 with the provisions of the preceding section, the person, company, or corpo-
5 ration entitled to said compensation for drainage may sue for and recover
6 the value of said mineral in any court of competent jurisdiction. And upon
7 the hearing of any such case if it shall appear that the defendant obstructed
8 the plaintiff in the exercise of the right to examine the said mines, and to
9 weigh said mineral, or concealed or secretly carried away any mineral taken
10 from said lands, the court shall render judgment for double the amount
11 proved to be due from such defendant.

2 **SEC. 38.** The company or corporation entitled to said drainage compen-
3 sation may, at any time, leave with any smelter of lead mineral in this
4 state, a written notice stating that said person, company or corporation
5 claim of the persons named in said notice, the amount to which said person,
6 company or corporation may be entitled under the provisions of this char-
7 ter, which notice shall have the effect of notices in garnishment, and also
8 authorize the said smelter to retain, for the use of the persons entitled
9 thereto, the one-tenth part of the mineral taken from said land and received
10 from the person named in said notice: *Provided*, That the payment or
11 delivery of the one-tenth part of the mineral taken from any of said lands
12 by any one of the persons whose duty it is made hereby to pay or deliver
13 the same, shall discharge the parties liable jointly with him except their
14 liability to contribute among themselves.

2 **SEC. 39.** Any person, company or corporation engaged as aforesaid, in
3 draining such mines and lead bearing mineral lands, whenever he or they
4 shall deem it necessary for the prosecution of their work shall have the
5 right-of-way upon, over or under the surface of such mineral lands, and the
6 contiguous and neighboring lands, for the purpose of conveying the water
7 from said mineral lands by troughs, pipes, ditches, water races or tunnels,

7 and the right to construct and use shafts and air holes in and upon the
8 same, doing as little injury as possible in making said improvements.

2 SEC. 40. If the said person, company or corporation engaged in drain-
3 ing as aforesaid, and the owner of any land upon which said right-of-way
4 may be deemed necessary cannot agree as to the amount of damages which
5 will be sustained by the owner by reason thereof, the parties may proceed
6 to have the same assessed under the provisions of chapter two of this title.

2 SEC. 41. The foregoing provisions shall not be construed to require the
3 owners of the mineral interest in any of said lands to take mineral there-
4 from or to authorize any other person to take the mineral from said lands
5 without the consent of the said owners.

CHAPTER 2. *Of taking Private Property for Works of Internal Improvement.*

2 SECTION 1. When any corporation or other person designs to construct a
3 canal or railroad, or a turnpike, graded, macadamized, or plank road, or a
4 bridge, as a work of public utility, although for private profit, it may take
5 such reasonable amount of private real property as may be requisite for a
6 right of way not exceeding one hundred feet in width, upon paying therefor
7 such sum as may be assessed in the manner herein provided.

2 SEC. 2. The company shall file its petition in the district court in the
3 county where the land lies, setting forth in substance:

3 The name of the owner ;
4 The parcel of land, a portion of which is wanted ;
5 The object for which it is wanted ;
6 A prayer that a suitable portion of land may be decreed to the petitioner
7 and may be set apart to them by metes and bounds.

2 SEC. 3. The owners of distinct parcels of real estate may be made de-
3 fendants to one petition.

2 SEC. 4. A service upon the owner must be made as in civil actions, ex-
3 cept as herein qualified.

3 Service upon and notice to an agent entrusted with the supervision of a
4 non-resident's land will be sufficient; a service by publication in a newspa-
5 per may be made the prescribed length of time before the return term; and
6 when the owner of a tract of land is unknown, the court, upon being satis-
7 fied that diligent and unsuccessful efforts have been made to ascertain the
8 ownership, may either before or after a publication authorize proceedings
9 against him by the description of the unknown owner of that tract of land,
10 (describing it.)

2 SEC. 5. When the requisite service has been made, if no sufficient cause
3 to the contrary is shown, the court shall issue a writ of inquiry of damages
4 to the sheriff, commanding him to summon a jury to inquire into and assess
5 the damages. The jurors are required to possess the ordinary qualifications
6 of jurors, and to be persons not interested in the same or a similar question.

2 SEC. 6. Twelve jurors shall be summoned unless the parties otherwise
3 agree in writing, and each party will have the right of challenge both for
4 cause and peremptorily, as in the district court.

2 SEC. 7. Or, if the parties assent, the jury may be thus constituted: the
3 sheriff may set down in writing the names of eighteen jurors, and the par-
4 ties shall alternately strike off one, beginning with the defendant, until but
5 six remain, who shall be competent to act, and be summoned accordingly.

2 SEC. 8. If a juror summoned fail to attend, his place may be supplied by
3 one summoned to attend forthwith.

2 SEC. 9. The jury shall be sworn to examine impartially and report truly
3 upon the subject submitted to their consideration, and the sheriff is author-
4 ized to administer such oath.

2 SEC. 10. The jury shall then proceed to examine the ground and may
3 hear testimony, but no argument of counsel, and shall set apart by metes and
4 bounds a quantity of land convenient and suitable for the purpose intended,
5 and assess the damage occasioned to the owner thereby.

2 SEC. 11. In estimating the damages no deduction shall be made for any
3 benefit that may be supposed to result to the owner from the contemplated
4 work.

2 SEC. 12. When the petitioner desires earlier action than is contemplated
3 in the preceding provisions, and is proceeding against one person only, it
4 may file its petition in the office of the district court and cause a service as
5 before provided, and seven days after service is effected the clerk may in va-
6 cation issue a writ of inquiry of damages to the sheriff as before directed,
7 and the sheriff shall then proceed as above provided, and make his return as
8 hereinafter directed.

2 SEC. 13. Before proceeding with the jury the sheriff is directed to give
3 the defendant, if he is known and resides in the county, and if not
4 then to his agent if he has one known, or to his tenant, three days' notice of
5 the time and place of the meeting of the jury.

2 SEC. 14. The report of the jury shall be reduced to writing, signed
3 by each of the jurors, and delivered to the sheriff, and be by him returned
4 together with the writ and his doings thereon to the district court without
5 delay.

2 SEC. 15. Upon the return of the inquest and writ the petitioner or the
3 owner of the land may file objections to the proceedings and show cause
4 why they should be set aside, and the court may direct issues other than
5 those upon the facts found by the jury to be made up and tried as in other
6 civil actions, and if good cause be shown may set aside the proceedings.
7 When objections have been filed, the finding of the jury upon the trial of
8 the issue there joined shall be to all intents the same as upon the trial of an
9 appeal.

2 SEC. 16. The damages assessed by the second jury shall be paid into
3 court for the defendant or to the defendant before a decree for the convey-
4 ance of the land can be made, unless the parties otherwise agree.

2 SEC. 17. If no sufficient objection is made and the damages fixed by the
3 first jury are paid the court shall decree a conveyance to the plaintiff of the
4 land reported by the jury, and such decree shall have the same effect and be
5 enforced in the same manner as an ordinary decree for the conveyance of
6 land.

2 SEC. 18. If the contemplated work be not commenced within one year
3 after obtaining land under these provisions, or if after being com-
4 menced it cease for two years to be prosecuted, or if after being completed it
5 ceases for two years to be used for its original purpose, the former owner
6 may file his petition in the district court to have the land restored to him
7 upon his refunding the purchase money without interest.

2 SEC. 19. The costs of the foregoing proceedings shall be paid by the
3 petitioner, except the costs occasioned by litigation by the defendant shall be
4 governed by the common rule in relation thereto.

2 SEC. 20. A company or person actually intending to make an application for
 3 the privileges herein contemplated and entering upon the land of another
 4 for the purpose of making the requisite examination and surveys and doing
 5 no unnecessary injury, shall be liable only for the actual damage done, and
 if sued in such case the plaintiff shall recover only as much cost as damage.

2 SEC. 21. The provisions of the foregoing sections do not apply to any
 3 corporation or person who has not obtained a license from the proper coun y
 4 court in accordance with the provisions of the chapter relating to granting
 licenses for works of internal improvement.

2 SEC. 22. Whenever, in the opinion of the governor, the interests of the
 3 people of the state require the construction of any drains, sewers, conduits,
 4 or other conveniences for the benefit of the penitentiary, hospital for the
 5 insane, or any other of the charitable or other institutions of the state upon
 6 or across lands, being private property, the same proceedings may be had in
 7 the name of the state as plaintiff as provided by the foregoing sections, and
 8 for that purpose the state shall be considered a person, but the limitation in
 9 section twenty-one of this chapter shall not apply to proceedings in the
 name of the state.

2 SEC. 23. Such proceedings on the part of the state shall be c nducted by
 3 the district-attorney of the district where the land may lie ; and, he shall
 4 commence such proceedings, whenever ordered by the governor.

2 SEC. 24. Whenever the amount of damages, to be paid by the state, in
 3 such case, shall be determined as herein before provided upon the certificate
 4 of the clerk of the court, with the order of the governor endorsed thereon
 5 the auditor of state is authorized to draw his warrant on the treasurer for
 6 the amount of such finding from any money in the treasury not otherwise,
 appropriated.

2 SEC. 25. Any railroad corporation in this state heretofore organized, or
 3 that may be hereafter organized, under the laws of this state, may take and
 4 hold, under the provisions contained in this chapter, so much real estate as
 5 may be necessary for the location, construction, and convenient use of their
 6 road. Such corporation may also take, remove, and use for the construction
 7 and repair of said road and its appurtenances, any earth, gravel, stone, tim-
 8 ber, or other materials, on or from the land so taken : *provided*, that the
 9 land so taken otherwise than by the consent of the owners, shall not exceed
 10 one hundred feet in width, except for wood and water stations, unless where
 11 greater width is necessary for excavation, embankment, or depositing waste
 earth.

2 SEC. 26. It may also take and hold additional real estate at its water-
 3 stations, for the purpose of constructing dams and forming reservoirs of
 4 water to supply its engine. Such real estate shall if the owner requests it
 5 be set apart in a square or rectangular shape including all the overflowed
 6 land : but the owner of the land shall not be deprived of access to the water
 7 or t e use thereof, in common with the company, on his own land. And
 8 the dwelling-house, out-house, orchards, and gardens, of any person shall
 9 not be overflowed or otherwise injuriously affected by any proceeding under
 this section.

2 SEC. 27. Any such railroad corporation may lay down pipes through any
 3 land adjoining the track of the railroad, and not to a greater distance than
 4 three-fourths of a mile from such track, (unless by consent of the owners of
 5 the land through which the pipes may pass beyond that distance,) and main-
 6 tain and repair such pipes, and thereby conduct water for the supply of the
 engines of such railroad from any running stream ; and such corporation

7 shall without unnecessary delay, after laying down or repairing such pipes,
 8 cover the same so as to restore the surface of the land through which they
 9 may pass to its natural grade; and said corporation shall as soon as practi-
 10 cable replace any fence that it may be necessary to open in laying down or
 11 repairing such pipes; and the owner of the land through which the same
 12 may be laid shall have a right to use the land through which such pipes pass,
 13 in any manner not to interfere with such pipes: *Provided*, also, that said
 14 pipes shall not be laid to any spring, nor be used so as to injuriously with-
 15 draw the water from any farm.

SEC. 28. Such railroad corporation may purchase and use real estate for
 2 any of the purposes mentioned in the three foregoing sections, for a price
 3 to be agreed upon with the owners thereof, or the damages to be paid by
 4 such corporation for any real estate taken as aforesaid, when not agreed
 5 upon, shall be ascertained and determined by commissioners to be appointed
 6 by the sheriff of the county where such real estate is situated, in conform-
 7 ity with the following provisions.

SEC. 29. Whenever any railroad corporation shall take any real estate as
 2 aforesaid, of any minor, insane person, or any married woman whose hus-
 3 band is under guardianship, the guardian of such minor or insane person, or
 4 such married woman, with the guardian of husband, may agree and settle
 5 with said corporation for all damages or claims by reason of the taking of
 6 such real estate, and may give valid releases and discharges therefor.

SEC. 30. If the owner of any real estate, necessary to be taken for either
 2 of the purposes mentioned in sections 25, 26, and 27, of this chapter, shall
 3 refuse to grant the right of way, or other necessary interest in said real
 4 estate required for such purposes, or if the owner and the railroad
 5 corporation cannot agree upon the compensation to be paid for the
 6 same, the sheriff of the county in which said real estate may be situated
 7 shall, upon the application of either party, appoint six disinterested freehold-
 8 ers of said county, not interested in a like question, unless a smaller number
 9 is agreed upon by the parties, whose duty it shall be to inspect said real
 10 estate and assess the damages which said owner will sustain by the appro-
 11 priation of his land for the use of said railroad corporation, and make report
 12 in writing to the sheriff of said county, who shall file and preserve the same;
 13 and if said corporation shall at any time before they enter upon said real
 14 estate for the purpose of constructing said road, pay to said sheriff for the
 15 use of said owner, the sum so assessed and returned to him as aforesaid, they
 16 shall be thereby authorized to construct and maintain their railroad over
 17 and across such premises: *provided*, that either party may have the right
 18 to appeal from such assessment of damages to the district court of the count-
 19 ty where such lands are situated within thirty days after such assessment is
 20 made. But such appeal shall not delay the prosecution of the work upon
 21 said railroad, if said corporation shall first pay or deposit with the sheriff the
 22 amount so assessed by said freeholders, and in no case shall said corporation
 23 be liable for the costs on appeal, unless the owner of such real estate shall be
 24 adjudged, and entitled upon the appeal to a greater amount of damages than
 25 was awarded by said freeholders. The company shall in all cases pay the
 26 costs of the first assessment.

27 *And provided*, further, that if the dwelling house, out-house, orchard or
 28 garden of the owner shall appear by the finding of the jury to be overflowed
 29 or otherwise injuriously affected by any dam and reservoir to be construct-
 30 ed under section 26, such dam shall not be erected until the question of such

31 overflowing or other injury shall be finally determined upon appeal in favor
32 of the company.

2 SEC. 31. The freeholders so appointed shall be the commissioners to
3 assess all damages to the owners of real estate in said county, and said cor-
4 poration may at any time after their appointment, upon the refusal of any
5 owner or guardian of any owner of lands in said county, to grant the right
6 of way, or other interest as aforesaid, by giving the said owner or guardian
7 five days notice thereof in writing, either by personal service or by leaving
8 a copy thereof at his or her dwelling, with some member of the family over
9 fourteen years of age, have the damages assessed in the manner hereinbefore
prescribed.

2 SEC. 32. In case of the death, absence, or neglect, or refusal of any of
3 said freeholders to act as commissioners as aforesaid, the sheriff shall sum-
4 mon other freeholders to complete the panel, and said commissioners shall
5 proceed as directed in the preceding section. Said commissioners shall receive
6 two dollars per day each for their services.

2 SEC. 33. The words, "non-resident," as used in this chapter, shall be
3 held to mean persons not residing in the county in which the lands lie,
4 over which the right of way is required; and when any railroad company
5 desires to locate its road over the lands of any such non-resident, no demand
6 of right of way shall be deemed necessary, except the publication of the
following notice:

2 SEC. 34. Notice for condemning right of way for railroad purposes over
3 the lands of non-residents, may be substantially in the following form,
to-wit:

4 "RIGHT OF WAY NOTICE."

5 "To (here name each person who is known to be a non-resident of any
6 lands in the county over which the right of way is desired), and all other
7 persons having any interest in, or owning any of the following real estate,
8 to-wit: (here describe by numbers, in tracts not exceeding one-sixteenth of
9 a section, thus: northeast quarter of northwest quarter, and northwest
10 quarter of northwest quarter of section 5, northeast quarter of northeast
11 quarter, northwest quarter of northeast quarter of section 6, all in township
12 96, range 22, etc.), you are hereby notified that the _____ railroad
13 company has located a line of railroad over the above described real estate,
14 and desire the right of way over the same, to wit: a strip or belt of land,
15 _____ feet in width through the center of which strip or belt of
16 land the center line of said railroad will run, leaving _____ feet on
17 each side of said center line, together with such widths as may be necessary
18 for berms, waste banks, and borrowing pits, and wood and water stations;
19 and unless you proceed to have the damages to the same appraised accord-
20 ing to law, on or before _____ day of _____, A. D., 18—, (a date
21 at least four weeks after the first publication of the notice), said company
22 will proceed to have the same appraised on the — — — day of _____,
23 (a date at least eight weeks after the first publication of the notice), at
24 which time you will be at liberty to appear before the appraisers on the
25 subject of the assessment of damages to your lands.

"_____ Railroad Company.

26 By _____, attorney, or _____, Right of way Agent."

28 Which notice shall be published in some newspaper in the county, if there
 29 be one, and if there be no newspaper in the county, then in the nearest county
 30 through which the proposed railroad runs in which there is a newspaper,
 31 for at least eight successive weeks prior to the day fixed for appraisement,
 32 at the instance of the railroad company, and shall be sufficient demand of,
 33 and notice to, all persons having any interest in any of the lands described
 34 in the notice.

SEC. 35. At the time fixed in the foregoing notice, the appraisement
 2 may be made and returned in tracts larger than forty acres, and all the lands
 3 appearing of record to belong to one person, and lying in one tract, may be
 4 included in one appraisement and return, unless the agent or attorney of
 5 the company, or the appraisers, shall have actual knowledge that the tract
 6 so appearing of record, does not belong wholly to the person in whose
 7 name it appears of record; and in case of such knowledge, the appraisement
 8 shall be made of the different parcels, as they are known to be
 9 owned.

SEC. 36. In any case where a railroad constructed in whole or in part
 2 by a corporation or other person, under the laws of this state, has ceased to
 3 be operated or used for more than ten years: or in any case where the con-
 4 struction of a railroad has been commenced by any corporation or person,
 5 within the state, and work on the same has ceased for more than ten years,
 6 and such railroad still remains unfinished, through the negligence of the
 7 corporation or person who undertook to construct the same, it shall be deem-
 8 ed and taken that the corporation or person thus in default has abandoned
 9 and surrendered all right and privilege to control over so much of the line
 10 of their road as remains unused or unfinished as aforesaid.

SEC. 37. In every case of abandonment of the work of operating or
 2 constructing a railroad within this state as provided in the preceding section,
 3 it shall be lawful for any other corporation or person to enter upon such
 4 abandoned work, or any part thereof, and to acquire the right of way over
 5 the same and the right to any unfinished work or grading found thereon,
 6 and the title thereto, by proceeding in the manner provided by law for ac-
 7 quiring private property for works of internal improvements, conforming in all
 8 particulars as near as may be to the provisions of this chapter: *Provided,*
 9 that parties who have previously received compensation in any form for the
 10 right of way on the line of such abandoned road bed, the consideration of
 11 which has not been refunded to them, shall not be permitted to receive
 12 the second time, but the value of such road bed and right of way, exclusive
 13 of the work done thereon, when taken for new company, shall be assessed to
 14 the former company or its legal representative.

SEC. 38. It shall be lawful for any railroad company, for the use of which
 2 any land shall have been condemned for right of way, under chapter 55,
 3 the revision of 1860, or any subsequent act, or under this chapter, to have
 4 recorded in the record of deeds of the county where such land is situated
 5 the report of the commissioners assessing damages, where the same shall
 6 not have been appealed from, and the amount of the assessment and costs shall
 7 have been paid to the sheriff, and such record shall have the effect of, and
 8 presumptive evidence of title in the railroad company to the right of way
 9 so taken, and shall constitute constructive notice of the rights of such com-
 10 pany in said real estate.

SEC. 39. Any such railroad corporation may raise or lower any turnpike
 2 plank road, or other way, for the purpose of having their railroad pass

3 or under the same; and in such cases said corporation shall put such turn-
4 pike, plank road, or other way, as soon as may be, in as good repair
5 and condition as before such alteration.

2 SEC. 40. If the proprietors of said plank road or turnpike, or the trustees
3 or city council having jurisdiction of such ways respectively, require further
4 alterations or amendments of such turnpike, road, or way, and give notice
5 thereof in writing to the agent or secretary of such railroad corporation, and
6 if the parties can not agree respecting the same, either of the parties may
7 apply to the circuit court, who, after reasonable notice to the adverse party,
8 shall make determination respecting such proposed alterations or amend-
ments, and shall award costs in favor of the prevailing party.

2 SEC. 41. If such railroad corporation shall unnecessarily neglect to
3 make such alterations and amendments thus determined upon by the circuit
4 court, the said turnpike corporation, or aggrieved city or township, shall be
5 entitled to their damages for such neglect.

2 SEC. 42. Every railroad corporation whilst employed in raising or lower-
3 ing any turnpike or other way, or in making any other alteration by means
4 of which the same may be obstructed, shall provide and keep in good order
5 suitable temporary ways, to enable travelers to avoid or pass such obstruc-
tions.

2 SEC. 43. Any railroad corporation may construct and carry their railroad
3 across, over, or under railroad, canal, stream, or water course, when it may
4 be necessary in the construction of the same; and in such cases said corpo-
5 ration shall so construct their railroad crossings as not unnecessarily to im-
6 pede the travel, transportation, or navigation upon the railroad, canal, or
7 stream so crossed: said corporation shall be liable for the damages occa-
sioned to any corporation or party injured by reason of said crossing.

2 SEC. 44. Every railroad corporation shall maintain and keep in good
3 repair all bridges, with their abutments, which such corporation shall con-
4 struct for the purpose of enabling their road to pass over or under any turn-
5 pike, road, canal, water course, or other way.

2 SEC. 45. Every railroad corporation shall be liable for all damages sus-
3 tained by any person in consequence of any neglect of the provisions of
4 this chapter, or of any other neglect of any of their agents, or by any misman-
agement of their engineers, by the persons sustaining such damages.

2 SEC. 46. Any railroad corporation shall be authorized to pass over, oc-
3 cupy, and enjoy, without payment of damages, any of the school, university,
4 and saline or other lands of this state, provided no more of such lands shall
5 be taken than is required for the necessary use and convenience of such
6 corporation.

2 SEC. 47. When any person owns land on both sides of any railroad, the
3 corporation owning such railroad shall, when required so to do, make and
4 keep in good repair one causeway or other adequate means of crossing the
5 same.

2 SEC. 48. Any company organizing under this code shall, as soon as con-
3 venient after its organization, establish a principal office at some point on
4 the line of its road, and change the same at pleasure, giving public notice in
5 some newspaper of such establishment or change, and all process against
6 said company shall be served on the president or secretary, or by leaving a
copy at the principal office of the corporation.

2 SEC. 49. Every company organized under this code shall be required to
3 erect at all points where their road shall cross any public road, at a sufficient
4 elevation from such public road to admit of free passage of vehicles of every

4 kind a sign with large and distinct letters placed thereon, to give notice of
 5 proximity of the railroad, and warn persons of the necessity of looking out
 6 for the cars; and every company neglecting or refusing to erect such sign,
 7 shall be liable in damages for all injuries occurring to persons or property
 8 from such neglect or refusal.

CHAPTER 3. *Of Railways and their Management.*

2 SEC. 1. It shall be lawful for any township, incorporated town or city,
 3 to aid in the construction of any projected railroad in this state, as herein-
 3 after provided.

2 SEC. 2. Whenever a petition shall be presented to the council or trustees
 3 of any incorporated town or city, or trustees of any township, signed by one
 4 third of the resident tax payers of such township, city or town, asking the
 5 question of aiding in the construction of any railroad to be submitted to the
 6 voters thereof, it shall be the duty of the trustees, to immediately give notice
 7 of a special election by publication in some newspaper published in the
 8 county, if any be published therein, and also by posting said notice in five
 9 public places in each township, city or town, at least twenty days before said
 10 election, which notice shall specify the time and place of holding said election,
 11 the line of road proposed to be aided, the rate per centum of tax to be raised,
 12 and the township or townships, incorporated town, or city, in which such tax
 13 shall be expended; at which election the question of "taxation" or "no taxa-
 14 tion" shall be submitted, and if a majority of the votes polled be "for taxa-
 15 tion" then, in that case, the township clerk, recorder, or clerk of said election
 16 shall forthwith certify to the county auditor the rate per centum of the tax
 17 thus voted by such township, city or town. The board of supervisors shall, at
 18 the time of levying the ordinary taxes next following said special election,
 19 levy all taxes voted under the provisions of this section, and cause the same
 20 to be placed on the tax lists of the proper townships, cities or towns, and
 21 said taxes shall be collected at the same time, in the same manner, and be
 22 subject to the same penalties for non-payment as other taxes: *Provided*, that
 23 the aggregate amount of tax levied under the provisions of this section, in
 24 any township, city or town, shall not exceed five per centum of the assessed
 value of the property of said township, city or town.

2 SEC. 3. The funds collected under the provisions of the preceding sec-
 3 tion shall be paid out by the county treasurer, to the treasurer of the rail-
 4 road company, upon the orders of the president or managing director of
 5 the railroad company, whose road such tax has been voted to aid; which
 6 orders shall be accompanied by sworn estimates of the engineer in charge of
 7 work on such road, showing that double the amount of such orders has been
 8 expended for the construction of such road, in accordance with the terms of
 9 the notice, provided for in section two of this chapter, and also by a certifi-
 10 cate signed by the members of the council or board of trustees, or a ma-
 11 jority of the members thereof, of the township, city, or town, voting the
 12 tax for which said orders are drawn, to the effect that the provisions of this
 13 chapter have been so complied with, as to entitle said company to the
 14 amount called for by such orders, and it is hereby expressly provided that
 15 no part of the funds so raised shall be expended in any other township than
 16 those specified in the notice of election. *Provided* however, That should
 17 the said taxes not be drawn from the county treasury, in accordance with
 the provisions of this chapter, by the railroad company in whose favor the

18 the same may have been voted, within two years after the date of the col-
 19 lection thereof, then the right of said railroad company to said funds shall
 20 be deemed forfeited, and the same shall be repaid by the county treasurer to
 21 the persons from whom the same may have been collected.

SEC. 4. All railroads constructed by or with the aid of any taxes levied,
 2 and collected under the provisions of the foregoing sections, shall be subject
 3 to the control of the general assembly in regard to the management of the
 4 same, and the charges for transportation of freight and passengers thereon.

SEC. 5. It shall be competent and lawful for every railway company or-
 2 ganized under the laws of this state, to issue its bonds to secure the payment
 3 of money borrowed for construction or equipment, at such rate of interest
 4 as it may deem expedient, and to sell the same at such discount as may be
 5 necessary; and such bonds shall be legal and binding.

SEC. 6. Railroad corporations, organized under the laws of this state,
 2 shall have the power to mortgage or execute deeds of trust of the whole or
 3 any part of their property and franchises to secure money borrowed by
 4 them for the construction and equipment of their roads, and may, whenever
 5 a majority of the board of directors shall so determine, issue their construc-
 6 tion and equipment bonds in sums not less than fifty dollars, secured by
 7 said mortgages or deeds of trust, payable to bearer or otherwise, and if
 8 payable to bearer, negotiable by delivery, bearing interest at the rate of
 9 not to exceed ten per centum per annum, and convertible into stock or not,
 10 as may be deemed expedient, and may sell them at such rates or prices as
 11 they deem proper; and if such bonds shall be sold below their nominal
 12 or par value, they shall be valid and binding on the company, and no plea
 13 of usury shall be put in or allowed by said companies in any suit or pro-
 14 ceeding upon the same.

SEC. 7. Said mortgages or deeds of trust may by their terms include
 2 and cover, not only the property of the companies making them at the
 3 time of their date, but property both real and personal, which may there-
 4 after be acquired by them, and shall be as valid and effectual for that
 5 purpose, as if the property were in possession at the time of the execution
 6 thereof.

SEC. 8. Said mortgages or deeds of trust, shall be recorded in the office
 2 of the recorder of each county through which the road mortgaged or deeded
 3 may run, or wherever it may hold lands, and shall be notice to all the
 4 world of the rights of all parties under the same, and for this purpose and
 5 to secure the rights of mortgagees or parties interested under deeds of trust
 6 so executed and recorded, the rolling stock and personal property of the
 7 company, properly belonging to the road and appertaining thereto, shall be
 8 deemed a part of the road, and said mortgages and deeds so recorded, shall
 9 have the same effect both as to notice and otherwise, as to the personal, as
 10 to the real estate covered by them.

SEC. 9. It shall be lawful for any railroad company incorporated within
 2 the state of Iowa, with the assent of two-thirds of all the stockholders in
 3 interest, to make and issue preferred stock in payment of debts due or to
 4 become due from such company, and such preferred stock shall be entitled
 5 to dividends at such rate of interest as the board of directors of such com-
 6 pany may prescribe, not exceeding eight per cent per annum if earned in
 7 any one year, after payment of all interest on bonds, before any dividend is
 8 made to the general stock; *Provided*, Said preferred stock so issued shall
 9 not exceed the sum of ten thousand dollars for each mile of railroad con-
 10 structed by any such company.

2 SEC. 10. Such preferred stock, and any income or mortgage bond issued
3 or to be issued by any such railroad company, shall, at the option of the
4 holders thereof, be convertible into general stock of the company, in such
5 manner and upon such terms as the said board of directors, with the assent
6 of the holders of the general stock, may prescribe; but in no case shall the
7 aggregate amount of the general stock of the said company, and the said
8 preferred stock, exceed the total amount of stock which such company may
be by law authorized to issue.

2 SEC. 11. It shall be lawful for any railroad company now or hereafter
3 organized and incorporated under the laws of this state, with the assent of
4 the stockholders, by a vote of two-thirds in amount thereof, to change the
5 corporate name of such company.

2 SEC. 12. Whenever any such company shall change its name under the
3 provisions hereof, it shall be the duty of the president and secretary of such
4 company to file with the secretary of state a statement under oath, showing
5 the assent of the stockholders, as required by the preceding section, to such
6 change, and also a properly certified copy of the record of the change of
7 name, as the same appears in the record of the proceedings of such company,
8 and showing the new name of such company; and from the time of filing
9 such evidence such company shall become a body-corporate and politic under
10 the new name, but such change of name shall in no wise affect any of
11 the rights, powers, or privileges of such corporation, nor any of its liabilities
12 to third parties, but all rights, powers, privileges, and franchises of the
13 old corporation shall be vested in the new corporation, and it shall be liable
14 upon all contracts entered into by the old to the same extent and in the same
15 manner as the company or corporation would have been under the original
name.

2 SEC. 13. Any railroad companies organized under the laws of this state,
3 shall have the power to intersect, join and unite their railroads, constructed,
4 or to be constructed in this state, or in any adjoining state, at such point on the
5 state line, or at any other point as may be mutually agreed upon by said
6 companies. And such railroads are authorized to merge and consolidate the
7 stock of the respective companies, making one joint stock company of the
8 railroads thus connected, upon such terms as may be by them mutually
9 agreed upon, in accordance with the laws of this or of any adjoining state,
10 with whose road or roads connections are thus formed: *provided*, that
11 three fourths of all the stockholders in amount in any road whose stock is
12 proposed to be consolidated, shall consent.

2 SEC. 14. Any railroad company organized under the laws of this state,
3 for the purpose of constructing a railroad from any point within the state, to
4 the boundary line thereof, is hereby empowered to extend said railroad into, or
5 through any other state, under such regulations as may be prescribed by the
6 laws of such state, through which said road may be so extended; and the
7 rights and privileges of said company, over said extension, in the construction
8 and use of said railroads, for the use of such company in controlling and
9 applying the assets of said company, shall be the same as if their railroad
had been constructed wholly within this state.

2 SEC. 15. Any railroad company organized under the laws of this state,
3 and which may have constructed, or commenced the construction of their
4 road so as to meet and connect with any other railroad in an adjoining state,
5 at the boundary line of this state, shall have this power to make such contracts
and agreements with any such roads, constructed in an adjoining state,

6 for the transportation of freight and passengers, or for the use of its said
7 road as to the board of directors may seem proper.

2 SEC. 16. Any railroad company in this state owning a railroad, shall on
3 request permit any other railroad to connect with, and shall draw over its
4 road the cars of any other railroad connecting with it, at reasonable times,
5 and for a toll not exceeding its ordinary rates.

2 SEC. 17. When railroad companies do not agree upon terms of connec-
3 tion or rates of transportation, either may make application to the district
4 court in any county, in which said connection may be located, or to the
5 judge of said court if in vacation, after ten days notice in writing to the
6 other company, and after hearing the parties, or on default, the said court or
7 judge may appoint three disinterested persons, being presidents or superin-
8 tendents of railroads, or experts in railroad business, without regard to their
9 place of residence, as commissioners, to determine the terms of connection
10 and rules and regulations necessary thereto.

2 SEC. 18. Said commissioners shall meet at such time and place as may
3 be ordered by said court or judge, and shall hear the parties, and any testi-
4 mony brought before them, and make and sign their report, prescribing the
5 things to be done. Such report made by them or a majority of them, shall
6 within such time as ordered by said court or judge be returned to and filed
7 in said court, to be confirmed thereby; and when so confirmed, it shall be
8 binding on the parties until another report shall be made upon a new appli-
9 cation, which cannot be made within two years after such confirmation.

2 SEC. 19. Said commissioners shall have such compensation as shall be
3 deemed reasonable by the court; and shall be governed by the same rules and
4 have the same powers in compelling the attendance of witnesses, and shall
5 themselves be sworn, as is now provided in cases of referees in civil actions
6 in the district court, and exceptions may be taken to their report in the same
7 manner, and such exception shall have the same effect, and the proceed-
8 ings upon their report shall be the same as on reports of referees in cases re-
9 ferred from said court, and the costs shall be paid by the parties in such pro-
10 portions as to the court may seem equitable and just.

2 SEC. 20. If the officers of, or any person in the employ of said compa-
3 nies refuse to comply with the terms of such confirmed report, they may be
4 punished as for a contempt of said court.

2 SEC. 21. Contracts between different railroad companies, entered into
3 by the boards of directors thereof, allowing a drawback of fifteen per cent.
4 or less on the gross earnings of any road, on business coming from or going
5 to any connecting road, shall be legal and valid.

2 SEC. 22. The board of directors of any railroad company in this state
3 owning and operating a railroad partially constructed, may, for the purpose
4 of inducing the investment of capital in the extension or completion of their
5 road, enter into a contract with the party furnishing such means, or the
6 trustees who may represent them, allowing a drawback not to exceed fifteen
7 per cent. of the gross earnings of all business coming from and going to any
8 part of the extension or portion to be aided or completed with the money,
9 or means thus obtained; or such railroad company may lease of the trustees
10 or said parties the road to be built with means thus furnished, subject to
11 the same rights and liabilities as are provided in section twenty-four of this
chapter.

2 SEC. 23. Any such drawback contract, or the benefit to be derived there-
3 from, in either of the cases mentioned in this act, may be mortgaged for the

3 purpose of securing construction bonds, in the same manner as any other
4 property of the company.

2 SEC. 24. The board of directors of any railroad company shall have
3 power to authorize contracts of lease or joint running arrangements with
4 any connecting road, for the operation of such connection, upon such reason-
5 able and just terms as may be agreed upon by the parties, and the parties
6 thus leasing or operating the railroad of another company, shall in all re-
7 spects, be liable to the public for their acts or negligence, in the same man-
ner as though the road belonged to them.

2 SEC. 25. All the duties and liabilities imposed upon railroad companies by
3 this chapter shall apply equally to all lessees of any railroad company oper-
4 ating the same within this state as fully as if such lessees were named; and
5 any action which may be brought against any railroad company by virtue
6 of any provision of this chapter may also be brought against the lessees of
anv such company.

2 SEC. 26. In all cases of suits against any railroad company, lessees, cor-
3 poration, or individuals, operating any railroad, for damages claimed either
4 to person or property, the same may be instituted in any county through
5 which the road of said company passes, and service made upon any station or
6 ticket-agent of said company or lessees, shall be deemed sufficient service
upon the principal.

2 SEC. 27. Each railroad company shall when it has completed and opened
3 stating the total amount paid in: specifying the amount expended in
4 its road for use, make a report under oath to the legislature of this state,
5 constructing the road, for engines, cars, depots, car-houses, and other
6 buildings, and the amount of all other miscellaneous expenses; such report
7 shall also state the length of the road, the number of planes on it, with
8 their inclination to the mile, the greatest curvature of the road, the average
width of the grade, and the number of ties per mile.

2 SEC. 28. In the month of June, in each and every year, every railroad
3 company operating a railroad in this state shall fix its maximum rates of
4 fare for passengers and freight, for transportation of timber, wood, and coal,
5 per ton, cord, or thousand feet per mile; also its fare and freight per mile
6 for transporting merchandise, and articles of the first, second, third, and
7 fourth classes of freight; and on the first day of July following shall put
8 up, at all the stations and depots on its road, a printed copy of such fare and
9 freight, and cause a copy to remain posted during the year. For wilfully
10 neglecting so to do, or for wilfully receiving higher rates of fare or freight
11 than those posted, the company shall forfeit and pay to the state of Iowa,
12 for the use of the school fund, not less than one hundred dollars nor more
13 than two hundred dollars, to be recovered in any civil action in the name of
14 the state: and it is hereby made the duty of the several district-attorneys
15 within their respective districts to sue for and recover all sums forfeited as
16 aforesaid; and such company shall also forfeit and pay to the person in-
17 jured double the amount of compensation or charge illegally taken, to be
recovered by such person in a civil action.

2 SEC. 29. Where any railroad runs through any improved or fenced
3 land, said railroad company shall make proper cattle-guards on such roads
where they enter or leave such improved or fenced land.

2 SEC. 30. At any or all points where any railroad crosses any public high-
3 way, the company owning said railroad shall, without unnecessary delay,
construct good, sufficient, and safe crossings.

2 Sec. 31. Any railroad company neglecting or refusing to comply with
 3 the provisions of sections twenty-nine and thirty, of this chapter, shall be
 4 liable for all damages sustained by any one by reason of such neglect or re-
 5 fusals; and in order for the injured party to recover, it shall only be necessa-
 6 for him to prove such neglect or refusal.

2 Sec. 32. Any railroad company operating its road in this state, and
 3 failing to fence such road on both sides thereof against live stock running
 4 at large at all points where said roads have the right to fence, shall be abso-
 5 lutely liable to the owner of any live stock injured, killed, or destroyed, by
 6 reason of the want of such fence or fences as aforesaid, for the value
 7 of the property so injured, killed, or destroyed, unless the injury complained
 8 of, is occasioned by the willful act of the owner or his agent; and in the cases
 9 contemplated in this section, in order to recover, it shall only be necessary
 10 for the owner of the property to prove the injury or destruction complained
 11 of: Provided, That in case the railroad company under the provisions of
 12 this section shall neglect or refuse to pay the value of any property so in-
 13 jured or destroyed, after thirty days notice in writing given, accompanied
 14 by an affidavit of the injury or destruction of said property to any officer of
 15 the company, or any station or ticket agent employed in the management of
 16 its business in the county where the injury complained of shall have been
 17 committed, such company shall in an action brought to recover therefor, be
 18 held liable to pay double the value of the property injured, killed or de-
 19 stroyed as aforesaid.

2 Sec. 33. Every railroad company shall be liable for all damages sustained
 3 by any person, including employees of the company, in consequence of any
 4 neglect of the agents, or by any mismanagement of the engineers or other
 5 employees of the corporation, to any person sustaining such damage, all con-
 6 tracts to the contrary notwithstanding.

2 Sec. 34. Any judgment recovered against any railroad company in this
 3 state, for any injury to persons or property, shall be a lien within the
 4 county where recovered, on the road and real or other property of such
 5 company, and shall be prior and superior to the lien of any mortgage or
 6 trust deed which may be hereafter executed, except liens for taxes.

2 Sec. 35. Each and every railroad in this state which has received grants
 3 of land to aid in the construction of its road, shall in time of war, insurrec-
 4 tion, or invasion, carry and transport troops and munitions of war, of this
 5 state, or of the United States, upon such roads, when by the state or United
 6 States authorized agent so required, free of charge. They shall also carry
 7 free of charge all wounded soldiers on their return to their respective
 8 homes.

2 Sec. 36. All companies, lessees, or corporations, hereafter running or
 3 operating any railroad within this state, shall be liable for injuring, destroy-
 4 ing, or killing any live stock, the same as railroad companies now are, and
 5 all the provisions of this chapter which apply to the putting in of cattle-
 6 guards, the fencing of roads, the injuring, destroying, or killing of live
 7 stock, the neglect of agents and employees, shall be held to apply to such
 8 companies, lessees, or corporations, as though they were specially named
 9 therein; and parties suffering injuries from the running and operation of
 10 such roads, by such parties, shall have all the remedies prescribed in said
 11 chapter as fully as they now have against the railroad company.

2 Sec. 37. The secretary and treasurer, or assistant treasurer and general
 3 superintendent of each and every railroad company organized under the
 4 laws of this state, shall reside in the state of Iowa.

2 SEC. 38. The offices of secretary, treasurer, or assistant treasurer, and
 3 general superintendent of every such railroad company, shall be established
 4 and kept within this state, at the place designated in the charter as the gen-
 5 eral business office of such company, at which office or offices the original
 6 record, stock, and transfer books, and all the original papers and vouchers
 7 necessary to such company, shall be kept, and it is hereby made the duty
 8 of the treasurer or assistant treasurer to keep a record of the whole financial
 9 condition of said company, which shall be open at all reasonable hours for
 10 the inspection of any stockholder of such company, and any investigation
 11 instituted by the legislature of this state.

2 SEC. 39. Every such railroad company shall annually, under the oath
 3 of the president, in the month of January, make a full report of the condi-
 4 tion of its affairs to the secretary of state, and shall have the same published
 5 in some newspaper printed in the place of its general business office, show-
 6 ing the amount of the capital stock of such company, and the amount paid
 7 thereon; the amount of bonds issued, and how secured, and all other indebt-
 8 edness; the length of such railroad when completed, and how much is built
 9 and in use; the number of acres of land donated or granted to them, by
 10 whom, and what disposition has been made of said grants or donations, the
 11 gross amount of receipts and how disbursed, the net amount of profit and
 12 the dividends made, with such other facts as may be necessary to a full state-
 13 ment of the affairs and condition of such railroads, and the secretary of state
 shall present the said report to the general assembly.

2 SEC. 40. In case any such railroad company shall neglect to make such
 3 report as required in the preceding section, any stockholder of such railroad
 4 company either individual or municipal, may file his petition in the district
 5 court in the county where the principal business office of such railroad com-
 6 pany is kept, stating that said report has not been made, praying that a
 7 peremptory writ of mandamus may issue against the said railroad company
 8 commanding them to make said report; said petition shall be under oath
 9 and filed at least ten days before the next term of the district court in said
 10 county, and notice thereof, shall be given to said railroad company for the
 11 same length of time, and in the same manner as is now required to be given
 12 defendants in other suits originally brought in the district court, and upon
 13 the filing of such petition the clerk of the district court under the seal there-
 14 of shall issue a peremptory writ of mandamus against the said railroad
 15 company and make the same returnable at the next term of the district court
 16 in said county, and costs shall be recoverable by either party, as in ordinary
 actions.

2 SEC. 41. If such railroad company shall fail to obey said writ as therein
 3 required, the said court shall, during the term, appoint three disinterested
 4 and competent persons near the place of the general business office of said
 5 railroad company, as an investigating committee, who shall examine into
 6 the affairs of said railroad company and report at as early a day as practica-
 7 ble, its condition, in manner and form as prescribed in section thirty-nine of
 8 this chapter, one copy of said report to be filed in the office of the clerk of
 9 the district court of the county where the proceedings are had, and one copy
 10 to be filed in the office of the secretary of state. The compensation for the
 11 services of such committee shall be paid by the railroad company thus inves-
 12 tigated, but it shall not exceed three dollars per day and mileage at the rate
 of ten cents per mile, counting one way.

2 SEC. 42. The board of directors of any such railroad company may es-
 3 tablish in any other state a transfer office, in which shall be kept a duplicate

3 transfer book, but in no case can a transfer of shares of stock in such com-
 4 pany be in force or binding until the same is entered in the original transfer
 5 books in the office in this state.

SEC. 43. In the transportation of persons or property by any railroad or
 2 other company, or by any person or firm engaged in the business of trans-
 3 portation of persons or property, no contract, receipt, rule or regulation shall
 4 exempt such railroad or other company, person or firm from the full liabili-
 5 ties of a common carrier, which in the absence of any contract, receipt, rule
 6 or regulation would exist with respect to such persons or property.

CHAPTER 4. *Of Telegraphs.*

SEC. 1. Any person or company may construct a telegraph line along
 2 the public highways of this state, or across the rivers or over any lands
 3 belonging to the state or to any private individual, and may erect the neces-
 4 sary fixtures therefor.

SEC. 2. Such fixtures must not be so constructed as to incommode the
 2 public in the use of any highway or the navigation of any stream, nor shall
 3 they be set up on the private grounds of any individual without paying him
 4 a just equivalent for the damages he thereby sustains.

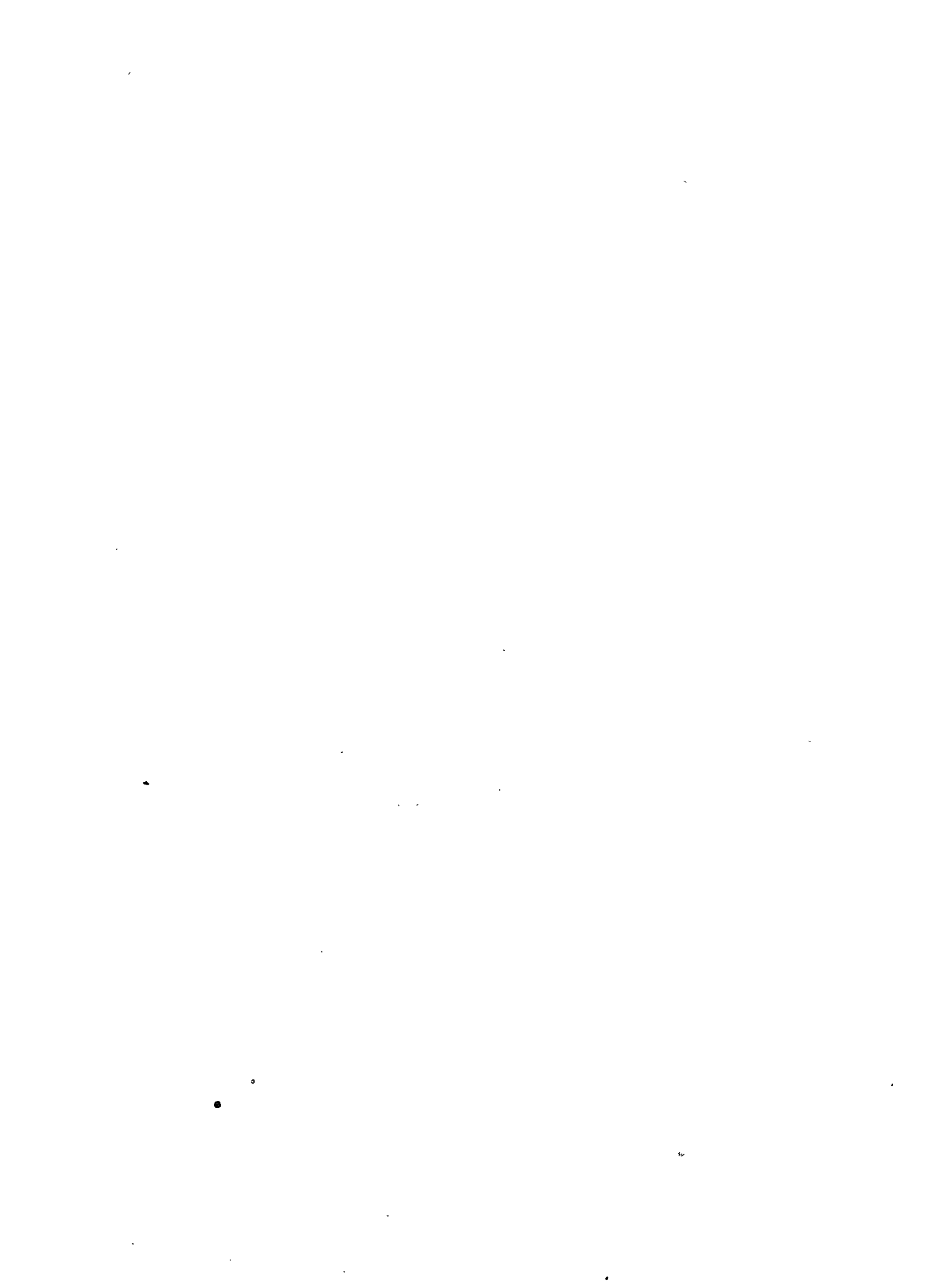
SEC. 3. If the person over whose lands such telegraph line passes claims
 2 more damage therefor than the proprietor of the telegraph is willing to pay,
 3 the amount of damages may be determined in the same manner as is pro-
 4 vided in cases of railroads and other works of internal improvement.

SEC. 4. If the proprietor of any telegraph within this state, or the per-
 2 son having the control and management thereof, refuses to receive dispatch-
 3 es from any other telegraph line or to transmit the same with fidelity and
 4 without unreasonable delay, all the laws of the state in relation to limited
 5 partnerships, to corporations, and to obtaining private property for the use
 6 of such telegraph shall cease to operate in favor of the proprietor thereof,
 7 and if private property has been taken for the use of such telegraph with-
 8 out the consent of the owner, he may reclaim and recover the same.

SEC. 5. Any person employed in transmitting messages by telegraph
 2 must do so without unreasonable delay, and any one who willfully fails thus
 3 to transmits them, or who intentionally transmit a message erroneously, or
 4 makes known the contents of any message sent or received to any person
 5 except him to whom it is addressed, or to his agent or attorney, is guilty of
 6 a misdemeanor.

SEC. 6. The proprietor of a telegraph is liable for all mistakes in
 2 transmitting messages made by any person in his employment as well as for
 3 all damages resulting from a failure to perform any other duties required by
 4 law.





TITLE XI. OF THE POLICE OF THE STATE.

CHAPTER 1. *Of the Settlement and Support of the Poor.*

2 SEC. 1. The father, mother, children, grandfather if of ability without
3 his personal labor, and the male grandchildren who are of ability, of any
4 poor person who is blind, old, lame, or otherwise impotent so as to be un-
5 able to maintain himself by work, shall jointly or severally relieve or main-
6 tain such poor person in such manner as may be approved by the trustees
7 of the township where such poor person may be or by the directors of the
8 poor house, but these officers shall have no control unless the poor person
has applied for aid.

2 SEC. 2. The word "father" in the preceding section includes the putative
3 father of an illegitimate child, and the question of his being the father may
4 be tried in any action or proceeding to recover for or to compel the support
5 of an illegitimate child. But there shall be no obligation to proceed against
6 the putative father before proceeding against the mother.

2 SEC. 3. Upon the failure of such relative so to relieve or maintain a poor
3 person who has made application for relief, the township trustees or the
4 directors of the poor house may apply to the circuit court of the county
5 where such poor person resides for an order to compel the same.

2 SEC. 4. At least ten days written notice of the application shall be given
3 by summons which shall be served as original process in an action may be
4 served and in any county by any officer thereof or by any other person.

2 SEC. 5. The court shall make no order affecting a person not served but
3 may notify him at any stage of the proceedings.

2 SEC. 6. The court may proceed in a summary manner to hear the alle-
3 gations and proofs of the parties and order any one or more of the relatives
4 of such poor person who appear to be able, to relieve and maintain him,
5 charging them as far as practicable in the order above named, and for that
6 purpose making new parties to the proceedings when necessary.

2 SEC. 7. Such order may be for the entire or partial support of the poor
3 person, and it may be for support either by money or by taking the poor
4 person to the relative's house, or the order may assign the poor person for a
5 certain time to one and for another period to another relative as may be
6 adjudged just and convenient, taking into view the means of the several
relatives.

2 SEC. 8. If the court order the relief in any other manner than in money
3 it shall fix a just weekly value upon it.

2 SEC. 9. The order may be specific in point of time, or it may be indefi-
3 nite until the further order of the court and may be varied from time to time
4 when the circumstances require it, on the application of the trustees, of the
5 poor person, or of any relative affected by it, upon ten days notice being
6 given.

2 SEC. 10. When money is ordered to be paid it shall be paid to such officer
3 as the court may direct.

SEC. 11. If any person fails to render the support ordered, on the affidavit of one of the proper trustees or directors showing that fact, the court may order execution for the amount due, rating any support ordered in kind as before assessed. In such proceeding, the county is plaintiff, and the person sought to be charged defendant.

SEC. 12. An appeal may be taken from such judgment as provided in the chapter relating to the circuit court.

SEC. 13. Whenever a father, or a mother, being a widow or living separate from her husband, abandons their children, or husband his wife, leaving them chargeable or likely to become chargeable upon the public for their support, the trustees of the township where such wife or children may be, or the directors, upon application being made to them, may apply to the circuit court of any county in which any estate of such father, mother, or husband may be for a warrant to seize the same, and upon due proof of the above facts the court may issue its warrant authorizing the trustees or directors to take into their possession the goods, chattels, effects, things in action, and the lands of the person absconding.

SEC. 14. By virtue of such warrant, the trustees or directors may take the property whenever the same may be found in the same county and shall be vested with all the right and title to the personal property and to the rents of the real property which the person absconding had at the time of his departure.

SEC. 15. All sales and transfers of any such property real or personal and leases made by the person after the issuing of the warrant shall be absolutely void.

SEC. 16. The said trustees or directors shall immediately make an inventory of the property so seized by them and return the same together with the proceedings to the court, there to be filed.

SEC. 17. The court upon inquiring into the facts and circumstances of the case, may discharge the order of seizure, but if it be not discharged, the court shall have power to direct from time to time what part of the personal property shall be sold and how, and how much of the proceeds of such sale, and of the rents and profits of the real estate shall be applied to the maintenance of the children or wife of the person so absconding.

SEC. 18. If the party against whom such warrant issued return and support the wife or children so abandoned, or give security to the county satisfactory to the circuit judge that such wife or children shall not become chargeable to the county, the warrant shall be discharged by an order of the court, and the property taken and remaining restored.

SEC. 19. The defendant may demand a jury in the trial contemplated on the question of his ability and of his obligation to support a poor relative; and also on the questions of abandonment and liability to become a public charge as provided above, which demand may be made upon the inquiry contemplated above, and such inquiry shall take place on the request of the defendant unless it be ordered on the motion of the court itself with notice to the defendant.

SEC. 20. Any county having expended any money for the relief of a poor person under the provisions of this chapter, may recover the same from any of his kindred mentioned in the first section of this chapter, by an action brought in any court having jurisdiction within two years from the payment of such expenses.

2 SEC. 21. A more distant relative who may have been compelled to aid a
3 poor person may recover from any one or more of the nearer relatives,
4 and one so compelled to aid may recover contribution from others of the
5 same degree.

6 SEC. 22. Legal settlements may be acquired in the counties as follows :

- 7 1. Any person having attained the age of majority, and residing in this
8 state one year without being warned as hereafter provided gains a
9 settlement in such county ;
- 10 2. A married woman follows and has the settlement of her husband, if
11 he have any within the state, and if she had a settlement at the
12 time of marriage it is not lost by the marriage ;
- 13 3. A married woman abandoned by her husband, and having obtained
14 authority to act as single person, may acquire a settlement as if she
15 were unmarried ;
- 16 4. Legitimate children follow and have the settlement of their father if
17 he have one, but if he has none then that of their mother ;
- 18 5. Illegitimate minor children follow and have the settlement of their
19 mother, or if she have none then that of the putative father ;
- 20 6. A minor whose parent has no settlement in this state, and a married
21 woman living apart from her husband, and having no settlement,
and whose husband has no settlement in this state, residing one
year in any county gains a settlement in such county ;
7. A minor bound as an apprentice or servant, immediately upon
such binding, if done in good faith, gains a settlement where his
master has one.

2 SEC. 23. A settlement once acquired continues until it is lost by acquir-
3 ing a new one.

4 SEC. 24. A person coming from another state, and not having become a
5 citizen of nor having a settlement in this state, falling into want and apply-
6 ing for relief, may be sent to the state whence he came at the expense of
7 the county under a warrant of the circuit court, otherwise he is to be relieved
8 in the county where he applies.

9 SEC. 25. Persons coming from other states or counties who are, or of
10 whom it is apprehended that they will become, county charges may be pre-
11 vented from obtaining a settlement in a county by warning them to depart,
12 and thereafter they shall not acquire a settlement except by the requisite
residence for one year uninterrupted by another warning.

3 SEC. 26. Such warning shall be in writing and may be served upon the
4 order of the trustees of the township or of the director or of the circuit
5 court or judge. The service may be made by any person and the person
6 making it shall make a return of his doings thereon to the officer issuing the
7 order, and if not made by a sworn officer it must be verified by affidavit.

8 SEC. 27. When a poor person applying for relief in one county has a
9 settlement in another he may be removed to the county of his settlement,
10 if he be able to be removed, upon the order of the board of supervisors of
11 the county where he applied for relief, and delivered to any trustee of a
12 township in the county where his settlement is or to a director of the poor-
house there, giving written notice of the fact to the county auditor ; or the
board of the county where the poor person applied for relief may in their
discretion cause the board of the county where the poor person has a settle-
ment to be notified of his being a county charge in the first county, and
thereafter it will become the duty of the board of the county of the settle-
ment to order the removal of the poor person if he is able to be removed,
and if not able then to provide for his relief.

SEC. 28. The county where the settlement is shall be liable to the county rendering relief for all reasonable charges and expenses incurred in the relief and care of a poor person if notice of relief being rendered is given to the county of the settlement within a reasonable time after the county of the settlement is ascertained; and for the charges of removal and expenses of support incurred after notice given, in all cases.

SEC. 29. When an order of removal is made, the county to which the removal is made may appeal from the order to the circuit court of the county where the order is made, by the board of the county, to which the removal is made, causing a notice of such appeal signed by its clerk to be filed in the office of the other county within thirty days after the service of the notice of the order. No other proceeding than the above shall be necessary to effect the appeal and the notice of appeal and a transcript of whatever other proceedings or papers there may be relative to the matter shall be filed in the office of the circuit court, and the cause may be entitled as of the county issuing the order as plaintiff against the county appealing as defendant and appellant.

SEC. 30. The cause may be tried as other actions, but there need be no pleading, the only issue being whether the poor person had a settlement in the county to which he was removed at the time of such order of removal.

SEC. 31. Upon the application of the county appellant the court may in its discretion change the venue of such cause to some convenient disinterested county.

SEC. 32. The city council of any incorporated city (of the first class) and the township trustees of any township are hereby authorized, and it is made their duty, to provide for the relief of such poor persons in their respective cities and townships as should not, in their judgment, be sent to the county poor-house; *Provided*, That the amount paid for, or in aid of, the support of such poor persons may be supplied to them either in the form of food, rent, clothing, fuel and lights, medical attendance, or in money; and shall not exceed two dollars per week for each person for whom relief is thus furnished, exclusive of medical attendance.

SEC. 33. In no case shall the widows or families of Iowa soldiers, or other persons in families requiring public relief, be sent to the county poor-house when they can, and prefer to be, relieved out of the poor-house, to the extent above provided.

SEC. 34. All moneys expended as contemplated in the two preceding sections, shall be paid out of the county treasury after the proper account rendered therefor shall have been approved by the board of supervisors of the respective counties, and in all cases the necessary appropriations therefor shall be made by the respective counties; *Provided*, That the board of supervisors shall have the power to limit the amount of relief furnished under this chapter, and shall have the power to refuse to continue such relief whenever in their judgment the person or persons receiving such relief are not in a condition to require further public assistance or aid.

SEC. 35. The trustees in each township in counties where there is no poor-house have the oversight and care of all poor persons in their township so long as they remain a county charge, and shall see that they are properly relieved and taken care of.

SEC. 36. The poor must make application for relief to the trustees of the township where they may be, and if the trustees are satisfied that the applicant is in such a state of want as requires relief at the public expense, they may for the time being afford such relief as the necessities of the person

5 may require, and shall report the case forthwith to the board of supervisors
6 who are authorized to deny further relief to such person if they find cause.

2 Sec. 37. All claims and bills for the care and support of the poor shall
3 be certified to be correct by the proper trustees and presented to the board
4 of supervisors, and if they are satisfied that they are reasonable and proper,
5 they are to be paid out of the county treasury.

2 Sec. 38. The board may in its discretion allow and pay to poor persons
3 who may become chargeable as paupers and who are of mature years and
4 sound mind, and who will probably be benefitted thereby, such sums or such
5 annual allowance as will not exceed the charge of their maintenance in the
6 ordinary mode.

2 Sec. 39. If any poor person on application to the trustees is refused the
3 required relief, he may apply to the board of supervisors, who, on examina-
4 tion into the matter, may direct the trustees to afford relief, or they may
5 direct specific relief.

2 Sec. 40. A person who is a resident of, but having no residence in this
3 state, falling into want and making application in one county, but having
4 his usual residence in another, may at his request be removed to such other
5 county by the county where he applied, and he shall then be at the charge
6 of such other county.

2 Sec. 41. The board of supervisors may enter into contract, when they
3 consider the same expedient, with the lowest bidder, through proposals
4 opened and examined at a regular session of the board, for the support of
5 all the poor at the time being of the county for one year only at a time, and
6 may make all requisite orders to that effect.

2 Sec. 42. When such a contract is made the board shall from time to time
3 appoint some person to examine and report upon the manner the poor are
4 kept and treated, which shall be done without notice to the person contract-
5 ing for their support, and if upon due notice and inquiry the board find that
6 the poor are not reasonably and properly supported, or cared for, they have
7 the power at a regular session to set aside the contract, making proper al-
8 lowances for the time it has been in operation.

2 Sec. 43. Such contractor and every contractor under the trustees of a
3 township may employ a poor person in any work for which his age, health,
4 and strength is competent, but this shall be subject to the decisions and or-
5 ders of the trustees, and in the last resort of the board of supervisors.

2 Sec. 44. The board of supervisors of each county is hereby authorized
3 to order the erection and establishment of a poor-house in such coun-
4 ty whenever that measure is deemed advisable, and also the purchase
5 of such land as may be deemed necessary for the use of the same, and is
6 invested with full authority to make the requisite contracts and to carry
7 such order into effect, provided the cost of said poor house and land shall be
8 first estimated by said board and approved by a vote of the people.

2 Sec. 45. The expense of such erection and purchase shall be defrayed by a
3 tax levied on the general assessment roll for that express purpose, which
4 shall constitute a separate and special fund to be collected and paid over in
5 manner as other taxes are, but to be paid in money only.

2 Sec. 46. When a poor-house is established the board has discretionary
3 authority to appoint directors or not, and when it deems it expedient so to
4 do, may appoint one or three in accordance with the provisions of the fol-
5 lowing sections; and until the board so appoint directors they are invested
6 with all the authority and powers in relation to the poor-house which are
7 given to the directors when they have been appointed.

SEC. 47. The directors when so appointed are to take charge of and manage the affairs of the poor and of the poor-house, and shall be a body corporate under the name of "the directors (or director) of the poor-house of—county" (naming the county).

SEC. 48. They are required to take an oath faithfully to discharge the duties of their office previous to acting therein. They continue in office one year and until their successors are appointed and qualified. They shall keep a record of their doings. And if a vacancy occur in their body, the board may fill it by appointment to continue until the end of the year.

SEC. 49. They may make all contracts and purchases requisite for the poor-house, and may prescribe rules or regulations for the management and good government of the same and for the introducing sobriety, morality, and industry among its occupants.

SEC. 50. The directors may appoint a steward of the poor-house who shall be governed in all respects by the rules and regulations of the board and may be removed by them at pleasure, and who shall receive such compensation, perform such duties, and give such security for their faithful performance as the board may appoint.

SEC. 51. The steward shall receive into the poor-house any person producing an order as hereafter provided and enter in a book to be kept for that purpose the name and age and the date of the reception of such person.

SEC. 52. He may require of persons admitted to the poor-house to perform such reasonable and moderate labor as may be suited to their ages and bodily strength, the proceeds of which shall be appropriated to the use of the poor-house in such manner as the directors may determine.

SEC. 53. No person shall be admitted to the poor-house unless upon the written order of a township trustee, a director, or the board of supervisors, and relief is to be furnished in the poor house only, when the person is able to be taken there, unless in the cases hereinbefore provided.

SEC. 54. When a trustee furnishes relief out of the poor-house to any person or gives an order of admission thereto, such trustee is required to notify one of the directors forthwith of the fact with the sex, age, health, and property of the poor person, and the date when relief was first furnished, and the directors have authority to countermand such order or supply and to make any provision in relation to him, not inconsistent with the foregoing provisions.

SEC. 55. The directors are empowered to bind out such poor children of the poor-house as they believe are likely to remain a permanent charge on the public, males until twenty-one and females until the age of eighteen unless sooner married, on such terms and conditions as prescribed in the chapter concerning master and apprentices. And they may bind for shorter periods on such conditions as they may adopt.

SEC. 56. When any inmate of the poor-house becomes able to support himself the director may order his discharge.

SEC. 57. When a poor person applying for relief is in a condition that will not admit of his removal to the poor-house the directors may provide for his relief out of the county treasury until his condition will admit of his removal.

SEC. 58. The directors shall cause the poor-house to be visited at least once a month by one of their body who shall carefully examine the condition of the inmates and the manner in which they are fed and clothed and otherwise provided for and treated, ascertain what labor they are required to perform, inspect the books and accounts of the steward, and look into all

6 matters pertaining to the poor-house and its inmates and report to the board.
7 When there is no board of directors the board of supervisors may perform
[8] the above duty or appoint a person therefor who shall report to them.

2 SEC. 59. The directors shall annually report to the board of supervisors
3 the state of the poor-house with a full account of their contracts, disburse-
4 ments, and proceedings.

2 SEC. 60. The expense of supporting the poor-house shall be paid out of
3 the county treasury by order of the board on certificates signed by the di-
4 rectors; and in case the ordinary revenue of the county prove insufficient
5 for the support of the poor the board may levy a poor tax not exceeding
6 one mill on the dollar to be entered on the county list and collected as the
7 ordinary county tax.

2 SEC. 61. The board may allow the directors out of the county treasury
3 such sum as it deems reasonable for their services not exceeding one dollar
4 and a half for each day employed in the duties of their appointment.

2 SEC. 62. The directors are also invested with all powers before given to
3 the trustees of townships in relation to the poor.

2 SEC. 63. The board is also invested with authority to let out the support
3 of the poor with the use and occupancy of the poor-house and farm for a
4 period not exceeding three years.

CHAPTER 2. *Of the Care of the Insane.*

2 SEC. 1. The hospital for the insane, located at Mount Pleasant, in Henry
3 county, shall be known by the name of the Iowa hospital for the insane at
4 Mount Pleasant; and the hospital for the insane, located at Independence,
5 in Buchanan county, shall be known by the name of the Iowa hospital for
6 the insane at Independence. Each of said hospitals shall be under the
7 charge of seven trustees, as herein provided, four of whom shall constitute
8 a quorum for the transaction of business; the governor of the state shall be
9 a member of the board by virtue of his office. When the term of [a] trustee
10 expires, his successor shall be appointed by the general assembly for six
11 years; and the incumbent shall hold office until his successor is appointed
12 and qualified. All vacancies occurring shall be filled by the governor until
13 the meeting of the general assembly.

2 SEC. 2. The trustees, before entering upon the duties of their office,
3 shall take and subscribe an oath or affirmation to support the constitution of
4 the United States, and of this state, and faithfully to discharge the duties
5 required of them by law, and the by-laws that may be established. They
6 shall be paid their actual and necessary expenses and three dollars per day
7 during the time they are actually engaged in the discharge of their official
8 duties; such payment to be made out of the state treasury, out of any
9 moneys not otherwise appropriated, by an order drawn by the secretary of
10 the board, and approved by the superintendent. The board of trustees shall
11 hold an annual meeting upon the first Wednesday of December of each
12 year, at the hospital, when they shall choose one of their number president,
13 and another secretary, and shall also choose a treasurer, for the year then
14 ensuing, and until their successors are elected and qualified. They shall
15 also hold quarterly meetings on the first Wednesdays in March, June, and
16 September.

2 SEC. 3. It shall be the duty of the board of trustees, or a majority there-
3 of, to inspect the hospital under their charge at each quarterly meeting;

3 and a committee of the board may visit the hospital monthly. The trustees
 4 shall make a record of their proceedings in books kept for the purpose; and
 5 at the annual meeting preceding the regular sessions of the general assem-
 6 bly, they shall make a report to the governor of the condition and wants of
 7 the hospital, which shall be accompanied by full and accurate reports of
 8 its superintendent and treasurer, and an account of all moneys received and
 9 disbursed.

SEC. 4. The trustees shall have the general control and management of
 2 the hospital under their charge; they shall have full power to make all
 3 by-laws necessary for the government of the same, not inconsistent with the
 4 laws and constitution of the state, and to conduct the affairs of the institu-
 5 tion in accordance with the laws and by-laws regulating the same. They
 6 shall appoint a medical superintendent, an assistant physician or physicians,
 7 a steward, and a matron, who shall reside in the hospital, and be styled
 8 resident officers of the same, and be governed and subject to all the laws
 9 and by-laws for the government of the said institution. But the trustees may,
 10 in their discretion, dispense with a steward, and cause the duties of a stew-
 11 ard to be performed by the other officers, under such rules and regulati ns
 12 as the board may adopt. They may also, in their discretion, and upon the
 13 nomination of the superintendent, appoint a chaplain and prescribe his
 14 duties. The board of trustees shall, from time to time, fix the salaries and
 15 wages of the officers and other employees of the hospital, and certify the
 16 same to the auditor of state; and they may remove any officer or other em-
 17 ployee of such institution: *Provided*, that the salary of the superintendent
 18 shall not be more than fifteen hundred dollars per annum; the salary of the
 19 assistant physician shall not be more than six hundred dollars per annum;
 20 the salary of the steward shall not be more than seven hundred dollars per
 21 annum; the salary of the matron shall not be more than three hundred
 22 dollars per annum.

SEC. 5. The board of trustees may take, in the name of the state, and
 2 hold in trust for the hospital, any land conveyed or devised, and any money
 3 or other personal property given or bequeathed, to be applied for any pur-
 4 pose connected with the institution.

SEC. 6. No trustee, or any officer of the hospital, shall be either directly
 2 or indirectly interested in the purchase of building material, or any article
 3 of furniture or supply for the use of the institution.

SEC. 7. No member of the board of trustees shall be eligible to the office
 2 of superintendent of the hospital during the term for which he was ap-
 3 pointed, nor within one year after his term shall have expired.

SEC. 8. The treasurer shall execute a bond to the state of Iowa for the
 2 use of the hospital, (naming which), in a sum, and with such securities, as
 3 the board of trustees shall approve, conditioned that he will faithfully per-
 4 form the duties of his office, and pay over and account for all money that
 5 shall come into his hands. He shall receive such compensation as the board
 6 shall fix, not exceeding one half of one per cent on all moneys received and
 7 paid out by him. Upon authority granted by the board, he shall have
 8 power to draw from the state treasury out of money not otherwise appro-
 9 priated, upon his order, approved by the superintendent and not less than
 10 two of the trustees, and under seal of the hospital, a sufficient amount from
 11 time to time, for the purpose of defraying any deficiencies that may arise in
 12 the current expenses of the hospital. Upon the presentation of such order
 13 to the auditor of state, it shall be the duty of the auditor to draw a warrant
 14 on the treasurer of state for the amount therein specified.

2 SEC. 9. The superintendent of the hospital shall be a physician of ac-
 3 knowledged skill and ability in his profession. He shall be the chief exec-
 4 utive officer of the hospital, and shall hold his office for six years unless
 5 sooner removed as above provided. Before entering on the duties of his
 6 office, he shall take and subscribe an oath or affirmation, faithfully and dili-
 7 gently to discharge the duties required of him by law. He shall have the
 8 entire control of the medical, moral, and dietetic treatment of the patients,
 9 and he shall see that the several officers of the institution faithfully and
 10 diligently discharge their respective duties. He shall employ attendants,
 11 nurses, servants, and such other persons as he may deem necessary for the
 12 efficient and economical administration of the affairs of the hospital, assign
 13 them their respective places and duties, and may at any time discharge any
 of them from service.

2 SEC. 10. The superintendent, or the steward and matron, under his di-
 3 rection, and not otherwise, shall make all purchases for the hospital, where,
 4 and in such manner as they can be made on the best terms, keep the accounts
 5 pay employees, and have a personal superintendence of the farm, grounds,
 and all the property of the hospital.

2 SEC. 11. The superintendent shall provide an official seal upon which
 3 shall be inscribed the statute name of the hospital under his charge, and the
 name of the state.

2 SEC. 12. The assistant physicians shall be medical men of such character
 3 and qualifications as to be able to perform the ordinary duties of the super-
 intendent during his necessary absence or inability to act.

2 SEC. 13. In each county of the state there shall be a board of commis-
 3 sioners, consisting of three persons, to be styled commissioners of insanity,
 4 two of whom shall constitute a quorum. The clerk of the circuit court shall
 5 be a member of such board and clerk of the same. The other members
 6 shall be appointed by the judge of said court. One of them shall be a re-
 7 spectable practicing physician, and the other a respectable practicing lawyer;
 8 and the appointment shall be made of persons residing as convenient as may
 9 be to the county-seat. Such appointment may be made during the session
 10 of the court or in vacation; and if made in vacation, it shall be by written
 11 order, signed by the judge and recorded by the clerk of the court. The ap-
 12 pointment shall be for two years, and so that the term of one commissioner
 13 shall expire every year. The appointment of successors may be made at
 14 any time within three months prior to the expiration of the term of the in-
 15 cumbent, who shall hold his office until his successor is appointed and quali-
 16 fied. In the temporary absence or inability to act of two of the commissioners,
 17 the judge of the circuit court, if present, may act in the room of one of such
 18 commissioners; or the commissioner present may call to his aid a respecta-
 19 ble practicing physician or lawyer, who, after qualifying as in other cases,
 20 may act in the same capacity. The record, in such cases, must show the fact
 of such absence.

2 SEC. 14. Before entering upon the duties of their office, the persons so
 3 appointed shall take and subscribe an oath or affirmation to support the
 4 constitution of the United States and of the state of Iowa, and to faithfully
 5 discharge their duties according to law, as such commissioners; which obli-
 6 gation shall be filed with the clerk of said court, who shall enter a memor-
 7 andum thereof on the records. They shall organize by choosing one of
 8 their number president. They shall hold their meetings for business at the
 office of the clerk of said court, unless, for good reasons, they shall fix on

9 some other place. If they deem necessary or advisable, they may hold ses-
10 sions at such regular times as they may fix. They shall also meet on notice
11 from the clerk.

SEC. 15. The term "clerk," as herein used, means clerk of said board of
2 commissioners, unless otherwise expressed. The said clerk shall sign and
3 give or issue all notices, appointments, warrants, subpoenas, or other process
4 required to be given or issued by the commissioners, affixing thereto his seal
5 as clerk of said court. He shall file and carefully preserve in his office all
6 papers connected with any inquest by the commissioners, and properly be-
7 longing to his office, with all notices, reports, and other communications.
8 He shall keep separate books in which to minute the proceedings of the
9 board; and his entries therein shall be sufficiently full to show, with the
10 papers filed, a complete record of their findings, orders, and transactions.
11 The notices, reports, and communications, herein required to be given or
12 made, may be sent by mail, unless otherwise expressed or implied; and the
13 fact and date of such sending, and of their reception, must be noted on the
14 proper record.

SEC. 16. The said commissioners shall have cognizance of all applica-
2 tions for admission to the hospital, or for the safe keeping otherwise, of
3 insane persons within their respective counties, excepting in cases otherwise
4 especially provided for. For the purpose of discharging the duties required
5 of them, they shall have power to issue subpoenas and compel obedience
6 thereto, to administer oaths, and do any act of a court necessary and proper
7 in the premises.

SEC. 17. Applications for admission to the hospital must be made in
2 writing, in the nature of an information, verified by affidavit. Such infor-
3 mation must allege that the person in whose behalf the application is
4 made, is believed by the informant to be insane, and a fit subject for custody
5 and treatment in the hospital; that such person is found in the county, and
6 has a legal settlement therein, if such is known to be the fact; and, if such
7 settlement is not in the county, where it is, if known; or where it is believed
8 to be, if the informant is advised on the subject.

SEC. 18. On the filing of an information as above provided, the com-
2 missioners shall at once take steps to investigate the grounds of the informa-
3 tion. For this purpose they may require that the person for whom such
4 admission is sought be brought before them, and that the examination be
5 had in his or her presence; and they may issue their warrant therefor, and
6 provided for the suitable custody of such person until their investigation
7 shall be concluded. Such warrant may be executed by the sheriff, or any
8 constable of the county; or, if they shall be of opinion, from such prelimi-
9 nary inquiries as they may make—and in making which they shall take the
10 testimony of the informant, if they deem necessary or desirable, and of
11 other witnesses, if offered,—that such course would probably be injurious
12 to such person, or attended with no advantage, they may dispense with such
13 presence. In their examination they shall hear testimony for and against
14 such application, if any is offered. Any citizen of the county, or any rela-
15 tive of the person alleged to be insane, may appear and resist the applica-
16 tion, and the parties may appear by counsel, if they elect. The commis-
17 sioners, whether they decide to dispense with the presence before them of
18 such person or not, shall appoint some regular practicing physician of the
19 county to visit or see such person, and make a personal examination touch-
20 ing the truth of the allegations in the information, and touching the actual

21 condition of such person, and forthwith report to them thereon. Such phy-
 22 sician may, or may not, be of their own number; and the physician so ap-
 23 pointed and acting shall certify, under his hand, that he has, in pursuance of
 24 his appointment, made a careful personal examination as required; and
 25 that, on such examination, he finds the person in question insane, if such is
 26 the fact, and if otherwise, not insane: and in connection with his examin-
 27 ation, the said physician shall endeavor to obtain from the relatives of the
 28 person in question, or from others who know the facts, correct answers, so
 29 far as may be, to the interrogatories hereinafter required to be propounded
 30 in such cases, which interrogations and answers shall be attached to his cer-
 31 tificate.

2 SEC. 19. On the return of the physician's certificate, the commissioners
 3 shall, as soon as practicable, conclude their investigation; and having done
 4 so, they shall find whether the person alleged to be insane, is insane;
 5 whether, if insane, a fit subject for treatment and custody in the hospital;
 6 whether the legal settlement of such person is in their county, and if not
 7 in their county, where it is, if ascertained. If they find such person is
 8 not insane, they shall order his or her immediate discharge, if in custody.
 9 If they find such person insane, and a fit subject for custody and treatment
 10 in the hospital, they shall forthwith issue their warrant and a duplicate
 11 thereof, stating such finding, with the settlement of the person, if found;
 12 and if not found, their information, if any, in regard thereto authorizing the
 13 superintendent of the hospital to receive and keep such person as a patient
 14 therein. Said warrant and duplicate with the certificate and finding of the
 15 physician, shall be delivered to the sheriff of the county, who shall execute
 16 the same by conveying such person to the hospital, and delivering him or
 17 her, with such duplicate, and physician's certificate, and finding, to the su-
 18 perintendent thereof. The superintendent, over his official signature, shall
 19 acknowledge such delivery on the original warrant, which the sheriff
 20 shall return to the clerk of the commissioners, with his costs and expenses
 21 indorsed thereon. If neither the sheriff nor his deputy is at hand, or, if
 22 both are otherwise engaged, the commissioners may appoint some other
 23 suitable person to execute the warrant in his stead who shall take and sub-
 24 scribe an oath or affirmation faithfully to discharge his duty, and shall be
 25 entitled to the same fees as the sheriff. The sheriff, or any other person so
 26 appointed, may take to his aid such assistance as he may need to execute
 27 such warrant; but no female shall thus be taken to the hospital without the
 28 attendance of some other female, or some relative. The superintendent, in
 29 his acknowledgment of delivery, must state whether there was any such
 30 person in attendance, and give the name or names, if any. It is, however,
 31 hereby provided, that if any relative or immediate friend of the patient, who
 32 is a suitable person, shall so request, he shall have the privilege of taking
 33 and executing such warrant, in preference to the sheriff, or any other person,
 34 and without taking such oath or affirmation; and for so doing he shall be
 35 entitled to his necessary expenses but to no fees. The requirements of this
 and preceding section are modified by the provisions of the next section.

2 SEC. 20. If the commissioners find that the person so committed to the
 3 hospital has, or probably has, a legal settlement in some other county, they
 4 shall immediately notify the commissioners of such county of such finding
 5 and commitment; and the commissioners so notified shall thereupon inquire
 6 and ascertain, if possible, whether the person in question has a legal settle-
 ment in their county, and shall immediately notify the superintendent of

7 the hospital, and the commissioners of the county from which such person
8 was committed, of the result of such inquiry. If the legal settlement of a
9 person so committed cannot for a time be ascertained, and is afterwards
10 found, the notices so required shall then be given.

2 SEC. 21. When the superintendent of the hospital has been duly notified
3 as herein required, that a patient sent to the hospital from one county has a
4 legal settlement in another county, he shall thereafter hold and treat such
5 patient as from the latter county; and such holding shall apply to expenses
6 already incurred in behalf of such patient and remaining unadjusted.

2 SEC. 22. Expenses incurred as herein provided by one county on account
3 of an insane person whose legal settlement is in another county, shall be re-
4 funded, with lawful interest thereon, by the county of such settlement, and
5 shall be presented to the board of supervisors of the county sought to be
6 charged, which shall be allowed and paid the same as other claims.

2 SEC. 23. Patients in the hospital having no legal settlement in the state,
3 or whose legal settlement cannot be ascertained, shall be supported at the
4 expense of the state, and the trustees may authorize the superintendent to
5 remove any patient, at the expense of the state, if they see proper.

2 SEC. 24. All patients in the hospital shall be regarded as standing upon
3 an equal footing; and the several patients, according to their different con-
4 ditions of mind and body, and their respective needs, shall be provided for
5 and treated with equal care; but if the relatives or immediate friends of
6 any patient shall desire it, and shall pay the expense thereof, such patient
7 may have special care, and may be provided with a special attendant, as
8 may be agreed upon with the superintendent. In such cases, the charges
9 for such special care and attendance shall be paid quarterly in advance.

2 SEC. 25. The relatives or friends of any patient in the hospital shall have
3 the privilege of paying any portion or all of the expenses of such patient
4 therein; and the superintendent shall cause the account of such patient to
5 be credited with any sums so paid.

2 SEC. 26. If, in the case of any person found to be insane and a fit sub-
3 ject for custody and treatment in the hospital, as above provided, it shall be
4 shown, to the satisfaction of the commissioners, that he cannot at once be
5 admitted therein, for want of room, or for any other cause, and that he can-
6 not with safety be allowed to go at liberty, the commissioners shall require
7 that such patient shall be suitably provided for, otherwise, until such admis-
8 sion can be had, or until the occasion therefor no longer exists. Such pa-
9 tients may be cared for either as private or as public patients. Those shall
10 be treated as private patients whose relations or friends will obligate them-
11 selves to take care of and provide for them, without public charge. In the
12 case of any one treated as a private patient, the commissioner shall appoint
13 some suitable person a special custodian, who shall have authority, and
14 whose duty it shall be, in all suitable ways to restrain, protect, and care for
15 such patient, in such manner as to best secure his or her safety and comfort,
16 and in such manner as to best protect the persons and property of others.
17 In the case of public patients, the commissioners shall require that they be,
18 in like manner restrained, protected, and cared for, by the directors of the
19 poor-house, or the overseers of the poor, at the expense of the county, and
20 they may accordingly issue their warrant to such directors or overseers, who
21 shall forthwith comply with the same. If there is no poor-house for the
22 reception of such patients, or if no more suitable place can be found, they
may be confined in the jail of the county in charge of the sheriff.

2 SEC. 27. On application to the commissioners in behalf of persons
3 alleged to be insane, and whose admission to the hospital is not sought,
4 made substantially in the manner above prescribed, and asking that provision
5 be made for their care as insane—either public or private—within the
6 county, and on proof of their insanity, and need of care as above pointed
7 out, the commissioners may provide for their restraint, protection, and care,
8 as in the case of other applications.

2 SEC. 28. On information laid before the commissioners of any county
3 that a certain insane person in the county is suffering for want of proper
4 care, they shall forthwith inquire into the matter, and, if they find the infor-
5 mation well founded, they shall make all needful provisions for the care of
6 such person, as provided in other cases.

2 SEC. 29. If any person in prison charged with a crime or misdemeanor,
3 whether in needy circumstances or not, shall at any time before indictment
4 is found against him, at the request of any citizen be brought before the
5 commissioner in the manner provided by law, and if it shall be found by
6 him that such person was an idiot or was insane when he committed the of-
7 fense, the said commissioners at their discretion shall proceed and the pris-
8 oner shall be dealt with in like manner as other idiots and lunatics are requi-
9 red to be.

2 SEC. 30. If any person in prison shall, after the commission of an of-
3 fense, and before conviction, become insane, whether he be in needy circum-
4 stances or not, and whether indicted or not, at the request of any citizen, an
5 inquest may be instituted as provided for in this chapter, and if the commis-
6 sioners shall find that such person became insane after the commission of the
7 crime or misdemeanor of which he stands charged, or indicted, and is still
8 insane, they shall proceed, and the prisoner shall for the time being and un-
9 til restored to reason, be dealt with in like manner as other lunatics are re-
10 quired to be; *Provided, however,* That if such lunatic be discharged, there
11 shall be a bond given for his safe keeping, conditioned that said lunatic
12 shall, when restored to reason, answer to said crime or misdemeanor, and
13 abide the order of the court in the premises, and any such lunatic may, when
14 restored to reason, be prosecuted for any offense committed by him previous
15 to such insanity.

2 SEC. 31. If the lunatic mentioned in the preceding section shall be confined
3 in the hospital, the superintendent in whose charge he may be, shall, as soon
4 as such lunatic is restored to his reason, give notice thereof to the district at-
5 torney of the proper county, and retain such lunatic in custody for such
6 reasonable time thereafter as may be necessary for said attorney to cause a
7 capias to issue and to be served, and no longer, and such capias may be is-
8 sued upon precipe filed by said attorney with the clerk of the district court,
9 by virtue whereof the said person so restored to reason, shall be again re-
10 turned to the jail of the proper county, to answer to the offense alleged
11 against him.

2 SEC. 32. When a person upon indictment for any crime or misdemeanor
3 shall be acquitted on the sole ground that he was insane, the fact shall be
4 found by the jury in their verdict, and the prisoner shall be dealt with as
5 provided in the two following sections.

2 SEC. 33. If the prisoner is not in needy circumstances, and the court is
3 satisfied from the nature of the offense or otherwise that it would be unsafe
4 to permit the prisoner to go at large, such prisoner shall be dealt with in the
5 manner provided in chapter 238 of part four, of this code.

2 SEC. 34. If the prisoner is a poor person, the probate judge shall pro-
 3 ceed, and the prisoner shall be dealt with in like manner as other insane
 4 persons are required to be in chapter 238 of part four, of this code.

2 SEC. 35. If any person, after being convicted of any crime or misde-
 3 meanor, and before the execution in whole or part of the sentence of the
 4 court, becomes insane, it shall be the duty of the governor of the state to
 5 inquire into the facts, and he may pardon such lunatic, or commute or sus-
 6 pend for the time being the execution in such manner and for such a period
 7 as he may think proper, and may by his warrant to the sheriff of the proper
 8 county, or warden of the Iowa penitentiary, order such lunatic to be con-
 9 veyed to the hospital and there kept until restored to reason. If the sen-
 10 tence of any such lunatic be suspended by the governor, the sentence of the
 11 court shall be executed upon him after such period suspension hath expired,
 unless otherwise directed by the governor.

2 SEC. 36. When any other person than those described in the seven pre-
 3 ceding sections shall be confined in jail and shall be insane, they may be
 4 proceeded against by the commissioners and sent to the hospital, poor-house
 5 or jail, or discharged upon bond being given for their safe keeping and sup-
 6 ported, or otherwise as in other cases.

2 SEC. 37. No person supposed to be insane shall be restrained of his lib-
 3 erty by any other person, otherwise than in pursuance of authority obtained
 4 as herein required, excepting to such extent and for such brief period as may
 5 be necessary for the safety of person and property until such authority can
 6 be obtained.

2 SEC. 38. Any person having care of an insane person and restraining
 3 such person, either with or without authority, who shall treat such person
 4 with wanton severity, harshness, or cruelty, or shall in any way abuse such
 5 person, shall be guilty of a misdemeanor, besides being liable in an action
 6 for damages.

2 SEC. 39. Insane persons who have been under care, either as public or pri-
 3 vate patients, outside of the hospital, by authority of the commissioners of any
 4 county, may, on application to that effect, be transferred to the hospital,
 5 whenever they can be admitted thereto, on the warrant of such commis-
 6 sioners. Such admission may be had without another inquest, at any time
 7 within six months after the inquest already had unless the commissioners
 8 shall deem further inquest advisable.

2 SEC. 40. In each case of application for admission to the hospital, correct
 3 answers to the following interrogatories, so far as they can be obtained, shall
 4 accompany the physician's certificate; and if on further examination,
 5 after the answers are stated, any of them are found to be erroneous, the
 6 commissioners shall cause them to be corrected:

- 7 (1.) What is the patient's name and age? Married or single? If any
 8 children, how many? Age of youngest child?
- 9 (2.) Where was the patient born?
- 10 (3.) Where is his (or her) place of residence?
- 11 (4.) What has been the patient's occupation?
- 12 (5.) Is this the first attack? If not, when did others occur, and what
 13 was their duration?
- 14 (6.) When were the first symptoms of this attack manifested, and in what
 15 way?
- 16 (7.) Does the disease appear to be increasing, decreasing, or stationary?
- 17 (8.) Is the disease variable, and are there rational intervals? If so, do
 they occur at regular periods?

- 18 (9.) On what subjects or in what way is derangement now manifested?
 19 State fully.
- 20 (10.) Has the patient shown any disposition to injure others?
- 21 (11.) Has suicide ever been attempted? If so, in what way? Is the
 22 propensity now active?
- 23 (12.) Is there a disposition to filthy habits, destruction of clothing,
 24 breaking of glass, etc?
- 25 (13.) What relatives, including grand parents and cousins, have been
 26 insane?
- 27 (14.) Did the patient manifest any peculiarities of temper, habits, dispo-
 28 sition, or pursuits, before the accession of the disease?—any predomi-
 29 nant passion, religious impressions, etc.?
- 30 (15.) Was the patient ever addicted to intemperance in any form?
- 31 (16.) Has the patient been subject to any bodily disease; epilepsy, sup-
 32 pressed eruptions, discharges of sores, or ever had any injury of the
 33 head?
- 34 (17.) Has restraint or confinement been employed? If so, what kind,
 35 and how long?
- 36 (18.) What is supposed to be the cause of the disease?
- 37 (19.) What treatment has been pursued for the relief of the patient?
 38 Mention particulars and the effects.
- 39 (20.) State any other matter supposed to have a bearing on the case.

SEC. 41. If at any time it may become necessary, for want of room or
 2 other cause, to discriminate in the general reception of patients into the hos-
 3 pital, a selection shall be made as follows: 1.—Recent cases, *i. e.*, cases of
 4 less than one year's duration, shall have preference over all others. 2.—
 5 Chronic cases, *i. e.*, where the disease is of more than one year's duration,
 6 presenting the most favorable prospects of recovery shall be next preferred.
 7 3.—Those for whom application has been longer on file, other things being
 8 equal, shall be next preferred. And, 4.—Where cases are equally meritori-
 9 ous, in all other respects, the indigent shall have the preference.

SEC. 42. On a statement in writing, verified by affidavit, addressed to a
 2 judge of the district or circuit court of the county in which the hospital is
 3 situated, or of the county in which any certain person confined in the hos-
 4 pital has his legal settlement, alleging that such person is not insane, and is
 5 unjustly deprived of his or her liberty, such judge shall appoint a commis-
 6 sion of not more than three persons, in his discretion, to inquire into the
 7 merits of the case, one of whom shall be a physician, and if two or more are
 8 appointed, another shall be a lawyer. Without first summoning the party
 9 to meet them, they shall proceed to the hospital and have a personal inter-
 10 view with such person, so managed as to prevent him or her, if possible, from
 11 suspecting its object; and they shall make any inquiries and examinations
 12 they may deem necessary and proper, of the officers and records of the hos-
 13 pital touching the merits of the case. If they shall judge it prudent and
 14 advisable they may disclose to the party the object of their visit, and either
 15 in the presence of such party, or otherwise, make further investigation of
 16 the matter. They shall forthwith report to the judge making the appoint-
 17 ment the result of their examination and inquiries. Such report shall be
 18 accompanied by a statement of the case, made and signed by the superin-
 19 tendent. If, on such report and statement and the hearing of the testimo-
 20 ny, if any is offered, the judge shall find the person not insane, he shall
 21 order his or her discharge. If, on the contrary, he shall so state, and
 22 authorize his or her continued detention. The finding and order of the

23 judge, with the report and other papers, shall be filed in the office of the
 24 clerk of the court over which such judge presides, who shall enter a memo-
 25 randum thereof on his record, and forthwith notify the superintendent of
 26 the hospital of the finding and order of the judge, and the superintendent
 27 shall carry out the order. The commissioners appointed, as provided in this
 28 section, shall be entitled to their necessary expenses and a reasonable com-
 29 pensation, to be allowed by the judge, and paid by the state out of any
 30 funds not otherwise appropriated: *provided*, that the applicant shall pay
 31 the same, if the judge shall find that the application was made without
 32 probable grounds, and shall so order.

2 SEC. 43. The commission so provided for shall not be repeated oftener
 3 than once in six months, in regard to the same party; nor shall such com-
 4 mission be appointed in the case of any patient within six months of the
 5 time of his or her admission.

2 SEC. 44. All persons confined as insane shall be entitled to the benefit
 3 of the writ of *habeas corpus*, and the question of insanity shall be decided
 4 at the hearing, and, if the judge shall decide that the person is insane, such
 5 decision shall be no bar to the issuing of the writ a second time, whenever
 6 it shall be alleged that such person has been restored to reason.

2 SEC. 45. If any patient shall escape from the hospital, the superintend-
 3 ent shall cause immediate search to be made for such patient; and if the
 4 patient cannot soon be found, he shall cause notice of such escape to be
 5 forthwith given to the commissioners of the county where the patient belongs;
 6 and if such patient is found in their county, the commissioners shall cause
 7 him to be returned, and shall issue their warrant therefor, as in other cases
 8 unless the patient shall be discharged, or unless, for good reasons, they
 9 shall provide for his or her care otherwise, of which they shall notify the
 0 superintendent.

2 SEC. 46. Any patient who is cured shall be immediately discharged by
 3 the superintendent. Upon such discharge, the superintendent shall furnish
 4 the patient, unless otherwise supplied, with suitable clothing, and a sum of
 5 money not exceeding twenty dollars, which shall be charged with the other
 6 expenses in the hospital of such patient. The relatives of any patient not
 7 susceptible of cure by remedial treatment in the hospital and not dangerous
 8 to be at large, shall have the right to take charge of and remove such patient
 9 on consent of the board of trustees: *Provided*, that in the interim of the
 0 meetings of the board the consent of two of the trustees shall be sufficient.

2 SEC. 47. On the application of the relations or immediate friends of any
 3 patient in the hospital, who is not cured, and who cannot be safely allowed
 4 to go at liberty, the commissioners of the county where such patient belongs,
 5 on making provision for the care of such patient within the county, as in
 6 other cases, may authorize his discharge therefrom: *Provided*, no patient
 7 who may be under charge or conviction of homicide, shall be discharged
 8 without the order of the board of trustees.

2 SEC. 48. The board of trustees shall order the discharge or removal
 3 from the hospital of incurable and harmless patients whenever it is neces-
 4 sary to make room for recent cases; in the interim between the meetings of
 5 the board, the superintendent, in conjunction with two trustees, shall possess
 6 and exercise the same power.

2 SEC. 49. When patients are discharged from the hospital by the authori-
 3 ties thereof, without application therefor, notice of the order of discharge
 4 shall at once be sent to the commissioners of the county where they belong;

4 and the commissioners shall forthwith cause them to be removed, and shall
5 at once provide for their care in the county as in other cases, unless such
6 patients are discharged as cured.

2 **Sec. 50.** The trustees shall, from time to time, fix the sum to be paid
3 per week for the board and care of the patients, and to arrive at such sum,
4 shall estimate the total outlay for the support of the hospital, ascertaining
5 such outlay as far as possible from the sums actually paid per annum; and
6 the weekly sums so fixed, shall be the sum said hospital shall be entitled to
7 demand for the keeping of any patient; and the certificate of the superin-
8 tendent, attested by the seal of the hospital, shall be evidence, in all places,
9 of the amount due as fixed.

2 **Sec. 51.** The superintendent shall certify to the auditor of state on the
3 first day of January, April, July, and October, the amount (not previously
4 certified by him) due to said hospital, from the several counties having pa-
5 tients chargeable thereto; and said auditor shall pass the same to the credit
6 of the hospital. The auditor shall, thereupon, notify the county auditor of
7 each county, so owing, of the amount thereof, and charge the same to said
8 county; and the board of supervisors shall add such amount to the next
9 state tax, to be levied in said county, and pay the amount so levied into the
10 state treasury.

2 **Sec. 52.** The provisions herein made for the support of the insane at
3 public charge, shall not be construed to release the estates of such persons
4 nor their relatives, from liability for their support; and the auditors of the
5 several counties, subject to the direction of the board of supervisors, are
6 authorized and empowered to collect from the property of such patients, or
7 from any person or persons legally bound for their support, any sums paid
8 by the county in their behalf, as herein provided; and the certificate from
9 the superintendent, and the notice from the auditor of state, stating the sums
10 charged in such cases shall be presumptive evidence of the correctness of
11 the sums so stated. If the board of county supervisors, in the case of any
12 insane patient who has been supported at the expense of the county, shall
13 deem it a hardship to compel the relatives of such patient to bear the burden
14 of his support, they may relieve such relatives from any part or all of such
burden, as may seem to them reasonable and just.

2 **Sec. 53.** Whenever it shall be shown, to the satisfaction of the commis-
3 sioners of insanity of any county, that cause no longer exists for the care,
4 within the county, of any particular person as an insane patient in their
5 county as herein provided, they shall order the immediate discharge of such
6 persons.

2 **Sec. 54.** The commissioners of insanity shall be allowed at the rate of
3 three dollars per diem each for all the time actually employed in the duties
4 of their office. They shall also be allowed their necessary and actual expens-
5 es, not including charges for board. The clerk, in addition to what he is
6 entitled to as commissioner, shall be allowed one half as much more, for
7 making the required record entries in all cases of inquest, and the meetings
8 of the board for any purpose, and for the filing of any papers required to be
9 filed. He shall also be allowed twenty-five cents for each notice or process
10 given or issued under seal as herein required. The examining physician
11 shall be entitled to the same compensation as a commissioner, and to mile-
12 age at the rate of ten cents per mile each way. The sheriff shall be allowed
13 for his personal services in conveying a patient to the hospital and return-
ing therefrom at the rate of three dollars per day for the time necessarily

14 and actually employed; and mileage the same as is allowed him in other
 15 cases, and for other services the same fees as for like services in other cases.
 16 Witnesses shall be entitled to the same fees as witnesses in the circuit court.
 17 The compensation and expenses provided for above shall be allowed and
 18 paid out of the county treasury in the usual manner. Whenever the com-
 19 missioners issue their warrant for the admission of a person to the hospital,
 20 and funds to pay the expenses thereof are needed in advance, they shall
 21 estimate the probable expense of conveying such person to the hospital, in-
 22 cluding the necessary assistance, and not including the compensation al-
 23 lowed the sheriff; and on such estimate, certified by the clerk, the auditor
 24 of the county shall issue his order on the treasury of the county in favor of
 25 the sheriff or other person intrusted with the execution of such warrant; the
 26 sheriff, or other person executing such warrant, shall accompany his return
 27 with a statement of the expenses incurred; and the excess or deficiency may
 28 be deducted from or added to his compensation, as the case may be. If
 29 funds are not so advanced, such expenses shall be certified and paid in the
 30 manner above prescribed on the return of the warrant. When the commis-
 31 sioners order the return of a patient, compensation and expenses shall be in
 32 like manner allowed.

2 SEC. 55. Any officer required herein to perform any act, and any per-
 3 son accepting an appointment under the provisions of this chapter, and will-
 4 fully refusing or neglecting to perform his duty, as herein prescribed, shall
 5 be guilty of a misdemeanor, besides being liable to an action for damages.

2 SEC. 56. The warrant of the commissioners of insanity, authorizing the
 3 admission of any person to the hospital as a patient, accompanied by a
 4 physician's certificate, as herein provided, shall operate to shield the super-
 5 intendent and other officers of the hospital against all liability to prosecution
 6 of any kind, on account of the reception and detention of such person in the
 7 hospital: *Provided*, such detention shall be otherwise in accordance with
 8 the laws and by-laws regulating its management.

2 SEC. 57. When the superintendent of the hospital, in obedience to a
 3 subpoena, attends any court out of the county in which the hospital is situ-
 4 ated as a witness for either party, in the case of a person on trial for a crimi-
 5 nal offense, and the question of the sanity of such person is raised, he shall
 6 be allowed, on such account, his necessary and actual expenses, and such
 7 daily pay as is allowed to other witnesses, and such expenses and pay
 8 shall be paid by the state. When compelled so to attend in civil cases, he
 9 shall be entitled the same compensation, to be paid by the party requiring his
 10 attendance.

2 SEC. 58. The superintendent shall affix the seal of the hospital to any
 3 notice, order of discharge, report, or other paper required to be given by him
 4 or issued.

2 SEC. 59. The term "insane," as used in this chapter, includes every
 3 species of insanity or mental derangement. The term "idiot," is restricted
 4 to persons foolish from birth, supposed to be naturally without mind. No
 5 idiot shall be admitted to the hospital.

2 SEC. 60. The trustees of the hospital shall provide for furnishing the
 3 commissioners of the counties entitled to send patients to the hospital with
 4 such blanks for warrants, certificates, etc., as will enable them with regularity
 5 and facility to comply with the provisions of this law; and, also, with copies
 6 of the by-laws of the hospital, when printed.

2 SEC. 61. The superintendents of the two hospitals and the governor of
 3 the state shall adopt such regulations as they may deem expedient in regard

3 to what patients or class of patients shall be admitted to and provided for in
 4 the respective hospitals; or from what portion of the state patients or certain
 5 classes of patients, may be sent to each or either hospital; and they may
 6 change such regulations from time to time as they may deem best; and they
 7 shall make such publication of these regulations as they may deem neces-
 8 sary for the information of those interested. The regulations so adopted
 9 shall be conformed to by the parties interested.

CHAPTER 3. *Of Domestic and Other Animals.*

SECTION 1. No person shall take up any unbroken animal as a stray, be-
 2 tween the first day of May and the first day of November, unless the same
 3 be found within his lawful enclosure; nor shall any person take up any stray
 4 unless he be a householder.

SEC. 2. If any horse, mule, neat cattle, sheep or hog, liable to be taken
 2 up, come upon any person's premises, any other person may notify him of
 3 the fact, and if he fail to take up such stray for more than five days after
 4 such notice, any other person being a householder in the same township,
 5 may take up such stray and proceed with it as if taken upon his own pre-
 6 mises; *Provided*, That he shall produce to the justice of the peace proof of
 7 the service of such notice, and all persons taking up stray animals shall state
 8 to the justice, under oath, where such stray was taken up.

SEC. 3. Any person taking up an estray, shall, within five days thereaf-
 2 ter, post up written notices in three of the most public places in the town-
 3 ship, containing a full description of said animal, and unless such stray
 4 shall have been previously reclaimed by the owner, he shall within ten days
 5 go before a justice of the peace in the township in which such stray was
 6 taken up, or in case there is no justice in the township, he shall go before
 7 the next nearest justice in the county, and make oath as to where said stray
 8 was taken up, and that the marks or brands have not been altered to his
 9 knowledge either before or after the same was taken up.

SEC. 4. If necessary, the justice shall issue a summons to three disinter-
 2 ested householders in the township to appear at the time and place men-
 3 tioned in said notice, to appraise the stray. The persons so summoned, or
 4 any two of them, attending, shall take an oath that they will fairly and im-
 5 partially appraise said stray, and their appraisement, embracing a descrip-
 6 tion of the size, age, color, sex, marks, and brands of the stray, shall be en-
 7 tered by the justice in a book to be kept by him for that purpose.

SEC. 5. The justice shall within ten days thereafter send a certified copy
 2 of such entry to the clerk of the district court, who shall immediately enter
 3 the same in an estray book, to be kept by him for that purpose. If the ap-
 4 praised value of the stray exceeds ten dollars, the clerk shall cause a copy
 5 of said entry to be posted on the court-house door, and a copy of said notice
 6 to be inserted once in some newspaper in the county, if there be one, if not
 7 he shall cause to be posted up written notices in three public places in the
 8 county. And he shall within ten days after receiving the notice of appraise-
 9 ment, (unless the animal shall have been previously reclaimed by the owner)
 10 forward a certified copy of the same to the public printer hereafter provided,
 11 together with the amount required to pay for two insertions of said notice in
 12 the paper published by such printer.

2 SEC. 6. The secretary of state shall select and contract with a printer to
3 print all such advertisements of strays, and shall immediately notify the
4 clerk of each county of the name and residence of each printer, and the
5 price of such advertisements.

6 In making the contract the secretary shall select an agricultural paper,
7 published at the capital, if there be one. Such contract shall be renewed on
8 the first day of January, annually; and if a vacancy should from any cause
9 occur, the secretary shall immediately fill it with a new contract.

2 SEC. 7. The printer thus selected shall once in each week issue a news-
3 paper or printed sheet, in which he shall give two successive insertions of
4 all estray notices sent to him, and shall send one copy of each of such papers
5 issued to the clerk of each county, who shall receive, file, and preserve all
6 such papers sent him, to be examined by any person who may desire to
7 see them.

8 The clerk is hereby required to subscribe for one copy of the paper selec-
9 ted by the secretary of state for the publication of estray notices, and the
10 amount of the subscription price shall be allowed and paid out of the treas-
11 ury of the county.

2 SEC. 8. When the appraised value of any estray does not exceed five
3 dollars, no further proceedings need be had, than for the justice to enter a
4 description of said estray on his estray book, and if no owner appear within
5 six months the right of the property shall vest in the finder upon his com-
6 plying with the law, and paying all costs.

2 SEC. 9. Where the appraised value of the estray exceeds five dollars and
3 is less than ten, and the finder shall have complied with the provisions of
4 this chapter, and paid all costs, the property shall vest in him after the expi-
5 ration of nine months, if no owner appear.

2 SEC. 10. Any person legally taking up a stray, may use or work it if he
3 do so with care and moderation, and do not abuse or injure it. But if any
4 person unlawfully take up any stray, or take up any stray and fail to comply
5 with the provisions of this chapter, or use or work it in a manner contrary
6 to this chapter, or work it before having it appraised, or shall keep such
7 stray out of the county for more than five days at any one time, before he
8 acquires a title to said stray, such offender shall forfeit to the county twenty
9 dollars, upon complaint being made by any person before a justice of the
10 peace.

11 In addition to the above penalty, the owner of the stray may recover of
such offender, double the amount of all injury sustained, with costs.

2 SEC. 11. The owner of any stray may within one year from the time of
3 taking up, prove his ownership of the same before a justice of the peace,
4 (and if the title shall not have already vested in the finder by section eight
5 or nine of this chapter,) and upon payment of all costs, the reward, and a
6 reasonable allowance, he shall be entitled to recover the stray. If the owner
7 and finder cannot agree upon the amount of such allowance, it shall be set-
8 tled by some justice of the peace, who shall take into consideration the
9 trouble and expense incurred by the finder, and whatever use he may have
10 had of the stray.

2 SEC. 12. If the owner fail to claim and prove his title to any stray
3 for one year after the time of taking up, and the finder shall have complied
4 with this law, a complete title to the stray shall vest in the finder; but if the
5 owner shall appear within eighteen months from the time of taking up, and
6 prove his ownership of such stray, and pay all costs and expenses, as above

6 provided, the finder shall pay him the appraised value of such stray, or may
7 at his option deliver up the stray.

2 SEC. 13. If any stray legally taken up, escape from the finder, or die
3 without any fault on his part, he shall not be liable for the loss.

2 SEC. 14. If any person shall sell, or trade, or take out of the state, any
3 stray before the legal title shall have vested in him, he shall forfeit to the
4 owner double the value of said stray; and shall be punished by fine not
5 exceeding ninety dollars, or imprisoned in the county jail not exceeding

2 SEC. 15. If any printer, clerk or justice of the peace fail to perform the
3 duties enjoined on him by this chapter, he shall forfeit to the county not
4 less than five nor more than fifty dollars to be sued for by any person in the
5 county, and paid into the school fund.

2 SEC. 16. No stallion, jack, bull, boar, or buck, shall hereafter be allowed
3 to run at large, and it shall be lawful for any person aggrieved thereby,
4 forthwith to distrain such animals and give immediate notice thereof to the
5 owner, if known, for which said owner shall pay all damages done by said
6 animals, and the costs of distraining, keeping, advertising, selling, and all
7 the costs not herein specified, resulting from so distraining said animals, to
8 the person aggrieved, and shall be further liable in a fine not exceeding five
9 dollars for every such offense.

2 SEC. 17. If such animal is not redeemed by the payment of such
3 damages within seven days, the person distraining shall advertise such ani-
4 mal for sale by written or printed notice in three of the most public places
5 in the township, giving at least seven days' notice of the time and place of
6 sale, and shall sell at public auction at the time and place designated, to the
7 highest bidder, and after deducting the amount of damages awarded by the
8 fence-viewers of the township in which such damages are done, or the ani-
9 mals so distrained, the remainder of the proceeds of said sale shall be paid
10 into the county treasury for the use of the school fund.

2 SEC. 18. In any county where stock, swine, or sheep are restrained from
3 running at large by a vote of the county, every owner thereof shall be liable
4 for all damages done by his stock, swine, or sheep running at large, to be
5 recovered in an action by the party injured; and any person may take pos-
6 session of any swine or sheep found running at large in said county, and
7 give notice thereof to any constable in said county, who shall have power,
8 and it is hereby made his duty, to sell such swine or sheep at public auction
9 to the highest bidder for cash, upon giving ten days' notice of the time and
10 place of sale, by posting the same in writing in three public places in the
11 township where such swine or sheep were found running at large, the pro-
12 ceeds of which sale, after payment of costs and charges of keeping, shall be
13 paid into the county treasury, to be applied to the use of the county until
14 legal proof be made to the auditor of said county, by the person claiming
15 such property, whereupon said auditor shall order said amount to be paid
16 out of any money in the hands of the treasurer not otherwise appropriated:
17 *Provided*, that if the owner, or any person for him, shall, on or before the
18 day of such sale, pay the costs and charges thus far made, the constable is
19 hereby required to release said sheep or swine to the person making such
20 application, upon satisfactory proof being made of ownership.

2 SEC. 19. When any person is injured in his land by any kind of do-
3 mestic animal, he may recover his damages by an action against the owner
4 of the beasts, or by distraining the beasts doing the damage: *Provided*,

4 that if the beasts were lawfully on the adjoining land and escaped therefrom
 5 in consequence of the neglect of the person suffering the damage to main-
 6 tain his part of the division fence, the owner of the beasts shall not be
 7 liable for such damage.

SEC. 20. And if the beasts are not lawfully upon the adjoining close,
 2 and came thereupon, or if they escaped therefrom into the injured inclo-
 3 sure, in consequence of the neglect of the adjoining owner to maintain any
 4 partition fence, or any part thereof, which it was his duty to maintain, then
 5 the owner of the adjoining land shall be liable as well as the owner of the
 6 beasts.

SEC. 21. If the person injured elect to distrain the beasts he shall
 2 proceed as directed concerning strays, except as hereinafter otherwise pro-
 3 vided.

SEC. 22. The fence viewers shall in such case be the appraisers, and shall
 2 find and certify the amount of damage done by the beasts.

SEC. 23. The distrainer shall then deliver the beasts to the sheriff of the
 2 county, who shall thereupon proceed to sell them at public auction to the
 3 highest bidder, for ready money, having first given ten days' public notice
 4 of the time and place of the sale.

SEC. 24. The property in the beasts shall in no case vest in the dis-
 2 trainer, but he shall receive his damages, the costs paid by him, and the
 3 expense of keeping the beasts; and the other proceeds of the sale shall be
 4 paid into the county treasury for the use of the owner, if claimed within
 5 twelve months from the sale.

SEC. 25. The distrainer shall in his statement show that the beasts were
 2 taken doing damage on his land, describing it, and the same shall appear in
 3 the advertisements, and he shall within forty-eight hours after distraining
 4 the beasts, notify the owner, if known and living in the same township, or
 5 within five miles of the injured inclosure in another township.

SEC. 26. The board of supervisors of each county shall procure at the
 2 expense of the county a book for each civil township in which to record the
 3 marks and brands of horses, sheep, hogs, and other animals.

SEC. 27. Any person wishing to mark or brand his domestic animals with
 2 any distinguishing mark may adopt his own mark and have a description
 3 thereof recorded by the clerk of the township in which the owner lives.

SEC. 28. No person shall adopt a mark or brand previously recorded to
 2 another person residing in the same township, nor shall the clerk record the
 3 same one to two persons.

SEC. 29. The clerk will be entitled to twenty-five cents for recording
 2 each mark or brand, and making a certificate thereof.

SEC. 30. A bounty of one dollar is allowed on each scalp of a wolf, lynx,
 2 swift, or wild-cat, to be paid out of the treasury of the county in which the
 3 animal was taken.

SEC. 31. The person claiming the bounty shall produce the scalp or
 2 scalps, with the ears thereon, to the county auditor, or a justice of the peace
 3 of the county wherein such wolf, lynx, swift, or wild-cat may have been
 4 taken and killed; and it shall be the duty of the officer before whom such
 5 scalps are produced, to deface or destroy the scalps when so produced, so as
 6 to prevent the use of the same, to obtain for a second time the bounty here-
 7 in provided.

SEC. 32. No person shall receive any of the sums aforesaid until he shall
 2 have sworn or affirmed to a statement of facts showing him entitled to such
 3 bounty.

2 SEC. 33. Any person may take charge of any animal whose owner has
3 abandoned it, or who fails to properly take care and provide for it, and may
4 furnish the same with proper shelter, nourishment, and care, at the owner's
5 expense, and shall have a lien on such animal for the same, which lien at
6 the expiration of three months shall become a perfect title to the property,
as provided in the case of an estray.

2 SEC. 34. In case any creature impounded shall continue to be without
3 necessary food and water for more than twelve successive hours, it shall be
4 lawful for any person from time to time, and as often as it shall be necessary,
5 to enter into and upon any pound, in which any such creature shall be so
6 confined, and to supply it with necessary food and water so long as it shall
7 remain so confined; such person shall not be liable to any action for such
8 entry, and the reasonable cost of such food and water may be collected by
him of the owner of such creature.

2 SEC. 35. It shall be lawful for any sheriff, constable, police-officer, officer
3 of any society for the prevention of cruelty to animals, or any magistrate,
4 to destroy any horse or other animal having the disease called and known
as the glanders, or any disabled creature unfit for further use.

2 SEC. 36. It shall be lawful for any person to kill any dog caught in the
3 act of worrying, maiming or killing any sheep or lambs, or other domestic
4 animal, or any dog attacking or attempting to bite any person outside of the
5 inclosure of the owner, and the owner shall be liable to the party injured
for all damages done by his dog.

2 SEC. 37. The board of supervisors of any county may at their regular
3 June session, in any year, determine whether there shall be a vote of the
4 county taken at the next general election upon the adoption of either of the
5 following stock acts, to be known and designated respectively as the stock
6 act of 1868, and the stock act of 1870; and, such vote, if taken, shall be con-
7 ducted and its effects regulated by the provisions of sections 20, 25, 26, 27,
8 28, of chapter 2, of title IV of this code. And if either of said acts be
9 adopted by a majority of all the votes cast upon the question at such general
10 election, then the same shall take effect in said county in ninety days after
11 such adoption, and shall remain in force until repealed by a like vote. But
neither of said acts shall be in force in any county until so adopted.

STOCK ACT OF 1868.

2 SEC. 38. (1) Any stock in the act of doing damage, between the hours of
3 sunset and sunrise, may be distrained by the person whose prop-
4 erty is damaged, or by the person having charge thereof, whether
5 the fences surrounding such property are lawful or otherwise.
6 (2) Whenever any stock shall be so distrained, the person sustaining
7 the damage, or having charge of the property damaged, shall,
8 within twenty-four hours after such distraint, notify the owner
9 or person claiming a right to such stock, (if he can be found with
10 reasonable diligence,) that it is distrained, and that he may forth-
11 with appear where the damage has been done, and view, com-
12 promise, and pay the same, or, failing so to do, the stock will be
13 dealt with according to law.
14 (3) The owner or person having charge of such stock, may, within
twenty-four hours after receiving such notice, appear and view,

- 15 compromise, and pay damages, and if the parties cannot agree upon
 16 the amount of damages to be paid, or upon the manner by which
 17 such damages shall be determined, the party sustaining the damage
 18 shall immediately notify the township trustees to appear at the time
 19 and place designated in said notice, (which shall not be more than
 20 twenty-four hours after the service thereof,) to view and assess the
 21 damages.
- 22 (4) When two or more of said trustees have assembled, they shall pro-
 23 ceed to view and assess the amount of damage done by the stock
 24 distrained, and the amount for which the owner of each head dis-
 25 trained is liable, and also the amount to be paid by the owner or
 26 person claiming such distrained stock, and the amount to be paid
 27 per day for the keeping of each head of such stock, and for the
 28 purpose of arriving at any of the facts, they may place under oath
 29 any person from whom they choose to elicit the information desired.
 30 And the said trustees shall, at the time of making the appraisement,
 31 each receive from the complaining party, one dollar for every
 32 six hours occupied by them in making the appraisement.
- 33 (5) The trustees shall at the time of making the appraisement make a
 34 correct record of their doings, which they shall preserve for future
 35 reference, and shall also, at the same time, make and deliver one
 36 copy thereof, to the complainant.
- 37 (6) At any time within thirty days from the time of distraining such
 38 stock, the owner or claimant of such stock, or any part thereof,
 39 may reclaim them, or part thereof, by paying to the complainant
 40 his or their proportion of the damages assessed and charges made,
 41 as determined by the trustees, according to the number they or
 42 either of them may have distrained; and if at the end of thirty
 43 days after distraining said stock, any part thereof shall remain in
 44 distraint, and the owners or claimants are known and have been
 45 notified as provided by this chapter, the chairman of the board of
 46 trustees shall sell the same at the inclosure, for cash to the highest
 47 bidder, between the hours of one and three o'clock, p. m., of said
 48 day, after posting up notices of the time and place of said sale in
 49 at least three public places in the township where said damage was
 50 done, at least ten days previous to the time of said sale; but if at
 51 the end of thirty days after such distraint, the owners and claim-
 52 ants are not known, and cannot with reasonable diligence be
 53 found, then so much of the stock as belongs to them shall be
 54 treated as estrays.
- 55 (7) Within twenty-four hours after such sale, the chairman of the board
 56 of trustees shall deduct from the proceeds thereof the amount of
 57 damages unpaid, with costs of keeping said stock, and one dollar
 58 for every six hours expended by either of the trustees, in the
 59 discharge of their duties as contemplated by the provisions of
 60 this chapter, which amount shall be paid over to the persons enti-
 61 tled to receive it.
- 62 (8) Within three days after such deductions have been made, the chair-
 63 man of the board of trustees, on demand being made, shall pay
 64 over all balances remaining in his hands to the persons entitled to
 65 receive them, and in such proportions as shall correspond with the
 66 number of stock distrained, and in accordance with the determina-
 67 tion of the trustees, and if the owners or claimants refuse or fail to

- 68 receive or demand the amount to which they are entitled, the bal-
 69 ance shall be paid over to the county treasurer, and become a part
 70 of the county school fund.
 71 (9) If, after the complainant has distrained any stock, any person with-
 72 out his consent, shall release, or attempt to release, such stock, or
 73 any part thereof, from confinement, he shall, on conviction, be
 74 deemed guilty of a misdemeanor, and shall be punished by a fine
 75 of not less than ten nor more than one hundred dollars for each
 76 offense, or by imprisonment not exceeding thirty days.

STOCK ACT OF 1870.

- 2 SEC. 39. (1.) The owners of cattle, horses, mules, sheep, swine, and
 3 other stock, shall be liable for all damages done by such stock.
 4 (2) The owner or person in actual possession of any cultivated lands
 5 shall have a lien on all and any stock that shall trespass on such
 6 lands.
 7 (3) The owner of any stock trespassing on the improved lands of another
 8 shall pay to the owner of the land so damaged the actual amount
 9 of damages so sustained.
 10 (4) The person who is in possession of the land so trespassed upon, may
 11 distrain any trespassing stock and retain the same in some safe
 12 place, at the expense of the owner, until such damages are paid.
 13 (5) Within twenty-four hours after the stock has been distrained (Sun-
 14 day not being included) the party so injured shall notify the town-
 15 ship trustees to appear on the premises to view and assess the dam-
 16 ages; when two or more of the trustees have assembled they shall
 17 proceed to view and assess the damages and the amount to be paid
 18 for keeping said stock; and if the person or persons owning such
 19 distrained stock refuse to pay the damages so assessed, then it shall
 20 be the duty of the trustees to post up notices in three conspicuous
 21 places, in the township wheresuch damages were done, that the
 22 said stock, or so much thereof as is necessary to pay such damages,
 23 with costs of sale, will be sold to the highest bidder; any money
 24 or stock left after satisfying such claims shall be returned to the
 25 owner of the stock so disposed of; said sale shall take place at the
 26 inclosure where such stock was distrained, between the hours of
 27 one and three P. M., on the tenth day after the posting of said no-
 28 tices; *Provided*, That if any one or more of said trustees are in
 29 any way interested in said damages, the trustee or trustees not so
 30 interested shall appoint some one or more, as the case may require,
 31 to act in the place of the person or persons so interested; the owner
 32 of the stock, or the person entitled to the possession thereof, when
 33 known, shall also be notified of the time and place of the meeting
 34 of said trustees to assess said damages.
 35 (6) The trustees shall make their assessment in writing and file the same
 36 with the township clerk, to be of record in his office, and they shall
 37 receive the sum of one dollar per day each, for each assessment.
 38 All persons aggrieved by the action of the trustees, under this act,
 may appeal to the circuit court of the proper county, in all cases

39 where the amount of assessment shall exceed forty dollars. The
 40 appeal-bond shall be filed with the clerk of the township in a pen-
 41 alty double the value of the property distrained, with good and
 42 sufficient securities, to be approved by the clerk ; and from and af-
 43 ter the filing of the appeal bond, the same shall operate as a stay
 44 of process. The clerk, after an appeal is taken, shall certify all the
 45 original papers to the clerk of the circuit court within the time
 46 prescribed for the appeal, for which he shall receive the sum of one
 47 dollar and fifty cents, fees.
 48 (7) If the owners of such distrained stock are not known, it shall be
 49 treated as estrays.

CHAPTER 4. *Of Fences.*

2 SEC. 1. The respective owners of lands inclosed with fences shall keep
 3 up and maintain partition fences betwen their own and the next adjoining
 4 inclosure so long as they improve them in equal shares unless otherwise
 5 agreed between them.

2 SEC. 2. If any party neglect to repair or rebuild a partition fence or a
 3 portion thereof which he ought to maintain, the aggrieved party may com-
 4 plain to the fence viewers, who after due notice to each party shall examine
 5 the same and if they determine the fence is insufficient shall signify it in
 6 writing to the delinquent occupant of the land and direct him to repair or
 7 rebuild the same within such time as they judge reasonable.

2 SEC. 3. If such fence be not repaired or rebuilt accordingly, the com-
 3 plainant may repair or rebuild it, and the same being adjudged sufficient by
 4 the fence viewers and the value thereof with their fees being ascertained by
 5 them and certified under their hands, the complainant may demand of the
 6 owner of the land where the fence was deficient the sum so ascertained, and
 7 in case of neglect to pay the same for one month after demand may recover
 8 it with one per cent. a month interest by action.

2 SEC. 4. When a controversy arises between the respective owners about
 3 the obligation to erect or maintain partition fences either party may apply to
 4 the fence viewers, who after due notice to each party may inquire into the
 5 matter and assign to each his share thereof and direct the time within
 6 which each shall erect or repair his share, in the manner provided above.

2 SEC. 5. If a party neglect to erect or maintain the part of fence assigned
 3 him by the fence viewers it may be erected and maintained by the aggrieved
 4 party in the manner before provided, and he shall be entitled to double the
 5 value thereof to be recovered as directed above.

2 SEC. 6. All partition fences shall be kept in good repair throughout the
 3 year unless the owners on both sides otherwise agree.

2 SEC. 7. No person, not wishing his land inclosed and not occupying nor
 3 using it otherwise than in common, shall be compelled to contribute to erect
 4 or maint. in any fence between him and an adjacent owner, but when he in-
 5 closes or uses his land otherwise than in common he shall contribute to the
 6 partition fences as in this chapter is provided.

2 SEC. 8. When lands owned in severalty have been inclosed in common
 3 without a partition fence and one of the owners is desirous to occupy his in
 4 severalty and the other refuses or neglects to divide the line where the fence

4 should be built or build a sufficient fence on his part of the line when
 5 divided, the party desiring it may have the same divided and assigned by
 6 the fence viewers who may in writing assign a reasonable time, having regard
 7 to the season of the year, for making the fence, and if either party
 8 neglect to comply with the decision of the viewers, the other after making
 9 his own part may make the other part and recover as directed above.

2 SEC. 9. In the case mentioned in the preceding section, when one of the
 3 owners desires to throw his field open and leave it uninclosed he shall first
 4 give the other party six months' notice of such intention, or such shorter
 5 notice as may be directed by the fence viewers on notice to the other party.

2 SEC. 10. When land which has lain uninclosed is inclosed, the owner
 3 thereof shall pay for one-half of each partition fence between his land and
 4 the adjoining lands, the value to be ascertained by the fence viewers, and if
 5 he neglect for thirty days after notice and demand to pay the same, the other
 6 party may recover as before provided ; or he may at his election rebuild and
 7 make half of the fence, and if he neglect so to do for two months after
 8 making such election he shall be liable as before provided.

2 SEC. 11. When a division of fence between the owners of improved
 3 lands may have been made, either by fence viewers or by agreement in
 4 writing, recorded in the office of the clerk of the township where the lands
 5 are, the owners and their heirs and assigns shall be bound thereby and shall
 6 support them accordingly, but if any desire to lay his lands in common and
 7 not improve them adjoining the fence divided as above, the proceedings
 8 shall be as directed in the case where lands owned in severalty have been
 9 inclosed in common without a partition fence.

2 SEC. 12. In the provisions of this chapter the term "owner" shall apply
 3 to the occupant or tenant when the owner does not reside in the county, but
 4 these proceedings will not bind the owner unless notified. The "fence
 5 viewers" means the fence viewers of the township in which the
 6 division line in controversy is, and if that line is between two townships,
 7 and both parties live in the same, then it means the viewers of that town-
 8 ship, but if the parties live in different townships one viewer at least shall
 9 be taken from that of the party complained against.

2 SEC. 13. When a person has made a fence or other improvement on an
 3 inclosure which on afterward making division lines is found to be on land of
 4 another, and the same has occurred through mistake, such first person may
 5 enter upon the land of the other and remove his fence or other improve-
 6 ment and material within six months after such line has been run, upon his
 7 first paying or offering to pay the other party for any damage to the soil
 8 which may be occasioned thereby, and when the parties can not agree as to
 9 the damages the fence viewers may determine them as in other cases.

2 SEC. 14. But such fence or other improvement (except substantial build-
 3 ings) shall not be removed if they were made or taken from the land on
 4 which they lie, until the party pays the owner the value of the timber to be
 5 ascertained by the fence viewers, nor shall a fence be removed at a time
 6 when the removal will throw open or expose the crop of the other party,
 7 but it shall be removed in a reasonable time after the crop is secured al-
 8 though the above six months have passed.

2 SEC. 15. When any question arises between parties, other than those
 3 above stated, concerning their rights in fences, or their duties in relation to
 4 building or supporting or removing them, such question may be determined
 5 by the fence viewers upon the principles of this chapter.

2 SEC. 16. A person building a fence may lay the same upon the line be-
 3 tween him and the adjacent owners so that the fence may be partly on one
 4 side and partly on the other, and the owner shall have the same right to re-
 move it as if it were wholly on his own land.

2 SEC. 17. The foregoing provisions concerning partition fences shall apply
 to a fence standing wholly upon one side of the division line.

2 SEC. 18. The foregoing provisions of this chapter do not bar any other
 3 legal proceedings for the determination of the title to land or the dividing
 4 line between contending owners, nor do they preclude agreements by the
 parties.

2 SEC. 19. Any fence constructed of strong materials, put up in a good
 3 and substantial manner, with sufficiently small spaces between the materials
 4 composing said fence, and raised to the height of four feet six inches, shall
 5 be considered a lawful fence, or such other construction or fences as may,
 6 in the opinion of the fence viewers, be of equal strength and security to the
 inclosure, shall in like manner be considered lawful.

2 SEC. 20. In all counties where by a vote of the legal voters of such
 3 county, or by any act of the general assembly it has been or may be here-
 4 after determined that hogs and sheep, or either of them, shall be prohibited
 5 from running at large, a fence made of three rails of good substantial ma-
 6 terial, or three boards not less than six inches wide, and three-quarters of an
 7 inch thick, such rails or boards to be fastened in or to good substantial posts,
 8 not more than ten feet apart, where rails are used, and not more than eight
 9 feet apart, where boards are used, or any other fence, which in the opinion
 10 of the fence viewers shall be equivalent thereto, shall be declared a lawful
 11 fence: *provided*, that the lowest or bottom rail or board shall not be more
 12 than twenty nor less than sixteen inches from the ground, and that such
 fence shall be fifty-four inches in height.

2 SEC. 21. In all cases where fences are built upon county lines, between
 3 counties in one of which hogs and sheep are prohibited from running at
 4 large, and another in which they are not prohibited from running at large,
 5 such fence shall be built in the manner prescribed in the 19th section: *pro-*
 6 *vided*, that the owner of any hogs or sheep shall be liable for all damages
 7 sustained by any person in consequence of such hogs or sheep crossing such
 county lines by way of the highway.

2 SEC. 22. In all cases of damages committed by trespassing animals in
 3 any county wherein the above described fences are lawful, the same rights
 4 and liabilities shall attach as are now provided in like cases, or in cases of
 5 trespassing animals under chapter three of this title: *provided*, that nothing
 6 in the foregoing provisions shall be so construed as to deprive drovers or
 7 other persons of their right to drive hogs, sheep, or other stock from one
 part of the state to another.

CHAPTER 5. *Of Lost Goods.*

2 SEC. 1. If any person shall stop or take up any vessel or water craft
 3 found adrift within the limits, or upon the boundaries of this state, of the
 4 value of five dollars, or upwards, including her cargo, tackle, rigging, and
 5 other appendages, it shall be the duty of such person within five days there-
 6 after, provided the same shall not have been previously proven and restored
 to the owner, to go before some justice of the peace of the proper county,

7 and make affidavit in writing, setting forth the exact description of such
 8 vessel or water craft, where and when the same was found; whether any,
 9 and if so, what cargo, tackle, rigging, or other appendages, were found on
 10 board or attached thereto; and that the same has not been altered or defaced,
 11 either in the whole or in part, since the taking up, either by him, or by any
 12 other person, to his knowledge; and the said justice shall thereupon issue
 13 his warrant, directed to some constable of his township or district, com-
 14 manding him forthwith to summon three respectable householders of their
 15 neighborhood, whose duty it shall be to proceed, without delay, to examine
 16 and appraise such boat or vessel, her cargo, or tackle, rigging, and all other
 17 appendages as aforesaid, and to make report thereof, under their hands, to
 18 the justice issuing such warrant, who shall enter the same, together with the
 19 affidavit of the taker up at large, in his estray book; and it shall be the
 20 further duty of such justice, within five days after said proceedings shall
 21 have been entered on his estyay book aforesaid, to transmit a certified copy
 22 thereof to the county auditor of the proper county, to be by him recorded
 23 in his estray book and filed in his office.

SEC. 2. In all cases where the appraisement of any such boat or vessel,
 2 including her cargo, tackle, rigging, or other appendages, shall not exceed
 3 the sum of twenty dollars, the taker up shall advertise the same on the door
 4 of the court house, and in three other of the most public places in the coun-
 5 ty, within five days after the appraisement, and if no person shall appear to
 6 claim and prove such boat or vessel within six months from the time of taking
 7 up, the property in the same shall vest in the taker up; but if the value
 8 thereof shall exceed the sum of twenty dollars, it shall be the duty of the
 9 county auditor, within five days from the time of the reception of the jus-
 10 tice's certificate at his office, to cause an advertisement to be set up on the
 11 door of the court house, and at three other of the most public places of the
 12 county; and also, a notice thereof to be published for three weeks succes-
 13 sively in some public newspaper printed in this state, and if the said boat or
 14 vessel be not claimed or proven within ninety days after the advertisement
 15 of the same as aforesaid, it shall be the duty of the taker up to deliver the
 16 same to the sheriff of the county wherein such boat or vessel may have been
 17 taken up, who shall thereupon proceed to sell the same at public auction to
 18 the highest bidder, for ready money, having first given ten days' notice of
 19 the time and and place of sale; and the proceeds of all such sales, after de-
 20 ducting the cost, and other necessary expenses, shall be paid into the county
 21 treasury.

SEC. 3. If any person shall find any lost goods, money, bank notes, or
 2 other things of any description whatever, of the value of five dollars, and
 3 upwards, it shall be the duty of such person to inform the owner thereof, if
 4 known, and to make restitution of the same, without any compensation
 5 whatever, except the same be voluntarily given; but if the owner be un-
 6 known, such person shall, within five days after such finding, take such
 7 goods, money, bank notes, or other things, before some justice of the peace
 8 of the proper county, and make affidavit of the description thereof, the time
 9 and place when and where the same was found; that no alteration had been
 10 made in the appearance thereof since the finding of the same; whereupon the
 11 justice shall enter a description of the property, and the value thereof, as
 12 near as he can ascertain, in his estray book, together with the affidavit of
 13 the finder; and shall also within five days after said proceedings shall have
 14 been entered upon his estray book as aforesaid, transmit to the county audi-
 15 tor a certified copy thereof, to be by him recorded in his estray book, and
 16 filed in his office.

2 SEC. 4. In all cases where such lost goods, money, bank notes, or other
 3 things, shall not exceed the sum of ten dollars in value, it shall be the duty
 4 of the finder to advertise the same on the door of the court house, and three
 5 other of the most public places of the county; and if no person shall appear
 6 to claim and prove such money, goods, bank notes, or other things, within
 7 twelve months from the time of such advertisement, the right to such prop-
 8 erty, when the same shall consist in goods, money, or bank notes, shall be
 9 vested in the finder; but if the value thereof shall exceed the sum of ten
 10 dollars, it shall be the duty of the county auditor within five days from the
 11 receipt of the justice's certificate, to cause an advertisement to be set upon
 12 the court house door, and in three of the most public places in the county;
 13 and also a notice thereof to be published for three weeks successively in
 14 some public newspaper printed in this state; and if the said goods, money,
 15 bank notes, or other things, be not reclaimed within six months after the
 16 finding, it shall be the duty of the finder, if the same shall consist in mo-
 17 ney or bank notes, to deliver the same to the county treasury, after deduct-
 18 ing the necessary expenses hereinafter provided for; if in bills, notes of
 19 hand, patents, deeds, mortgages, or other instruments of value, the same
 20 shall be delivered to the county auditor, to be preserved in his office, for the
 21 benefit of the owner, whenever legal application shall be made therefore; if
 22 in goods, or merchandize, the same shall be delivered to the sheriff of the
 23 county, who shall thereupon proceed to sell the same at public auction to
 24 the highest bidder, for ready money, having first given ten days' notice of
 25 the time and place of such sale; and the proceeds of all such sales, after
 26 deducting the cost and other expenses, shall be paid into the county treas-
 ury.

2 SEC. 5. In all cases where any vessel or water craft shall be taken up, or
 3 any goods, money, or bank notes shall be found as aforesaid, which shall be
 4 of a value less than five dollars, it shall be the duty of the finder to adver-
 5 tise the same by setting up three advertisements in the most public places
 6 in the neighborhood; but in such cases he shall keep and preserve the same
 7 in his possession, and shall make restitution thereof to the owner, without
 8 fee or reward, except the same be given voluntarily, whenever legal appli-
 9 cation be made for the same, provided it shall be done in three months from
 10 such taking up or finding; but if no owner shall appear to claim such prop-
 11 erty within the time aforesaid, the exclusive right to the same shall be vest-
 ed in the finder or taker up.

2 SEC. 6. In any case where a claim is made to property found or taken up,
 3 and the ownership of the property cannot be agreed upon by the finder and
 4 the claimant, they may make a case before any justice of the peace who
 5 may hear and adjudicate it, and if either of them refuses to make such case,
 6 the other may make an affidavit of the facts which have previously occur-
 7 red, (and the claimant shall also verify his claim in his affidavit) and the
 8 justice may take cognizance of and try the matter on the other party hav-
 9 ing one day's notice, but there shall be no appeal from the decision. This
 section does not bar any other remedy given by law.

2 SEC. 7. As a reward for the taking up of all boats and other vessels, and
 3 for finding of lost goods, money, bank notes and other things, before resti-
 4 tution of the property, or proceeds thereof shall be made, the finder shall be
 5 entitled to ten per cent upon the value thereof, in addition to which said al-
 6 lowance the owner shall also be required to pay to the taker up, or finder, all
 7 such cost and charges as may have been paid by him for services rendered
 as aforesaid, including the cost of publication; together with reasonable

8 charges for keeping and taking care of such property, which last-mentioned
 9 charge, in case the taker up, or finder, and the owner cannot agree, shall be
 10 assessed by two disinterested householders of the neighborhood, to be ap-
 11 pointed by some justice of the peace of the proper county, whose decision,
 12 when made, shall be binding and conclusive on all parties.

2 Sec. 8. The nett proceeds of all sales made by the sheriff in pursuance
 3 of this chapter, and all money or bank notes paid over to the county treasur-
 4 er, as directed in this chapter, shall remain in the hands of the county
 5 treasurer, in trust for the owner, if any such shall apply in one year from
 6 the time the same shall have been paid over, but if no owner shall appear
 7 within the time aforesaid, the said money shall be considered as forfeited,
 8 and the claim of the owner thereto forever barred, in which event the mon-
 9 ey shall remain in the county treasury for the use of common schools in said
 10 county.

2 Sec. 9. If the taker up of any water craft, or finder of lost goods,
 3 bank notes, or other things, shall be faithful in taking care of the same, and
 4 if any unavoidable accident shall happen thereto, without the fault or neglect
 5 of the finder or taker up, before the owner shall have an opportunity of re-
 6 claiming the same, such taker up or finder shall not be accountable therefor:
 7 *provided*, that in cases of accident as aforesaid, it shall be the duty of the
 8 taker up or finder, within ten days thereafter, to certify the same under his
 9 hand to the county auditor, who shall make an entry thereof, in his estray
 10 book.

2 Sec. 10. If any person shall trade, sell, or loan, out of the limits of this
 3 state, any such property as may at any time be taken up or found as afore-
 4 said, before he shall be vested with the right to the same, agreeably to the
 5 foregoing provisions, he shall forfeit and pay double the value thereof, to be
 6 recovered by any person who shall sue for the same, in any court, or before
 7 any justice of the peace having jurisdiction thereof, one-half thereof shall go
 8 to the person suing, and the other half to the county as aforesaid.

2 Sec. 11. If any person shall take up any boat or vessel, or shall find any
 3 goods, money, bank notes, or other things, and shall fail to comply with the
 4 requisitions of this chapter, every such person so offending shall forfeit and
 5 pay the sum of twenty dollars, to be recovered before any justice of the
 6 peace, by any person who will sue for the same, one-half for the use of the
 7 person suing, and the other half to be deposited in the county treasury, for
 8 the use of common schools: *provided*, that nothing herein contained shall
 9 prevent the owner from having and maintaining his action for the recovery
 10 of any damage he may sustain.

2 Sec. 12. In all cases where services shall be performed by any officer or
 3 other person under this act, the following fees or compensantion shall be al-
 4 lowed, to wit: to the justice of the peace, for administering the oath to the
 5 taker-up or finder, making an entry thereof, with the report of the apprais-
 6 ers, and making and transmitting a certificate thereof to the county auditor,
 7 fifty cents; to the auditor for taking proof of the ownership of the property
 8 and granting certificate of the same, twenty-five cents; for registering each
 9 certificate transmitted to him by the justice as aforesaid, ten cents; for ad-
 10 vertisements, including the newspaper publication, fifty cents; to the sheriff
 11 on account of sales made by him in pursuance of this act, four per cent. on
 12 the amount; to the constable, for each warrant served on appraisers, twenty-
 13 five cents; to each appraiser, twenty-five cents; all which said costs and
 14 charges, with the exception of the justice's for granting a certificate of own-
 15 ership, and the sheriff's commission, shall be paid by the taker up to the

15 person entitled thereto, whenever the service shall be performed: *provided*,
 16 that in all cases where it shall be necessary to make publication in a news-
 17 paper, the taker up or finder, as the case may be, shall be required to deposit
 18 with the county auditor a sum of money sufficient to pay the same, previous
 19 to the publication thereof, all which costs and charges shall be reimbursed
 20 to the taker up or finder, in all cases where restitution of the property shall
 21 be made to the owner, or the same shall be delivered to the sheriff to be
 22 sold, or where money or bank notes shall be paid into the county treasury,
 23 in addition to the reward to which such person may be entitled, for such
 24 taking up or finding as aforesaid.

CHAPTER 6. *Of Intoxicating Liquors.*

2 SEC. 1. No person shall manufacture or sell by himself, his clerk, stew-
 3 ard or agent, directly or indirectly, any intoxicating liquors, except as here-
 4 inafter provided. And the keeping of intoxicating liquor with the intent,
 5 on the part of the owner thereof, or any person acting under his authority
 6 or by his permission, to sell the same within this state, contrary to the pro-
 7 visions of this chapter, is hereby prohibited, and the intoxicating liquors so
 8 kept, together with the vessels in which it is contained, is declared a nuis-
 9 ance, and shall be forfeited and dealt with as hereinafter provided.

2 SEC. 2. Nothing in this chapter shall be construed to forbid the sale by
 3 the importer thereof, of foreign intoxicating liquor imported under the au-
 4 thority of the laws of the United States, regarding the importation of such
 5 liquors, and in accordance with such laws: *provided*, that the said liquor, at
 6 the time of said sale by said importer, remains in the original casks or pack-
 7 ages in which it was by him imported, and in quantities not less than the
 8 quantities in which the laws of the United States require such liquors to be
 9 imported, and is sold by him in said original casks or packages, and in said
 10 quantities only: *provided*, that nothing contained herein shall prevent any
 11 person or persons from manufacturing in this state, liquors for the purpose
 12 of being sold according to the provisions of this chapter to be used for me-
 13 chanical or medicinal purposes.

2 SEC. 3. Every person who shall manufacture any intoxicating liquor, as
 3 in this chapter prohibited, shall be deemed guilty of a misdemeanor, and
 4 shall pay, on his first conviction for said offense, a fine of one hundred dol-
 5 lars and the costs of prosecution, and shall stand committed thirty days,
 6 unless the fine be sooner paid; on his second conviction, he shall pay a fine
 7 of two hundred dollars, and the costs of prosecution, and shall stand com-
 8 mitted sixty days unless the fine be sooner paid. And on the third, and
 9 every subsequent conviction for said offense, he shall pay a fine of two hun-
 10 dred dollars and the costs of prosecution, and shall be imprisoned in the
 11 county jail ninety days.

2 SEC. 4. Any citizen of the state, except hotel-keepers, keepers of saloons,
 3 eating-houses, grocery keepers, and confectioners, is hereby permitted with-
 4 in the county of his residence to buy and sell intoxicating liquors for me-
 5 chanical, medical, culinary, and sacramental purposes only, provided, he
 6 shall first obtain permission from the circuit court of the county in which
 7 such business is conducted as follows.

2 SEC. 5. He shall first procure the certificate of twelve citizens of the

2 township in which he resides, that he is of good moral character, and a cit-
 3 izen of the county and state; and such certificate shall also state the purpose
 4 for which it is obtained.

2 SEC. 6. He shall present such certificate to the circuit court of said
 3 county, together with his bond in the penal sum of not less than one thou-
 4 sand dollars, with two good and sufficient sureties, to be approved by the
 5 circuit judge, that he will conform to the provisions of all laws of the state
 6 of Iowa, regulating the sale of intoxicating liquors; that he will keep an
 7 accurate account in a book kept for that purpose, of all his purchases and
 8 all his sales, specifying therein the kind and quantity and price of the
 9 liquor bought by him, the date of each purchase, and the name of the per-
 10 son of whom it was made; the kind and quantity and price of liquor sold
 11 by him, the name of the purchaser at every such sale, and the use for which
 12 the liquor on every such sale was sold, as stated by the purchaser; that such
 13 account shall be at all times open to the inspection of the district and cir-
 14 cuit judges, the district attorney, and the grand jurors, and such other
 15 persons as may be authorized by law to examine the same, and shall
 16 be produced whenever lawfully required to be used in evidence against
 him.

2 SEC. 7. Upon the presentation of such certificate and bond to the cir-
 3 cuit court, a day shall be fixed by said court for the final hearing of the
 4 application, and notice thereof given by publication in at least one news-
 5 paper published in the county, or by posting such notice in the township,
 6 town, or ward in which the business is to be conducted. Such publication
 7 or posting shall be at least ten days prior to the time of final hearing, and
 8 the applicant shall pay the expenses thereof in advance, and a fee of two
 dollars for final hearing.

2 SEC. 8. At such final hearing any resident of the county may appear
 3 and show cause why such permit should not be granted, and the same shall
 4 be refused unless the judge shall be fully satisfied that the requirements of
 5 the law have in all respects been fully complied with, that the applicant is a
 6 person of good moral character, and that taking into consideration the
 7 wants of the locality, and the number of permits already granted, such per-
 8 mit would be proper and necessary for the accommodation of the neigh-
 borhood.

2 SEC. 9. Every permission so granted shall specify the house in which
 3 intoxicating liquors may be sold by virtue of the same, and the length of
 4 time the same shall be in force, which in no case shall exceed twelve
 5 months.

2 SEC. 10. The bond shall be deposited with the clerk of the district court,
 3 and suit shall be brought thereon at any time by the district attorney in
 4 case the conditions thereof or any of them, shall be broken. The principal
 5 and sureties therein shall also be jointly and severally liable for all civil
 6 damages, costs and judgments that may be obtained against the principal
 7 in any civil action, brought by a wife, child, parent, guardian, em-
 8 ployer or other person under the provisions of sections thirty-four, thirty-
 9 five, and thirty-six, of this chapter. All other moneys collected on such
 bond shall go to the school fund of the county.

2 SEC. 11. The account book of purchases and sales hereinbefore
 3 referred to, shall at all times be subject to the inspection of the district or
 circuit judge, sheriff, or any constable or marshal, grand jurors, or of all

4 justices of the peace of the county, and shall be produced by the party keep-
5 ing the same, to be used as evidence on the trial of any prosecution against
6 him, or against liquors alleged to have been seized from him or his house,
7 on notice duly served that the same will be required as evidence.

2 SEC. 12. The sureties of every person obtaining such permit from any
3 circuit judge, under the provisions of this chapter shall enter into a recog-
4 nizance in the presence of the circuit court, containing the same stipulations
5 as the bond required in the sixth section of said chapter, which fact, together
6 with the names of the sureties, shall be entered upon the record, and so
7 cited in a permit to be issued by the court, and any judgment which shall
8 thereafter be rendered against the principal for any fine or cost, or vacating
9 any permit in consequence of any act committed during its continuance, and
10 violation or evasion of law, shall be conclusive on such sureties, in a suit
or proceeding against them on said recognizance.

2 SEC. 13. Any permit procured or obtained under this chapter, by any
3 person not entitled to the same by the provisions hereof, shall be declared
4 fraudulent and void, and any one who after obtaining such permit shall en-
5 ter upon or be engaged in any pursuit in consequence of which he would
6 not be eligible to obtain such permit, shall be deemed to have abandoned
7 the same, and shall thereafter claim no protection thereby.

2 SEC. 14. When any resident of the county shall file a written informa-
3 tion, on oath, before any circuit judge, charging any one now holding, or
4 who may hereafter hold such privilege, with violating the law either by fail-
5 ing to keep a correct record of purchase or sale, or by making false entries
6 in such record or account, or by selling colorably and under pretense of com-
7 plying with the law, but substantially in violation thereof, or when any sher-
8 iff, constable, or marshal of the county shall, in his official character, make,
9 sign, and file such written information, it shall be the duty of the circuit
10 judge to issue his notice to the accused to appear before him in court, at a
11 time fixed to show cause why his permit shall not be vacated; and for the
12 purpose of trial either party may have witnesses summoned as in other
cases.

2 SEC. 15. The defendant may answer the complaint or charge, and the
3 circuit court, either on default or on answer, or on finding any of the charges
4 sustained by proof, shall revoke the permission of the party to sell liquor,
5 and shall adjudge the defendant to pay the costs; and no person whose per-
6 mission shall be revoked by the court shall be capable of holding such priv-
7 ilege again within this state for the space of two years thereafter.

2 SEC. 16. When intoxicating liquor shall be seized under a search warrant
3 by virtue of the laws now in force, it shall be no bar to the confiscation and
4 destruction of the same that the party claiming the same has a permit under
5 this or any former law, if the court or jury trying the facts shall be satisfied
6 from the proof that the defendant has sold such liquors in violation or eva-
7 sion of law, and at the time of the seizure had the liquors in question with
8 the intention of selling the same contrary to law; and any judgment of a
9 competent tribunal condemning liquors seized under such warrant, from any
10 person holding such permit, or convicting him of selling contrary to law,
shall work a forfeiture of his privilege.

2 SEC. 17. If any person by himself, his clerk, servant or agent, shall for
3 himself or any person else, directly or indirectly, or on any pretence, or by
4 any device, sell, or in consideration of the purchase or any other property,
give to any other person any intoxicating liquors, he shall be deemed guilty

5 of a misdemeanor, and shall pay, on his first conviction for said offense, a
 6 fine of twenty dollars and the costs of prosecution, and shall stand commit-
 7 ted ten days, unless the same be sooner paid; on the second conviction for
 8 the same offense, he shall pay a fine of fifty dollars, and the costs of prose-
 9 cution, and shall stand committed thirty days, unless the same be sooner
 10 paid, and on the third and every subsequent conviction for said offense, he
 11 shall pay a fine of one hundred dollars, and the costs of prosecution, and
 12 shall be imprisoned in the county jail not less than three nor more than six
 13 months. And in default of the payment of the fines and costs provided for
 1 the first and second convictions under this section, the person so convicted
 15 shall not be entitled to the benefit of section 5005 of the code until he shall
 16 have been imprisoned sixty days. All clerks, servants and agents, of
 17 whatever kind, engaged or employed in the manufacture, sale or keeping for
 18 sale in violation of this chapter, of any intoxicating liquor, shall be charged and
 19 convicted in the same manner as principals may be, and shall be subject to
 20 the penalties herein provided. Indictments and informations for violations
 21 under this section may allege any number of violations of its provisions by the
 22 same party, but the various allegations must be contained in separate counts,
 23 and the person so charged may be convicted and punished for each of the
 24 violations so alleged as on separate indictments or informations; but a separate
 25 judgment must be entered on each count on which a verdict of guilty is
 26 rendered. The second and third convictions, however, mentioned in this
 27 section, shall be construed to mean convictions on separate indictments or
 28 informations.

SEC. 18. Any person who shall mix any intoxicating liquor with any
 2 beer, wine, or cider, by him sold, and shall sell or keep for sale, as a beve-
 3 rage, such mixture, shall be deemed guilty under the preceding section, and
 4 shall be punished accordingly.

SEC. 19. No person shall own, or keep, or be in any way concerned, en-
 2 gaged, or employed in owning or keeping any intoxicating liquor with
 3 intent to sell the same in this state, (or to permit the same to be sold there-
 4 in), in violation of the provisions hereof; and any person who shall so own
 5 or keep, or be concerned or engaged or employed in owning or keeping such
 6 liquor with any such intent, shall be deemed guilty of a misdemeanor, and shall
 7 on his first conviction for said offense pay a fine of twenty dollars and the
 8 costs of prosecution, and stand committed until the same be paid. On his sec-
 9 ond conviction for said offense, he shall pay a fine of fifty dollars and the costs
 10 of prosecution, and shall stand committed until the same be paid, and on
 11 his third and every subsequent conviction for said offense, he shall pay a
 12 fine of one hundred dollars and the costs of prosecution, and shall be im-
 13 prisoned in the county jail not less than three, nor more than six months.
 14 And upon the trial of every indictment or information for violations of the
 15 provisions of this section, proof of the finding of the liquor named in the
 16 indictment or information in the possession of the accused in any place, ex-
 17 cept his private dwelling house, or its dependencies, (or in such dwelling
 18 house or its dependencies, if the same be a tavern, public eating house, gro-
 19 cery, or other place of public resort), shall be received and acted upon by
 20 the court as presumptive evidence that such liquor was kept or held for sale
 21 contrary to the provisions hereof.

SEC. 20. In cases of a violation of the provisions of either of the three
 2 preceding sections, or of the third section of this chapter, the building or
 3 erection of whatever kind, or the ground itself, in or upon which such un-
 4 lawful manufacture or sale, or keeping with intent to sell, of any intoxica-
 5 ting liquors, is carried on, or continued, or exists, is hereby declared a

6 nuisance, and may be abated as the law provides: and in addition to the
 7 penalties prescribed in said sections, whoever shall erect or establish, or con-
 8 tinue, or use any building, erection, or place for any of the purposes pro-
 9 hibited in said sections, shall be deemed guilty of a nuisance, and may be
 10 prosecuted and punished accordingly, in the manner provided by law. And
 11 proof of the manufacture, sale, or keeping with intent to sell, of any intoxi-
 12 cating liquor in violation of the provisions of this chapter, in or upon the
 13 premises described by the party accused, or by any other person under the
 14 authority or by the permission of the party accused, shall be deemed suffi-
 15 cient as presumptive evidence of the offense provided for in this section.

2 SEC. 21. If any credible resident of any county shall, before a justice
 3 of the peace for the same county, make written information, supported by
 4 his oath or affirmation, that he has reason to believe, and does believe, that
 5 any intoxicating liquor, described as particularly as may be, in said inform-
 6 ation, is in said county, in any place, described as particularly as may be in
 7 said information, owned or kept by any person named or described in said
 8 information as particularly as may be, and is intended by him to be sold in
 9 violation of the provisions of this chapter, said justice shall, (upon finding
 10 probable cause for such information,) issue his warrant of search, directed
 11 to any peace officer in said county, describing as particularly as may be,
 12 the liquor and the place described in said information, and the person nam-
 13 ed or described in said information as the owner or keeper of such liquor,
 14 and commanding the said officer to search thoroughly said place, and to
 15 seize the said liquor, with the vessels containing it, and to keep the same
 16 securely until final action be had thereon; whereupon the said peace officer,
 17 to whom such warrant shall be delivered, shall forthwith obey and execute,
 18 so far as he shall be able, the commands of said warrant, and make return
 19 of his doings to said justice, and shall securely keep all liquors so seized by
 20 him, and the vessels containing it, until final action be had thereon; provid-
 21 ed, however, that if the place to be searched be a dwelling house in which
 22 any family resides, and in which no tavern, eating house, grocery, or other
 23 place of public resort is kept, such warrant shall not be issued unless said
 24 complainant shall, on oath or affirmation, declare before said justice, that he
 25 has reason to believe and does believe, that within one month next before
 26 the making of said information, intoxicating liquor has been, in violation of
 27 this chapter, sold in said house or in some dependency thereof, by the per-
 28 son accused in said information, or by his consent or permission; nor unless
 29 from the facts and circumstances disclosed by such complaint to said justice,
 30 the said justice shall be of opinion that said complainant has adequate reason
 for such belief.

2 SEC. 22. The information and search warrant in such case shall describe
 3 the place to be searched, as well as the liquors to be seized, with reasonable
 4 particularity. When any liquors shall have been seized by virtue of any
 5 such warrant, the same shall not be discharged or returned to any person
 6 claiming the same by reason of any alleged insufficiency of description in
 7 the warrant of the liquor or place, but the claimant shall only have a right
 to be heard on the merits of the case.

2 SEC. 23. Whenever upon such warrant such liquors shall have been
 3 seized, the justice who issued such warrant shall within forty-eight hours af-
 4 ter such seizure, cause to be left at the place where such liquor was seized,
 5 if such place be a dwelling-house, store, or shop, posted in some conspicu-
 ous place on or about said building, and also to be left with or at the last

6 known and usual place of residence of the person named, or described in
7 said information, as the owner or keeper of said liquor, if he be a resident
8 of this state, a notice summoning such person and all others whom it may
9 concern, to appear before said justice at a place and time named in said no-
10 tice, (which time shall not be less than five nor more than fifteen days after
11 the posting and leaving of said notices) and show cause, if any they have,
12 why said liquor, together with the vessels in which the same is contained,
13 should not be forfeited; and said notice shall, with reasonable certainty, de-
14 scribe said liquor and vessels, and shall state where, when, and why the
15 same were seized. At the time and place prescribed in said notice, the per-
16 son named in said information, or any other person or persons claiming an
17 interest in said liquor or vessels, or any part thereof, may appear and show
18 cause why the same should not be forfeited. If any person shall then and
19 there so appear, he shall become a party defendant in said case, and said
20 justice shall make a record thereof. Whether any person shall so appear or
21 not, said justice shall at the prescribed time proceed to the trial of said case,
22 and said complainants, or either of them, may, and upon their default, the
23 officer having such liquor in custody, shall appear before said justice and
24 prosecute said information, and show cause why such liquor should be ad-
25 judged forfeited. The proceeding in the trial of such case may be the same
26 substantially as in cases of misdemeanor triable before justices of the peace,
27 and if any person shall appear and be made a party defendant as herein
28 provided, and shall make written plea that said liquor, or the part thereof
29 claimed by him was not owned or kept with intent to be
30 sold in violation of this chapter, such party defendant may,
31 at his option demand a jury to try the issue, and if, upon
32 the evidence then and there presented, the said justice or jury as the
33 case may be, shall find for verdict, that the liquor was, when seized, owned
34 or kept by any person, (whether said party defendant or not), for the pur-
35 pose of being sold in violation of this chapter, the said justice shall render
36 judgment that said liquor or said part thereof, with the vessels in which it
37 is contained, is forfeited. If no person be made defendant in manner afore-
38 said, or if judgment be in favor of all the defendants, who appear and are
39 made such, then the costs of the proceeding shall be paid as in ordinary
40 criminal prosecutions where the prosecution fails. If the judgment shall be
41 against only one party defendant appearing as aforesaid, he shall be ad-
42 judged to pay all the costs of the proceedings in the seizure and detention of
43 the liquor claimed by him up to that time and of said trial. But if such
44 judgment shall be against more than one party defendant claiming distinct
45 interests in said liquor, then the costs of said proceedings and trial shall be
46 according to the discretion of said justice equitably apportioned among said
47 defendants, and execution shall be issued on such judgments against said
48 defendants for the amount of the costs so adjudged against them. And any
49 person appearing and becoming party defendant as aforesaid, may appeal
50 from said judgment of forfeiture as to the whole, or any part of said liquor
51 and vessels claimed by him, and so adjudged forfeited, to the next term of
52 the district court in said county, if on the rendition of the judgment, he, or
53 some person for him, shall make, or cause to be made, an affidavit stating
54 the facts, showing the alleged errors in the proceedings or judgment com-
55 plained of; and if also on said rendition of judgment, he shall file with the
56 justice a written undertaking in a sum and with sureties to be approved by
57 said justice, that said defendant will prosecute the appeal without delay,

58 and will pay whatever sum may be adjudged against him in the further
 59 progress of the action. On the allowing of such appeal, the justice shall file
 60 in the office of the clerk of said district court, a certified copy of the entries
 61 in his docket, together with all the undertakings and papers in the cause,
 62 in the same manner as is provided in cases of appeals in misdemeanors
 63 triable before a justice of the peace. And if the party so appealing shall
 64 fail to appear before said district court at the next term thereof, and on the first
 65 day of said term, to prosecute his appeal, the said court shall, with out further
 66 proceedings, affirm the judgment from which such appeal was taken. But
 67 if the party so appealing shall appear, and if on trial had upon the issue or
 68 otherwise, as the case may be, it be found that said liquor, in respect to
 69 which an appeal was taken, was, when seized, owned or kept by any person
 70 for the purpose of being sold in violation of this chapter, then said liquor,
 71 and the vessels containing it, shall, by said court be adjudged forfeited, and
 72 the said court shall adjudge said defendant to pay the costs arising upon
 73 said appeal in addition to the costs adjudged against him by the justice of
 74 the peace.

SEC. 24. Whenever it shall be finally decided that liquor seized as afore-
 2 said is forfeited, the justice of the peace, or other court rendering final
 3 judgment of forfeiture, shall issue to the officer having said liquors in cus-
 4 tody, or to some other peace officer, a written order, directing him forth-
 5 with to destroy said liquor and the vessels containing the same, and imme-
 6 diately thereafter to make return of said order to the court, whence issued,
 7 with his doings indorsed thereon, which return shall in all cases be sworn
 8 to. Whenever it shall be finally decided that any liquor so seized is not
 9 liable to forfeiture, the court by whom such final decision shall be rendered,
 10 shall issue a written order to the officer having the same in custody, or to
 11 some other peace officer, to restore said liquor with the vessels containing
 12 the same, to the place where it was seized, as nearly as may be, or to the
 13 person entitled to receive it, which order the officer, after obeying the com-
 14 mands thereof, shall return to the said court with his doings thereon indorsed,
 15 and the costs of the proceedings in such case attending the restoration, as
 16 also the costs attending the destruction of such liquor in case of forfeiture,
 17 shall be taxed and paid in the same manner as is provided in case of ordin-
 18 ary criminal prosecution, where the prosecution fails.

SEC. 25. If any person shall be found in a state of intoxication, he
 2 shall be deemed guilty of a misdemeanor, and any peace officer may,
 3 without warrant, and it is hereby made his duty to take such person into
 4 custody, and to detain him in some suitable place, till an information can be
 5 made before a magistrate, and a warrant issued in due form, upon which he
 6 may be arrested and tried, and if found guilty, he shall pay a fine of ten
 7 dollars, and the costs of prosecution, and shall be imprisoned in the county
 8 jail thirty days. But the magistrate before whom such person is tried and
 9 convicted may remit any portion of such penalty and order the prisoner to
 10 be discharged upon his giving information under oath stating when, where,
 11 and of whom he purchased or received the liquor which produced the in-
 12 toxication, and the name and character of the liquor obtained. In cases
 13 arising under this section, appeals may be allowed as in cases of ordinary
 14 misdemeanor within the jurisdiction of justices of the peace.

SEC. 26. In any indictment or information arising under this chapter, it
 2 shall not be necessary to set out exactly the kind or quantity of intoxicating
 3 liquors manufactured or sold, or kept for purposes of sale, nor the exact

4 time of the manufacture, or sale, or keeping with intent to sell, but proof of
 5 the violation by the accused of any provision of this chapter, the substance
 6 of which violation is briefly set forth, within the time mentioned in said in-
 7 dictment or information, shall be sufficient to convict such person; nor
 8 shall it be necessary in any indictment or information to negative any ex-
 9 ceptions contained in the enacting clause or elsewhere which may be proper
 10 ground of defense; and in any prosecution for a second or subsequent
 11 offense, as provided herein, it shall not be requisite to set forth in the in-
 12 dictment or information the record of a former conviction, but it shall be
 13 sufficient briefly to allege such conviction, nor shall it be necessary in every
 14 case to prove payment in order to prove a sale within the true meaning and
 15 intent of this chapter, and the person purchasing any intoxicating liquor
 16 sold in violation of this chapter shall, in all cases be a competent witness to
 17 prove such sale.

2 Sec. 27. A justice of the peace shall be entitled to receive for causing
 3 notices to be posted up and left pursuant to section twenty-three, fifty cents;
 4 for issuing an order pursuant to section twenty-four, fifty cents; and the offi-
 5 cer who shall make service of any warrant for the seizure of any intoxicat-
 6 ing liquors shall be allowed for such service the sum of one dollar, for the
 7 removal and custody of such liquors his reasonable expenses, and one dollar
 8 for delivery or destruction of liquor under order of court, his reasonable
 9 expenses, and one dollar, and for posting and leaving notices pursuant to
 section twenty-three, one dollar.

2 Sec. 28. All payments or compensation for intoxicating liquor sold in
 3 violation of this chapter, whether such payment or compensation be in
 4 money, goods, land, labor, or any thing else whatever, shall be held to have
 5 been received in violation of law, and against equity and good conscience,
 6 and to have been received upon a valid promise and agreement of the re-
 7 ceiver in consideration of the receipt thereof, to pay on demand to the per-
 8 son furnishing such consideration the amount of said money or the just
 9 value of such goods, land, labor, or other thing. All sales, transfers, con-
 10 veyances, mortgages, liens, attachments, pledges and securities of every
 11 kind, which either in whole or in part shall have been made, for or on ac-
 12 count of intoxicating liquors sold in violation of this chapter, shall be ut-
 13 terly null and void against all persons in all cases, and no rights of any kind
 14 shall be acquired thereby, and no action of any kind shall be maintained in
 15 any court in this state for intoxicating liquors, or the value thereof, sold in
 16 any other state or country contrary to the law of said state or country, or
 17 with intent to enable any person to violate any provision of this chapter;
 18 nor shall any action be maintained for the recovery or possession of any in-
 19 toxicating liquor, or the value thereof, except in cases where persons own-
 20 ing or possessing such liquor with lawful intent may have been illegally de-
 21 prived of the same. Nothing however, in this section shall affect in any way
 22 negotiable paper in the hands of bona fide holders thereof, for valuable con-
 23 sideration, without notice of illegality in its inception or transfer, or the
 24 holder of land or other property who may have taken the same in good
 25 faith, without notice of any defect in the title of the person from whom the
 26 same was taken, growing out of a violation of the provisions of this chap-
 27 ter, and all evidence given in actions brought by or against such bona fide
 holders, shall be in no way affected by the provisions of this section.

2 Sec. 29. It shall be the duty of all peace officers to see that the provis-
 ions of this chapter are faithfully executed, and when informed that the law

3 has been violated, or when they have reason to believe that the law has been
 4 violated, and that proof of that fact can be had, it shall be the duty of such
 5 officers, and it is hereby made their special duty, to go before a magistrate
 6 and make information of the same and of the person so violating the law.
 7 Upon the filing of such information before a magistrate it shall be his duty
 8 to institute a suit and proceed to the arrest and trial thereof according to
 9 law. Upon trials before a magistrate it shall be the duty of the district at-
 10 torney to appear for the state, unless the person filing such information shall
 11 select some other attorney. The district attorney or any other attorney se-
 12 lected and appearing and prosecuting such trial before a magistrate, shall be
 13 allowed the sum of five dollars, to be paid out of the county treasury by or-
 14 der from the auditor of such county. Any peace officer failing to comply
 15 with the provisions of this section, shall be guilty of a misdemeanor, and
 16 pay a fine of not less than ten nor more than fifty dollars, and a conviction
 17 shall work a forfeiture of his office.

SEC. 30. The principal and securities in the bond mentioned in sections six
 2 and seven shall be jointly and severally liable for all fines and costs that
 3 may be adjudged against the principal for any violation of any of the pro-
 4 visions of this chapter, and shall also jointly and severally be liable for all
 5 civil damages and costs that may be adjudged against such principal in any
 6 civil action, authorized to be brought against him by the provisions of this
 7 chapter.

SEC. 31. If any railroad conductor, freight agent, expressman, depot
 2 master, or any other person in the employment or in any manner connected
 3 with any railroad corporation, or any teamster, stage driver, or common
 4 carrier of any kind, or any person proposing to act as agent for any other
 5 person or persons, whether within or without this state, or any other indi-
 6 vidual of whatever calling shall bring within this state for any other person
 7 or persons, any intoxicating liquor, without first having been furnished with
 8 a copy of the certificate authorizing such person or persons to sell such in-
 9 toxicating liquors, certified by some justice of the peace to be correct such
 10 person or persons so offending, shall be deemed guilty of a misdemeanor,
 11 and shall, upon conviction thereof, forfeit and pay a fine for the first offense
 12 of twenty dollars, and be imprisoned in the county jail thirty days; for the
 13 second and each subsequent offense, shall forfeit and pay a fine of fifty dollars,
 14 and be imprisoned in the county jail ninety days.

SEC. 32. Courts and jurors are requested to construe this chapter so as
 2 to prevent evasion, and so as to cover the act of giving as well as selling by
 3 persons not authorized.

SEC. 33. Wherever the words intoxicating liquors occur in this chapter,
 2 the same shall be construed to mean all spirituous and vinous liquors; pro-
 3 vided, that nothing herein shall be so construed as to forbid the manufacture
 4 and sale of wine from grapes, currants, or other fruits grown in this state.

SEC. 34. Any person who shall, by the manufacture or sale of intoxicat-
 2 ing liquors, contrary to the provisions of this chapter, cause the intoxication
 3 of any other person, shall be liable for and compelled to pay a reasonable
 4 compensation to any person who may take charge of and provide for such
 5 intoxicated person, and one dollar per day in addition thereto for every day
 6 such intoxicated person shall be kept in consequence of such intoxication
 7 which sums may be recovered in a civil action before any court having ju-
 8 risdiction thereof.

SEC. 35. Every wife, child, parent, guardian, employer or other person

2 who shall be injured in person or property, or means of support, by any in-
 3 toxicated person, or in consequence of the intoxication, habitual or otherwise,
 4 of any person shall have a right of action, in his or her own name, against any
 5 person, who shall by selling intoxicating liquors, cause the intoxication of such
 6 person, for all damages actually sustained as well as exemplary damages;
 7 and a married woman shall have the same right to bring suits, prosecute
 8 and control the same, and the amount recovered, as if a single woman; and
 9 all damages recovered by a minor under this section, shall be paid either to
 10 such minor, or his parent, guardian or next friend, as the court shall direct,
 11 and all suits for damages under this section shall be by civil action in any
 12 court having jurisdiction thereof.

2 **SEC. 36.** For all fines and costs assessed, or judgments rendered of any
 3 kind, against any person for any violation of the provisions of this chapter,
 4 the personal and real property (except the homestead as now provided by
 5 law) of such person as well as the premises and property, personal or real,
 6 occupied and used for that purpose with the consent or knowledge of the
 7 owner thereof or his agent by the person manufacturing or selling intoxica-
 8 ting liquors contrary to the provisions of this chapter, shall be liable, and
 9 all such fines, costs or judgments shall be a lien on such real estate until
 10 paid; and where any person is required by sections six and seven of this chap-
 11 ter to give a bond with sureties, the principal and sureties in the bond men-
 12 tioned, shall be jointly and severally liable for all civil damages, costs, and
 13 judgments that may be adjudged against the principal in any civil action,
 14 authorized to be brought against him for any violation of the provisions of
 15 this chapter; provided, there shall be exempt such personal effects as may
 16 be necessary for the support of the family of defendant for six months
 to be determined by the township trustees.

2 **SEC. 37.** If any one purchasing intoxicating liquors of a person author-
 3 ized to sell, shall make to such person any false statement regarding the use
 4 to which such liquor is intended by the purchaser to be applied, such person
 5 so obtaining such liquor shall be deemed guilty of misdemeanor, and shall,
 6 upon conviction thereof, forfeit and pay a fine of ten dollars, together with
 7 costs of prosecution, and shall stand committed until the same be paid. For
 8 the second offense he shall pay a fine of twenty dollars and costs of pros-
 9 ecution, and be imprisoned in the county jail not less than ten nor more
 than fifty days.

2 **SEC. 38.** It shall be unlawful for any person to sell by himself, his clerk,
 3 steward, or agent, directly or indirectly, any ale, wine, malt liquors, or beer
 4 of any kind, except as provided in section two of this chapter, and the keep-
 5 ing of ale, wine, malt liquors, or beer, of any kind, with intent on the part
 6 of the owner thereof, or any other person acting under his authority, or
 7 by his permission, to sell the same within the state contrary to the provis-
 8 ions of this section, is hereby prohibited, and the ale, wine, malt liquors, or
 9 beer of any kind so kept, together with the vessels in which it is contained,
 10 are declared a nuisance, and shall be forfeited and dealt with as hereinbefore
 provided.

2 **SEC. 39.** The penalties for any violation of the preceding section, and
 3 the mode of procedure against any person for the violation of any of the
 4 provisions thereof, shall be the same in all cases as is provided in case of the
 5 sale of intoxicating liquors in this chapter, and the selling or keeping for sale,
 6 contrary to the provisions hereof, of any of the liquors prohibited by the pre-
 ceding section in any house or place shall constitute said house or place

7 a nuisance, and the building, as well as the person or persons so offending
8 against the provisions hereof, shall be subject to the same penalties, and may
9 be proceeded against in the same manner, as is provided in the case of
10 intoxicating liquors in section twenty of this chapter; and for the purposes
11 herein set forth, ale, wine, malt liquors, or beer of any kind shall be con-
12 sidered intoxicating liquors.

SEC. 40. At their regular session in June of each year, the board of su-
2 pervisors in each county, shall determine whether the adoption of the two
3 preceding sections shall be submitted to the legal voters of the county at
4 the ensuing general election, and if the supervisors so declare, by resolution
5 to be spread upon the records of said board, and to be published for four
6 consecutive weeks next preceding said election in one or more newspapers in
7 said county, if one there be, and if not, then to be posted in three public
8 places in each township of said county; there may be written or printed on
9 each ballot cast at said election, either of the sentences following, to wit:
10 "for prohibition;" "against prohibition;" and, if a majority of all the votes
11 cast at such election in said county be "for prohibition," then, and not other-
12 wise, shall the two preceding sections be in full force, in said county from
13 and after the first Monday in January next following such election, and the
14 board of supervisors shall so declare by resolution, to be spread upon their
15 records. And if a majority of the votes cast shall be "against prohibition,"
16 then, and in that case the remainder of this chapter shall remain and be in
17 full force in such county, and the two preceding sections shall be null and
18 void in such county.

CHAPTER 7. *Of Fire Companies.*

SEC. 1. Any person who is an active member of any fire engine, hook
2 and ladder, hose, or any other company for the extinguishment of fire or the
3 protection of property at fires, under the control of the corporate authori es
4 of any city or incorporated town, shall, during the time he shall continue an
5 active member of such company, be exempted from the performance of mi-
6 litary duty, and from the performance of labor on the highways, on account
7 of poll-tax, and from serving as a juror; and any person who shall have been
8 an active member of such company in any city or town as aforesaid, and
9 shall have faithfully discharged his duty as such, for the term of ten years,
10 shall be forever thereafter exempted from the performance of military duty
11 in the time of peace, from serving as a juror, and from the performance of
12 labor on the highways.

SEC. 2. Any person who has served in any company for the term of ten
2 years, as provided in the preceding section, shall be entitled to receive from
3 the foreman of the company of which he shall have been a member, a certi-
4 ficate to that effect, and on the presentation of such certificate to the clerk
5 or recorder of the proper city or town, it shall be the duty of such clerk or
6 recorder to file the same in his office, and to give his certificate, under the
7 corporate seal, to the person entitled thereto, setting forth the name of the
8 company of which such person shall have been a member, and the duration
9 of such membership; and such certificate shall be received in all courts and
10 places as evidence that the person legally holding the same is entitled to the
11 exemption hereinbefore mentioned.

SEC. 3. To entitle any person to exemption from labor on the highway,

2 before the expiration of the aforesaid term of ten years, he shall on or be-
 3 fore the first day of April of each year, file with the clerk or recorder of
 4 the proper city or town, a certificate signed by the foreman of the company
 5 of which said person is a member, that the person holding said certificate is
 6 an active member of said fire company, and thereupon the clerk or recorder
 7 shall enter said exemption upon the street tax list, for that year.

2 SEC. 4. Any person who shall either by misrepresentation or by the use
 3 of a false certificate, or the certificate of any other person, endeavor to avail
 4 himself of the benefits of this chapter, upon conviction thereof before any
 5 mayor, recorder, or magistrate of any incorporated city or town, or before
 6 any district court, shall be sentenced to imprisonment in the county jail for
 7 a period of not more than six months, or less than one month, and to pay a
 fine of not less than ten dollars, nor more than one hundred dollars.

2 SEC. 5. Any person or persons who shall willfully destroy or injure any
 3 engine, hose carriage, hose, hook and ladder crriage, or anything whatever,
 4 used for the extinguishment of fires, belonging to any fire company, on con-
 5 viction thereof shall be sentenced to imprisonment in the penitentiary for a
 6 period of not less than one year, nor more than three years.

2 SEC. 6. It shall not be lawful for any person to remove any engine or
 3 other apparatus for the extinguishment of fire, from the house, or other
 4 place where the same shall be kept or deposited, except in time of fire or
 5 alarm of fire, unless properly authorized so to do by the president and di-
 6 rectors or foreman of the company to whom the same shall belong, or their
 7 duly authorized agent, and any person offending against the provisions of this
 8 section shall forfeit and pay a sum not less than five dollars, nor more than
 9 twenty dollars, to be sued for, and recovered in the name of the state, for
 10 the use of the school fund, before any mayor, recorder, or magistrate of the
 city or town wherein the offense has been committed.

2 SEC. 7. It shall not be lawful for any person or persons to cause false
 3 alarm of fire, either by setting fire to any combustible material or by giving
 4 an alarm of fire without cause, and any person offending against the provi-
 5 sions of this section shall be fined a sum of not less than five dollars nor
 6 more than twenty dollars, to be sued for and recovered as specified in the
 foregoing sections.

CHAPTER 8. *Of Illegitimate Children.*

2 SEC. 1. When any woman residing in any county of the state is delivered
 3 of a bastard child or is pregnant with a child which, if born alive, will be a
 4 bastard, complaint may be made in writing by any person to the circuit
 5 court of the county where she resides, stating that fact and charging the
 proper person with being the father thereof.

2 SEC. 2. Upon the complaint being filed the clerk shall issue a summons
 3 requiring the person charged to appear at a time named, but not less than
 4 seven days distant, and answer to the county on the complaint of ———
 5 (the complainant,) which with a copy of the complaint shall be served and
 6 returned in the manner required in other actions. If the accused be not
 7 found, notice shall be given as in actions before justices of the peace when
 defendant is not found.

2 SEC. 3. From the time of the issuing of the summons in such case the
 3 action shall be a perpetual lien and security upon the real property of the

3 accused in the county where the action is pending, for the payment of any
4 money and the performance of any order adjudged by the proper court.

2 **SEC. 4.** Upon the return day of the summons if the legal service has been
3 made the court shall proceed to hear, try and determine the cause, examin-
4 ing the woman and other witnesses and permitting the accused to introduce
5 testimony also; but continuances may be granted for good cause, and the
6 accused may demand a jury.

2 **SEC. 5.** The issue in such case shall be whether the party is guilty or not
3 and shall be tried as other issues.

2 **SEC. 6.** If the accused be found guilty or confess the accusation, he shall
3 be charged with the maintenance of the child in such sum or sums and in
4 such manner as the court direct and with the costs of the suit, and shall be
5 required to enter into bond to the county with surety approved by the cir-
6 cuit judge, or in his absence by the clerk, to save the county and all other
7 counties of the state from charges for the maintenance of the child and for
8 the performance of the orders of said court, and execution may issue for costs
9 and for any sum ordered to be paid immediately.

2 **SEC. 7.** When money has been ordered to be paid from time to time or
3 by installments, and when a bond has been ordered to be given with a con-
4 dition for the performance of any act and the accused neglects to perform
5 such order, a scire facias may issue from the circuit or district court (as the
6 case may be) to the accused or to his executor, or to any heir or devisee
7 holding under him any land subject to the lien, to show cause why judge-
8 ment should not be rendered and execution issue for the sum due, breach of
9 the condition ordered by the proper court.

2 **SEC. 8.** Either party shall have the right to appeal to the district court,
3 and the appeal shall there be heard in the same manner as other appeals
4 from inferior tribunals in criminal cases.

TITLE XII. OF EDUCATION.

CHAPTER 1. *Of the Superintendent of Public Instruction.*

2 SEC. 1. The superintendent of public instruction shall be charged with
 3 the general supervision of all the county superintendents and all the com-
 4 mon schools of the state. He shall meet county superintendents in conven-
 5 tion at such points in the state as he may deem most suitable for that pur-
 6 pose, and by explanation and discussion endeavor to secure a more uniform
 7 and efficient administration of school laws. He shall attend teachers' insti-
 8 tutes in the several counties of the state as far as may be consistent with the
 9 proper discharge of other duties imposed by law, and assist by lecture or
 10 otherwise in their instruction and management. He shall render a written
 11 opinion to any school officer asking it touching the exposition or administra-
 12 tion of any school-law, and shall determine all cases appealed from the deci-
 13 sion of county superintendents. It is hereby made the duty of the super-
 14 intendent of public instruction to revise and codify all school-laws which
 15 may be in force after the adjournment of the regular session of each general
 16 assembly, before printing a new edition of said laws as now required by
 statute.

2 SEC. 2. An office shall be provided for him at the seat of government, in
 3 which he shall file all papers, reports, and public documents, transmitted to
 4 him by the county superintendents, each year separately, and hold the same
 5 in readiness to be exhibited to the governor, or to a committee of either
 6 house of the general assembly, at any time when required; and he shall
 7 keep a fair record of all matters pertaining to his office.

2 SEC. 3. He may, if he deem it expedient, subscribe for a sufficient num-
 3 ber of copies of the "Iowa Instructor and School Journal," or of such other
 4 educational journal published in the state, as he may select, to furnish each
 5 county superintendent with one copy, and his certificate of having thus sub-
 6 scribed, shall be authority for the auditor of state to issue his warrant for
 7 the amount of said subscriptions: *Provided*, That he shall cause to be in-
 8 serted in the journal he may so select, a correct copy of any decision he
 9 may deem it necessary to make for the efficient carrying out of the school-
 law.

2 SEC. 4. He shall cause as many copies of the school law in force, with
 3 the forms, regulations, and instructions herein contemplated, thereto annexed,
 4 to be from time to time printed and distributed among the county superin-
 5 tendents, as he shall deem expedient, and shall furnish each county superind-
 6 ent with a sufficient number to supply each school officer in his county with
 7 one copy, to be handed to his successor in office. He shall also prepare and
 8 cause to be distributed to the several county superintendents a form of cer-
 9 tificate in blank to be granted to teachers, also all other blank forms neces-
 sary to be used in carrying out the school-laws.

SEC. 5. He shall annually, on the first day of January, report to the auditor of state, the number of persons in each county of the state between the ages of five and twenty-one years.

SEC. 6. He shall make a report to the general assembly, at each regular session thereof, which shall embrace, first, a statement of the condition of the common schools of the state; the number of district townships and sub-districts therein; the number of teachers; the number of schools; the number of school-houses, and the value thereof; the number of persons between five and twenty-one years of age; the number of scholars in each county that have attended school the previous year, as returned by the several county superintendents; the number of books in the district libraries, and the value of all apparatus in the schools, and such other statistical information as he may deem important. Second, such plans as he may have matured for the management and improvement of the school fund, and for the more perfect organization and efficiency of common schools. He shall cause one thousand copies of his report to be printed, and shall present it to the general assembly on the second day of its session.

SEC. 7. Whenever reasonable assurances shall be given by the county superintendent of any county to the superintendent of public instruction, that not less than twenty teachers desire to assemble for the purpose of holding a teachers' institute in said county, to remain in session not less than six working days, he shall appoint the time and place for said meeting, and give due notice thereof to the county superintendent; and for the purpose of defraying the expenses of said institute there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, a sum not exceeding fifty dollars annually for one such institute in each county held as aforesaid, which the said superintendent shall immediately transmit to the county superintendent in whose county the institute shall be held, who shall therewith defray the necessary expenses of the institute, and if any balance remains he shall pay the same into the county treasury, and the same shall be credited to the teachers' fund.

CHAPTER 2. *Of the State University.*

SEC. 1. The objects of the state university, established by the constitution at Iowa City, shall be to provide the best and most efficient means of imparting to young men and young women on equal terms, a liberal education, and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications. The university, so far as practicable, shall begin the courses of study, in its collegiate and scientific departments, at the points where the same are completed in high schools; and no students shall be admitted who have not previously completed the elementary studies, in such branches as are taught in the common schools throughout the state.

SEC. 2. The university shall never be under the exclusive control of any religious denomination whatever.

SEC. 3. The university shall be governed by a board of regents, consisting of the governor of the state, who shall be president of the board by virtue of his office, and the superintendent of public instruction, and the president of the university, who shall also be members by virtue of their

5 respective offices, together with one person from each congressional district
6 of the state, who shall be elected by the general assembly.

2 SEC. 4. The members of said board shall be divided into three classes,
3 consisting of two each. The number in each class, as the congressional
4 districts of the state increase, shall be kept as nearly equal as practicable,
5 and the members of each class shall hold office for the term of six years
6 from their election, and until their successors are elected and qualified. The
7 general assembly shall elect members every two years, as the terms of
8 office of the respective classes expire. The board of regents shall fill all
9 vacancies occurring therein, except when the legislature is in session, and
10 the persons so appointed shall hold their offices until the next session of the
general assembly.

2 SEC. 5. The university shall include a collegiate, scientific, normal, law,
3 and such other departments, with such courses of instruction and elective
4 studies, as the board of regents may determine; and the board shall have
5 authority to confer such degrees, and grant such diplomas and other marks
6 of distinction as are usually conferred and granted by other universities.

2 SEC. 6. The meetings of the board of regents shall be held at such times
3 as the board may appoint. The president of the board may call special
4 meetings when he deems it expedient, or special meetings may be called by
5 any three members of the board.

2 SEC. 7. An executive committee, consisting of three competent and re-
3 sponsible persons, shall be appointed by the board of regents, who shall
4 audit all claims, and whose chairman shall draw all orders for such audited
5 claims on the treasurer, but before payment such orders shall be counter-
6 signed by the secretary. Said committee shall keep a specific and complete
7 record of all matters involving the expenditure of money, which record
8 shall be submitted to the board of regents at each regular meeting of the
9 same.

2 SEC. 8. The board of regents shall elect a secretary who shall hold his
3 office at the pleasure of the board. It shall be his duty to record all the
4 proceedings of the board of regents, and carefully to preserve all its books
5 and papers. His books shall exhibit what parts of the university lands
6 have been sold, when the same were sold, and at what price, and to whom,
7 on what terms, what portion of the purchase-money has been paid, and
8 when paid on each sale, how much is due on each sale, by whom and how
9 secured, and when payable, what lands remain unsold, where situated, and
10 their appraised value, if appraised, or their estimated value, if not appraised.
11 His books shall also show how the permanent fund of the university has
12 been invested, the amount of each kind of stocks, if any, with the date
13 thereof, and when due, and the interest thereon, and when and where pay-
14 able, the amount of each loan, if any, and when made, and payable to whom,
15 and how secured, and at what interest, and when and where payable.—
16 When any further sales of lands, or further instruments shall be made, the
17 secretary shall enter the same upon his books as above set forth. The sec-
18 retary shall countersign and register all orders for money on the treasurer
19 and the treasurer shall not pay an order on him for money, unless the same
be countersigned by the secretary.

2 SEC. 9. The board of regents shall elect a treasurer, who shall hold his
3 office at the pleasure of the board. It shall be his duty as treasurer to keep
4 a true and faithful account of all moneys received and paid out by him, and
before entering upon the duties of his office he shall take and subscribe an

5 oath that he will faithfully perform the duties of treasurer; and he shall also
 6 give a bond in the penalty of fifty thousand dollars conditioned for the faith-
 7 ful discharge of his duties as treasurer, and that he will at all times keep and
 8 render a true account of moneys received by him as such treasurer, and of
 9 the disposition he has made of the same, and that he will at all times be
 10 ready to discharge himself of the trust, and to pay over when required;
 11 which bond shall have two or more good sureties, and shall be approved, as
 12 to its form and the sufficiency of its sureties, by the board of regents and
 13 also the auditor and secretary of state, and shall be filed in the office of the
 14 latter.

SEC. 10. The treasurer of the university shall have a set of books, in
 2 which he shall keep an accurate account of all transactions relative to the
 3 sale and disposition of university lands, and the management of the fund
 4 arising therefrom; which books shall exhibit what parts and portions of
 5 land have been sold, at what prices and to whom, and how the proceeds have
 6 been invested, and on what securities, and what lands still remain unsold,
 7 where situated, and of what value respectively.

SEC. 11. The treasurer shall, on the first day of June and December of
 2 each year, notify in writing each person in default of payment of either prin-
 3 cipal or interest of funds loaned by or due to the university, and shall cause
 4 suit to be commenced against such delinquents, when in his judgement the
 5 best interest of the institution requires.

SEC. 12. The board of regents shall enact laws for the government of the
 2 university, and shall appoint a president and the requisite professors and
 3 tutors, together with such other officers as they may deem expedient, and
 4 shall determine the salaries of such officers, the compensation of the secreta-
 5 ry and treasurer, and the amount of fees to be paid for tuition. They shall
 6 remove any officer connected with the university, when in their judgment
 7 the good of the institution requires it.

SEC. 13. The board of regents is authorized to expend such portion of
 2 the income of the university fund, as it may deem expedient in the purchase
 3 of apparatus, library, and cabinet of natural history, in providing suitable
 4 means to keep and preserve the same, and in procuring all other necessary
 5 facilities for giving instruction.

SEC. 14. All specimens of natural history and geological and mineralogical
 2 specimens, which are or hereafter may be collected by the state geologist of
 3 Iowa, or by any others appointed by the state to investigate its natural his-
 4 tory and physical resources, shall belong to and be the property of the state
 5 university, and shall form a part of its cabinet of natural history, which shall
 6 be under the charge of the professor of that department.

SEC. 15. No sales of lands belonging to the university shall hereafter
 2 take place unless the same shall be decided upon at a regular meeting of the
 3 board of regents, or at one called for that particular purpose, and then only
 4 in the manner, upon the notice, and on the terms which the board shall pre-
 5 scribe; and no member of the board shall be either directly or indirectly
 6 interested in any purchase of such lands upon sale, nor shall the secretary
 7 or treasurer be so interested. It shall be lawful for the board to invest any
 8 portion of the permanent endowment fund not otherwise invested, as well as
 9 any surplus income which is not immediately required for other purposes, in
 10 United States stocks or stocks of the state of Iowa, or by note and mortgage
 11 on unencumbered real estate the value of which, after deducting the value
 12 of all perishable improvements thereon, shall be double the amount of the

13 sum loaned, and hold the same for the university, either as a permanent
 14 fund or as an income to defray current expenses as said board of regents may
 15 deem expedient. It shall not be lawful for the board to use any portion of
 16 the permanent fund for the ordinary expenses of the institution.

2 SEC. 16. The president of the university shall make a report on the
 3 fifteenth day of September, preceding the meeting of the general assembly,
 4 to the board of regents, which shall exhibit the condition and progress of
 5 the institution in its several departments, the different courses of study
 6 pursued therein, the branches taught, the means and methods of instruction
 7 adopted, the number of students, with their names, classes, and residences,
 8 and such other matters as he may deem proper to communicate.

2 SEC. 17. The board of regents shall, on the first day of October preced-
 3 ing each regular meeting of the general assembly, make a report to the
 4 superintendent of public instruction, which report, with that of the presi-
 5 dent of the university, shall be embodied in the said superintendent's report
 6 to the general assembly. The report of the board of regents shall contain
 7 the number of professors, tutors and other officers, with the compensation of
 8 each, the condition of the university fund, and the income received therefrom,
 9 the amount of expenditures and the items thereof, with such other informa-
 10 tion and recommendations as they may deem expedient to lay before the
 11 general assembly.

2 SEC. 18. The regents shall receive no compensation except for mileage
 3 in traveling to and from the meetings of the board; which shall be at the
 4 same rate, and computed in the same manner, as the mileage allowed to
 5 members of the general assembly. The auditor of state is hereby author-
 6 ized to audit and allow the claims for such attendance, for not more than
 7 three meetings annually.

CHAPTER 3. *Of the State Agricultural College and Farm.*

2 SECTION 1. The lands, rights, powers and privileges granted to and con-
 3 ferred upon the state of Iowa by the act of congress entitled "An act dona-
 4 ting public lands to the several states and territories which may provide col-
 5 leges for the benefit of agriculture and the mechanic arts," approved July 2,
 6 1862, are hereby accepted by the state of Iowa upon the terms, conditions
 7 and restrictions contained in said act of congress. And there is hereby es-
 8 tablished a state agricultural college and model farm, to be connected with
 9 the entire agricultural interests of the state, and under the management of
 10 a board of trustees, composed of one member elected from each judicial dis-
 11 trict. The governor and the president of the state agricultural college and
 12 farm shall be members of said board by virtue of their offices.

2 SEC. 2. The general assembly at each biennial session shall elect one-half
 3 of said board of trustees, who shall serve for four years from the first of
 4 May next after their election. Any vacancies in said board, caused by
 5 death, removal from the district or the state, resignation, or failure to quali-
 6 fy within sixty days after election, may be filled by a vote of a majority of
 7 the members of said board.

2 SEC. 3. The annual meeting of the board of trustees shall be held at the
 3 agricultural college on the first Wednesday of December in each year.

2 SEC. 4. Said trustees are authorized to sell or lease all of the lands

2 granted to the state of Iowa, by the act of congress entitled, "an act donat-
 3 ing public lands to the several states and territories which may provide col-
 4 leges for the benefit of agriculture and mechanic arts," approved July 2d,
 5 1862, which grant was accepted by the general assembly of the state of Iowa,
 6 September 11, 1862, upon the following conditions, regulations and restric-
 7 tions, to wit: None of said lands shall be sold for a less sum than fifty per
 8 cent. above the price that each piece of said lands respectively was appraised
 9 at, by the trustees, in the year 1865, but they may be sold by the purchaser
 10 paying one-fourth at the time of sale, and the balance at any time within ten
 11 years from the day of sale, the purchaser to pay eight per cent. interest per
 12 annum, annually in advance on the deferred payment. And on a failure to
 13 pay the interest or the principal within sixty days after it becomes due, the
 14 purchaser shall forfeit all claim to said land, as well as that portion of the
 15 principal and interest he had paid.

2 SEC. 5. Any of said lands may be leased in amounts not to exceed 160
 3 acres, to any one man, for any term not exceeding ten years, the lessee to
 4 pay eight per cent. per annum in advance upon the price of said land, which
 5 is hereby declared to be fifty per cent. additional to the price at which each
 6 piece of said lands respectively, were appraised by the trustees, in the year
 7 1865, and the said lessee shall have the privilege of purchasing said land at
 8 or before the expiration of the lease, at the above described advance price.
 9 The lessee failing to pay the interest upon said lease within sixty days from
 10 the time the same becomes due, shall forfeit his lease, together with the
 amount of the interest he has paid and the improvements thereon.

2 SEC. 6. The money arising from the sale of said lands, shall be paid
 3 into the state treasury, which shall be invested by the state treasurer, in
 4 bonds of the state of Iowa, or United States registered bonds, as directed by
 5 the act of congress, granting said lands. And the moneys arising from the
 6 interest on the leases of said lands, shall be paid over to the trustees, to be
 7 loaned by said board of trustees, on good and sufficient security, until needed
 8 to defray the expenses of the college.

2 SEC. 7. The trustees are hereby endowed with all necessary authority
 3 to appoint agents, or do any other acts to carry out the provisions of the
 4 three preceding sections.

2 SEC. 8. The board of trustees shall elect a treasurer, at their annual
 3 meeting in each year, who shall receive and keep all the moneys arising
 4 from the sale of the products of the farm, or from any other source, and give
 5 bonds in such sum as the board of trustees may require. He shall pay over
 6 all moneys, upon the warrant of the president countersigned by the sec-
 7 retary. He shall render, annually, in the month of January, to the board of
 8 trustees, and as often as may be required by the said board, a full and true
 statement of all the moneys received and disbursed by him.

2 SEC. 9. The president of the college shall be president of the board of
 3 trustees. It shall be his duty to preside at all meetings of the board. He
 4 shall control, manage and direct the affairs of the college and farm herein
 established, subject to such rules as may be prescribed by the trustees.

SEC. 10. Said board shall have power:

- 2 (1) To elect a president for the state agricultural college and farm, and
 3 in the absence of the president, a temporary president and such
 4 other officers as may be required in the transaction of the business
 5 of the board, or provided for by this chapter.
- 6 (2) To make all necessary rules and regulations for the government of
 7 the college and farm.

8 (3) To provide for the erection, preservation and repair of college and
9 farm buildings now existing, and for such others as the general
10 assembly may authorize.

11 (4) To keep a full and complete record of all their proceedings, and to do
12 such other things as may be found necessary to carry out the in-
13 tent and meaning of this chapter.

14 A majority of the trustees shall be a quorum for the transaction of
15 business.

SEC. 11. The trustees shall receive no compensation, except for mileage
2 in traveling to and from the meetings of the board, which shall be at the
3 same rate, and computed in the same manner as the mileage allowed to
4 members of the general assembly; and the auditor of state is hereby au-
5 thorized to audit and allow the claims for such attendance upon not more
6 than three meetings annually.

SEC. 12. The college year shall commence on the first day of December
2 of each year, and terminate on the thirtieth of November of the following
3 year; the biennial report of the board of trustees shall be filed in the office
4 of the governor not later than the fifteenth day of December preceding the
5 regular meeting of the legislature. The governor shall cause four thousand
6 copies of the report to be printed and bound in paper and distributed as
7 follows: two thousand copies of which shall be furnished to the agricultural
8 college, and the balance to be distributed as provided by chapter seven of
9 title two or part first of this code.

SEC. 13. The president, secretary, treasurer, and cashier shall take and
2 subscribe the oath provided in section eight of the same chapter.

SEC. 14. The fees arising from the releasing of the lands shall be paid
2 into the treasury of the Iowa State agricultural college and farm for the
3 use thereof.

SEC. 15. The board of trustees shall at any meeting have power to select
2 a competent person for superintendent of the agricultural college farm, who
3 shall reside on the farm, and shall, under the direction of the trustees, take
4 charge of the farm and property of every description connected therewith,
5 and in the management thereof shall be governed by such rules and regu-
6 lations as the board of trustees may from time to time adopt.

SEC. 16. The superintendent shall act as secretary of the board of trust-
2 ees, and shall keep the records of their proceedings. He shall also keep a
3 strict account of all receipts and expenditures connected with the farm, and
4 all improvements, including buildings, and shall report in writing to the
5 board of trustees at their regular meeting in January of each year, a full
6 account of all his transactions; he shall also report at such other times
7 as the trustees may deem necessary. His books shall at all times be subject
8 to the inspection of any one of the members of the board.

SEC. 17. The superintendent shall receive for his services a salary of
2 one thousand dollars per annum, to be paid quarterly from the state trea-
3 sury in the same manner as is provided by law for the payment of salaries
4 of the state officers; and he shall before entering upon the discharge of the
5 duties of his office, execute a bond in such sum and with such sureties as the
6 trustees may require for the faithful performance of his duties. He may at
7 any time be removed from office by a vote of two-thirds of the members of
8 the board of trustees.

SEC. 18. The course of instruction in said college shall include the fol-
2 lowing branches, to-wit: natural philosophy, chemistry, botany, horticulture,

3 fruit growing, forestry, animal and vegetable anatomy, geology, mineralo-
 4 gy, meteorology, entomology, zoology, the veterinary art, plain mensura-
 5 tion, leveling, surveying, book keeping, and such mechanic arts as are
 6 directly connected with agriculture. Also, such other studies as the
 7 trustees may from time to time prescribe, not inconsistent with the purposes
 8 of this chapter.

2 SEC. 19. The board of trustees shall establish such professorships as they
 may deem best to carry into effect the provisions of this chapter.

2 SEC. 20. Tuition in the college herein established shall be forever free to
 2 pupils from this state over fourteen years of age, who have been been residents
 3 of the state six months previous to their admission. Applicants for admis-
 4 sion must be of good moral character, able to read and write the English
 5 language with ease and correctness, and also to pass a satisfactory examina-
 6 tion in the fundamental rules of arithmetic.

2 SEC. 21. The trustees upon consultation with the professors and teachers
 shall from time to time, establish rules regulating the number of hours, to
 3 be not less than two in winter and three in summer, which shall be devoted
 4 to manual labor, and the compensation therefor; and no student shall be ex-
 5 empt from such labor except in case of sickness or other infirmity.

2 SEC. 22. The board shall elect annually from the teachers or more ad-
 vanced pupils, a competent book keeper, who shall keep an accurate account
 3 of the receipts and disbursements of said college and farm from all sources;
 4 he shall also keep a minute and accurate account with each field and of
 5 each crop, which shall embrace the time and manner of cultivation, the
 6 amount of seed and the product, condition of the seed before planting and
 7 sowing, and after harvesting, and kind and amount of fertilizers used; also
 8 a list of animals kept on the farm and the treatment of the same; also a
 9 register of the weather; of all of which he shall make an annual statement
 10 or synopsis of the same, to the secretary of the board of trustees.

2 SEC. 23. Said college and farm shall be charged with the amount of
 crops, the proceeds of sales, and the increase of animals raised on the farm.

2 SEC. 24. No person shall open, maintain or conduct any shop or other
 2 place for the sale of wine, beer, or spirituous liquors, or sell the same at
 3 any place within a distance of two miles from the agricultural college in
 4 Story county: *Provided*, That the same may be sold for sacramental, me-
 5 chanical, medical, or culinary purposes: and any person violating the pro-
 6 visions of this section shall be punished, on conviction by any court of com-
 7 petent jurisdiction, by a fine not exceeding fifty dollars for each offense, or
 8 by imprisonment in the county jail for a term not exceeding thirty days, or
 9 by both such fine and imprisonment.

CHAPTER 4. *Of the Soldiers' Orphans' Homes.*

SECTION 1. The board of trustees of the Iowa soldiers' orphans' homes shall consist of one person from each congressional district and one from the state at large, who shall be appointed by the general assembly for two years and until their successors are elected and qualified.

SEC. 2. Said board shall govern and manage said homes, and shall have power to enact laws and rules for the regulation of all their concerns, and power also to alter the same from time to time as shall seem to them proper; and shall also have full power to carry on and manage all the affairs of the said homes.

SEC. 3. The members of said board shall each receive the same mileage going to and returning therefrom, as members of the general assembly.

SEC. 4. Said trustees shall, before entering upon the discharge of their duties, take and subscribe an oath or affirmation to support the constitution of the United States and of this state, and also faithfully to discharge the duties required of them by law, and the by-laws that may be established.

SEC. 5. Said board shall have all the powers of reception, transmission and succession which belong to an incorporation, and shall choose a president, treasurer and secretary from their own body, and determine the bonds to be given.

SEC. 6. For the support of the several orphans' homes there is appropriated out of any money in the state treasury not otherwise appropriated, the sum of ten dollars per month for each orphan actually supported, counting the average number sustained in the several homes for the month, and upon the presentation to the auditor of state each month of a sworn statement of the average number of orphan children supported by the institution for the preceding month, it shall be the duty of the auditor to draw his warrant upon the treasurer of state in favor of the treasurer of the board of trustees of the Iowa soldiers' orphans' home, for the sum hereinbefore provided.

SEC. 7. The expenses of the transmission of orphans to the homes, and of the board and management, shall be paid out of the fund so provided.

SEC. 8. The board of trustees shall make a full and minute report of all the disbursements of the homes, and of their condition, financial and otherwise, to each regular session of the general assembly.

SEC. 9. In the enumeration of persons between the ages of five and twenty-one years as provided by section 49 of chapter nine of this title, the orphans at the several homes shall in no case be enumerated in the school-district in which such homes are located, except in cases where the mother, guardian, or other person having the legal charge or control of such child, other than the officers of the home, shall reside in such district.

SEC. 10. Any child in either of the orphans' homes may, with the consent of the parents or guardian of such child, be adopted by any citizen of this state, but no article of adoption shall be of any force or validity until approved by the board of trustees, nor shall any child so adopted be removed from the home until articles of adoption are so approved. The board of trustees shall have power, and it shall be their duty to discharge from the homes, all children who are of proper age, or have sufficient means to provide for themselves, or whose mothers have sufficient means and are competent to take care of them. Any child adopted from either of the homes

10 shall be returned to the home from which it was taken upon the order of
 11 the board of trustees, and the board shall make such order, whenever they
 12 are satisfied that such child is not properly trained, educated, and provided
 13 for by the person by whom it was adopted. Such order shall be entered on
 14 the minutes of the proceedings of the board of trustees, and shall discharge
 15 and cancel the articles of adoption.

SEC. 11. The assessor of each ward and township when he is making
 2 assessment for each term of two years, shall take an enumeration of all the
 3 children of deceased soldiers who were in the military service of the gov-
 4 ernment of the United States, from his ward or township, naming the com-
 5 pany, regiment, battery, batallion, or organization to which the deceased
 6 soldiers belonged, and make accurate returns to the board of supervisors of
 7 his county, designating the name, age, and sex of all the children belonging
 8 to the family of the deceased, for which the assessor shall receive the same
 9 compensation as for other services.

SEC. 12. It shall be the duty of the board of supervisors, to revise said
 2 enumeration list of orphans from time to time, by adding thereto or striking
 3 therefrom as they may deem proper.

SEC. 13. It shall be the duty of the clerk of the board of supervisors to
 2 furnish to the assessors of the several townships in his comnty such blanks
 3 as may be necessary for taking the aforesaid enumeration.

SEC. 14. The board of supervisors of the several counties shall have con-
 2 trol of the county orphan funds, and shall use the same for the maintenance
 3 and education of the orphans aforesaid, in such manner and in such sums as
 4 the exigencies of the case may demand, and for no other purpose.

SEC. 15. The board of supervisors may levy a tax not to exceed one half
 2 mill on the dollar, in any one year, on all the taxable property in their
 3 county, provided that there are any such orphans in their county needing
 4 such aid, and shall apply said fund in manner as herei before directed.

SEC. 16. If the children of the deceased soldiers aforesaid have no
 2 natural or other guardian, or are neglected, the board of supervisors may ap-
 3 point some suitable person in the township, whose duty it shall be to see that
 4 said children are cared for according to the spirit and intent of this chapter.

SEC. 17. The funds raised under the provisions of section fifteen, shall
 2 be called the "soldiers' county orphan fund," and shall be levied, colle ted
 3 and paid out in the same manner as other county funds.

SEC. 18. The provisions regarding this county tax shall not be so construed
 2 as to prevent the orphans, or any number thereof, from their respective
 3 counties, to attend any orphans' home in this state.

CHAPTER 5. *Of the State Reform School.*

SEC. 1. A reform school shall be maintained for the reformation of such
 2 boys and girls, under the age of eighteen years who may be committed to it
 3 as hereinafter provided.

SEC. 2. There shall be a board of trustees whose name and style shall be
 2 the board of trustees of the Iowa reform school, and it shall consist of one
 3 person from each congressional district, who shall be appointed by the gen-
 4 eral assembly, and shall be classified so that two trustees shall go out of
 5 office every two years. And the general assembly, at every regular session
 6 shall appoint two persons as trustees for the term of six years each, and
 7 until their successors are appointed and qualified. All vacancies occurring

8 in said board by death, resignation, or otherwise, shall be filled by ap-
9 pointmen by the governor of the state.

2 SEC. 3. Said trustees shall, before entering upon the discharge of their
3 duties, take and subscribe an oath or affirmation to support the constitution
4 of the United States and of this state, and faithfully discharge the duties re-
5 quired of them by law.

2 SEC. 4. The members of said board shall receive no compensation except
3 the same mileage, going to and returning from the place of meeting, as mem-
4 bers of the general assembly, computed for the actual distance from their
5 residence to the place of meeting.

2 SEC. 5. Said board of trustees shall, from their board, appoint a presi-
3 dent, secretary and treasurer, and shall take charge of the general interests
4 of the institution; shall have power to enact by-laws and rules for the regu-
5 lation of all its concerns not inconsistent with the constitution and laws of
6 this state; see that its affairs are conducted in accordance with the require-
7 ments of law, and that strict discipline is maintained therein; provide em-
8 ployment and instruction for the inmates; appoint a superintendent, a stew-
9 ard, a teacher or teachers, and such other officers as in their judgment the
10 wants of the institution may require, and prescribe their duties; exercise a
11 vigilant supervision over the institution, its officers and inmates; remove
12 such officers at their pleasure and appoint others in their stead, and deter-
13 mine the salaries to be paid to the officers; and shall also require the treas-
14 urer to execute a bond to the state of Iowa in such sum as they may deem
15 necessary, which bond shall be approved by said board and filed in the office
of the secretary of state.

2 SEC. 6. They shall cause the boys and girls under their charge to be in-
3 structed in piety and morality, and in such branches of useful knowledge as
4 are adapted to their age and capacity, and in some regular course of labor,
5 either mechanical, manufacturing, or agricultural, as is best suited to their
6 age, strength, disposition, and capacity, and as may seem best adapted to se-
7 cure the reformation and future benefit of the boys and girls.

2 SEC. 7. The trustees, with the consent in writing of their parents or guar-
3 dians, as the case may be, or in case they have no parents or guardians, may
4 bind out boys and girls committed to the school, until they attain their ma-
5 jority, or for any less time, stipulating in the indentures for the needful
6 amount of education, and from time to time, as the rightful guardians of the
7 boys and girls, ascertain whether the duties and obligations of the person to
8 whom the boy or girl is bound, are faithfully performed, and if not, cancel
9 the indenture, and receive the boy or girl into the school again.

2 SEC. 8. When there shall be twenty or more boys and girls in the
3 the school, one or more of the trustees shall visit the school once in every
4 month, and examine the boys and girls in their school room and labor, and
5 inspect the register and accounts of the superintendent. A record shall be
6 kept of these visits in the books of the superintendent. Once in every year,
7 or oftener, if the trustees think it necessary, they shall examine the school
8 in all its departments, including the accounts, vouchers, and documents of
9 the superintendent, and prepare a report on the condition of the institution
10 on the first Monday in November next preceding the meeting of the general
11 assembly, which, together with a full report of the superintendent, and a
12 list of the officers and their salaries, with an estimate of the value of the per-
13 sonal property of the state in connection with the school, shall be laid before
the general assembly.

2 Sec. 9. The superintendent, with such subordinate officers as the trust-
 3 tees may appoint, shall have the charge and custody of the boys and girls ;
 4 he shall discipline, govern, instruct, employ, and use his best endeavors to
 5 reform the inmates in such manner as, while preserving their health, will
 6 secure the promotion, as far as possible, of moral, religious, and industrious
 7 habits, and regular, thorough progress and improvement in their studies,
 8 trades, and employment.

2 Sec. 10. He shall, before entering upon his duties, give a bond to the
 3 state, with snreties, the amount and sureties to be satisfactory to the board
 4 of trustees, conditioned that he shall faithfully perform all his duties, and
 5 account for all money received by him as superintendent, which bond shall
 6 be filed in the office of the secretary of state; he shall have charge of all the
 7 property of the institution within the precincts thereof; he shall keep in
 8 suitable books complete accounts of all his receipts and expenditures, and of
 9 all property intrusted to him, showing the income and expenses of the in-
 10 stitution, and in such manner as the trustees may require, for all money
 11 received by him. His books and documents relating to the school shall at
 12 all times be open to the inspection of the trustees. He shall keep a register
 13 containing the name, age, and circumstances connected with the early his-
 14 tory of each boy and girl, and shall add such facts as shall come to his
 15 knowledge, relating to his or her history while at the institution and after
 16 leaving it.

2 Sec. 11. When a boy or girl, under age of eighteen years, shall, in any
 3 court of record, be found guilty of any crime, excepting murder, the said
 4 court may, if in its opinion the accused is a proper subject therefor, instead
 5 of entering judgment, cause an order to be entered, that said boy or girl be
 6 sent to the state reform school, pursuant to the provisions of this chapter,
 7 and a copy of said order, duly certified by the clerk, under the seal of said
 8 court, shall be a sufficient warrant for carrying said boy or girl to the school,
 9 and for his or her commitment to the custody of the superintendent thereof.

2 Sec. 12. When a boy or girl under the age of eighteen shall be convicted
 3 before a justice of the peace, or other inferior court, of any crime, or of
 4 being a disorderly person, it shall be lawful for the magistrate before whom he
 5 or she may be convicted, to forthwith send such boy or girl together with all
 6 the papers filed in his office on the subject, under the control of some officer,
 7 to a judge of a court of record, who shall then issue an order to the parent
 8 or guardian of said boy or girl, or such person as may have him or her in
 9 charge, or with whom he or she has last resided, or one known to be nearly
 10 related to him or her, or if he or she be alone or friendless, then to such
 11 person as said judge may appoint to act as guardian for the purposes of the
 12 case, requiring him or her to appear at a time and place stated in said order,
 13 to show cause why said boy or girl should not be committed to the reform
 14 school for reformation and instruction.

2 Sec. 13. Said order shall be served by the sheriff, or other officer, by de-
 3 livering a copy thereof, personally, to the party to whom it is addressed, or
 4 leaving it with some person of full age at the place of residence or business
 5 of said party, and immediate return shall be made to the said judge of the
 6 time and manner of such service. The fees, of judge, sheriff, or other officer
 7 under this chapter, shall be the same as now allowed by law for like
 8 services.

2 Sec. 14. At the time and place mentioned in said order, or at the time
 3 and place to which it may be adjourned, if the parent or guardian to whom

3 said order may be addressed shall appear, then in his or her presence, or if
 4 he or she shall fail to appear, then in the presence of some suitable person
 5 whom the said judge shall appoint as guardian for the purposes of the case,
 6 it shall and may be lawful for said judge to proceed to take the voluntary
 7 examination of said boy or girl, and to hear the statements of the party
 8 appearing for him or her, and such testimony in relation to the case as may
 9 be produced, and if upon such examination and hearing the said judge shall
 10 be satisfied that the boy or girl is a fit subject for the state reform school, he
 11 may commit him or her to said school by warrant.

2 **SEC. 15.** The judge shall certify, in the warrant, the place in which
 3 the boy or girl resided at time of his or her arrest, also his or her age as
 4 near as can be ascertained, and command the said officer to take the said
 5 boy or girl, and deliver him or her, without delay to the superintendent of
 6 said school, or other person in charge thereof, at the place where the same
 7 is established; and such certificate, for the purpose of this chapter shall be
 8 conclusive evidence of his or her residence or age. Accompanying this
 9 warrant the judge shall transmit to the superintendent, by the officer exe-
 10 cuting it, a statement of the nature of the complaint, together with such
 11 other particulars concerning the boy or girl as the judge is able to ascertain.

2 **SEC. 16.** If the judge is of the opinion that the boy or girl is not a fit
 3 subject for the school, or if said boy or girl shall appeal from the decision
 4 of the court in which the conviction was had, he shall remand him or her to
 5 the custody of the officer who had him or her in charge, to be returned to
 6 the magistrate before whom the conviction was had, to be dealt with accord-
 7 ing to law.

2 **SEC. 17.** If any parent or guardian shall make complaint to a judge of a
 3 court of record, that any boy or girl, the child or ward of such parent or
 4 guardian, is habitually vagrant or disorderly, or incorrigible, it shall and
 5 may be lawful for said judge to issue a warrant to have the sheriff or constable
 6 to cause said boy or girl to be brought before him at such time and
 7 place as he may appoint, when and where said judge shall examine the parties
 8 and if in his judgment the boy or girl is a fit subject for the reform school
 9 he may issue an order with the consent of the said parent or guardian in-
 10 dorsed thereon, to be executed by a sheriff or constable, committing said boy
 11 or girl to the custody of the superintendent of said school for reformation
 12 and instruction till he shall attain the age of majority: *provided*, that security
 13 for the payment of the expenses of said complaint, commitment, and of carry-
 14 ing said boy or girl to the reform school, and the expenses of board at
 15 such school, may in the discretion of said judge, be required of said parent
 or guardian.

2 **SEC. 18** No boy or girl shall be committed to said reform school or a
 3 longer term than until he or she attain the age of majority, but the said trust-
 4 ees, by their order, may at any time after one year's service, discharge a
 5 boy or girl from said school, as a reward of good conduct in the school, and
 upon satisfactory evidence of reformation.

2 **SEC. 19.** Any boy or girl committed to the state reform school shall be
 3 there kept, disciplined, instructed, employed, and governed, under the di-
 4 rection of the trustees, until he or she arrives at the age of majority or is
 5 bound out, reformed, or legally discharged. The binding out or discharge
 6 of a boy or girl as reformed, or having arrived at the age of majority, shall
 7 be a complete release from all penalties incurred by conviction of the offense
 for which he or she was committed.

2 SEC. 20. If any boy or girl, convicted of a felony, committed to the re-
3 form school, shall prove unruly or incorrigible, or if his or her presence shall
4 be manifestly and persistently dangerous to the welfare of the school, the
5 trustees shall have power to order his or her removal to the county from
6 which he or she came, and delivery to the jailor of the said county, and pro-
7 ceedings against him or her shall be resumed, as if no warrant or order
committing him or her to the reform school had been made.

2 SEC. 21 Every person who unlawfully aids or assists any boy or girl
3 lawfully committed to the reform school in escaping or attempting to escape
4 therefrom, or knowingly conceals such boy or girl after his or her escape,
5 shall be punished as provided by section 429E of part four of this code.

CHAPTER 6. *Of the Institution for the Education of the Blind.*

2 SEC. 1 There shall be maintained at Vinton, in the county of Benton an
3 institution for the education of the blind, under the supervision of a board
4 of trustees consisting of the governor, superintendent of public instruction
5 and secretary of state, who shall be members of said board by virtue of
6 their respective offices, and six other persons, who shall be chosen by the
7 legislature as their present or future terms of office expire, and hold their
offices for four years from the date of each appointment.

2 SEC. 2. The principal of the institution shall also be a member of the
3 board of trustees by virtue of his office, but shall have no vote on any ques-
4 tion relating to his own salary or office as principal.

2 SEC. 3. The trustees shall have the general supervision of the institution,
3 adopt rules for the government thereof, provide teachers, servants and ne-
4 cessaries for the institution, and perform all other acts necessary to render
5 the institution efficient, and to carry out the purpose of its establishment.

2 SEC. 4. Three of said trustees shall constitute a quorum for the transac-
3 tion of business.

2 SEC. 5. Trustees residing more than ten miles from the institution, shall
3 be allowed ten cents per mile to and from their place of meeting, which
4 shall be paid out of the funds of the institution, for attendance at the quar-
5 terly and annual meetings of the board.

2 SEC. 6. The board of trustees shall fix the compensation of all the offi-
3 cers and employees of said institution, at such rate as shall by them be
4 deemed just and equitable: *Provided*, that in no event shall the total amount
5 of expenses of the institution exceed the total amount of appropriation for
the same.

2 SEC. 7. The assistant officers shall receive their appointment from the
3 board, upon the nomination of the principal, and shall be responsible to the
4 principal for the faithful performance of their duties, and the principal shall
be held responsible to the board for the performance of his duties.

2 SEC. 8. The trustees shall appoint some one of the employees, steward,
3 at such compensation as they may deem just, who, under their direction,
shall purchase all supplies for the institution.

2 SEC. 9. Persons not residents of the state shall be entitled to the bene-
3 fits of this institution on paying to the treasurer thereof the sum of thirty
four dollars a quarter in advance.

2 SEC. 10. The board of trustees shall elect one of their number president

2 and another treasurer of the institution, and the treasurer shall enter into
3 bonds with security in such sum as the board shall direct, conditioned for
4 the faithful paying over all money belonging to the institution upon the
5 order of the board, which bond shall be filed with the secretary of state.

2 **SEC. 11.** The board of trustees shall not create any indebtedness against
3 the institution exceeding the amount appropriated by the general assembly
4 for the support thereof.

2 **SEC. 12** To meet the ordinary expenses of the institution, including fur-
3 niture, books, and maps, the compensation of principal, matron, teachers,
4 and employees, and to provide for contingencies, there is hereby appro-
5 priated the sum of eight thousand dollars annually, or so much thereof as
6 may be necessary, to be drawn quarterly.

2 **SEC. 13.** For the purpose of meeting current expenses, there is appro-
3 priated, out of the state treasury, forty dollars per quarter for each pupil in
4 said institution.

2 **SEC. 14.** The principal of said institution shall report to the governor, on
3 or before the fifteenth day of December, preceding each regular session of
4 the general assembly, the number of pupils in attendance, with the name,
5 age, sex, residence, place of nativity, and also the cause of blindness of each
6 pupil. He shall also make a report of the studies pursued and trades
7 taught in said institution, together with a complete statement of the
8 expenditures, and also the number, kind and value of articles manufactured
9 and sold.

2 **SEC. 15.** When the pupils of said institution are not otherwise supplied
3 with clothing, they shall be furnished by the principal, who shall make out
4 an account therefor, in each case, against the parent or guardian, if
5 the pupil be a minor, and against the pupil, if he or she have no
6 parent or guardian, or has attained the age of majority, which account shall
7 be certified to be correct and signed by the principal, and shall be presump-
8 tive evidence of its correctness, in the courts, and such principal shall forth-
9 with remit such account to the treasurer of the proper county, who shall
10 proceed to collect the same by suit, if necessary, in the name of such institu-
11 tion, and pay the same into the state treasury, and said principal shall, at
12 the same time, remit a duplicate of such account to the auditor of state, who
13 shall credit the same to account of the asylum for the blind, and charge it
14 to the proper county.

2 **SEC. 16.** The above appropriations, including account of clothing fur-
3 nished pupils, shall be drawn quarterly on the order of the trustees of the
4 institution, made on the auditor of the state, who shall draw his warrant
5 in the name of such institution on the treasurer, as ordered by the
6 trustees.

2 **SEC. 17.** All blind persons, residents of this state, of suitable age and
3 capacity, shall be entitled to an education in this institution at the expense
4 of the state, and it shall be the duty of each county superintendent of com-
5 mon schools to report on the first day of November of each year to the
6 superintendent of the institution for the blind, the name, age, residence, and
7 post office address of every blind person, and every person blind to such an
8 extent as to be unable to acquire an education in the common schools, and
9 who resides in the county in which he is superintendent.

2 **SEC. 18.** There shall be established an industrial home for blind persons
3 who are unable to support themselves, in connection with the Iowa institu-
4 tion for the education of the blind, which shall be controlled and directed
5 by the same board of trustees.

2 SEC. 19. The industrial home shall be open to such blind persons of this
3 state as shall be dependent upon their own labor for support, and who, in
4 the opinion of the trustees, shall in other respects be proper subjects to be
5 admitted into that department of the institution.

2 SEC. 20. An itemized account of all material and expenses connected
3 with the home shall be kept by the superintendent of the institution; he
4 shall also keep an account with each person employed in the home, charging
5 them with material furnished, and crediting them with articles manufactured,
6 at the market price, and any balance remaining, after deducting a
7 reasonable amount for board and clothing, (if any has been furnished,) shall
8 be paid to the person who shall have performed the labor.

CHAPTER 7. *Of the Institution for the Deaf and Dumb.*

2 SEC. 1. There shall be permanently maintained at Council Bluffs in the
3 county of Pottawattamie, an institution for the support and education of the
4 deaf and dumb under the supervision of a board of trustees consisting of
5 the governor, superintendent of public instruction, secretary of state, and
6 the principal of the institution, who shall be members of said board by
7 virtue of their respective offices, and four other persons to be appointed by
8 the governor with the consent of the senate, as their present or future terms
9 of office expire, and to hold their offices for four years from the date of each
10 appointment.

2 SEC. 2. The trustees shall have the general supervision of the institution,
3 adopt rules for the government thereof, provide teachers, servants, and necessities
4 for the institution, and perform all other acts necessary to render it
5 efficient and to carry out the purpose of its establishment.

2 SEC. 3. Three of said trustees shall constitute a quorum for the transaction
3 of business, and their proceedings at each meeting shall be recorded in a
4 minute book, which shall be signed by those present, and form a record of
5 their proceedings.

2 SEC. 4. Persons not residents of the state, of suitable age and capacity,
3 shall be entitled to an education in said institution, on paying to the trustees
4 thereof the sum of thirty-five dollars a quarter in advance.

2 SEC. 5. Every deaf and dumb citizen of the state, of suitable age and
3 capacity, shall be entitled to receive an education in said institution at the
4 expense of the state.

2 SEC. 6. The board of trustees shall select one of their number as treasurer
3 of the institution, and he shall enter into bonds, with security, in such
4 sum as the board shall direct, conditioned for the faithful paying over of all
5 money belonging to the institution, upon the order of the board, which bond
6 shall be filed with the secretary of state.

2 SEC. 7. The board shall not create any indebtedness against the institution
3 exceeding the amount appropriated by the general assembly for the use
4 thereof.

2 SEC. 8. For the purpose of meeting current expenses, there is hereby
3 appropriated the sum of forty dollars per quarter for each pupil in said
4 institution.

2 SEC. 9. To meet the ordinary expenses of the institution, including furniture,
3 books, school-apparatus, and compensation of officers and teachers,

3 there is hereby appropriated the sum of eight thousand dollars per annum'
4 or so much thereof as may be necessary.

5 SEC. 10. The superintendent of said institution shall report to the gov-
6 ernor, on or before the tenth day of December preceeding each regular ses-
7 sion of the general assembly, the number of pupils in attendance, with the
8 name, age, sex, residence, place of nativity, and also the cause of the deaf-
9 ness of each pupil. He shall make a report of the studies pursued and trades
0 taught in said institution, together with a complete detailed statement of the
1 expenditures for said institution and the receipts on account of the same, the
2 salaries paid to each officer and teacher, and also the kind, number and value
3 of all articles manufactured and sold.

4 SEC. 11. When the pupils of said institution are not otherwise supplied
5 with clothing, they shall be furnished by the superintendent, who shall make
6 out an account of the cost thereof, in each case, against the parent or guar-
7 dian, if the pupil be a minor, and against the pupil if he or she have no
8 parent or guardian, or have attained the age of majority; which account
9 shall be certified to be correct by said superintendent; and when so certified,
0 such an account shall be presumed correct in all courts. The superinten-
1 dent shall thereupon remit said account by mail to the treasurer of the
2 county from which the pupil so supplied shall have come to said institution;
3 such treasurer shall proceed at once to collect the same by suit in the name
4 of his county if necessary, and pay the same into the state treasury; the
5 superintendant shall at the same time remit a duplicate of such account
6 to the auditor of state, who shall credit the same to the account of the insti-
7 tution, and charge it to the proper county: *Provided*, if it shall appear by
8 the affidavit of three disinterested citizens of the county not of kin to the
9 pupil, that the said pupil or his or her parents would be unreasonably op-
0 pressed by such suit, then such treasurer shall not commence the said suit
1 but shall credit the same to the state on his books, and report the amount
2 of such account to the board of supervisors of his county, and it shall be the
3 duty of the said board to levy sufficient tax to pay the same to the state, and
4 to cause the same to be paid into the state treasury.

5 SEC. 12. The above mentioned appropriations, including the accounts for
6 clothing aforesaid, shall be drawn quarterly on the requisition of the board
7 of trustees of the institution in the usual manner.

CHAPTER 8. *Of County High Schools.*

1 SECTION 1. Each county having a population of two thousand inhabit-
2 ants or over, as shown by the last state or federal census, may establish a
3 high school on the conditions and in the manner hereinafter prescribed, for
4 the purpose of affording better educational facilities for pupils more ad-
5 vanced than those attending district schools, and for persons desiring to fit
6 themselves for the vocation of teaching.

7 SEC. 2. When one third of the electors of a county, as shown by the re-
8 turns of the last preceding election, shall petition the board of supervisors,
9 requesting that a county high school be established in their county at the
0 place in said petition named, then said board shall give twenty days' notice
1 previous to the next general election, or previous to a special election duly
2 called for that purpose, that they will submit the question to the electors of
3 said county whether such high school shall be established; at which election

8 said electors shall vote, by ballot, for or against establishing such county
9 high school. The notice contemplated in this section shall be given through
10 one or more newspapers published in said county, if any be published there-
11 in, and by at least one written or printed notice, to be posted in each town-
12 ship.

SEC. 3. After said election the ballots on said question shall be canvass-
2 ed in the same manner as in the election for county officers; and if a ma-
3 jority of all the votes cast on said question shall be in favor of establishing
4 said school, the board of supervisors shall immediately proceed to appoint
5 six persons, who shall be residents of the county, but not more than two of
6 whom shall be residents of the same township, who shall, with the county
7 superintendent of common schools, constitute a board of trustees for said
8 high school. Each of said trustees, appointed as aforesaid, shall hold his
9 office until his successor is elected and qualified; and shall be required, with-
10 in ten days after appointment, to qualify by taking the oath of office, and
11 giving such bond as may be required by the said board of supervisors, for
12 the faithful discharge of his duties.

SEC. 4. At the next general election after said appointment, there shall
2 be elected in such county six high school trustees, who shall be divided into
3 three classes of two each; each class to hold their office one two, and three
4 years respectively, and their respective terms to be decided by lot. And
5 each year thereafter shall be two such trustees elected to succeed those whose
6 term is about to expire. And said trustees shall qualify and enter upon the
7 duties of their office in the same manner, and at the same time, as other
8 county officers.

SEC. 5. The county superintendent shall be by virtue of his office presi-
2 dent of said board of trustees; and, at their first meeting in each year, they
3 shall appoint, from their own number, a secretary and treasurer, who shall
4 perform the usual duties devolving upon such officers, for the term of one
5 year, or until their successors are appointed to take their places.

SEC. 6. At said meeting, or at some succeeding meeting called for such
2 purpose, said trustees shall make an estimate of the amount of funds needed
3 for building purposes, for payment of teachers' wages, and for contingent
4 expenses, and they shall present to the board of supervisors, a certified esti-
5 mate of the rate of tax required to raise the amount desired for such pur-
6 poses. But in no case shall the tax for such purposes exceed, in any one
7 year, the amount of five mills on the dollar on the taxable property of the
8 county, and, when the tax is levied for the payment of teachers' wages and
9 contingent expenses only, shall not exceed two mills on the dollar.

SEC. 7. The said tax shall be levied and collected in the same manner as
2 other county taxes, and when collected the county treasurer shall pay the
3 same to the treasurer of the county high school, in the same manner that
4 school funds are paid to the district treasurers as required by law.

SEC. 8. The said treasurer of the high school shall give such additional
2 bond as the board of trustees may deem sufficient, and receive all moneys
3 from the county treasurer, and from other parties, that belong to the funds
4 of said school, and pay the same out only by direction of the board of trust-
5 ees, upon orders duly executed by the president, countersigned by the sec-
6 retary thereof, stating the purpose for which they were drawn. Both the
7 secretary and treasurer shall keep an accurate account of all moneys received
8 and expended for said school; and at the close of each year, and as much
9 oftener as required by the board, they shall make a full statement of the
10 financial affairs of the school.

2 SEC. 9. The said board of trustees shall proceed as soon as practicable,
3 after their appointment as aforesaid, to select the best site, in accordance
4 with the vote of the county, that can be obtained without expense to the
5 same, and the title thereof shall be vested in said county. They shall then
6 proceed to make such purchases of material, and to let such contracts for
7 their necessary school buildings as they may deem proper, but shall not
8 make any purchase or contract in any year to exceed the amount on hand,
9 and to be raised by the levy of tax that year.

2 SEC. 10. When said board of trustees shall have furnished a suitable
3 building for the school, they shall employ some competent teacher to take
4 charge of the same, and furnish such assistant teachers as they deem neces-
5 sary, and provide for the payment of their salaries. As far as practicable,
6 model schools shall be encouraged; and advanced students and those pre-
7 paring to become teachers may be employed a portion of their time in
8 teaching the younger pupils, in order that they may become familiar with
9 the practice as well as theory of successful school-teaching, and also avoid,
0 as far as practicable, the expense of employing other assistant teachers.

2 SEC. 11. Tuition shall be free to all pupils of such school residing in the
3 county where the same is located. The board of trustees, however, shall
4 make such general rules and regulations as they deem proper in regard to
5 age and grade of attainments, essential to entitle pupils to admission in the
6 school. If there should be more applicants than can be accommodated at
7 any time, each district shall be entitled to send its equal proportion of pu-
8 pils, according to the number of scholars it may have, as shown by the last
9 report to the county superintendent of common schools. And the boards of
0 the respective school districts shall designate such pupils as may attend.

2 SEC. 12. If, at any time, the school can accommodate more pupils than
3 apply for admission from that county, the vacancies may be filled by appli-
4 cants from other counties, upon the payment of such tuition as the board of
5 trustees may prescribe; but at no time shall such pupils continue in said
6 school to the exclusion of pupils belonging in the county in which such
7 high school is situated.

2 SEC. 13. In any county where there is no county high school, it shall be
3 lawful for the board of supervisors thereof, upon the presentation of a peti-
4 tion signed by the majority of the qualified electors of the county, to levy a
5 tax, not exceeding one mill on the dollar in any one year, sufficient to pay
6 the tuition of those scholars who desire to attend the county high school of
7 some other county, or a high school or high school department established in
8 the county, and, when they do attend such high school, this tuition may be
9 paid out of the funds levied for that purpose.

2 SEC. 14. The principal of any such high school, with the approval of the
3 board of trustees, shall make such rules and regulations as he deems proper,
4 in regard to the studies, conduct, and government of the pupils under his
5 charge, and, if any such pupils will not conform to, and obey, the rules of
6 the school, they may be suspended or expelled therefrom by the board of
7 trustees.

2 SEC. 15. The said board of trustees shall annually make a report to the
3 board of supervisors of their county, which shall specify the number of
4 students, both male and female, who have been in attendance at the county
5 high school during the year, the branches of learning taught, the text-books
6 used, the number of teachers employed, the amount of salary paid to them,
7 the amount expended for library and apparatus and for buildings and all

7 other expenses; also the amount of funds on hand, debts unpaid, and
8 other information deemed important or expedient to report. Said report
9 shall be printed in at least one newspaper in the county, if any is published
10 therein, and a copy of the report shall be forwarded to the state superintend-
11 ent of public instruction.

SEC. 16. The board of supervisors shall have power to fill any vacancy
2 that may occur in the board of trustees of that county, by appointment, un-
3 til the next general election, and a majority of any such board of trustees
4 shall be a quorum for the transaction of business.

SEC. 17. The board of supervisors may allow each member of the board
2 of trustees the sum of two dollars per day for the time actually employed
3 in the discharge of his official duties, and when such accounts are presented
4 for payment, they shall be audited and paid out of the county treasury, in
5 the same manner as other accounts against the county, and said trustees
6 shall not be entitled to any further remuneration for services or expenses.

CHAPTER 9. *Of the System of Common Schools.*

SEC. 1. Each civil township now, or hereafter organized in this state, is
2 hereby declared a school district, for all the purposes of this chapter, and
3 each sub-district, as now organized, shall continue such, subject to the pro-
4 visions hereinafter made.

SEC. 2. When a new civil township has been formed, the township tru-
2 tees shall divide the same into sub-districts, if deemed necessary; and shall
3 post written notices, specifying the time and place of the first election for
4 sub-directors, in the manner provided for the election of sub-directors in or-
5 ganized district townships.

SEC. 3. When an organized district township has been left without offi-
2 cers, the township trustees shall give such notice for a special election of
3 sub-directors, as is required of the sub-director in case of regular sub-district
4 elections; and the person elected shall continue in office until the next regu-
5 lar sub-district election thereafter.

SEC. 4. When any district township shall be divided into two or more
2 entire townships for civil purposes, the existing board of directors shall con-
3 tinue to act for both or all of the new districts until the next regular sub-
4 district election thereafter, at which time the new district townships shall
5 organize by the election of sub-directors. The respective board of directors
6 shall, immediately after such organization, make an equitable division of the
7 then existing assets and liabilities, between the old and new districts; and
8 in case of a failure to agree, the matter may be decided by arbitrators chosen
9 by the parties in interest. A similar division shall be made in case of the
10 formation of an independent district under special laws, or the consolidation
11 of civil townships.

SEC. 5. Every school district which is now, or may hereafter be organiz-
2 ed, is hereby made a body corporate, by the name of the "district township
3 of, in the county of, in the state of Iowa," and in that
4 name may hold property, become a party to suits and contracts and do other
5 corporate acts.

SEC. 6. Each district township shall hold an annual meeting on the
2 second Saturday in March.

2 SEC. 7. The electors of the district, when legally assembled at such
3 meeting, shall have the following powers, viz:

4 FIRST—To appoint a chairman and secretary, in the absence of the reg-
5 ular officers.

6 SECOND—To direct the sale or other disposition to be made of any school-
7 house, or the site thereof, and of such other property, personal and real, as
8 may belong to the district; and to direct the manner in which the proceeds
9 arising therefrom shall be applied: *Provided*, That the money so obtained,
10 shall be used for the benefit of the sub-district in which such school house
11 site or other property is situated.

12 THIRD—To determine what additional branches shall be taught in the
13 schools of the district.

14 FOURTH—To delegate any or all of the powers, contained in the forego-
15 ing specifications, to the board of directors.

16 FIFTH—To vote such tax, not exceeding ten mills on the dollar in any one
17 year, on the taxable property of the district township, as the meeting shall
18 deem sufficient for the purchase of grounds and the construction of the nec-
19 essary school houses for the use of the respective sub-districts, and for the
20 payment of any debts contracted for the erection of school-houses, and for
procuring district libraries and apparatus for the schools.

2 SEC. 8. The several sub-districts shall annually, on the first Saturday in
3 March, hold a meeting for the election of sub-director, five days notice of
4 which meeting shall be given by the then resident sub-director: or if there
5 is none, by the district secretary, posting a written notice in three public
6 places therein, and such notice shall state the hour of meeting.

7 SEC. 9. At the meeting of the sub-district, a chairman and secretary shall
8 be appointed, who shall act as judges of the election, and give a certificate
9 of election to the sub-director elect.

2 SEC. 10. In all district townships comprising but one sub-district, the
3 board of directors shall consist of three sub-directors; and in all district
4 townships comprising but two sub-districts, it shall consist of one sub-di-
5 rector chosen from each sub-district, and one from the district township at
6 large, who shall in both cases be elected in the manner provided by law for
7 the election of one sub-director for each sub-district. The judges of the
8 respective sub-district elections, shall canvass the votes for the sub-director
9 chosen from the district township at large, and shall issue a certificate of
election to the person elected.

2 SEC. 11. In each sub-district there shall be taught one or more schools for
3 the instruction of youth, between the ages of five and twenty-one years, for
4 at least twenty-four weeks, of five school days each, in each year, unless the
5 county superintendent shall be satisfied that there is good and sufficient
6 cause for failure so to do.

7 Any person who was in the military service of the United States during
8 his minority shall be admitted into the schools in the sub-district in which
9 he may reside, on the same terms on which youths between the ages of five
and twenty-one are admitted.

2 SEC. 12. Children residing in one district township may attend school
3 in another, in the same or adjoining county, on such terms as may be agreed
4 upon by the respective boards of directors of the district townships inter-
5 ested, but, in case no such agreement is made, they may attend school in
6 such adjoining district township, with the consent of the board of directors
thereof, when they reside nearer to the school in said district township than

7 to any school in their own district township. The board of directors of the
 8 township in which the children reside shall be notified in writing, and the
 9 district township in which they attend school shall pay the average tuition of
 10 said children per week, and an average proportion of the contingent expenses
 11 of the subdistrict where they attend school, and in case of refusal so to do, the
 12 secretary shall file the account of said tuition and contingent expenses, cer-
 13 tified to by the president, with the clerk of the board of supervisors of the
 14 county in which said children reside, who shall, at the time of making the
 15 next semi-annual apportionment thereafter, deduct the amount from the sum
 16 apportioned to the district township in which said children reside, and pay
 17 it over to the district township in which they have attended school.

2 Sec. 13. Pupils who are actual residents of a district township, shall
 3 be permitted to attend school in the same, regardless of the time when they
 4 acquired such residence, whether before or after the enumeration, or of the
 5 residence of their parents or guardians; but pupils who are sojourning tem-
 6 porarily in one district township, while their actual residence is in another,
 7 and to whom the last preceding section is not applicable, may attend
 8 school upon such terms as the board of directors may deem just and equi-
 9 table.

2 Sec. 14. Pupils may attend school in any sub-district of the district
 3 township in which they reside, with the consent of the sub-director of such
 4 sub-district, and of the sub-director of the sub-district in which such pupils
 5 reside.

2 Sec. 15. The electors of a sub-district may, at their regular meeting in
 3 March, determine what amount is required for the erection of a school-house
 4 in said sub-district, and the payment of debts contracted for the construction
 5 of school houses, and the sub-director shall certify the same to the next
 6 regular meeting of the electors of the district township held thereafter.

2 Sec. 16. Should the electors of the district township neglect or refuse to
 3 vote said amount at said meeting, or a sum adequate for the erection of said
 4 house, the board of directors shall, at their first regular meeting thereafter,
 5 ascertain the per centum of the sum applied for on the property of the dis-
 6 trict township, and shall apportion the same among the several sub-districts,
 7 as justice and equity may require, taking as the apportionment the respect-
 8 ive amounts previously levied upon said sub-districts for school house pur-
 9 poses: *Provided*, That in no case shall the rate exceed fifteen mills on the
 10 dollar on the property of any sub-district. Within ten days thereafter the
 11 secretary shall file a certified statement of the same with the board of super-
 12 visors, showing the per-centum assessed on each sub-district. Said per
 13 centum shall be levied in accordance with said statement, and collected and
 14 expended for the erection of a school house in said sub-district in the same
 15 manner as though it had been voted by the district township meeting.
 16 Should the aggregate of sums thus applied for by the respective sub-districts,
 17 exceed five mills on the dollar in any one year, on the property of the dis-
 18 trict township, the board of directors shall reduce it proportionally to that
 19 rate.

2 Sec. 17. The sub-directors of the several sub-districts shall constitute a
 3 board of directors for the district township, and shall enter upon their duties
 4 on the day fixed for the regular meeting of the board in March, at which
 5 time they shall organize by electing from their own number a president, who
 6 shall simply be entitled to a vote as a member of the board; and from the
 7 district township at large, a secretary and a treasurer, unless there are at

basis of...

7 least five sub-directors in the district township, in which case they may be
8 selected from the board. If selected from the district township at large,
9 they shall have no vote in the proceedings of the board.

2 SEC. 18. The board of directors shall hold their regular meetings on the
3 third Monday in March and September of each year; and may hold such
4 special meetings as occasion may require, at the call of the president, or by
5 request of a majority of the board.

2 SEC. 19. They shall make all contracts, purchases, payments and sales,
3 necessary to carry out any vote of the district; but before erecting any
4 school house, they shall consult with the county superintendent as to the
5 most approved plan of such building.

2 SEC. 20. They shall fix the site for each school house, taking into consid-
3 eration the geographical position and convenience of the people of each por-
4 tion of the sub-district, and shall determine what number of schools shall be
5 taught in each sub-district, and for what additional time beyond the period
6 required by law they shall be continued during each year.

2 SEC. 21. They may establish graded or union schools wherever they
3 may be necessary, and may select a person who shall have the general su-
4 pervision of the schools in their district, subject to the rules and regulations
5 of the board.

2 SEC. 22. They shall appoint a temporary president and secretary in case
3 of the absence of the regular officers, and shall fill any vacancy that may
4 occur in the office of president, secretary or treasurer, or in the board of di-
5 rectors.

2 SEC. 23. They shall require the secretary and treasurer, each, to give
3 bonds to the district, in such penalty and with such securities as they may
4 deem necessary to secure the district against loss, conditioned for the faith-
5 ful performance of their official duties. The bond shall be filed with the
6 president, and in case of a breach of the conditions thereof, he shall bring
7 suit thereon in the name of the district township.

2 SEC. 24. They shall, from time to time, examine the accounts of the
3 treasurer, and make settlement with him; and shall present at each regular
4 meeting of the electors of the district township, a full statement of the re-
5 ceipts and expenditures of the district township, and such other information
6 as may be deemed important.

2 SEC. 25. They shall audit and allow all just claims against the district,
3 and fix the compensation of the secretary and treasurer; and no order shall
4 be drawn on the district treasury until the claim for which it is drawn has
5 been so audited and allowed.

2 SEC. 26. They shall visit the schools in their district, and aid the
3 teachers in establishing and enforcing rules for the government of the
4 schools; and see that they keep a correct list of the pupils, embracing the
5 periods of time during which they attended school, the branches taught, and
6 and such other matters as may be required by the county superintendent.
7 In case a teacher employed in any of the schools of the district township is
8 found to be incompetent, or is guilty of partiality or dereliction, in the dis-
9 charge of his duties, or for any other sufficient cause shown, the board of
10 directors may, after a full and fair investigation of the facts of the case, at a
11 meeting convened for the purpose, at which the teacher shall be permitted
12 to be present and make his defense, expel him from school, and direct the
sub-director to discharge him.

2 SEC. 27. They shall, at their regular meeting in March of each year, re-
quire the secretary to file with the clerk of the board of supervisors, county

3 superintendent, and county treasurer, each, a certificate of the election, quali-
 4 fication, and post office address of the president, secretary, and treasurer of
 5 the district township, and to advise them from time to time of any changes
 6 made in said offices by appointment.

2 SEC. 28. They shall, at their regular meeting in September, or at any
 3 special meeting called thereafter for that purpose, divide their township into
 4 sub-districts, such as justice, equity, and the interests of the people require;
 5 and may make such alterations of the boundaries of sub-districts, hereto-
 6 fore formed, as may be deemed necessary; and shall designate such sub-
 7 district, and all subsequent alterations, in a distinct and legible manner,
 8 upon a plat of the district provided for that purpose; and shall cause a
 9 written description of the same to be recorded in the district records; a copy
 10 of which shall be delivered by the secretary to the county treasurer, and
 11 also to the clerk of the board of supervisors, who shall record the same in
 12 his office: *Provided*, that the boundaries of sub-districts shall conform to the
 13 lines of congressional divisions of land; and that the formations and altera-
 14 tions of sub-districts, as contemplated in this section, shall not take effect
 15 until the next sub-district election thereafter; at which election a sub-direc-
 tor shall be elected for the new sub-district formed.

2 SEC. 29. In cases where, by reason of streams or other natural obstacles
 3 any portion of the inhabitants of any school district township cannot, in the
 4 opinion of the county superintendent, with reasonable facility, enjoy the ad-
 5 vantages of any school in their township, the said county superintendent,
 6 with the consent of the board of directors of such district township as may be
 7 affected thereby, may attach such part of said township to an adjoining town-
 8 ship, and erect a new sub-district with part of the said adjoining township,
 9 and the order erecting the same shall be transmitted to the township district
 10 clerk in each district, and be by him recorded in his records of sub-districts,
 11 and the proper entry made on his plat of sub-districts, and such order shall
 12 designate the township district to which the new sub district shall be at-
 13 tached, and all sub-districts heretofore formed, conforming substantially to
 14 the principles above expressed, are hereby declared to be legal and as valid as
 15 if formed under this provision.

2 SEC. 30. Where, on account of unbridged streams or other impassable
 3 obstructions, or of the location of settlements, any portion of the inhabitants
 4 of any sub-district or district in one county cannot with reasonable facility,
 5 in the opinion of the county superintendent, enjoy the advantage of any
 6 school located in such county, the said county superintendent, with the writ-
 7 ten consent of the county superintendent of the county to which the territory
 8 is to be attached, may attach such part of such sub-district or district in said
 9 county to any adjoining district in the county contiguous, and the order
 10 changing the boundaries of the districts shall be transmitted to the secreta-
 11 ries of the respective districts affected thereby; and when the district to
 12 which such territory is attached is a district township, then the county super-
 13 intendent, of the county to which such territory is attached, shall erect a new
 14 sub-district with part of the said adjoining township, and, when such district
 15 is an independent district, then the said county superintendent shall attach
 16 such territory to said independent district; but such changes shall be made
 17 only between the first day of October and the first day of March; and any
 18 party aggrieved by such order may appeal to the superintendent of public
 19 instruction. The territory thus attached to another county shall belong
 20 to such county for voting, levying of taxes, enumeration of children, and all
 other school purposes, but the secretary of the school-district shall report the

21 taxes levied upon such attached territory as provided in the next section, to
 22 the clerk of the board of supervisors in the county from which such territory
 23 has been taken, and the taxes shall be collected by the county treasurer of
 24 the same, and the two latter officers shall apportion school funds for such ter-
 25 ritory, and serve notices on the school officers of said district, the same as if
 26 all were within their county; and the school officers of the district to which
 27 such territory is attached shall draw warrants on such county treasurer for
 28 the taxes and other school-funds belonging to said attached territory the
 29 same as if said territory belonged geographically to their county.

SEC. 31. The board of directors of the district township shall appor-
 2 tion any tax, voted by the district township meeting for school house fund,
 3 among the several sub-districts in such manner as justice and equity may
 4 require, taking as the basis of said apportionment the respective amounts
 5 previously levied upon said sub-districts, for the use of such fund, provided
 6 that if the electors of one or more sub-districts at their last annual meeting
 7 shall have voted to raise a sum for school house purposes, greater than that
 8 granted by the electors at the last annual meeting of the district township,
 9 they shall estimate the rate of tax on such sub-district, or sub-districts, neces-
 10 sary to raise the amount of such excess, and cause the secretary to certify
 11 the same, within five days thereafter, to the board of supervisors, who shall,
 12 at the time of levying taxes for county purposes levy the per centum of
 13 such excess on the taxable property of the sub-districts asking the same,
 14 provided that not more than fifteen mills on the dollar shall be levied on
 15 the taxable property of any sub-district for any one year for school house
 16 purposes.

SEC. 32. They shall, at their regular meeting in March of each year, or
 2 at a special meeting convened for that purpose, between the time designated
 3 for such regular meeting and the third Monday in May, estimate the per
 4 centum on the taxable property of the district township which shall be nec-
 5 essary to raise the amount required for the "contingent fund," and also
 6 such sum as may be required for the "teacher's fund," in addition to the
 7 amount received from the semi-annual apportionment, as shown by the notice
 8 from the clerk of the board of supervisors, to support the schools of the dis-
 9 trict for the time required by law for the current year; and shall cause the
 10 secretary to certify the same within five days thereafter, to the board of su-
 11 pervisors, who shall, at the time of levying taxes for county purposes, levy
 12 the per centum thus certified upon the property of the district township,
 13 which shall be collected and paid over as other district taxes are.

14 *Provided,* That if the electors of one or more sub-districts, at their last
 15 annual meeting, shall have voted to hold a school exceeding the time re-
 16 quired by law, and exceeding the time provided for by the estimate aforesaid,
 17 it shall be the duty of the board to estimate the cost of such excess,
 18 and cause the same to be certified as aforesaid; in which case it shall be the
 19 duty of the board of supervisors to levy such excess upon the property of
 20 the sub-district voting therefor, and which shall be collected and paid over
 21 as aforesaid.

SEC. 33. They shall make such rules and regulations as may be neces-
 2 sary for the direction and restriction of sub-directors in the discharge of their
 3 official duties, and not inconsistent with law.

SEC. 34. A majority of the board of directors shall be a quorum to trans-
 2 act business, but a less number may adjourn from time to time, and no tax
 3 shall be levied by the board after the third Monday in May; nor shall the

4 boundaries of sub-districts be changed except a vote of the majority of the
5 board.

6 Nor shall the members of the board, except its secretary and treasurer,
7 receive pay out of any school funds for services rendered under this chap-
8 ter.

2 SEC. 35. The president shall preside at all meetings of the board of di-
3 rectors, and of the district township; shall draw all drafts on the county
4 treasurer for money apportioned to his district; sign all orders on the district
5 treasury, specifying in the order the fund on which they are drawn, and the
6 use for which it is appropriated, and shall sign all contracts made by the
7 board.

2 SEC. 36. He shall appear in behalf of his district in all suits brought by
3 or against the same, but when he is individually a party this duty shall be
4 performed by the secretary; and in all cases where suits may be instituted by
5 or against any of the school officers to enforce any of the provisions herein
6 contained, counsel may be employed by the board of directors.

2 SEC. 37. The secretary shall record all the proceedings of the board and
3 district meetings, in separate books kept for that purpose; shall preserve
4 copies of all reports made to the county superintendent; shall file all papers
5 transmitted to him pertaining to the business of the district; shall counter-
6 sign all drafts and orders drawn by the president, and shall keep a register
7 of all orders drawn on the district treasury, showing the number of the or-
8 der, date, name of the person in whose favor drawn, for what purpose, and
9 the amount; and shall, from time to time, furnish the district treasurer with
a transcript of the same.

2 SEC. 38. He shall give ten days' previous notice of the district township
3 meeting, by posting a written notice in five conspicuous places therein, one
4 of which shall be at or near the last place of meeting, and shall furnish a
5 copy of the same to the teacher of the school, if in session, of each sub-dis-
6 trict, to be read in the presence of the pupils thereof, and such notice shall,
7 in all cases, state the hour of meeting.

2 SEC. 39. He shall keep an accurate account of all the expenses incurred
3 by the district, and shall present the same to the board of directors, to be
4 audited and paid as herein directed.

2 SEC. 40. Whenever a tax has been voted by any district township, for
3 purposes in this chapter specified, the secretary shall immediately certify the
4 percentum to the board of supervisors, who shall, at the time of levying the
5 tax for county purposes, levy a tax of the amount thus certified to them,
6 upon the assessed value of all the real and personal property in the district,
7 which shall be collected by the county treasurer at the same time and in the
8 same manner as state and county taxes are collected, but it shall be receiva-
9 ble only in cash.

2 SEC. 41. Between the fifteenth and twentieth days of September in each
3 year, the secretary of each school district shall file with the county super-
4 intendent a report of the affairs of the district, which shall contain the fol-
5 lowing items, viz:

6 *First*—The number of persons, male and female, each, in his district, be-
7 tween the ages of five and twenty-one years.

8 *Second*—The number of schools, and the branches taught.

9 *Third*—The number of pupils, and the average attendance of the same
10 in each school.

11 *Fourth*—The number of teachers employed, and the average compensa-
tion paid per week, distinguishing males from females.

12 *Fifth*—The length of school in days, and the average cost of tuition per
13 week for each scholar.

14 *Sixth*—The aggregate amount paid teachers during the year, and the bal-
15 ance of teachers' fund in the district territory.

16 *Seventh*—The text books used, and the number of volumes in the district
17 literary, and the value of apparatus belonging to the district.

18 *Eighth*—The number of school-houses, and their estimated value.

19 *Ninth*—The amount raised within the year by district tax for the erection
20 of school houses, the amount for teacher's fund, and for other purposes of
21 this chapter, stating separately the amount for each.

22 *Tenth*—The amount of public fund received from the semi-annual appor-
23 tionments made by the clerk of the board of supervisors, and if any, from
24 other sources, stating what, and how much from each, and such other infor-
25 mation as he may deem useful.

SEC. 42. Should the secretary fail to file his report as above directed, he
2 shall forfeit the sum of twenty-five dollars, and shall make good all losses
3 resulting from such failure, and suit shall be brought, in both cases, by the
4 district, on his official bond.

SEC. 43. The treasurer shall hold all moneys belonging to the district,
2 and pay out the same on the order of the president, countersigned by the
3 secretary, and shall keep a correct account of all expenses and receipts in a
4 book provided for the purpose.

SEC. 44. The money collected by district tax, for the erection of school-
2 houses, and for the payment of debts contracted for the same, shall be called
3 the "school-house fund;" that designed for rent, fuel, repairs, and all other
4 contingent expenses necessary for keeping the schools in operation, the
5 "contingent fund;" and that received for the payment of teachers, the
6 "teachers' fund;" and the district treasurer shall keep with each fund a
7 separate account; and shall pay no order which does not specify the fund
8 on which it is drawn, and the specific use to which it is applied. If he have
9 not sufficient funds in his hands to pay in full the warrant drawn on the
10 fund specified, he shall make a partial payment thereon, paying as near as
11 may be, an equal proportion of each warrant.

SEC. 45. He shall receive all moneys apportioned to the district township
2 by the clerk of the board of supervisors, and also all money collected by the
3 county treasurer on the district tax, levied for his district.

SEC. 46. He shall register all orders on the district treasury reported to
2 him by the secretary, showing the number of the order, date, name of the
3 person in whose favor drawn, the fund on which it is drawn, for what pur-
4 pose, and the amount.

SEC. 47. He shall render a statement of the finances of the district from
2 time to time, as may be required by the board of directors, and his books
3 shall always be open for inspection.

SEC. 48. It shall be the duty of the sub-director, under such rules and
2 regulations as the board of directors may prescribe, to negotiate and
3 make in his sub-district all necessary contracts for providing fuel for schools,
4 employing teachers, repairing and furnishing school houses, and for making
5 all other provisions necessary for the convenience and prosperity of the
6 schools within his sub-district, and he shall have the control and manage-
7 ment of the school house, unless otherwise ordered by a vote of the district
8 township meeting. All contracts made in conformity with the provisions

9 of this sections, shall be approved by the president, and reported to the
10 board of directors, and said board, in their corporate capacity, shall be re-
11 sponsible for the performance of the part of the district township.

2 **SEC. 49.** He shall, between the first and tenth days of September of each
3 year, prepare a list of the names of the heads of families in his sub-district,
4 together with the number of children in each family between the ages of
5 five and twenty-one years, distinguishing males from females, and shall
6 record the same in a book kept for that purpose.

2 **SEC. 50.** He shall, between the tenth and fifteenth days of September
3 of each year, report to the secretary of the district township the number of
4 persons in his sub-district between the ages of five and twenty one years,
5 distinguishing the males from females.

2 **SEC. 51.** He shall have power, with the concurrence of the president
3 of the board of directors, to dismiss any pupil from the schools in
4 his sub-district, for gross immorality, or for persistent violation of the regu-
5 lations of the school; and to re-admit them, if he deems proper so to do;
6 and shall visit the schools in his sub-district at least twice during each term
7 of said school.

2 **SEC. 52.** All contracts with teachers shall be in writing, specifying the
3 length of time the school is to be taught, in weeks; the compensation
4 per week, or per month of four weeks; and such other matters as may be
5 agreed upon; and shall be signed by the sub-director and teacher, and be
6 approved by and filed with the president before the teacher enters upon the
7 discharge of his duties.

2 **SEC. 53.** The board of supervisors of each county, shall at the time of
3 levying the tax for county purposes, levy a tax for the support of
4 schools within the county, of not less than one mill, nor more than two and
5 one half mills on the dollar, on the assessed value of all the real and per-
6 sonal property within the county, which shall be collected by the county
7 treasurer, at the time, and in the same manner as the state and county taxes
8 are collected, except that it shall be receivable only in cash.

2 **SEC. 54.** They shall also levy at the same time, the district school
3 tax certified to them, from time to time by the respective district secre-
4 taries.

2 **SEC. 55.** The clerk of the board of supervisors shall, on the first Mon-
3 day in April, and fourth Monday in September of each year, apportion the
4 county school tax, together with the interest on the permanent school fund
5 to which his county is entitled, and all other money in the hands of the
6 county treasurer belonging in common to the schools of his county, and not
7 included in any previous apportionment, among the several school districts
8 therein, in proportion to the number of persons between five and twenty-
9 one years of age, as shown by the report of the county superintendent
10 filed with him for the year immediately preceding, which report, showing the
11 number of persons between the ages of five and twenty-one years, in each
12 school district in the county, shall be so filed on the 15th day of October
annually.

2 **SEC. 56.** He shall forward to the superintendent of public instruction, a
3 certificate of the election or appointment and qualification of the county su-
4 perintendent; and shall also, on the second Monday in February and August
5 of each year, make out and transmit to the auditor of the state, in accord-
6 ance with such form as the said auditor may prescribe, a report of the inter-
est of the school fund then in the hands of the county treasurer, and not

7 included in any previous appointment; and also the amount of said interest
8 remaining unpaid.

2 SEC. 57. The county treasurer shall, on the first Monday in April, of each
3 year, pay over to the treasurer of the district the amount of all school district tax
4 which shall have been collected, and shall render him a statement of the
5 amount uncollected; and shall pay over the amount in his hands quarterly,
6 thereafter. He shall also keep the amount of tax levied for school-house pur-
7 poses separate in each sub-district, where such levy has been made directly
8 upon the property of the sub-district making the application and shall pay over
9 the same quarterly to the township treasurer, for the benefit of such sub-district.
10 He shall, in all counties wherein independent school-districts are organized,
11 keep a separate account with said independent school-districts in which the
12 receipts shall be daily entered, which books shall at all times be open to the
13 inspection and examination of the district board of directors, and shall pay
14 over to the said independent school-district, the amount of school taxes in his
15 possession, on the order of the board, on the first day of each and every
month.

2 SEC. 58. On the first day of each quarter, the county treasurer shall give
3 notice to the president of the school board of each township in his county, of
4 the amount collected for each fund; and it shall be the duty of the president
5 of each board to draw his warrant, countersigned by the secretary, upon the
6 county treasurer of such amount, who shall pay the amount of such taxes to
7 the treasurers of the several school boards only on such warrants.

2 SEC. 59. No person shall be employed to teach a common school which
3 is to receive its distributive share of the school fund, unless he shall have a
4 certificate of qualification signed by the county superintendent of the county
5 in which the school is situated, or by some other officer duly authorized by
6 law; and any teacher who commences teaching without such certificate, shall
7 forfeit all claim to compensation for the time during which he teaches with-
out such certificate.

2 SEC. 60. The teacher shall keep a correct register of the school, which
3 shall exhibit the sub-district, township, county, and state, in which the school
4 is kept; the day of the week, the month and year; the name, age, and at-
5 tendance of each scholar, and the branches taught. When scholars reside in
6 different districts, a register shall be kept for each district.

2 SEC. 61. The teacher shall immediately after the close of his school, file
3 in the office of the secretary of the board of directors, a certified copy of the
4 register aforesaid.

2 SEC. 62. On the last Saturday of each month the county superintendent
3 shall meet all persons desirous of passing an examination, and for the trans-
4 action of any other business within his jurisdiction, in some suitable room
5 provided for that purpose by the board of supervisors at the county seat, at
6 which time he shall examine all such applicants for examination as to their
7 competency and ability to teach orthography, reading, writing, arithmetic,
8 geography and English grammar and history of the United States; and in
9 making such examination, he may, at his option, call to his aid one or more
assistants.

2 SEC. 63. If the examination is satisfactory, and the superintendent is
3 satisfied that the respective applicants possess a good moral character, and
4 the essential qualifications for governing and instructing children and youth,
5 he shall give them a certificate to that effect, for a term not exceeding one
year.

2 SEC. 64. Any school officer or other person shall be permitted to be
3 present at such examination ; and the superintendent shall make a record of
4 the name, residence, age, and date of examination of all persons so exam-
5 ined, distinguishing between those to whom he issues certificates, and those
6 rejected.

2 SEC. 65. If any person shall make application for an examination at any
3 other time, he shall pay the superintendent a fee of one dollar before the
4 examination is commenced, as a compensation therefor ; unless he presented
5 himself on the regular day specified, and was unable from no fault of his
6 own to obtain an examination, in which case no fee shall be required of
7 him.

2 SEC. 66. If for any cause the county superintendent cannot be present
3 at the regular day thus fixed, he shall appoint one or more deputies to make
4 the examination in his stead. He shall afterwards issue certificates to those
5 who receive the recommendation of his deputies as aforesaid.

2 SEC. 67. The superintendent may revoke the certificate of any teacher
3 in the county, which was given by the superintendent thereof, for any rea-
4 son which would have justified the withholding thereof, when the same was
5 given.

2 SEC. 68. On the fifth day of October of each year he shall make a report
3 to the superintendent of public instruction, containing an abstract of the
4 reports made to him by the respective district secretaries, and such other
5 matters as he shall be directed to report by said superintendent, and as he
6 himself may deem essential in exhibiting the true condition of the schools
7 under his charge ; and he shall at the same time file with the clerk of the
8 board of supervisors a statement of the number of persons between the
9 ages of five and twenty-one years, in each school district in his county.

2 SEC. 69. Should he fail to make either of the reports required in the last
3 section, he shall forfeit to the school fund of his county the sum of fifty
4 dollars, and shall besides, be liable for all damages caused by such neglect.

2 SEC. 70. He shall, at all times, conform to the instructions of the super-
3 intendent of public instruction, as to matters within the jurisdiction of the
4 said secretary. He shall serve as the organ of communication between the
5 secretary and townships, or districts authorities. He shall transmit to the
6 townships, districts or teachers, all blanks, circulars, and other communica-
7 tions, which are to them directed.

2 SEC. 71. For the time necessarily spent in the discharge of his official
3 duties he shall receive the sum of three dollars per day, to be paid from the
4 county revenue : provided that he shall visit each school in his county at
5 least once in each term, and shall spend at least one half day in each visit ;
6 and he shall be entitled to such additional compensation as the board of
7 supervisors may allow ; provided further, that he shall file a sworn state-
8 ment of the time he has been employed in his official duties with the clerk
9 of the board of supervisors, before he shall be entitled to any compensa-
0 tion.

2 SEC. 72. A school month shall consist of four weeks of five school days
3 each.

2 SEC. 73. All fines and penalties collected from a school district officer by
3 virtue of any of the provisions of this chapter, shall enure to the benefit of that
4 particular district. Those collected from any member of the board of direc-
5 tors shall belong to the district township, and those collected from county
6 officers to the county. In the two former cases suit shall be brought in the

6 name of the district township ; in the latter in the name of the county, and
 7 by the district-attorney. The amount in each case shall be added to the fund
 8 next to be applied by the recipient for the use of common schools.

2 SEC. 74. In all cases where a school district, as constituted at the time of
 3 the taking effect of an act entitled "An act for the public instruction of the
 4 state of Iowa," approved March 12th, 1858, and formed of a part of two or
 5 more civil townships in the same or adjoining counties, had a school house
 6 erected, which said house had not been destroyed, removed or abandoned,
 7 said district as at that time constituted, shall be and remain a sub-district in,
 8 and form a part of the district township in which such school-house is situ-
 9 ated, for voting, taxation, enumeration of children, distribution of money,
 10 and all other school purposes, as fully as though said sub-district were all
 11 included within the township in which the school-house is situated. And
 12 the boundaries of such sub-district shall not be changed, except with the con-
 13 currence of the boards of directors of the townships interested: *Provided,*
 14 That upon the written application of two-thirds of the electors residing upon
 15 the territory within the township in which the school-house is not situated,
 16 to the respective boards of directors, or when said school-house has been remo-
 17 ved, or said territory is uninhabited, it shall remain under the jurisdiction of,
 18 and form a part of the district township to which it geographically belongs ;
 19 and any tax which has been levied on said territory for the construction of
 20 a school-house at any other site than the one originally occupied, shall be re-
 21 funded to the district township to which said territory reverts, for the con-
 22 struction of a school-house in the sub-district in which said sub-district may
 23 subsequently be included ; and the respective boards of directors shall, in
 24 either case, divide their districts in accordance with the provisions of this
 section.

2 SEC. 75. When a judgment has been obtained against a school district,
 3 it shall be the duty of the board of directors to pay off and satisfy the same,
 4 from the proper fund, by an order on the treasurer of the district ; and it
 5 shall be the duty of the district meeting at the time for voting a tax for the
 6 payment of other liabilities of the district to provide for the payment of
 7 such order or orders.

2 SEC. 76. In case a school district has borrowed money of the school fund,
 3 it shall be the duty of the board of supervisors to levy such tax, not exceed-
 4 ing five mills on the dollar in any one year, on the taxable property of the
 5 district as constituted at the time of making such loan, as may be necessary
 6 to pay the annual interest on said loan, and the principal when the same falls
 7 due, unless the board of supervisors shall see proper to extend the time of
 said loan.

2 SEC. 77. No district township meeting, or sub-district meeting, shall or-
 3 ganize earlier than nine o'clock, A. M., nor adjourn before twelve o'clock M. ;
 4 and in all independent school districts, the polls shall remain open from nine
 5 o'clock A. M., to four o'clock P. M.

2 SEC. 78. When any school officer is suspended by election or otherwise,
 3 he shall immediately deliver to his successor in office, all books, papers and
 4 moneys pertaining to his office, taking a receipt therefor ; and every such
 5 officer who shall refuse to do so, or who shall wilfully mutilate or destroy
 6 any such books or papers, or any part thereof, or shall misapply any moneys
 7 entrusted to him by virtue of his office, shall be liable to the provisions of
 the general statutes for the punishment of such offenses.

SEC. 79. Nothing in this chapter shall be so construed as to give the

2 board of directors of a district township, jurisdiction over any territory in-
 3 included within the limits of any city or village, with the territory annexed
 4 thereto for school purposes, which has organized separately as an independ-
 5 ent district.

2 SEC. 80. Any city or town, containing not less than three hundred inhab-
 3 itants within its recorded plat, may be constituted a separate school district,
 4 and territory contiguous to such city or town may be included with it as a
 5 part of said separate district, in the manner hereinafter provided.

2 SEC. 81. At the written request of any ten legal voters residing in such
 3 city or town, the board of directors of the district township shall establish
 4 the boundaries of the contemplated school district, including such contigu-
 5 ous territory as may best subserve the convenience of the people for school
 6 purposes, and shall give at least ten days' previous notice of the time and
 7 place of such meeting of the electors residing in said district, by posting
 8 written notices in at least five conspicuous places therein; at which meeting
 9 the said electors shall vote by ballot for or against a separate organization.

2 SEC. 82. Should a majority of votes be cast in favor of such separate
 3 organization, the board of directors of the district township shall give sim-
 4 ilar notice of a meeting of the electors for the election of six directors.
 5 Two of these directors shall hold their office until the first annual meeting
 6 after their election, and until their successors are elected and qualified; two
 7 until the second; and two until the third annual meeting thereafter: their
 8 respective terms of office to be determined by lot. The said six directors
 9 shall constitute a board of directors for the district, and they shall at their
 10 first regular meeting in each year elect a president, secretary, and treasurer,
 11 the two latter to be chosen outside of the board.

2 SEC. 83. Said meeting for the first election of directors shall organize by
 3 appointing a president, and secretary, who shall act as judges of the election,
 4 and issue a certificate of election to the persons elected.

2 SEC. 84. The organization of such independent district shall be com-
 3 pleted on or before the first day of August of the year in which said
 4 organization is attempted, and upon such organization is thus com-
 5 pleted, all taxes levied by the board of directors of the district town-
 6 township, of which the independent district formed a part in that year, shall
 7 be void so far as the property within the limits of the independent district
 8 is concerned, and the board of directors of such independent district shall
 9 levy all necessary taxes for school purposes as provided by law for that year,
 10 at a meeting called for that purpose, at any time before the third Monday of
 11 August of that year, which shall be certified to the board of supervisors on
 12 or before the first Monday of September, and said board of supervisors shall
 13 levy said tax at the time and in the manner that school taxes are required to
 be levied in other districts.

2 SEC. 85. In case such school district is formed of parts of two or more
 3 civil townships in the same or adjoining counties, the duty of giving the
 4 notice shall devolve upon the directors of the township in which a majority
 5 of the legal voters of the contemplated school district reside.

2 SEC. 86. Said school district may have as many schools, and be divided
 3 into such wards, or other sub-divisions for school purposes, as the board of
 4 directors may deem proper; and shall be governed by the laws enacted for
 5 the regulation of district townships, so far as the same may be applicable.

2 SEC. 87. It shall be lawful for the electors of any independent school
 3 district, at the annual meeting of such district, to vote a tax not exceeding

3 ten mills on the dollar, in any one year, on the taxable property of such
 4 district as the meeting may deem sufficient for the purchase of grounds and
 5 the construction of the necessary school houses for the use of such independ-
 6 dent district, and for the payment of any debts contracted for the erection
 7 of such school houses, and for procuring library and apparatus for the
 8 use of the schools of such independent district. And the treasurer shall
 9 make a statement to the district meeting of the receipts and disbursements
 10 of the preceding year.

SEC. 88. The annual meeting of all independent school districts shall be
 2 held on the second Monday in March for the transaction of the business of
 3 the district, and for the election by ballot of two directors as the successors
 4 of the two whose term expires, who shall continue in office for three years ;
 5 and the president, secretary, and one of the directors then in office, shall act
 6 as judges of the election, and shall issue certificates of election to the persons
 7 elected for the ensuing term.

SEC. 89. Where an independent school district has been formed out of a
 2 civil township or townships as herein contemplated, the remainder of such
 3 township, or of each of such townships, as the case may be, shall constitute
 4 a district township, as provided in the first section of this chapter, and the
 5 boundaries between such district township and independent school district,
 6 may be changed at any time with the concurrence of their respective boards
 7 of directors.

SEC. 90. Independent districts, located contiguous to each other, may
 2 unite and form one and the same independent district, in the manner fol-
 3 lowing: At the written request of any ten legal voters residing in each of
 4 said independent districts, their respective boards of directors shall require
 5 their secretaries to give at least ten days notice of the time and place for a
 6 meeting of the electors residing in such districts, by posting written notices
 7 in at least five public places in each of said districts, at which meeting the
 8 said electors shall vote by ballot for or against a consolidated organization
 9 of said independent districts ; and if a majority of the votes cast at the elec-
 10 tion, in each district, shall be in favor of uniting said districts, then the sec-
 11 retaries shall give similar notice of a meeting of the electors as provided for
 12 by the law for the organization of independent districts. The independent
 13 districts, thus consolidated, shall be completed, and its directors governed by
 14 the same provisions of the law, which apply to other independent districts.

SEC. 91. The corporate name of all independent school districts formed
 2 under the provisions of the nine preceding sections, or either of them, shall
 3 be the independent school districts of — (adding the name of the city,
 4 village or town where established, as the case may be.

SEC. 92. Independent school-districts shall have the power and authori-
 2 ty to borrow money for the purpose of erecting and completing school-
 3 houses, by issuing negotiable bonds of the independent district, to run any
 4 period not exceeding ten years, drawing a rate of interest not to exceed ten
 5 per centum per annum, which interest may be paid semi-annually, which
 6 said indebtedness shall be binding and obligatory on the independent dis-
 7 trict for the use of which said loan shall have been made: But no district
 8 shall permit a greater outstanding indebtedness than an amount equal to
 9 five per centum of the last assessed value of the property of the district.

SEC. 93. When any independent district has procured the site for and is
 2 ready to erect, or has erected and is desirous of completing, its school-house,
 3 it shall be lawful for the school-board of such district to submit to the

4 voters of their district, at the annual or a special meeting, the question of
 5 issuing bonds as contemplated by the preceding section, giving the same
 6 notice of such meeting as is now required by the law to be given for the
 7 election of officers of such districts, and the amount proposed to be raised
 8 by the sale of such bonds, which question shall be voted upon by the electors;
 9 and if a majority of all the votes cast on that question be in favor of such
 10 loan, then said school board shall issue bonds to the amount voted in denom-
 11 inations of not less than twenty-five dollars, nor exceeding one thousand
 12 dollars, due not more than ten years after date, and payable at the pleasure
 13 of the district at any time before due, which said bonds shall be given in the
 14 name of the independent district issuing them, and shall be signed by the
 15 president of the board and delivered to the treasurer, taking his receipt
 16 therefor, who shall negotiate said bonds at not less than their par value, and
 17 countersign the same when negotiated. The treasurer shall stand charged
 18 upon his official bond with all bonds that may be delivered to him: but
 19 any bond or bonds not negotiated may be returned by him to the board.

2 SEC. 94. Nothing in this act shall be deemed to conflict or interfere with
 3 sub-division five, of section seven, of this chapter, but if the electors of an
 4 independent school district which has issued bonds shall at the annual
 5 meeting in March, for any year, fail to vote sufficient school house tax to
 6 raise a sum equal to the interest on the outstanding bonds which will accrue
 7 during the then coming year, and such proportionate portion of the princi-
 8 pal as will liquidate and pay off said bonds at maturity, then it shall be
 9 lawful for the school board of such district to vote a sufficient rate on the
 10 taxable property of the district to pay such interest, and such portion
 11 of the principal as will pay said bonds in full by the time of their maturity,
 12 and shall cause the same to be certified and collected the same as other
 school taxes.

2 SEC. 95. All school orders shall draw six per cent interest after having
 3 been presented to the treasurer of the district, and not paid for want of
 4 funds, which fact shall be indorsed upon the order by the treasurer.

CHAPTER 10. *Of School House Sites.*

2 SEC. 1. It shall be lawful for any school board, whether of district town-
 3 ship or independent district, to take and hold, under the provisions con-
 4 tained in this act, so much real estate as may be necessary for the location
 5 and construction of a school house, and convenient use of the school:
 6 *Provided*, that the real estate so taken, otherwise than by the consent of the
 owner or owners, shall not exceed one acre.

2 SEC. 2. All grounds appropriated to orchards, gardens, and public parks
 3 shall be excluded from the provisions of this chapter, and all sites shall be
 4 selected on some public road, and not within twenty rods of any residence,
 without the consent of the owner, except in case of independent districts.

2 SEC. 3. If the owner of any real estate, on which said school-board may
 3 desire to locate a school-house, refuse or neglect to grant the site on his or
 4 her premises, or, if such owner cannot be found, the county superintendent
 5 of the county in which said real estate may be situated, shall, upon applica-
 6 tion of either party, appoint three disinterested persons of said county, un-
 less a smaller number is agreed upon by the parties, whose duty it shall be

7 after taking an oath or affirmation, to faithfully and impartially discharge
 8 the duties imposed on them by this chapter, to inspect said real estate, and
 9 assess the damages which said owners will sustain by appropriation of his
 10 or her land for the use of said house and school, (said county superintendent
 11 giving to the owner of such real estate the same notice as is required for the
 12 commencement of a suit at law in the district court of Iowa, of the time of
 13 such assessment of damages,) and make a report in writing to the county su-
 14 perintendent of said county, (giving the amount of damage, description of
 15 land, and exact location,) who shall file and preserve the same in his office.
 16 If said school-board shall, at any time before they enter upon said land for
 17 the purpose of building or constructing said house, deposit with the county
 18 treasurer, for the use of said owner, the sum so assessed as aforesaid, they
 19 shall be thereby authorized to build or construct said house, and maintain
 20 their right to said premises: *Provided*, that either party may have the
 21 right to appeal from such assessment of damages, to the circuit court of the
 22 county where such real estate is situated, within twenty days after receiving
 23 notice that such assessment is made, which appeal shall be final; but such
 24 appeal shall not delay the prosecution of work upon said house if said
 25 school-board shall first pay, or deposit with the county treasurer, the amount
 26 so assessed by such appraisers, and in no case shall said school-board be
 27 liable for costs on appeal, unless the owner of said real estate shall be ad-
 28 judged a greater amount of damages than was awarded by said appraisers.
 29 The school-board shall in all cases pay costs of the first assessment.

SEC. 4. The title acquired by said school-districts in and to said real
 2 property, shall be for school-purposes only, and, in case the same should cease
 3 to be used for said purpose for the space of two years, then the title acquired
 4 in said land under this act shall revert to the owner of the fee-simple title
 5 of the same upon the repayment by him of the principal amount paid for
 6 said land by said districts without interest, together with the value of any
 7 improvements thereon erected by said district.

CHAPTER 11. *Of Appeals.*

SECTION 1. Any person aggrieved by any decision or order of the district
 2 board of directors, in matter of law or of fact, may, within thirty days after
 3 the rendition of such decision, or the making of such order, appeal there-
 4 from to the county superintendent of the proper county.

SEC. 2. The basis of the proceeding shall be an affidavit, filed by the
 2 party aggrieved, with the county superintendent, within the time for making
 3 the appeal.

SEC. 3. The affidavit shall set forth the errors complained of in a plain
 2 and concise manner.

SEC. 4. The county superintendent shall, within five days after the filing
 2 of such affidavit in his office, notify the secretary of the proper district in
 3 writing, of the taking of such appeal. And the latter shall, within ten days
 4 after being thus notified, file in the office of the county superintendent a
 5 complete transcript of the record and proceedings relating to the decision
 6 complained of, which transcript shall be certified to be correct by the sec-
 7 retary.

SEC. 5. After the filing of the transcript aforesaid in his office, he shall

2 notify in writing all persons adversely interested, of the time and place
3 where the matter of the appeal will be heard by him.

2 SEC. 6. At the time thus fixed for hearing, he shall hear testimony for
3 either party, and for that purpose may administer oaths if necessary, and he
4 shall make such decision as may be just and equitable, which shall be final,
5 unless appealed from as hereinafter provided.

2 SEC. 7. An appeal may be taken from the decision of the county super-
3 intendent to the superintendent of public instruction, in the same manner as
4 provided in this chapter for taking appeals from the district board to the
5 county superintendent, as nearly as applicable, except that he shall give
6 thirty days' notice of appeal to the county superintendent, and the like no-
7 tice shall be given the adverse party. And the decision, when made, shall
8 be final.

2 SEC. 8. Nothing in this chapter shall be so construed as to authorize
3 either the county or state superintendent to render a judgment for money,
4 neither shall they be allowed any other compensation than is now allowed
5 by law. All necessary postage must first be paid by the party aggrieved.

CHAPTER 12. *Of the School Fund.*

2 SEC. 1. The following are hereby declared to be and remain perpetual
3 funds for school purposes, the interest of which only, can be appropriated :

- 3 1. The five per cent upon the net proceeds of the public lands in the
4 state of Iowa.
- 5 2. The proceeds of the sales of the five hundred thousand acres of land,
6 which were granted to the state of Iowa, under the eighth section
7 of the act of congress, passed September the 4th, A. D., 1841, en-
8 titled "an act to appropriate the proceeds of sales of public lands,
9 and to grant pre-emption rights."
- 10 3. The proceeds of all sales of intestate estates which escheat to the state
11 by reason of there being no heir.
- 12 4. The proceeds of the sales of the sixteenth section in each township of
13 the state, or lands selected in lieu thereof.

2 SEC. 2. The following are declared to be and remain temporary funds
3 for common school purposes, to be received and appropriated annually in
4 the same manner as the annual interest of the perpetual fund :

- 4 1. All forfeitures of ten per cent, which by the laws of this state, are au-
5 thorized to be made for the benefit of the school fund.
- 6 2. The proceeds of all fines collected in the state for violations of the
7 penal laws.
- 8 3. The proceeds of all fines collected for the non-performance of military
9 duty.
- 10 4. The proceeds of the sales of lost goods and estrays.

2 SEC. 3. The five per centum of the net proceeds of all sales of the public
3 lands in the state, is hereby made payable to the state treasurer, whose duty
4 it shall be to apportion the same among the several counties in this state,
5 taking into consideration the amount of the permanent school fund already
6 in possession of said counties, so that each county may hold an amount of
7 school fund proportionate to its population.

2 SEC. 4. Those portions of the permanent school fund enumerated in the
3 second and fourth sub-divisions of section one of this chapter, are hereby

3 made payable to the county treasurer of the county in which the lands sold
4 are situated, and the proceeds of sub-division third of section one of this
5 chapter are made payable to the treasurer of the county where said escheated
6 estates are.

2 **SEC. 5** The temporary funds enumerated in section two of this chapter
3 are hereby made payable to the county treasurer of the several counties in
4 which they are incurred or arise respectively, which shall be accounted for
5 to the board of supervisors of said county, who shall apportion the same
6 among the several school districts of said county, as provided by law.

2 **SEC. 6.** The auditor is authorized and required to audit all losses to the
3 school fund, as provided in section three of article seven of the constitution;
4 and for this purpose he shall prescribe such regulations for the conduct of
5 officers having such funds in charge as he shall deem necessary to ascertain
6 such losses.

2 **SEC. 7.** Whenever any amount not less than one thousand dollars is
3 audited in favor of the permanent school fund for losses of the same where-
4 by the state of Iowa becomes indebted to said fund, it shall be the duty of
5 the state auditor to issue the bond or bonds of the state in favor of said
6 fund, bearing interest at the rate of eight per cent, payable semi-annually,
7 on the first day of January and July after the issuing of the same, and the
8 amount required to pay the interest on said bonds, as the same becomes due, is
9 hereby appropriated out of any revenue in the state treasury.

2 **SEC. 8.** The state auditor shall keep the school fund accounts in books
3 provided for that purpose, separate and distinct from the revenue books, and
4 immediately after making the apportionment required by section 11 of
5 chapter 3 of title two, he shall notify the auditor of each county of the sum
6 to which his county is entitled by said apportionment, and in those cases
7 where the counties have less of such interest than they are entitled to by
8 apportionment, he shall by such notice authorize the treasurer of each of
9 such counties to transfer the amount of such deficiency from the state reve-
10 nue in his hands to such interest fund, and said notice shall be filed by the
11 treasurer, and be his proper voucher to the state for the amount of said
12 revenue so transferred. And in those cases where the counties have an ex-
13 cess of such interest over the amount apportioned to each, such notice shall
14 authorize the county treasurer to transfer such excess from the interest fund
15 to the state revenue, and such notice shall be filed and be his proper vouch-
16 er for such amount of the interest fund, and such excess so transferred shall
be paid into the state treasury as revenue.

2 **SEC. 9.** The board of supervisors may, at such time as they deem best,
3 authorize the township trustees of any organized township, where the six-
4 teenth section, or land selected in lieu thereof, has not been sold, to lay out
5 the same, or cause it to be done, in such tracts as in their judgment will be
6 for the best interests of the school fund, conforming as far as the interests
7 of said fund will permit, to the legal sub-divisions of the United States
8 surveys, and they shall appraise each tract at what they believe to be its true
9 value, and certify to the said board of supervisors the divisions and appraisements
10 made by them; said division and appraisal shall be approved or
11 disapproved by said board at their first meeting after such report, and in
12 case they disapprove the same, they may at once order another division and
13 appraisal should they deem it best. In all cases where the board of
14 supervisors approve of any division and appraisal of school lands, it
15 shall be the duty of the county auditor to make and keep a record of such
division, appraisal and approval.

2 SEC. 10. Whenever the board of supervisors shall offer for sale the six-
 3 teenth section, or lands selected in lieu thereof, or any portion of the same,
 4 or any part of the 500,000 acre grant, it shall be the duty of the county
 5 auditor to give at least forty days' notice by written or printed notices posted
 6 in five public places in the county, two of which shall be in the township in
 7 which the land to be sold is situated; and also to publish a notice of said
 8 sale for four weeks preceding the same in a newspaper, should one be pub-
 9 lished in the county; if there is none published in said county, then in
 10 some newspaper authorized by the board of supervisors; and he shall de-
 11 scribe the land to be sold, and state the time and place of sale; then at such
 12 time and place, or at such other time and place as the sale may be adjourned
 13 to, he shall offer to the highest bidder, subject to the provisions of this chap-
 14 ter, and shall sell upon the following terms, viz: either for cash, or one-
 15 third of the purchase money to be paid at the time of purchase, and the
 16 balance on a credit not exceeding ten years, with interest on the same at the
 17 rate of ten per cent. per annum; said interest to be paid at the office of the
 18 county treasurer of said county, on the first day of January in each and
 19 every year; but in no case shall the lands so offered to be sold for less than
 20 its appraised value—nor shall any member of the board of supervisors, or
 21 county auditor, trustees or any person who was engaged in the division and
 22 appraisement of said land be directly or indirectly interested in the pur-
 23 chase thereof, and any sale made, where such party or any of them are so
 interested, shall be void and of no effect.

2 SEC. 11. No part of the sixteenth section, nor land selected in lieu there-
 3 of, nor any part of the five hundred thousand acre grant, nor any other
 4 school lands whatsoever, shall be sold for a less sum than the minimum
 5 price of six dollars per acre, except as hereinafter provided, and in no case
 for less than the amount at which it has been appraised.

2 SEC. 12. No school lands of any kind shall be sold until there shall be
 3 at least twenty-five legal voters resident in the congressional township in
 4 which said school land is situated, and in a fractional township of less than
 5 thirty-six sections the number of voters residing therein, must have at least
 6 the same ratio to twenty-five as the number of sections, or parts of sections,
 7 in said townships has to thirty-six, which fact in all cases must be shown to
 the satisfaction of the board of supervisors.

2 SEC. 13. Where the board of supervisors of any county shall have
 3 once, at least offered for sale any school-lands in compliance with the re-
 4 quirements of section nine and ten of this chapter, and are unable to sell
 5 the same for as large an amount as the minimum price of six dollars per
 6 acre; and if in the opinion of said board of supervisors said land can not
 7 be sold for that price, and it is for the best interests of the school fund that
 8 the same be sold for a less price, then, and in that case said board of super-
 9 visors may instruct the auditor of said county to transmit by mail or other-
 10 wise, to the register of the state land office, a certified copy of the proceed-
 11 ings of said board of supervisors in relation to the order of sale of said land
 12 and subsequent proceedings in relation thereto, including the action of the
 13 township trustees, and the price per acre at which said land shall have been
 14 appraised, which transcript the register of the state land office shall submit
 15 to the state census board; and if a majority of said census board, including
 16 the register of the state land office, shall approve of the sale of said land
 17 for less than the minimum price of six dollars per acre, then the register of
 the state land office shall certify such approval to the auditor of the county

18 from whence said transcript came, which certificate shall be transcribed in
 19 the minute book of the board of supervisors of said county, and thereupon
 20 said land may again be offered and sold to the highest bidder, as provided
 21 in section ten of this chapter, without being again appraised; but no case
 22 under the provisions of this section shall any school-land be sold for a less
 23 sum than one dollar and twenty-five cents per acre.

2 SEC. 14. When any lands have been bid in by the state in behalf of the
 3 school fund on execution founded on a judgment in favor of said fund, such
 4 land shall be sold in the same manner as other school lands. Whenever any
 5 such lands shall have been conveyed to the counties in which the same are
 6 situated, for the use of school-fund instead of to the state, as required by law,
 7 such conveyance shall be considered valid and binding, and on the proper
 8 certificates being made, as hereinbefore provided, patents shall be issued to
 9 the purchasers of said lands in like manner as in cases where the convey-
 ances were made to the state for the use of the school-fund.

2 SEC. 15. When any purchaser shall pay the full amount of his purchase
 3 money at the time of purchase, or whenever full payment shall be made for
 4 lands previously purchased, whether of the sixteenth sections, or of lands bid
 5 in on the foreclosure of mortgages, or of any other lands belonging to the
 6 school fund, the auditor shall forthwith issue a certificate of that fact which
 7 shall be transmitted to the state land office, and entitle the purchaser to a
 patent which shall be issued by the governor.

2 SEC. 16. In case the lands are purchased upon a partial credit, as herein-
 3 before provided, the contract shall at once be reduced to writing, signed by
 4 the parties, and recorded in the office of the recorder, after which it shall be
 5 filed in the office of the county auditor, and during the continuance of such
 6 contract, it shall be lawful for such purchaser, his heir or assignee, at any
 7 time to pay the principal and interest due upon such contract, and receive a
 certificate of purchase, as mentioned in the preceding section.

2 SEC. 17. When in the judgment of the board of supervisors, any school
 3 lands which they are about to offer for sale, are of such a character that a sale
 4 upon partial credit would be unsafe or incompatible with the interest of the
 5 school fund, and especially in the case of timbered lands, the board of super-
 6 visors may, in their discretion, exact the whole of the purchase money in ad-
 7 vance; or if they sell such land upon a partial credit, as hereinbefore per-
 8 scribed, it shall be their duty to require good collateral security for the pay-
 ment of the purchase-money upon which credit is given.

2 SEC. 18. Whenever any purchaser of any school lands sold under the
 3 provisions of this chapter upon a partial credit, or any person to whom a
 4 portion of the school fund has been loaned, fails to pay the interest upon the
 5 amount due the school fund from him on the first day of January, and such
 6 payment is not made within six months thereafter, then, and in that case, the
 7 entire amount both of principal and interest owing to the school fund from
 8 such person, shall be deemed to have become due, and the county auditor
 9 shall report the name of the delinquent, together with the sum total due from
 10 such delinquent to the district attorney of his judicial district, who shall im-
 11 mediately commence suit for the collection of the amount thus reported.
 12 The provisions of this section, in so far as they provide for the principal
 13 owing for the purchase of school lands, or for money borrowed from the
 14 school fund, becoming due and being collected at an earlier day than that
 15 stipulated in the contract, upon failure to pay the interest, are hereby declar-
 16 ed to be a part of every contract made under and by virtue of this chapter,
 whether expressed in such contract or not.

2 SEC. 19. The provisions of the last section shall be of force as far as
 3 applicable to all cases where land is purchased, or money borrowed from the
 4 university fund, and in case of delinquency as provided for in said section,
 5 the treasurer of the state university shall make the report therein required
 6 to the district attorney of the district where the party so purchasing or bor-
 7 rowing resides, or where the real estate given as security for said purchase
 or loan is situated.

2 SEC. 20. All school lands, the sale of which is provided for under this
 3 chapter, shall be subject to taxation from and after the execution and deliv-
 4 ery of the contract to the purchaser.

2 SEC. 21. All contracts relative to the sale of school lands provided for
 3 in this chapter shall be subject to such laws as now are, or may hereafter be
 4 in force in this state, relative to the prevention or punishment of waste.

2 SEC. 22. It is hereby made the duty of the township trustees in each
 3 township, to see that no waste be committed upon any school lands lying in
 4 their township, and in case any such waste be attempted, it shall be their
 5 duty to apply by petition to the district court, or to any judge thereof, for an
 6 injunction to stay waste, and the same if granted, shall be without bond and
 7 shall stand for trial first in order upon the court docket; the same shall be tried
 8 in a summary way, and upon such trial the said township trustees shall be
 9 competent witnesses. The court may make such order in the premises as
 10 shall be equitable and calculated to secure the school lands from waste or
 11 destruction, and may adjudge damages to the township trustees, against the
 12 party for injuries done in such cases; the costs shall abide the event of the
 13 suit, and the damages shall be paid to the county treasurer, and constitute a
 part of the permanent school fund.

2 SEC. 23. When, in the opinion of the board of supervisors, it may be
 3 necessary to have a portion of the school lands within their county surveyed,
 4 they may employ the county surveyor for the purpose, who shall be paid
 5 out of the county treasury upon proof made of the request and performance
 6 of the service.

2 SEC. 24. The several boards of supervisors shall hold and manage the
 3 securities given to the school fund in their respective counties, and also all
 4 judgments and lands therein belonging to said fund for the use of said fund;
 5 and to that end such counties shall have power to sue in their own name for
 6 the use of said fund, either by the district attorney, or such other attorney
 7 as such board shall select, and to do all other acts in relation to the same,
 8 necessary for the protection of said fund, and such counties shall be sever-
 9 ally liable for all losses upon loans of such fund made in such county. But
 10 any county may discharge itself from any liability in any case by showing
 11 that the alleged loss was not incurred by reason of any default of her
 officers or by taking insufficient or imperfect securities.

2 SEC. 25. The permanent school fund shall be loaned out, as hereinafter
 3 provided, as the same may come into the hands of the county treasurer, but
 4 no loan to any one person or company shall exceed the sum of five hundred
 5 dollars, nor shall any loan of the school fund be made to the county auditor,
 6 treasurer, or to any member of the board of supervisors. Said loans shall
 not be made for a shorter time than one year nor for more than five years.

2 SEC. 26. The payment of the money thus borrowed, together with the in-
 3 terest thereon, at the rate of ten per cent per annum, shall be secured by
 4 promissory notes executed by the party borrowing, together with two good
 sureties, and by mortgage on unincumbered real estate, which, exclusive of

5 any buildings, is appraised by the appraisers hereinafter provided for, at
6 double the value of the amount of money loaned; which real estate must
7 be situated in the county where such loan is made.

8 SEC. 27. The value of real estate offered as security for money loaned as
9 herein provided, shall be fixed by three appraisers under oath, who shall be
10 selected by the county auditor, and in making the valuation provided for,
11 the appraisers shall not take into consideration any buildings that may be
12 on the land; said appraisers shall be allowed for their services the sum of
13 fifty cents each, to be paid by the party borrowing, and party borrowing
14 shall pay for recording the mortgage given to secure such loan.

15 SEC. 28. When any person desires to borrow from the permanent school
16 fund, he shall apply to the county auditor, and if in the opinion of the said
17 auditor it would be to the interest of the school fund to grant such applica-
18 tion, he shall order the necessary papers to be made out to secure the
19 amount thus to be borrowed as required by section two of this chap-
20 ter. When the same are made out, they shall be presented to the said aud-
21 itor, who shall, if he approve the same, indorse thereon, "accepted" and
22 sign his name below the same, and he shall examine the title to any real es-
23 tate offered as security, and make and preserve an abstract of such
24 title, which shall be certified by him and submitted to the board of
25 supervisors at the first meeting thereafter; he may charge a fee not to exceed
26 two dollars for his services in making said abstract of title, to be paid by the
27 party borrowing. He shall then give to the party borrowing a copy of the
28 promissory note certifying over his hand and official seal, that it is a correct
29 copy of the same, which together with a mortgage securing it has been filed
30 in this office, and upon the parties presenting said certificate to the treasurer
31 shall pay the amount specified in said copy of note out of the permanent
32 school fund in his possession, and retain the said certified copy of his
33 voucher. The said auditor shall file the original note in his office, and also
34 the mortgage after having it recorded.

35 SEC. 29. In all cases where the county auditor is required to take mort-
36 gages upon real estate as security for money borrowed, and upon the return
37 of the appraisers thereof, it shall be the duty of the said auditor to examine
38 the assessment of the said land for the year previous, and should the said
39 appraisal be higher than the said assessment, to take the security upon one-
40 half of the assessed valuation thereof.

41 SECTION 30. At each meeting of the board of supervisors the auditor shall
42 make a full statement of all money received for and loaned out of the school
43 fund under his control, and shall also submit for their examination all notes,
44 mortgages, and abstracts of title connected with the school fund which have
45 come into his possession since their last meeting. Said board of supervi-
46 sors at the first meeting after such report and papers are submitted to them,
47 shall either approve or disapprove of each and every loan made by said auditor.
48 Should they disapprove of any loan or security thus reported, they may re-
49 quire the party borrowing to give additional security within thirty days;
50 and in case of failure so to do, the entire amount, both of principal and in-
51 terest, owing to the school fund, shall be deemed to have become due, and
52 the district attorney shall be directed immediately to collect the same; and
53 in such case should it be found impossible to collect the entire amount due,
54 and the security prove insufficient, then the county auditor, and his bond-
55 men shall be liable for the deficiency. The provision herein contained with
56 regard to principal and interest becoming due on the failure to give addi-
57 tional security when required, for money borrowed from the school fund, is

18 hereby declared to be a part of every contract made under and by virtue of
19 this chapter, whether expressed in this contract or not.

SEC. 31. When any person desires to pay either principal or interest
2 due on the school fund, he shall obtain a certificate from the county auditor
3 specifying the amount due from such person to the school fund, stating
4 whether it is principal or interest, or both, and setting forth distinctly the
5 amount of each. Upon the presentation of which certificate to the county
6 treasurer, and not until then, the treasurer shall receive the amount so spec-
7 ified from the person presenting the certificate, and shall indorse on said
8 certificate the date, and his name, and upon the return to the auditor of such
9 certificate, so indorsed, the party returning it shall have a receipt from him
10 for the amount so paid.

SEC. 32. Whenever any portion of the school fund has been loaned upon
2 real estate security upon which exists a prior incumbrance, other than for
3 taxes, the board of supervisors shall have authority, in their discretion, if
4 they deem it necessary, to remove said prior incumbrance in order that said
5 fund may ultimately realize the money upon said loan, to appropriate so
6 much money out of the school fund, if any there be within said county as
7 shall be necessary to remove said incumbrance, *Provided*, said incumbrance
8 shall not exceed one half the actual cash value of said real estate, and *Pro-*
9 *vided, further*, that said respective counties shall, in such case, be liable for
10 the ultimate payment, within five years thereafter, with ten per cent inter-
11 est thereon, of the money so appropriated so to remove said incumbrance.

SEC. 33. Whenever the board of supervisors shall find it necessary to
2 effect the ends of justice, they may by resolution assign without recourse,
3 any school fund claim to any person having a subsequent lien on the premi-
4 ses affected by such claim, upon the full payment of the amount due the said
5 fund, but not otherwise.

SEC. 34. Such board may, when deemed necessary, employ some com-
2 petent person to examine the securities aforesaid, make abstracts of titles to
3 the lands mortgaged, and make out complete statements thereof for such
4 boards, and under the direction of said boards, or a committee thereof, to
5 procure the renewal of such notes and mortgages, when demanded by per-
6 sons entitled thereto, upon such terms as to time and security in all respects
7 as in making new loans. And such agent may with the consent of said board
8 or committee take from any person responsible for any loan, any additional
9 security by way of bond or mortgage, or both, in cases where the property
10 mortgaged is inadequate security for the sum loaned, and the applicant shall
11 pay up all interest and procure the written consent of the securities on the
12 note; but in all cases of the continuance of loans, as well as in cases of new
13 loans, abstracts of title shall be presented and filed with the mortgage,
14 which shall show the title to the mortgaged premises is in the mortgagor,
15 free and clear of any incumbrance or debt.

SEC. 35. Any person responsible to the school fund for any part of the
2 principal thereof, who shall promptly pay all interests and costs (if any)
3 thereon, whether the same may be rendered into a judgment or not, shall
4 be permitted to borrow such principal, upon complying in all respects with
5 the requirements of law relating to new loans.

SEC. 36. Every county auditor in whose county there are outstanding
2 contracts on the sale of school lands, and which contracts are due, shall immedi-
3 ately publish a notice requiring all persons holding any such lands, to at
4 once pay up the amount due thereon, or otherwise make satisfactory ar-
5 rangements for an extension of time. He shall also give a like notice to all

6 mortgagors to said fund on whose notes either principal or interest is due.
7 Such notices shall be printed for four weeks in a newspaper published in
8 the county, if there be one; if there be none, then in such newspaper pub-
9 lished in this state as will be most likely, in the opinion of said auditor to
10 give notice to all concerned; and a copy of such notice shall be posted for
11 the same time at the outer door of the building in which the last district
12 court in said county was held.

SEC. 37. In the case the person holding lands so contracted or mortgaged,
2 shall neglect to pay the sums due thereon or make an arrangement for an
3 extension of time, within three months from the first publication of such no-
4 tice the board of supervisors may cause suit to be brought, and prosecuted
5 with the utmost diligence to secure said fund, and in any action in favor of a
6 county for the use of the school fund, an injunction may issue without bond,
7 and in any such action, where service is made by publication, default and
8 judgment may be entered and enforced without the bond required of indi-
9 viduals. In all such suits the court shall give the plaintiff as a part of the
10 costs, such an amount as will be a sufficient compensation for the plaintiff's
11 attorney in the case.

SEC. 38. In case of sales of lands on execution founded on any such
2 mortgage or contract, the attorney for said board, or other person authorized
3 by said board shall bid on behalf of the state, for the use of said fund, such
4 sum as the interests of said fund may require, and if struck off to the state,
5 the same shall be held and disposed of in all respects the same as other lands
6 belonging to said fund, except as hereinafter provided

SEC. 39. All contracts, notes and mortgages given to said fund shall be
2 made payable to the county controlling them, but no such contracts, notes or
3 mortgages shall be invalid, because they are made payable to any other payee,
4 but the same shall be deemed and taken to belong to said county, for the use
5 of said fund, and suits may be maintained thereon in the name of the said
6 county, with the same effect as if they were drawn payable to the said county.

SEC. 40. The county auditor shall annually in the month of June trans-
2 mit to the auditor of state a statement of the amount of the permanent school
3 fund on loan or contract in such county, and all receipts and payments on
4 account thereof: And whenever any loss to said fund is ascertained, he shall
5 report the particulars thereof to the auditor of state, who shall report the
6 same to the general assembly at its next session thereafter, to the end that an
7 appropriation therefor may be made to pay the interest thereon to said fund.

SEC. 41. Each county having any portion of the permanent school fund on
2 loan within the same, shall be responsible for the collection of the annual
3 interest thereof, unless the board of supervisors of such county shall in their
4 report show that the non-collection thereof is unavoidable by reason of the
5 failure of both mortgage and personal security for said loan, as shown by the
6 sheriff's return on the execution issued on the judgment thereon; and on mak-
7 ing the semi-annual distribution of the temporary school fund, the auditor
8 shall withhold from the distributive share of any county so much as the
9 uncollected interest in said county which has remained due and unpaid for the
10 term of eighteen months previous to the time of the making of such distribu-
11 tion, if said county has not sued said claim, or is not otherwise legally exon-
12 erated therefrom; and when interest has been so withheld, it shall, when col-
13 lected, be added to the distributive share of such county.

SEC. 42. In case any county has or hereafter may divert any portion of
2 the school fund to other purposes than such as is allowed by law, the auditor-

3 of state shall withhold from such county such sum from its distributive share
 4 of the temporary school fund as will equal the amount so diverted, and in
 5 cases of withholding any part of the distributive share of a county, he shall
 6 thereon notify the presidents of the several township districts in said county
 7 through the county superintendent, of the sum so withheld, and the cause
 8 thereof.

SEC. 43. In case any county shall divert any portion of the school fund to
 2 any use not authorized by law, the auditor of state shall inform the state board
 3 of equalization of the fact, and such board when determining the rate of state
 4 tax to be levied in such year, shall add to the rate so fixed for other counties,
 5 such a per cent. as will raise an amount on the county so diverting such fund,
 6 as will equal as near as may be the sum so diverted from the school fund, and
 7 the board of supervisors of such county shall assess the sum upon the taxable
 8 property of their county, and the same shall be collected, and for all purposes
 9 be considered a state tax, and when so levied and certified to said auditor, he
 10 shall add to the amount (if any) he shall withhold on that account of the dis-
 11 tributive share of such county to the next apportionment to such county, but
 12 if none had previously been withheld from such county, then the sum so levied
 13 and certified shall be credited to the temporary school fund the same as if col-
 14 lected in ordinary course.

SEC. 44. The board of supervisors shall at their meeting in June of each
 2 year, ascertain the amount of permanent school fund, if any, in the hands of
 3 the county treasurer, and if the amount on hand shall at any time exceed the
 4 sum of one thousand dollars, and in the opinion of the said board of supervi-
 5 sors it cannot be loaned within the county under the requirements of the law,
 6 then the board of supervisors shall order the county treasurer to transmit the
 7 amount in his hands to the state treasurer, to be invested by the state treasurer
 8 in United States stocks, said investment to be approved by the census board.

SEC. 45. Each county treasurer shall immediately upon receiving or
 2 paying out any moneys belonging to the school fund, enter a correct account
 3 thereof on proper books kept by him for the purpose, in all cases where money
 4 is received, distinguishing between principal and interest, and shall keep
 5 an account showing all money due the school fund, whether principal or
 6 interest, and designating the amount of each and from whom due, and his
 7 books shall at all times present a clear and intelligible statement of the
 8 school fund in his hands. Said books shall at all times be open to the
 9 inspection and examination of any householder or taxpayer in the county.

SEC. 46. Each county auditor shall keep in his office in books provided
 2 for that purpose, an account to be known as the school fund account, in
 3 which he shall enter all notes, mortgages, bonds, and assets of every kind
 4 and description which may come into his hands, and he shall open accounts
 5 with the county treasurer in which he shall charge him with all money in
 6 his hands at the time such account is opened, and also with all money which
 7 may thereafter be paid to him as shown by the certificates duly endorsed as
 8 hereinbefore provided for, distinguishing between principal and interest,
 9 which shall be kept in distinct accounts; and shall on the third Monday of
 10 May, the first Monday of October, and the third Monday of December in
 11 each and every year, make a complete settlement of the school fund account
 12 with the county treasurer, from the time of the last settlement, and at each
 13 regular meeting of the board of supervisors, he shall submit a full report of
 14 his last settlement with the county treasurer, and also of all notes, mort-
 15 gages, bonds, assets, of every kind and description, which have come into
 16 his hands since the last meeting of the board.

2 SEC. 47. Any county treasurer, or auditor, failing or neglecting to perform
3 any of the duties which are required of him by the provisions of this chapter shall
4 be liable to a fine of not less than one hundred dollars nor more than five hundred
5 dollars, to be recovered in an action brought in the district court by the board
6 of supervisors, the judgment to be entered against the party and his bondsmen,
and the proceeds to go to the school fund.

2 SEC. 48. Whenever it shall be evident to the board of supervisors that the
3 interest of the school fund will be endangered by immediate prosecution of
4 any mortgage or the sale of mortgaged premises, they may give such reason-
5 able time as they may deem for the best interest of the school fund.

2 SEC. 49. At every sale of lands mortgaged to the school fund it shall be
3 the duty of the chairman of the board of supervisors to attend such sale and to
4 bid on behalf of the state the amount of the principal, interest and costs due
5 to the school fund, if in his opinion the interests of the said fund require it.
6 And the county auditor shall immediately forward to the register of the state
7 land office a certified abstract of all lands bid off at such sales and conveyed
8 to the state for the use of the school fund, giving their description in full and
the date of the conveyance.

2 SEC. 50. Lapse of time shall in no case bar any action brought or to be
3 brought on any contract for any part of the school fund, nor shall such lapse of
4 time prevent the introduction of evidence in any such action, any provision of
this code, to the contrary notwithstanding.

CHAPTER 13. *Of the State Library.*

2 SEC. 1. The judges of the supreme court are the commissioners of the
3 state library, and as such have the management and control thereof in the
4 selection and exchange of books therefor, for which they receive no compen-
5 sation.

2 SEC. 2. A room shall be provided for the same in the state capitol which
3 shall not be appropriated or used for any other purpose so long as the library
4 shall remain therein; and it shall be provided with fuel and other conveni-
5 ences at the expense of the state.

2 SEC. 2. The library shall be in the care and custody of a librarian
3 appointed by the governor, by and with the advice and consent of the
senate.

2 SEC. 4. The librarian shall give bond to the state in the sum of five
3 thousand dollars, for the faithful performance of his duties, for the preserva-
4 tion and safe delivery of all the property committed to his care, to his succes-
5 sor, or to the governor, and for the faithful paying over all moneys that may
6 come into his hands from fines, forfeitures, or otherwise, which bond is to be
7 approved by the governor, or in his absence, the secretary of state, and the
bond filed in the secretary's office.

2 SEC. 5. The librarian shall have the custody and charge of all books,
3 maps, charts, engravings, paintings, and all other things properly belonging
4 to the library, or directed to be deposited therein. The library shall be kept
5 open during the session of the general assembly and of the supreme court
6 at the seat of government, from nine to twelve o'clock in the forenoon, and
7 from two to nine o'clock in the afternoon, and at other times during the after-
noon of each Wednesday and Saturday.

2 SEC. 6. No person shall be permitted to remove from the library any

2 book or other property belonging thereto, except the governor, the judges of
3 supreme and district courts, the judges of the district court of the United
4 States, the United States district attorney, the heads of the departments of
5 state, the members and officers of the general assembly, and attorneys of the
6 supreme court during term times; but no one of said persons shall be allowed
7 to take such books or property from the library without executing a receipt
8 therefore, nor keep the same more than ten days at any one time.

2 SEC. 7. No books or other property shall be removed from the seat of
3 government, and no person shall be entitled to take from the library more
4 than two books at the same time; *provided*, that during the terms of the
5 supreme court of the state, or the federal court, the judges and attorneys may
6 be permitted to take and use any number of books needed on the trial of
7 causes; but said books shall not be taken from the seat of government, and
8 shall be returned according to law.

2 SEC. 8. If the librarian shall permit or allow any person not authorized
3 hereby, to remove a book or other property from the library, he shall be lia-
4 ble to pay a fine of ten dollars for every book or other article so taken, and
5 it shall be the duty of the governor to direct the strict enforcement of this
6 penalty.

2 SEC. 9. Any person not authorized hereby, who shall take a book or
3 other property from the library, either with or without the consent of the
4 librarian, shall be deemed guilty of petit larceny, and shall be proceeded
5 against and punished as provided in the code for such offenses.

2 SEC. 10. It shall be the duty of the librarian, when books are added to the
3 library, to enter the same on the catalogue immediately after their receipt
4 and before they can be taken out; to cause each book in the library to be
5 labeled with a printed label, to be pasted on the inside of the cover, with
6 the words "Iowa state library," with the number of the volume in the cat-
7 alogue of said library inscribed on said label, and also to write the same
8 words at the bottom of the thirtieth page of each volume.

2 SEC. 11. Any person injuring, defacing, destroying or losing a book-
3 shall pay to the librarian twice the value of the book, or if it shall be one
4 of a set, he shall be liable to pay the full amount of the value of the set,
5 and it shall be the duty of the librarian to prosecute such person, upon
6 such loss or injury coming to his knowledge: *provided*, that if such person
7 shall within a reasonable time, replace the book so injured or lost, he shall
8 not be liable to fine or prosecution under this section.

2 SEC. 12. The commissioners and librarian shall adopt such further regu-
3 lations consistent with the provisions of this act as they see fit, for the pre-
4 servation and management of the library, and may prescribe forfeitures for
5 the breach of such regulations, which regulations and forfeitures being post-
6 ed one week in the library room, shall have the force and effect of law, and
7 such forfeitures may be recovered in the name of the state, and shall be for
8 the use of the library.

2 SEC. 13. The librarian shall report to the commissioner whenever called
3 on, a list of books and other property missing from the library, an account
4 of the fines and forfeitures imposed and collected, and the amount uncol-
5 lected, a list of accessions to the library since the last report, and all other
6 information in relation to the library that he may call for. He shall also
7 make a full and specific report to the general assembly on the first of its
8 session.

2 SEC. 14. The commissioners and librarian may determine what books
3 and articles may be taken from the library, and what shall remain in the
4 library for reference.

CHAPTER. 14. *Of the State Historical Society.*

SECTION 1. There is hereby annually appropriated until the legislature shall by law or otherwise direct, to the state historical society, formed in connection with, and under the auspices of the state university, the sum of five hundred dollars, to be expended by said society in collecting, embodying, arranging and preserving in authentic form, a library of books, pamphlets, maps, charts, manuscripts, papers, paintings, statuary, and other materials illustrative of the history of the state of Iowa, to rescue from oblivion the memory of its early pioneers, to obtain and preserve varieties of their exploits, perils and hardy adventures ; to secure facts and statements relative to the history, genius, and progress or decay of our Indian tribes ; to exhibit faithfully the antiquities, past and present resources of Iowa ; also to aid in the publication of such of the collections of the society as the society shall from time to time deem of value and interest, to aid in binding its books, pamphlets, manuscripts and papers, and in paying other necessary incidental expenses of the society, but no part of such annual appropriation shall ever be paid for services rendered by the officers to the society.

SEC. 2. It shall be the duty of the executive committee of the said state historical society of Iowa, to keep an accurate account of the manner of expenditure of the said sum of money hereby appropriated, and furnish the same, together with the vouchers thereof, to the governor of this state, in the month of December of the year the legislature shall meet, to be by him laid before the legislature.

SEC. 3. There shall be delivered to the said society, eighty bound copies of all books and documents published by order of the state, for the purpose of effecting exchanges with similar societies in other states, and for preservation in the library of said society.

The Following
Page(s) are Not Yet
Available

**If you have a hardcopy page suitable for scanning,
LLMC would like to hear from you.**

Thank you.

1-800-235-4446

or

llmc@llmc.com

TITLE I. OF RIGHTS TO PROPERTY.

CHAPTER 1. *Of the Rights of Aliens.*

SEC. 1. All aliens, whether they reside in the United States or in any foreign country, may in this state acquire, hold, and enjoy property, personal or real, or any interest therein, by purchase, gift, devise or descent, and may convey, mortgage, or devise the same in a like manner, and with the same effect, as if such aliens were native-born citizens of the United States. And all property, real or personal, situated in this state and belonging to a foreigner, shall, if not disposed of by will, after the death of the owner descend to the heirs of such foreigner, whether the same reside in the United States or in any foreign country.

SEC. 2. All the distinctions heretofore made by law between citizens and resident and non-resident foreigners, in reference to the acquisition, possession, enjoyment, and transfer of property, real and personal, by conveyance, gift, devise, descent, or otherwise, are hereby abolished. A non-resident alien shall be entitled to dower in lands situated in this state, the same as resident citizens, except as against a purchaser from the decedent, or a purchaser under execution against the decedent, but as against such purchaser an alien not residing in the state of Iowa shall not be entitled to dower.

SEC. 3. The title to any land heretofore conveyed by purchase or gift, or transferred by devise or descent, shall not be questioned, nor in any manner affected by reason of the alienage of any person, from or through whom such title may have been derived.

CHAPTER 2. *Of Title in the State or County.*

SEC. 1. Whenever, to secure the state or any county therein, from loss, it shall become necessary to take real estate on account of a debt, either by bidding off the same at a sale on execution or otherwise, the conveyance thereof to the state or to any county shall vest in such grantee as complete a title as if such grantee were an actual person.

SEC. 2. The proper person to bid off such real estate shall be :

1st—The attorney general, or the proper district attorney in case the judgment is in the name of the state, and the proceeds thereof are payable into the state treasury.

2d—In case the proceeds of the judgment are by law payable into the county treasury for the use of the county revenue or the school or other fund

8 of the county, the district attorney of the district, or the president of the
9 board of supervisors of the county, or any attorney employed or authorized
10 by the board of supervisors to prosecute such claim.

2 SEC. 3. The officers above named, shall in the cases aforesaid have full
3 authority to bid upon and purchase in the name of the state or county, as
4 the case may be, real or personal property sold upon execution upon judg-
5 ments in favor of the state or county, or any fund thereof, whenever they
6 shall deem it necessary so to do for the interest of the state or county, and to
7 take the title to said property in the name of the state or county, to be held
8 and disposed of as provided in this chapter.

9 But in all cases where real property is sold under such executions, it shall
10 first be appraised in the manner provided by law for the appraisement of
11 property levied on under execution, and it shall be the duty of the said offi-
12 cers so to bid upon and purchase said property, for the lowest sum possible.
13 If no other person shall bid therefor, they shall bid at least two-thirds of
14 the appraised value thereof, or the full amount of the judgment and costs, if
the same is less than two-thirds of such appraised value.

2 SEC. 4. In cases where the state becomes the purchaser of real estate,
3 under execution, issued upon judgments rendered in favor of the state all
4 costs and expenses attending the same shall be audited and allowed by the
5 state census board and paid out of any money in the state treasury not other-
6 wise appropriated, whenever such costs and expenses cannot be collected out
of the defendant in such judgments.

2 SEC. 5. Whenever the state or any county holds any such lands undis-
3 posed of, it may by its proper agent, lease and control the use of the same as
4 shall in the opinion of the census board, if belonging to the state, and the
5 board of supervisors if belonging to the county, be for the best interest of
6 such owner and the proceeds of such use shall belong to the fund to which
the debt on which the land was taken belongs.

2 SEC. 6. The officers invested with the control and management thereof,
3 shall have full power, and it shall be their duty to keep any valuable build-
4 ings therein insured against fire, for the benefit of the state or county, in
5 some responsible insurance company, or companies, and the expense of such
6 insurance shall be paid out of the rents of such property, or the proceeds
thereof when sold.

2 SEC. 7. In any case where the state holds any lands as above provided
3 the Governor may dispose of the same at not less than the cost to the state,
4 including interest and expenses, and the proceeds shall be credited to the
5 fund to which the debt, on which said land was taken, belonged; provided
6 that if in the unanimous opinion of the census board the interest of the state
7 would be promoted by selling for a sum less than cost, and if said board
8 shall fix the sum at which such land should be sold, the governor may sell
9 the same for the sum so fixed; and on any such sale if the purchase money
10 shall not be paid in hand, adequate security, to be determined by said cen-
sus board, shall be given for the payment thereof.

2 SEC. 8. Whenever any county as any real estate as provided in the
3 foregoing sections, it shall be competent for the board of supervisors to sell
4 and dispose thereof; as in their judgment shall be for the best interest of
5 their said county; provided that if the same is sold on time for any part of
6 the purchase money, the said board shall require adequate security for the
payment thereof, besides the responsibility of the purchaser; and the proceeds

7 of sales of all such lands shall belong to the fund to which the debt on
8 which the land was taken belonged.

2 SEC. 9. In case of any such sale and conveyance by such board, the res-
3 olution making the sale, shall be entered on the minutes of such board; the
4 yeas and nays on the passage of such resolution shall be also there entered
5 with the date thereof; such resolution shall express the consideration paid
6 for such land, and such a description thereof as shall be necessary to make a
7 deed therefor; and a transcript of such proceedings relating to said sale;
8 the resolution and yeas and nays on its passage, made and certified under
9 the hand of said clerk and the seal of the said board shall be a sufficient deed of
10 conveyance by the said county, and shall be entitled to be recorded or re-
ceived in evidence without further proof.

2 SEC. 10. The state or county on selling such lands may at the option of
3 the officers making such sale, execute a contract of sale or an absolute con-
4 veyance therefor; and may take notes, mortgages, contracts or other secu-
5 rities, payable to the grantor, which shall be as valid as if made to an actual
6 person.

CHAPTER 3. *Of Perpetuities and Land in Mortmain.*

2 SECTION 1. Every disposition of property is void which suspends the ab-
3 solute power of controlling the same for a longer period than during the
4 lives of persons then in being, and for twenty-one years thereafter.

2 SEC. 2. Church organizations occupying property granted to them by
3 the territory or state of Iowa may lease such property for business purposes,
4 and occupy other property with their church edifice.

4 *Provided*, That all of the income derived from such leased property shall
5 be devoted to maintaining the religious exercises and ordinances of the church
6 to which the grant was originally made, and to no other purpose; and that
7 such church and its affairs shall remain in the control of a board of trustees
8 regularly chosen in accordance with its charter.

CHAPTER 4. *Of the Transfer of Personal Property.*

2 SECTION 1. No sale or mortgage of personal property where the vendor
3 or mortgagor retains actual possession thereof is valid against existing cred-
4 itors or subsequent purchasers without notice, unless a written instrument
5 conveying the same is executed, acknowledged like conveyances of real es-
6 tate, and filed for record with the recorder of deeds of the county where the
7 holder of the property resides.

2 SEC. 2. The recorder of deeds must keep an entry book or index for in-
3 struments of the above description, having the pages thereof ruled so as to
4 show in parallel columns to be alphabetically arranged in double entry in the
5 manner hereinafter provided in case of deeds for real property:

- 5 1. The mortgagors or vendors;
- 6 2. The mortgagees or vendees;

- 7 3. The date of the filing of the instrument ;
- 8 4. The date of the instrument itself ;
- 9 5. Its nature ;
- 10 6. The page and book where the record is to be found.

2 SEC. 3. Whenever any written instrument of the character above con-
 3 templated is filed for record as aforesaid, the recorder shall note thereon the
 4 day and hour of filing the same, and forthwith enter in his entry book all
 5 the particulars required in the preceding section except the sixth item there-
 6 in, and from the time of said entry and not before shall the sale or mort-
 7 gage be deemed complete as to third persons, and shall have the same effect
 8 as though it had been accompanied by the actual delivery of the property so
 9 sold or mortgaged.

2 SEC. 4. The recorder shall as soon as practicable record such instrument
 3 and enter in his entry book in its proper place the page and book where the
 4 record may be found.

CHAPTER 5. *Of Claims on the Public Lands*

2 SEC. 1. The owner of what is known as a valid claim or improvement
 3 on the public lands has a transferrable interest therein which may be sold
 4 on execution or otherwise; and any sale of such improvement is a sufficient
 5 consideration to sustain a promise.

2 SEC. 2. The occupant of such claim will be deemed to have constructive
 3 possession thereof to the extent of three hundred and twenty acres: *pro-*
 4 *vided*, it be so marked out and designated that the boundaries can be readily
 5 traced and determined, and he may protect and defend his possession by the
 6 proper civil action.

CHAPTER 6. *Of Real Property.*

2 SEC. 1. All persons owning lands not held by an adverse possession,
 3 shall be deemed to be seized and possessed of the same.

2 SEC. 2. The term "heirs" or other technical words of inheritance are not
 3 necessary to create and convey an estate in fee simple.

2 SEC. 3. Every conveyance of real estate passes all the interest of the
 3 grantor therein unless a contrary intent can be reasonably inferred from
 4 the terms used.

2 SEC. 4. Where a deed purports to convey a greater interest than the
 3 grantor was at the time possessed of, any after acquired interest of such
 4 grantor to the extent of that which the deed purports to convey enures to
 5 the benefit of the grantee.

2 SEC. 5. Adverse possession of real property does not prevent any person
 3 from selling his interest in the same.

3 SEC. 6. Estates may be created to commence at a future day.

2 SEC. 7. Declarations or creations of trusts or powers in relation to real
 3 estate must be executed in the same manner as deeds of conveyance, but
 4 this provision does not apply to trusts resulting from the operation or con-
 5 struction of law.

SEC. 8. Conveyances to two or more in their own right create a tenancy in common unless a contrary intent is expressed.

SEC. 9. A married woman may convey her interest in real estate in the same manner as other persons.

SEC. 10. In every conveyance of real estate the joining of the wife with her husband shall be deemed sufficient to pass any and all right which the said wife had or has in said property in said conveyance, either in her own right independent of the husband, or as his wife, unless the contrary appears on the face of the conveyance.

SEC. 11. In the absence of stipulation to the contrary, the mortgagor of real estate retains the legal title and right of possession thereof; but in case of personal property the mortgagee holds that title and right.

CHAPTER 7. *The Conveyance of Real Property.*

SECTION 1. No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration without notice, unless recorded in the office of the recorder of deeds of the county in which the land lies, as hereinafter provided.

SEC. 2. It shall not be deemed lawfully recorded unless it has been previously acknowledged, or proved in the manner herein prescribed.

SEC. 3. The recorder of deeds must keep an entry-book or index, the pages of which are so divided as to show in parallel columns:

- 1 The grantors;
- 2 The grantees;
- 3 The time when the instrument was filed;
- 4 The date of the instrument;
- 5 The nature of the instrument;
- 6 The book and page where the record thereof may be found;
- 7 The description of the land conveyed, in the manner following:

Grantors.	Grantees.	Date of filing.	Date of instrument.	Character of instrument.	Book.	Page.	Description.
A. B. C. D.		1848.	1848.	Deed.	E. $\frac{1}{2}$ N. E. $\frac{1}{4}$ Sec. 14, T. 7, R. 2. W.
M. N. P. Q.		Oct. 7,	June 4,	Deed.	Lot 429, in Burlington.
R. S. T. V.		Nov. 3,	Sept. 19,	Mortgage.	S. $\frac{1}{2}$ Sec 10, T. 67, R. 3. W.

2 SEC. 4. The recorder must indorse upon every instrument properly filed in
 3 his office for record the time when it was so filed, and shall forthwith make
 4 the entries provided for in the last preceding section, except that of the
 5 book and page where the record of the instrument may be found, and from
 6 that time such entries shall furnish constructive notice to all the rights of the
 7 grantee conferred by such instrument.

2 SEC. 5. The entries in such entry book shall be double, the one showing
 3 the names of the respective grantors arranged in alphabetical order, the other
 4 those of the grantees in like order. Where there are two or more grantors
 5 having different surnames, there must be as many distinct entries among the
 6 grantors as there are different names, being alphabetically arranged in regard
 7 to each of such names. The same rule shall be followed in case of several
 8 grantees.

2 SEC. 6. Every such instrument shall be recorded as soon as practicable
 3 in a suitable book to be kept by the recorder for that purpose.

3 After which he shall complete the entries aforesaid, so as to show the book
 4 and page where the record is to be found.

2 SEC. 7. It shall be the duty of the recorder to record all deeds, mort-
 3 gages and other instruments affecting town lots, in cities or vilages, the plats
 4 whereof are recorded, in separate books from those in which other convey-
 5 ances of real estate are recorded.

2 SEC. 8. It shall be the duty of the auditor of each county to keep in his
 3 office books for the transfer of real estate; which shall consist of a transfer
 4 book, index book and book of plats.

2 SEC. 9. Said transfer book shall be ruled and headed substantially after
 3 the following form, and entries thereupon shall be in numerical order, be-
 4 ginning with section one.

SECTION No....., TOWNSHIP, RANGE

Grantee.	Grantor.	Date of filing.	Date of instrument.	Description.	Page of plats.	Page of		
.....
.....
.....

THE INDEX BOOK THUS

NAMES OF GRANTEEES	PAGES OF TRANSFER BOOK.
.....
.....
.....

2 SEC. 10. The auditor shall keep a book of plats, showing the number of
3 lot and block, or township and range, divided into sections and subdivisions,
4 as occasion may require, and he shall designate on said plats each piece of
5 land or town lot, and mark in pencil the name of the owner thereon in a
6 legible manner. Said plats shall be lettered or numbered so that they may
7 be conveniently referred to by the memoranda of the transfer book, and
8 shall be drawn on a scale of not less than four inches to the mile.

2 SEC. 11. Whenever a deed of unconditional conveyance of real estate is
3 presented for record it shall be the duty of the auditor to enter in the index
4 book, in alphabetical order, the name of the grantee, and opposite thereto
5 the number of the page of the transfer book on which such transfer is
6 made; and upon the transfer book he shall enter in the proper columns the
7 name of the grantee, the name of the grantor, date of instrument, the char-
8 acter of the instrument, the description of the property, and the number or
9 letter of the plat on which the same is marked.

2 SEC. 12. After the auditor has made the entries contemplated in the pre-
3 ceding section, he shall endorse upon the deed the following words: "En-
4 tered for taxation this day of, A. D.," with the
5 proper date inserted, and shall sign his name thereto.

2 SEC. 13. The county recorder shall not file for record any deed of real
3 property until the proper entries have been made upon the transfer books in
4 the auditor's office, and endorsed upon the deed.

2 SEC. 14. The auditor shall correct the transfer books from time to time,
3 as he shall find them incorrect.

2 SEC. 15. Any deed, conveyance, or other instrument in writing by which
3 real estate in this state shall be conveyed or encumbered, if acknowledged
4 within this state, must be so before some court having a seal, or some judge,
5 justice, or clerk thereof, or some justice of the peace or notary public.

2 SEC. 16. When made or acknowledged out of this state, but within the
3 United States, it shall be acknowledged before some court of record or offi-
4 cer holding the seal thereof, or before some commissioner appointed by the
5 governor of this state to take the acknowledgment of deeds, or before some
6 notary public or justice of the peace; and when made by a justice of the
7 peace, a certificate under the official seal of the proper authority of the offi-
8 cial character of said justice, and of his authority to take such acknowledg-
9 ments, and of the genuineness of his signature, shall accompany said certifi-
0 cate of acknowledgment.

2 SEC. 17. Any deed or other conveyance of lands within this state, which
3 is executed without the United States, may be acknowledged or proven be-
4 fore any ambassador, minister, secretary of legation, consul, or charge d' Af-
5 fairs of the United States, or before any officer of a foreign country who is
6 authorized by the laws thereof to take acknowledgments of conveyance of
7 real estate. But the certificate of acknowledgment by a foreign officer must
8 be authenticated by some ambassador, minister, secretary of legation, con-
9 sul, or charge d' Affairs of the United States, whose official written state-
10 ment that full faith and credit is due to the certificate of such foreign officer,
11 shall be deemed sufficient evidence of the qualification of said officer to the
12 acknowledgment, and of the genuineness of his signature or seal, if he has
any.

2 SEC. 18. The court or person taking the acknowledgment must indorse
upon the deed a certificate setting forth the following particulars :

- 3 1 The title of the court or person before whom the acknowledgment was
4 taken ;
5 2 That the person making the acknowledgment was personally
6 known to at least one of the judges of the court or to the officer
7 taking the acknowledgment to be the identical person whose name
8 is affixed to the deed as grantor, or that such identity was proved
9 by at least one credible witness (naming him).
10 3 That such person acknowledged the instrument to be his voluntary act
11 and deed.

2 SEC. 19. If the grantor die before acknowledging the deed, or if for any
3 other reason his attendance can not be procured in order to make the ack-
4 nowledge ment, or if having appeared he refuses to acknowledge it, proof of
5 the due execution and delivery of the deed may be made by any competent
6 testimony.

2 SEC. 20. Such proof may be made before the same court or officers as
3 are authorized to take acknowledgments as aforesaid.

2 SEC. 21. The certificate indorsed by them upon the deeds thus proved
3 must state :

- 3 1 The title of the court or officer taking the proof ;
4 2 That it was satisfactorily proved that the grantor was dead, or that for
5 some other reason his attendance could not be procured in order to
6 make the acknowledgment, or that having appeared he refused to
7 acknowledge the deed ;
8 3 The names of the witnesses by whom proof was made, and that it was
9 proved by them that the instrument was executed by the person
10 whose name is thereunto subscribed as a party.

2 SEC. 22. The certificate of proof or acknowledgment as aforesaid may be
3 given under seal or otherwise, according to the mode by which the courts
4 or officers granting the same usually authenticate their most solemn and
5 formal acts.

2 SEC. 23. Any officer who knowingly states a material untruth in either
3 of the certificates above contemplated, may be indicted and fined any sum
4 not exceeding the value of the property conveyed or otherwise affected by
5 the instrument on which such certificate is indorsed.

2 SEC. 24. The execution of any deed, mortgage, or other instrument in
3 writing, executed by any attorney in fact, may be acknowledged by the
4 attorney executing the same.

2 SEC. 25. The court or person taking the acknowledgment, must in-
3 dorse upon such instrument a certificate setting forth the following par-
4 ticulars :

- 4 1. The title of the court or person before whom the acknowledgment was
5 taken.
6 2. That the person making the acknowledgment was personally known
7 to at least one of the judges of the court, or to the officer taking
8 the acknowledgment, to be the identical person whose name is
9 subscribed to the instrument as attorney for the grantor or gran-
10 tors therein named, or that such identity was proved to him by at
11 least one credible witness, to him personally known and therein
12 named.
13 3. That such person acknowledged said instrument to be the act and
14 deed of the grantor or grantors therein named, by him as his
15 or their attorney thereunto appointed, voluntarily done and exe-
16 cuted.

2 SEC. 26. Any court or officer having power to take the proof above con-
 3 templated, may issue the necessary subpoenas and compel the attendance of
 4 witnesses residing within the county by attachment if necessary.

2 SEC. 27. All deeds and conveyances of lands, tenements and heredita-
 3 ments lying and being within this state, heretofore executed, and which said
 4 deeds and conveyances have been acknowledged or proved according to and
 5 in compliance with the laws and usages of the state, territory or county in
 6 which such deeds and conveyances were acknowledged, and proven, are
 7 hereby declared effectual and valid in law to all interests and purposes, as
 8 though the same acknowledgments had been taken, or proof of execution
 9 made within this state, and in pursuance to the acts and laws thereof; and
 10 such deeds so acknowledged or proved as aforesaid, may be admitted to be
 11 recorded in the respective counties in which such lands, tenements or here-
 12 ditaments do or may lie, anything in the acts and laws of this state to the
 13 contrary thereof notwithstanding: Provided, that all deeds and conveyances
 14 of lands, tenements and hereditaments situated within this state, which have
 15 been acknowledged or proved in any other state, territory, or county, accord-
 16 ing to and in compliance with the laws and usages of such state, territory,
 17 or county, and which deeds or conveyances have been recorded within this
 18 state be and the same are hereby confirmed and declared effectual and valid
 19 in law to all intents and purposes, as though the said deeds, or conveyances
 20 so acknowledged or proved and recorded, had prior to being recorded, been
 acknowledged or proved within this state.

2 SEC. 28. The acknowledgments of all deeds mortgages and other instru-
 3 ments in writing taken and certified previous to the passage of this act,
 4 and which have been duly recorded in the proper counties of this state be
 5 and the same are hereby declared to be legal and valid in all courts of law
 6 or equity in this state or elsewhere, anything, in the several different
 7 acts or laws of the territory or state of Iowa in regard to acknowledgment
 to the contrary notwithstanding.

2 SEC. 29. All deeds, mortgages, or other instruments in writing for the
 3 conveyance of lands, which have heretofore been made and executed, and
 4 the officer taking the acknowledgment has not affixed his seal to the
 5 acknowledgment, such acknowledgment shall nevertheless be good and valid
 6 in law and equity, any thing in law heretofore passed to the contrary not-
 withstanding.

2 SEC. 30. No instrument containing a power to convey or in any manner
 3 affect real estate, certified and recorded as above prescribed, can be revoked
 4 by any act of the parties by whom it was executed until the instrument
 5 containing such revocation is acknowledged and deposited for record and
 6 entered on the entry book in the same office in which the instrument confer-
 ring the power is recorded.

2 SEC. 31. Every instrument in writing affecting real estate which is ac-
 3 knowledged or proved, and certified as hereinbefore directed, may be read in
 4 evidence without farther proof.

2 SEC. 32. The record of such instrument or a duly authenticated copy
 3 thereof is competent evidence whenever by the party's own oath or other-
 4 wise the original is shown to be lost, or not belonging to the party wishing
 5 to use the same nor within his control. And in such case it is no objection
 6 to the record that no official seal is appended to the recorded acknowledg-
 7 ment thereof, if, when the acknowledgment purports to have been taken by
 an officer having an official seal, there be a statement in the certificate of

8 acknowledgment that the same is made under his hand and seal of office and
9 the records show by a scroll or otherwise that there was such a seal, which
10 will be presumptive evidence that the official seal was attached to the original
11 certificate.

SEC. 33. The provisions of the preceding section are intended to apply
2 to all instruments heretofore recorded as well as those hereinafter to be re-
3 corded.

SEC. 34. Neither the certificate nor the record nor the transcript thereof
2 is conclusive evidence of the facts therein stated.

SEC. 35. Nothing herein contained shall invalidate any act already done.

SEC. 36. The following or other equivalent forms, varied to suit circum-
2 stances, are sufficient for the purposes therein contemplated :

3 FOR A QUIT CLAIM DEED.

4 For the consideration of . . . dollars, I hereby quit claim to A. B. all my
5 interest in the following tracts of land, (describing it).

6 FOR A DEED IN FEE-SIMPLE WITHOUT WARRANTY.

7 For the consideration of . . . dollars, I hereby convey to A. B. the following
8 tract of land (describing it).

9 FOR A DEED IN FEE WITH WARRANTY.

10 The same as the last preceding form, adding the words "and I warrant
11 the titles against all persons whomsoever," (or other words of warranty as
12 the party may desire.)

13 FOR A MORTGAGE.

14 The same as deed of conveyance, adding the following: "To be paid
15 upon conditions that I pay," &c.

16 FOR A DEED OF TRUST.

17 For the purpose of securing to A. B. the sum of dollars, with in-
18 terest from date at the rate of . . . per cent per annum, (or as the case may
19 be) I hereby convey to C. D., (describe the property conveyed). And if the
20 sum so secured to A. B. is not paid to him by the (stating the time of pay-
21 ment) I hereby authorize the said C. D. to sell the property herein con-
22 veyed (stating the manner, place of sale, notice to be given, &c.,) to execute
23 a deed to the purchaser, to pay off the amount herein secured with interest
24 and costs, and to hold the remainder subject to my order.

SEC. 37. Whenever the board of supervisors of any county in this state
2 shall deem it necessary and expedient, they shall have authority to have
3 transcribed, indexed and arranged, any deed, probate or county record be-
4 longing to said county, or to have made a comple index, as contemplated by
5 section

2 SEC. 38. Whenever any new county shall have been formed from other
3 original and organized counties, or shall have been attached to another coun-
4 ty for judicial or other purposes, and shall afterwards be fully organized
5 and detached, and when any records of the kind mentioned in section
6 are in the original county or counties, which properly belongs to such new
7 county, the board of supervisors of such new or attached county shall have
8 authority to have transcribed, indexed and arranged, such records, or any of
9 them, for the use of such new county, and at the expense of such new
county.

2 SEC. 39. The board of supervisors may employ any suitable person to
3 perform said labor, the amount of compensation therefor to be previously
4 fixed by them, not exceeding six cents for each one hundred words of the
5 records proper, and twelve and one-half cents for each one hundred words
6 of indexing; such compensation to be paid out of the treasury of the county
for which the records are transcribed, and to be audited as other claims.

2 SEC. 40. When any such records are so transcribed, the board of super-
3 visors of the county to which the original records belong, shall compare the
4 copy so transcribed with the original, and upon the same being found to be
5 correctly transcribed, they shall make a written certificate in each volume
6 or book of such transcribed records in their official capacity, certifying that
7 such transcribed records have been compared with the original by them, and
are true and correct copies of the original records.

2 SEC. 41. Such transcribed records, so certified, shall have the same
3 force and effect in all respects as the original records, and be admissible
as evidence in all cases of equal validity with the original records.

CHAPTER 8. *Of Occupying Claimants.*

2 SECTION. 1. Where an occupant of land has color of title thereto, and
3 good faith has made any valuable improvement thereon, and is afterwards
4 in the proper action found not to be the rightful owner thereof, no execu-
5 tion shall issue to put the plaintiff in possession of the property, after the
6 filing of the petition hereinafter mentioned, until the provisions of this chap-
ter have been complied with.

2 SEC. 2. Such petition must set forth the grounds on which the defendant
3 seeks relief, stating with other things as accurately as practicable the value
4 of the improvements upon the lands as well as the value of the lands aside
from the improvements.

2 SEC. 3. All issues joined thereon must be tried as in ordinary cases, and
3 if the value of the land or the improvements is in controversy such value
must be ascertained on the trial.

2 SEC. 4. The plaintiff in the main action may thereupon pay the appraised
3 value of the improvements and take the property.

2 SEC. 5. Should he fail to do this after a reasonable time to be fixed by
3 the court, the defendant may take the property, upon paying the value of
the land aside from the improvements.

2 SEC. 6. If this be not done within a reasonable time to be fixed by the
3 court, the parties will be held to be tenants in common of all the land, in-
cluding the improvements, each holding an interest proportionate to the

4 value of his property as ascertained by the appraisement above contem-
5 plated.

2 SEC. 7. The purchaser in good faith at any judicial or tax sale made by
3 the proper person or officer, has color of title within the meaning of this
4 chapter, whether such person or officer had sufficient authority to sell or not,
5 unless such want of authority was known to such purchaser at the time of
6 the sale. And the rights of such purchaser pass to his assignees or repre-
7 sentatives.

2 SEC. 8. Any person has also such color of title who has occupied a tract
3 of land by himself or by those under whom he claims for the term of five
4 years, or who has thus occupied the land for a less term than five years, if
5 he or those under whom he claims have at any time during such occupancy
6 with the knowledge and consent, express or implied, of the real owner,
7 made any valuable improvement thereon, or if he or those under whom he
8 claims, have at any time during such occupancy paid the ordinary county
9 taxes thereon for any one year, and two years have thereafter elapsed with-
10 out a re-payment or proffer of re payment of the same by the owner of the
11 land: *Provided*, such occupancy is continued up to the time at which the
12 suit is brought by which the recovery of the land is obtained as above con-
13 templated: but nothing in this act shall be construed to give tenants color
of title against their landlords.

2 SEC. 9. When any person shall have settled upon any lands within this
3 state, and shall have occupied the same for three years, under or by virtue
4 of any law of said state, or any contract with its proper officers, for the pur-
5 chase of said land, or under any law of, or by virtue of any purchase from,
6 the United States, and shall have made valuable improvements thereon, and
7 shall have been, or shall hereafter be, found not to be the true owner there-
8 of, or not to have acquired a right to purchase the same, from the state or the
9 United States, such person shall be deemed an occupying claimant within
the meaning of this chapter.

2 SEC. 10. In the cases above provided for, if the occupying claimant has
3 committed any injury to the land by cutting timber or otherwise the plain-
4 tiff may set the same off against any claim for improvements made by such
5 claimant.

2 SEC. 11. It is sufficient cause of challenge to any juror selected to ap-
3 praise the value of the land or the improvements, that he is interested in a
4 like question.

2 SEC. 12. The plaintiff is entitled to an execution to put himself in posses-
3 sion of his property in accordance with the provisions of this chapter, but
not otherwise.

CHAPTER 9. *The Homestead.*

2 SECTION 1. Where there is no special declaration of the statute to the
3 contrary, the homestead of every head of a family is exempt from judicial
4 sale.

2 SEC. 2. A widow or widower, though without children, shall be deemed
3 the head of a family while continuing to occupy the house used as such at
the time of the death of the husband or wife.

2 SEC. 3. A conveyance by such owner is of no validity unless the husband
and wife (if the owner is married) concur in and sign such conveyance.

2 SEC. 4. But the homestead is liable for taxes accruing exclusively there-
3 on, and the whole or a sufficient portion thereof, may be sold to pay the
same. It is also subject to mechanic's liens in the cases provided by law.

2 SEC. 5. It may also be sold on execution for debts contracted prior to the
purchase of such homestead (except where otherwise declared,) or for those
3 created by written contract executed by the persons having the power to con-
4 vey and expressly stipulating that the homestead is liable therefor. But it
5 shall not in such cases be sold except to supply the deficiency remaining
6 after exhausting the other property of the debtor which is liable to execu-
7 tion.

2 SEC. 6. The homestead must embrace the house used as a home by the
owner thereof, and if he has two or more houses thus used by him at different
3 times and places he may select which he will retain as his homestead.

2 SEC. 7. It may contain one or more lots or tracts of land with the build-
ings thereon and other appurtenances, subject to the limitations contained in
3 the next section, but must in no case embrace different lots and tracts unless
4 they are contiguous, or unless they are habitually and in good faith used as
5 part of the same homestead.

2 SEC. 8. If within a town plat it must not exceed one half an acre in
extent, and if not within a town plat it must not embrace in the aggregate
3 more than forty acres. But if when thus limited in either case its value is
4 less than five hundred dollars it may be enlarged till its value reaches that
5 amount.

2 SEC. 9. It must not embrace more than one dwelling house nor any other
buildings except such as are properly appurtenant to the homestead as such,
3 but a shop or other building situated thereon and really used and occupied
4 by the owner in the prosecution of his own ordinary business and not ex-
ceeding three hundred dollars in value may be deemed appurtenant to such
6 homestead.

2 SEC. 10. The owner may select his own homestead and cause it to be
marked out, platted, and recorded as provided in the next section. If he
3 neglect this the privilege of doing the same devolves upon his wife. A fail-
ure in this respect by both does not leave the homestead liable, but the
5 officer having an execution against the property of such a defendant may
6 cause the homestead to be marked off, platted, and recorded, and may add
7 the expenses thence arising to the amount embraced in his execution.

2 SEC. 11. The homestead shall be marked off by fixed and visible monuments
and in giving the description thereof the direction and distance of the start-
3 ing point from some corner of the dwelling house shall be stated. The de-
4 scription and plat shall then be recorded by the recorder of deeds in a book
5 to be called the "homestead book," which shall be provided with a proper
6 index.

2 SEC. 12. The owner may from time to time at his pleasure change the
limits of his homestead by changing the metes and bounds, as well as the
3 record of the plat and description, or he may change the homestead entirely;
4 but such changes shall not prejudice conveyances or lines made or created
5 previously thereto.

2 SEC. 13. The new homestead, to the extent in value of the old, is exempt
from execution in all cases where the old or former homestead would have
3 been exempt, but in no other, nor in any greater degree.

2 SEC. 14. When a disagreement takes place between the owner and any
 3 person adversely interested as to whether any land or buildings are properly
 4 a part of the homestead, the sheriff shall at the request of either party sum-
 5 mon nine disinterested persons having the qualification of jurors. The par-
 6 ties then, commencing with the owner of the homestead, shall in turn strike
 7 off one juror each and shall continue to do so until only three of the number
 8 remain. These shall then proceed as referees to examine and ascertain all
 9 the facts of the case and shall report the same with their opinion thereon to
 the next term of the district court.

2 SEC. 15. If either party fail to strike off jurors in the manner directed
 in the last section the sheriff may strike off such jurors.

2 SEC. 16. The court may also in its discretion refer the whole matter or
 3 any part of it back to the same referees, or to others to be selected in the
 4 same manner or as the parties otherwise agree, giving them directions as to
 the report that is required of them.

2 SEC. 17. When the court is sufficiently possessed of the facts of the case
 3 it shall make its decision, and may, if expedient, direct the homestead to be
 4 marked off anew or a new plat and description to be made and recorded,
 5 and may take any farther step in the premises which in its discretion it may
 6 deem proper for attaining the objects of this statute. It shall also award
 7 costs as nearly as may be in accordance with the practice observed in other
 cases.

2 SEC. 18. The extent or appurtenances of the homestead, as thus estab-
 3 lished, are liable to be called in question in like manner whenever a change
 in value or circumstances will justify such new proceeding.

2 SEC. 19. Upon the death of either husband or wife the survivor may
 3 continue to possess and occupy the whole homestead until it is otherwise
 disposed of according to law.

2 SEC. 20. If there is no such survivor, the homestead descends to the
 3 issue of either husband or wife, according to the general rules of descent
 4 unless otherwise directed by will, and is to be held by such issue exempt
 from any antecedent debts of their parents or their own.

2 SEC. 21. If there is no such survivor or issue, the homestead is liable to
 3 be sold for the payment of any debts to which it might at that time be sub-
 jected if it had never been held as a homestead.

2 SEC. 22. Subject to the rights of the surviving husband or wife as de-
 3 clared by law, the homestead may be devised like other real estate of the
 testator.

CHAPTER 10. *Of Landlord and Tenant.*

2 SEC. 1. The executor of a tenant for life who demises real property so
 3 held and dies on or before the day on which the rent is payable, and a per-
 4 son entitled to rent dependent on the life of another, may recover the pro-
 portion of rent which had accrued at the time of the death.

2 SEC. 2. A tenant giving notice of his intention to quit the demised pre-
 3 mises at a time named, and afterwards holding over, and a tenant or his as-
 4 signee wilfully holding over the premises after the term, and after notice to
 5 quit, shall pay to the person entitled thereto double the yearly value of the
 premises during the time he holds over.

SEC. 3. The attornment of a tenant to a stranger is void unless made with the consent of the landlord, or pursuant to, or in consequence of, a judgment at law or in equity, or to a mortgagee after the mortgage has been forfeited.

SEC. 4. A landlord shall have a lien for his rent upon all crops grown upon the demised premises, and upon any other personal property of the tenant which has been used on the premises during the term, and not exempt from execution for the period of one year after a year's rent or the rent of a shorter period claimed falls due; but such lien shall not in any case continue more than six months after the expiration of the term.

SEC. 5. The lien may be effected by the commencement of an action within the period above prescribed, for the rent alone, in which action the landlord will be entitled to a writ of attachment upon filing with the proper clerk or the justice, an affidavit that the action is commenced to recover rent accrued within one year previous thereto, upon premises described in the affidavit.

SEC. 6. Any person in the possession of real property with the assent of the owner is presumed to be a tenant at will until the contrary is shown.

SEC. 7. Thirty days' notice in writing is necessary to be given by either party before he can terminate a tenancy at will; but when in any case a rent is reserved payable at intervals of less than thirty days, the length of notice need not be greater than such interval between the days of payment. In case of tenants occupying and cultivating farms, the notice must fix the termination of the tenancy to take place on the first day of March; except in cases of field tenants or croppers, whose leases shall be held to expire when the crop is harvested, unless otherwise agreed upon. But where an express agreement is made, whether the same has been reduced to writing or not the tenancy shall cease at the time agreed upon, without notice.

CHAPTER 11. *Of Walls in Common.*

SEC. 1. In cities, towns, and other places, surveyed into building lots, the plats whereof are recorded, he who is about to build contiguous to the land of his neighbor, may, if no wall be on the line between, rest one-half of his wall on his neighbor's land; *provided*, he build of brick or stone, at least as high as the first story; *and provided*, the whole thickness of such wall, above the cellar wall, does not exceed eighteen inches, not including the plastering, which, for the purposes hereof, is not to be considered as part of the wall: *and provided also*, that his neighbor shall not be compelled to contribute to the expense of said wall.

SEC. 2. If his neighbor be willing, and does contribute one-half of the expense of building such wall, then it is a wall in common between them; and if he even refuses to contribute to the building of such wall, he shall yet retain the right of making it a wall in common, by paying to the person who built it, one-half of the appraised value of said wall, at the time of using it.

SEC. 3. Every wall being a separation between buildings, shall, as high as the upper part of the first story, be presumed to be a wall in common, if there be no titles, proof, or mark to the contrary.

SEC. 4. The repairs, and rebuilding of walls in common, are to be made at the expense of all who have a right to the same, and in proportion to the interest of each therein: nevertheless, every co-proprietor of a wall in common, may be exonerated from contributing to the repairs or building, by giving up his right in common: *provided*, no building belonging to him be actually supported by the wall thus held in common.

SEC. 5. Every co-proprietor may build against a wall held in common, and cause beams or joists to be placed therein, and any person building such a wall, shall, on being requested by his co-proprietor, make the necessary flues, and leave the necessary bearings for the joists or beams, at such height, and distance apart, as shall be specified by his co-proprietor.

SEC. 6. Every co-proprietor is at liberty to increase the height of the wall held in common; but he alone is to be at the expense of raising it, and of repairing, and keeping in repair, that part of the wall, above the part so held in common.

SEC. 7. If the wall so held in common, cannot support the wall to be raised upon it, he who wishes to have it made higher, is bound to rebuild it anew entirely, and at his own expense, and the additional thickness of the wall must be placed entirely on his own land.

SEC. 8. The person who did not contribute to the heightening of the wall held in common, may cause the raised part to become common, by paying one-half of the appraised value of such raising, and half of the value of the grounds occupied by the additional thickness of the wall, if any ground was so occupied.

SEC. 9. Every proprietor joining a wall, has, in like manner, the right of making it a wall in common, in whole or in part, by repaying to the owner of the wall one half of its value, or the one-half of the part which he wishes to hold in common, and one-half of the value of the ground on which it is built, if the person who has built the wall, has laid the foundation entirely upon his own ground.

SEC. 10. Neither of the two neighbors can make any cavity within the body of the wall held by them in common; nor can either affix to it any work without the consent of the other, or without having, on his refusal, caused the necessary precautions to be used, so that the new work be not an injury to the rights of the other, to be ascertained by persons skilled in building.

SEC. 11. No dispute between neighbors, as to the amount to be paid by one or the other, by reason of any of the matters treated of in this chapter, shall delay the execution of the provisions of the same: *provided*, that the party on whom the claim is made, shall enter into bonds, with security, to the satisfaction of the clerk of the district court of the proper county, conditioned that he shall pay to the claimant whatever may be found to be his due, on the settlement of the matter between them, either in a court of justice, or elsewhere; and the said clerk of the district court is hereby required to indorse his approval on said bond, when the same is approved by him, and retain the same in his custody, until demanded by the opposite party.

SEC. 12. This act is not to prevent adjoining proprietors from entering into special agreement about walls on the lines between them; but no evidence of such agreement shall be competent, unless it be in writing, signed by the parties thereto, or their lawfully authorized agents, and whenever such proprietor is a minor, the guardian of his estate shall have full authority to act for, and bind him, in all matters relating to walls in common.

CHAPTER 12. *Of Liens for Hedges.*

2 SEC. 1. All contracts in writing, for the planting or growing of any
3 hedge, shall run with the land which the hedge is designed to benefit, and
4 all transfers of the ownership of land shall operate as a transfer of any
5 hedging contract relating to the same, and the person to whom such land is
6 transferred, no matter by what mode, may sue and be sued upon such hedg-
ing contract as though he was one of the original parties to the same.

2 SEC. 2. All labor or capital expended in pursuance of the contract above
3 mentioned, by any one, in planting or growing any hedge, shall operate as
4 a lien on the land which is to be benefited by the hedge, and the said land
5 shall be liable for the value and capital expended in planting or growing
6 such hedge, notwithstanding any transfer of the ownership of the land.

2 SEC. 3. Any hedge planter or grower who desires to establish and perpet-
3 uate his lien, shall file with the recorder of deeds in the county where the
4 hedge is situated, a memorandum in writing, having his own signature, con-
5 taining the following particulars, to wit:

- 6 1 The name of the hedge planter or grower.
- 7 2 The name of the other party to the contract.
- 8 3 The numbers of the land which the hedge is designed to benefit.
- 9 4 The date of the contract or time of planting the hedge.
- 10 5 The number of rods planted.
- 11 6 The price to be paid and the time of payment for the planting or grow-
ing of the same.

12 Such filing shall operate as constructive notice to all persons of the exist-
13 ence of the hedging contract and lien.

2 SEC. 4. The recorder of deeds shall keep a book for the purpose of re-
3 cording such memorandums, for which he shall be entitled to the ordinary
4 fees.

2 SEC. 5. Suit may be brought upon hedging contracts, as in ordinary
3 cases, and execution issued against the personal property of the defendant,
4 and the land subject to the lien resorted to afterward in case the demand is
not satisfied.

2 SEC. 6. The certificate of the recorder indorsed on the memorandum
3 referred to in section three, shall be evidence of the filing and recording
4 of the same, but not evidence of the facts which it contains, which must be
established by the production of the contract, or other competent proof.

TITLE II. OF TRADE AND COMMERCE.

CHAPTER 1. *Of Weights and Measures, and Inspection.*

2 SEC. 1. The standard weights and measures now in charge of the secre-
 3 tary of state, being the same that were furnished to this state by the govern-
 4 ment of the United States, shall be the standards of weight and measure
 throughout the state.

2 SEC. 2. The unit or standard measure of length and surface, from which
 3 all other measures of extension, whether they be lineal, superficial or solid,
 4 shall be derived and ascertained, shall be the standard yard, now in posses-
 5 sion of the secretary of state, and furnished by the government of the
 United States.

2 SEC. 3. The yard shall be divided into three equal parts called feet, and
 3 each foot into twelve equal parts called inches. For the measures of cloths and
 4 other commodities commonly sold by the yard, it may be divided into halves,
 quarters, eighths and sixteenths.

2 SEC. 4. The rod, pole or perch shall contain five and a half such yards,
 3 and the mile, one thousand seven hundred and sixty such yards; the chain
 4 for measuring land shall be twenty two yards long, and shall be divided into
 one hundred equal parts called links.

2 SEC. 5. The acre for land measure shall be measured horizontally, and con-
 3 tain ten square chains, and shall be equivalent in area to a rectangle sixteen
 4 rods in length and ten in breadth, six hundred and forty such acres being
 contained in a square mile.

2 SEC. 6. The units or standards of weight from which all other weights
 3 shall be derived and ascertained, shall be the standard avoirdupois and
 troy weights as furnished this state by the United States.

2 SEC. 7. The avoirdupois pound which bears to the troy pound the ratio
 3 of seven thousand to five thousand seven hundred and sixty, shall be divided
 4 into sixteen equal parts called ounces; the hundred weight shall consist of
 5 one hundred avoirdupois pounds and twenty hundred weight shall constitute
 a ton. The troy ounce shall be equal to the twelfth part of a troy pound.

2 SEC. 8. The unit or standard measure of capacity for liquids from
 3 which all other measures of liquids shall be derived and ascertained, shall
 4 be the standard gallon, and its parts, as furnished this state by the govern-
 ment of the United States.

2 SEC. 9. The barrel shall be equal to thirty-one and a half gallons, and
 two barrels shall constitute a hogshead.

2 SEC. 10. The unit or standard measure of capacity for substances not
3 being liquids from which all other measures of such substances shall be deriv-
4 ed and ascertained, shall be the standard half-bushel furnished this state by
the United States.

2 SEC. 11. The peck, half-peck, quarter-peck, quart and pint measures for
3 measuring commodities which are not liquids, shall be derived from the half-
bushel by successively dividing that measure by two.

2 SEC. 12. All contracts hereafter made within this state for work to be
3 done, or for anything to be sold or delivered by weight or measure, shall be
4 taken and construed according to the standards of weight and measure here-
by adopted as the standard of this state.

2 SEC. 14. A bushel of the respective articles hereafter mentioned shall
3 mean the amount of weight in this section specified; that is to say:

- 3 Of wheat, sixty pounds;
- 4 Of shelled corn, fifty-six pounds;
- 5 Of corn in the cob, seventy pounds;
- 6 Of rye, fifty-six pounds;
- 7 Of oats, thirty-three pounds;
- 8 Of barley, forty-eight pounds;
- 9 Of potatoes, sixty pounds;
- 10 Of beans, sixty pounds;
- 11 Of bran, twenty pounds;
- 12 Of clover seed, sixty pounds;
- 13 Of timothy seed, forty-five pounds;
- 14 Of flax-seed, fifty-six pounds;
- 15 Of hemp seed, forty-four pounds;
- 16 Of buckwheat, fifty-two pounds;
- 17 Of blue grass seed, fourteen pounds;
- 18 Of castor beans, forty-six pounds;
- 19 Of dried peaches, thirty-three pounds;
- 20 Of dried apples, twenty-four pounds;
- 21 Of onions, fifty-seven pounds;
- 22 Of salt, fifty pounds;
- 23 Of stone coal, eighty pounds;
- 24 Of sweet potatoes, forty-six pounds;
- 25 Of lime, eighty pounds;
- 26 Of sand, one hundred and thirty pounds;
- 27 Of Hungarian grass seed, forty-five pounds;
- 28 Of millet seed, forty-five pounds;
- 29 Of Osage orange seed, thirty-two pounds;
- 30 Of sorghum saccharatum seed, thirty pounds;
- 31 Of broom corn seed, thirty pounds.

2 SEC. 15. The "perch" of mason work or stone is hereby declared to
3 consist of twenty-five feet cubic measure.

2 SEC. 16. The standard size for all boxes used in picking hops shall be
3 thirty-six inches long, eighteen inches wide, and twenty-three and one-
4 fourth inches deep, inside measure.

2 SEC. 17. A superintendent of weights and measures for this state, who
3 shall be a scientific man, of sufficient learning and mechanical tact to perform
4 the duties of his office, shall be appointed by the governor, from the board
of professors of the Iowa state university, and shall hold his office

5 during the pleasure of the governor, and shall give a bond in the penal
6 sum of five thousand dollars for the faithful discharge of his duties.

2 SEC. 18. It shall be the duty of the superintendent to take charge of the
3 standards adopted hereby, to see that they are deposited in the building
4 built for this purpose now belonging to the state, from which they shall in
5 no case be removed, and to take all other necessary precautions for their
6 safe keeping. It shall also be his duty to provide the several counties
7 with such standards, balances, and other means of adjustment as may be
8 ordered by them, and as often as once in ten years to compare the same
9 with those in his possession. He shall, moreover, have a general supervi-
9 sion of the weights and measures of the state.

2 SEC. 19. The superintendent shall receive for his services a salary of
2 fifty dollars a year.

2 SEC. 20. He shall procure for the state, a complete set of copies of the
2 original standard of weights and measures adopted hereby, which shall be
3 used for adjusting the county standards, and in no case shall the original
4 standards be used for any other purpose than the adjustment of this set of
5 copies: *Provided*, the cost of the same shall not exceed three hundred and
6 fifty dollars. He shall also procure such apparatus and fixtures as are neces-
7 sary in the comparison and adjustment of county and town standards.

2 SEC. 21. The board of county supervisors of any county may, at any
2 regular meeting, provide for obtaining from the state superintendent of weights
3 and measures, such standards of weight and measure as they may deem nec-
4 essary for their county, and in case they order such standards, they shall ap-
5 point a county sealer of weights and measures, who shall hold his office
6 during the pleasure of the board.

2 SEC. 22. It shall be the duty of the county sealer to take charge of the
2 county standards and standard balances, and provide for their safe keeping,
3 to provide cities and incorporated towns with such standard weights and
4 and measures, and standard balances as may be wanting, and to compare
5 the cities and incorporated towns standard with those in his possession as
6 often as once every five years.

2 SEC. 23. A sealer of weights and measures may be appointed in every
2 city and incorporated town by the council thereof, and shall hold his office
3 during their pleasure, and said council may obtain from the sealers of
4 weights and measures of their respective counties such standards of weights
5 and measures as they may deem necessary for their respective cities or in-
6 corporated towns; and in case the board of supervisors of any county in
7 which any city or town may be situated, shall not have obtained such stand-
8 ards, then said council may obtain from the state superintendent of weights
9 and measures.

2 SEC. 24. It shall be the duty of each sealer in cities and incorporated
2 towns to take charge and provide for the safe keeping of the town or city
3 standards, and to see that the weights, measures, and all apparatus used for
4 determining the quantity of commodities used throughout the town or city
5 which shall be brought to him for that purpose, agree with those standards
6 in his possession.

2 SEC. 25. All expenses directly incurred in furnishing the several coun-
2 ties, cities, and incorporated towns with standards or in comparing those
3 that may be in their possession, shall be borne by the respective counties,
4 cities, and incorporated towns for which such expenses shall have been in-
5 curred.

2 SEC. 26. The state superintendent of weights and measures shall cause
3 to be impressed upon all standards of weights and measures furnished by
4 him the word "Iowa," and such other device as he shall direct for the par-
5 ticular county, city, or incorporated town, and the county sealers shall see
6 that in addition to the above device there is impressed on the town and city
7 standards such other device as the board of supervisors shall direct for the
8 several cities and incorporated towns.

2 SEC. 27. Each sealer shall be entitled to receive for his services at and
3 after the following rates: For sealing and marking every beam, ten cents.
4 For sealing and marking measures of extension at the rate of ten cents per
5 yard, not to exceed fifty cents for any one measure. For sealing and mark-
6 ing every weight, five cents. For sealing and marking liquid and dry meas-
7 ures, five cents for each measure. He shall also be entitled to a reasonable
8 compensation for making weights and measures conform to the standards in
9 his possession.

2 SEC. 28. Whenever the state superintendent of weights and measures
3 shall resign, be removed from office, or remove from Iowa City, or whenev-
4 er any city, county, or incorporated town sealer shall resign, be removed
5 from office, or remove from the city, county, or town in which he shall have
6 been appointed or elected, it shall be the duty of the person so resigning, re-
7 moved, or removing, to deliver to his successor in office all the standard
8 beams, weights and measures in his possession.

2 SEC. 29. In case of the death of any such sealer of weights and meas-
3 ures, his representatives shall, in like manner, deliver to his successor in of-
4 fice such beams, weights and measures.

2 SEC. 30. In case of refusal or neglect to deliver such standards entire
3 and complete, the successor in office may maintain an action against the per-
4 son or persons so refusing or neglecting, and recover for the use of such
5 county, city, or incorporated town, double the value of such standards as
6 shall not have been delivered. And in every such action, in which judg-
7 ment shall be rendered for the plaintiff, he shall recover double costs.

2 SEC. 31. If any person or persons shall hereafter use any weights, meas-
3 ures, beams, or other apparatus for determining quantity of commodities,
4 which shall not be conformable to the standards of this state, in any coun-
5 ties whose standards have been obtained by the board of supervisors, or in
6 any city or incorporated town after such standards have been obtained there-
7 in, whereby any person shall be injured or defrauded, he shall be subjected
8 to a fine not exceeding five dollars for each offense, to be used for and col-
9 lected by the city, county or town sealer. He shall also be subject to an
10 action at law, in which the defrauded person shall recover treble damages
11 and costs, and it shall be the duty of every person keeping any store, grocery
12 or other place for the sale or purchase of such commodities as are usually sold
13 by weight or measure, once in each year to procure the weights and meas-
14 ures used by him, to be compared with the standard herein provided; and
15 he shall be subject to a fine of five dollars for every neglect to comply with
this provision, to be recovered by any one who shall prosecute therefor.

WEIGHMASTERS OF PUBLIC SCALES.

2 SEC. 32. All persons keeping public scales before entering upon their
3 duties as weighmasters, shall be sworn before some person having authority

3 to administer an oath, to keep their scales correctly balanced; to make true
4 weights; and to render a correct account to the person or persons having
5 weighing done.

2 SEC. 33. All weighmasters are required to make true weights, and to
3 keep a correct register of all weighing done by them, giving the amount of
4 each weight, date of weighing, and the name of the person or persons for
5 whom such weighing was done, and to give upon demand, to any person or
6 persons having weighing done, a certificate, showing the weight, date of
weighing, and for whom weighed.

2 SEC. 34. Any keeper of public scales violating any of the provisions of
3 the foregoing section upon complaint made before any justice of the peace
4 having jurisdiction of the offense, may upon conviction thereof, be fined in
5 any sum not more than twenty dollars and not less than five dollars for each
6 offense, and shall be liable to the person or persons injured, for the full
amount of damages by them sustained.

Of the Inspection of Shingles and Lumber.

2 SEC. 35. It shall be the duty of the board of supervisors of each county,
3 as often as it may be necessary, to appoint one inspector of lumber and
4 shingles, who shall have the power to appoint one or more deputies to act
5 under him. For the conduct of the deputies, the principal shall be liable.

2 SEC. 36. Before any inspector, or deputy inspector, shall enter upon the
3 duties of his office, he shall take an oath or affirmation that he will faithfully
4 and impartially execute the duties required of him by law, and each inspect-
5 or shall moreover, enter into a bond with sufficient security to be approved
6 by the county auditor in such sum as the board of supervisors may require,
7 made payable to the state of Iowa, which bond shall be deposited with the
8 treasurer of the county, conditioned for the faithful and impartial perform-
ance of his duties, as required by law.

2 SEC. 37. Any person who may think himself aggrieved, by the incapaci-
3 ty, neglect, or misconduct of such inspector, or his deputy, may institute a
4 suit on a copy of the bond certified by the treasurer: *provided*, that the
5 treasurer shall not be liable for costs. And in case the person suing shall
6 obtain judgment, he may have execution as in other cases: *provided further*,
7 that suit be commenced within one year from the cause of action.

2 SEC. 38. It shall be the duty of the inspectors or their deputies, within
3 their respective counties, to inspect all lumber, boards, and shingles on ap-
4 plication made to them, for that purpose; and when inspected, stamp on the
5 lumber, boards, and shingles, with branding irons made for that purpose,
6 the name of the state and county where inspected, and the kind and quality
7 of the articles inspected; which branding iron shall be made and lettered as
8 directed by the board of supervisors. And every inspector shall make, in a
9 book for that purpose, fair and distinct entries of articles inspected by him,
10 or his deputies, with the names of the persons for whom said articles were
inspected.

2 SEC. 39. The board of supervisors of each county shall have full power
3 and authority on complaints and sufficient cause shown, to remove from
office, any inspectors appointed, or to fill any vacancy that may occur.

SEC. 40. If any person shall counterfeit the aforesaid brands, or marks, or either of them, upon conviction thereof, he shall be deemed guilty of forgery, and shall be punished accordingly.

SEC. 41. A lawful shingle shall be sixteen inches in length, four inches wide, half an inch thick at the butt end; and all lumber shall be divided into four qualities, and shall be designated clear, first common and second common and refusal. Shingles shall be clear of sop, and designated as first and second quality. The shingles to be branded on each bundle with the quality and the name of the inspector.

SEC. 42. The fees for inspecting and measuring shall be fifteen cents per thousand feet, board measure and fifteen cents per thousand for shingles.

CHAPTER 2. *Money on Account and Interest.*

SEC. 7. The money of account of this state is the dollar, cent, and mill, and all public accounts and the proceedings of all courts in relation to money, shall be kept and expressed in money of the above denomination.

SEC. 2. The above provisions shall not in any manner affect any demand expressed in money of another denomination, but such demand in any suit or proceeding affecting the same shall be reduced to the above denomination.

SEC. 3. The rate of interest shall be six cents on the hundred, by the year, on money due by express contract, unless a different rate be expressed in writing; on all moneys after the same becomes due, where there is no contract fixing the rate of interest; on judgments and decrees for the payment of money, where no other rate is expressed; on money lent without contract fixing the rate of interest, and on money received to the use of another, and retained beyond a reasonable time, without the owner's consent, express or implied; on money due upon settlement of matured accounts from the day the balance is ascertained; on money due upon open accounts, after six months from the date of the last item; and on all money due, or to become due, where there is a contract to pay interest, and no rate stipulated.

SEC. 4. Parties may agree, in writing, for the payment of interest not exceeding ten cents on the hundred, by the year.

SEC. 5. Interest shall be allowed on all moneys due on judgments and decrees, of any competent court or tribunal, at the rate of six per cent. per annum, unless a different rate is fixed by the contract, on which the judgment or decree is rendered, in which case the judgment or decree shall draw interest at the rate expressed in the contract; but no judgment or decree shall draw more than ten per cent per annum, which rate must be expressed in the judgment or decree.

SEC. 6. No person shall, directly or indirectly, receive in money, goods, or things in action, or in any other manner, any greater sum of value, for the loan of money, or upon contract founded upon any bargain, sale, or loan of wares, merchandise, goods, chattels, lands, and tenements, than is in this act prescribed.

SEC. 7. If it shall be ascertained, in any suit brought on any contract, that a rate of interest has been contracted for greater than is authorized by this chapter, either directly or indirectly, in money, property, or other valuable thing, the same shall work a forfeiture of ten per cent. per annum upon

5 the amount of such contract to the school fund of the county in which the
 6 suit is brought, and the plaintiff shall have judgment for the principal sum,
 7 without either interests or costs. The court in which said suit is prosecuted,
 8 shall render judgment for the amount of interest forfeited as aforesaid,
 9 against the defendant, in favor of the state of Iowa, for the use of the school
 10 fund of said county, whether the said suit is contested or not; and in all
 11 cases where the unlawful interest is not apparent on the contract or writing,
 12 the person contracting to pay the unlawful interest shall be a competent wit-
 13 ness to prove that the contract is usurious; and in no case where unlawful
 14 interest is contracted for, shall the plaintiff have judgment for more than
 15 the principal sum, whether the unlawful interest be incorporated with the
 16 principal or not.

SEC. 8. Nothing in this act shall be so construed so as to prevent the
 2 proper assignee in good faith and without notice, of any usurious contract
 3 recovering against the usurer the full amount of the consideration paid by
 4 him for such contract, less the amount of the principal money, but the same
 5 may be recovered of the usurer in the proper action before any court having
 6 competent jurisdiction.

CHAPTER 3. *Of Notes and Bills.*

SEC. 1. Notes in writing made and signed by any person promising to pay
 2 to another person or his order or bearer, or to bearer only, any sum of money,
 3 are negotiable by indorsement or delivery in the same manner as inland
 4 bills of exchange according to the custom of merchants.

SEC. 2. The person to whom such sum of money is made payable may
 2 maintain an action against the maker, and any person to whom such note is
 3 so indorsed or delivered may maintain his action in his own name against
 4 the maker or the indorser or both of them.

SEC. 3. Bonds, due bills, and all instruments in writing by which the
 2 maker promises to pay to another without words of negotiability a sum of
 3 money, or by which he promises to pay a sum of money in property or
 4 labor, or to pay or deliver any property or labor, or acknowledges any
 5 money or labor or property to be due, are assignable by indorsement
 6 thereon, or by other writing, and the assignee shall have a right of action
 7 in his own name, subject to any defense or set-off, legal or equitable, which
 8 the maker or debtor had against any assignor thereof before notice of his
 9 assignment.

SEC. 4. Instruments by which the maker promises to pay a sum of
 2 money in property or labor, or to pay or deliver property or labor, or ac-
 3 knowledges property or labor or money to be due to another, are negotia-
 4 ble instruments with all the incidents of negotiability, whenever it is
 5 manifest from their terms that such was the intent of the maker, but the
 6 use of the technical words "order" or "bearer" alone will not manifest
 7 such intent.

SEC. 5. When by the terms of an instrument its assignment is pro-
 2 hibited, an assignment of it shall nevertheless be valid, but the maker may
 3 avail himself of any defense or set-off, legal or equitable, against the as-
 4 signee, which he may have against any assignor thereof before suit is
 5 commenced thereon.

SEC. 6. An open account of sums of money due on contract may be assigned, and the assignee will have the right of action in his own name, but subject to the same defenses and set-offs as the instruments mentioned in the preceding section.

SEC. 7. The blank indorsement of an instrument for the payment of money, property, or labor, by a person not a payee, indorsee, or assignee thereof, shall be deemed a guaranty of the performance of the contract.

SEC. 8. To charge such guarantor notice of non-payment by the principal must be given within a reasonable time, but the guarantor is chargeable without notice if the holder show affirmatively that the guarantor has received no detriment from the want of notice.

SEC. 9. The assignor of any of the above instruments not negotiable shall be liable to the action of his assignee without notice.

SEC. 10. Grace shall be allowed upon bills or notes payable within this state, according to the principles of the law merchant; and notice of non-acceptance or non-payment, or both, of said instruments shall be required according to the rules and principles of the commercial law.

SEC. 11. A demand at any time during the days of grace will be sufficient for the purpose of charging the indorser.

SEC. 12. The following days, viz.: The first day of the week, called Sunday; the first day of January; the fourth day of July; the twenty-fifth day of December; and any day appointed or recommended by the governor of this state, or by the president of the United States, as a day of fasting or of thanksgiving, shall be regarded as holiday for all purposes relating to the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes; and any of such obligations (or such as are denominated bank or mercantile paper) falling due on any of the days above named, shall be considered and treated as falling due on the succeeding day.

SEC. 13. In case of a demand of payment of any promissory note, bill of exchange or other commercial paper, by a notary public, and a refusal by the maker, drawer or acceptor, as the case may be, the notary making said demand may inform the indorser or any party to be charged, if in the same town or township, by notice deposited in the nearest postoffice to the party to be charged, on the day of demand, and no other notice shall be necessary to charge said party.

SEC. 14. When the holder of an instrument for the payment of money is absent from the state when it becomes due, and when the indorsee or assignee, of such an instrument has not notified the maker of such indorsement or assignment, the maker may tender payment at the last residence or place of business of the payee before the instrument became due, and if there be no person authorized to receive payment and give the proper credit therefor the maker may deposit the amount due with the clerk of the district court in the county where the payee resided at the time it became due (paying the clerk one per cent. on the amount deposited), and the maker shall be liable for no interest from that time.

SEC. 15. No contract for labor or for the payment or delivery of property (other than money) in which the time of performance is not fixed can be converted into a money demand until a demand of performance has been made and the maker refuses or a reasonable time is allowed for performance.

SEC. 16. When a contract for labor or for the payment or delivery of

2 property (other than money) does not fix a place of dayment the maker may
 3 tender the labor or property at the place where the payee resided at
 4 the time of making the contract, or at the residence of the payee at the
 5 performance of the contract, or where the assignee of the contract resides
 6 when it becomes due.

2 SEC. 17. But if the property in such case be too ponderous, to be conve-
 3 niently transported, or if the payee had no known place of residence within
 4 the state at the making of the contract, or if the assignee of a written con-
 5 tract have no known place of residence within the state at the time of per-
 6 formance, the maker may tender the property at the place where he resided
 at the time of making the contract.

2 SEC. 18. When the contract is contained in a written instrument which
 3 is assigned before due and the maker has notice thereof he shall make the
 4 tender at the residence of the holder if he resides in the state and no farther
 from the maker than did the payee at the making thereof.

2 SEC. 19. A tender of the property as above provided discharges the
 3 maker from the contract, and the property becomes vested in the payee or
 4 his assignee and he may maintain an action in relation thereto as in other
 cases.

2 SEC. 20. But if the property tendered be perishable, or required feeding
 3 or other care, and no person found to receive it when tendered it is the duty
 4 of the person making the tender to preserve, feed, or otherwise take care of
 5 the same, and he has a lien on the property for his reasonable expenses and
 trouble in so doing.

2 SEC. 21. The rate of damage to be allowed and paid upon the non-accept-
 3 ance or non-payment of bills of exchange drawn or indorsed in this state,
 4 when damage is recoverable, shall be as follows: If the bill be drawn upon
 5 a person at a place out of the United States or in California, Oregon, Utah,
 6 or New Mexico, ten per cent. upon the principal specified in the bill with
 7 interest on the same from the time of the protest; if drawn upon a
 8 person at a place in the state of Iowa, Missouri, Illinois, Wisconsin, or Min-
 9 nesota, three per cent. with interest; if drawn upon a person at a place in
 10 the state of Arkansas, Louisiana, Mississippi, Tennessee, Kentucky, Indiana,
 11 Ohio, Virginia, District of Columbia, Pennsylvania, Maryland, New Jersey,
 12 New York, Massachusetts, Rhode Island, or Connecticut, five per cent.
 13 with interest; if drawn upon a person at a place in any other state in the
 United States, eight per cent. with interest.

CHAPTER 4. *Of Tender.*

2 SECTION 1. When a tender of money or property is not accepted by the
 3 party to whom it is made, the party making it may if he sees fit retain in
 4 his own possession the money or property tendered; but if afterwards the
 5 party to whom the tender was made see proper to accept it and give notice
 6 thereof to the other party, and the subject of tender be not delivered to him
 within a reasonable time, the tender shall be of no effect.

2 SEC. 2. An offer in writing to pay a particular sum of money or to de-
 3 liver a written instrument or specific personal property, if not accepted, is

3 equivalent to the actual tender of the money, instrument, or property, sub-
 4 ject however to the condition contained in the preceding section; but if the
 5 party to whom the tender is made desire an inspection of the instrument or
 6 property tendered (other than money) before making his determination, it
 7 shall be given him on request.

SEC. 3. The person making a tender may demand a receipt in writing,
 2 duly signed, for the money or article tendered, as a condition precedent to
 3 the delivery thereof.

SEC. 4. The person to whom a tender is made must at the time make any
 2 objection which he may have to the money, instrument, or property tender-
 3 ed, or he will be deemed to have waived it. And if the objection be to the
 4 amount of money, the terms of the instrument, or the amount or kind of
 5 property, he must specify the amount, terms, or kind which he requires, or
 6 be precluded from objecting afterwards. But an offer of bank notes is not
 7 a tender though not objected to.

CHAPTER 5. *Of Sureties.*

SECTION 1. When any person bound as surety for another, for the pay-
 2 ment of money or the performance of any other contract in writing, appre-
 3 hends that his principal is about to become insolvent or to remove perma-
 4 nently from the state without discharging the contract, if a right of action
 5 has accrued on the contract he may by writing require the creditor to sue
 6 upon the same, or to permit the surety to commence suit in such creditor's
 7 name and at the surety's cost.

SEC. 2 If the creditor refuse to bring suit, or neglect so to do for ten
 2 days after the request, and does not permit the surety so to do, and furnish
 3 him with a true copy of the contract or other writing therefor, and enable
 4 him to have the use of the original when requisite in such suit, the surety
 5 shall be discharged.

SEC. 3. When the surety commences such suit, he shall file his under-
 2 taking to pay such costs as may be adjudged against the creditor, and the
 3 suit shall be brought against all the obligors, but those joining in the request
 4 to the creditor shall make no defense to the action but may be heard on the
 5 assessment of the damages.

SEC. 4. The provisions of this chapter extend to the executor of a
 2 deceased surety and to the executor, indorsee, and assignee of the creditor;
 3 but they do not extend to the official bonds of public officers, executors, or
 4 guardians.

CHAPTER 6. *Of Private Seals.*

SECTION 1. The use of private seals in written contracts (except seals of corporations) is abolished, and the addition of a private seal to an instrument of writing made since the first day of July, A. D., 1851, shall not affect its character in any respect.

SEC. 2. All contracts in writing made since the first day of July, A. D., 1851, and signed by the party to be bound or his authorized agents or attorney, shall import a consideration in the same manner as sealed instruments formerly did.

SEC. 3. The want or failure, in whole or in part, of the consideration of a written contract may be shown as a defense, total or partial as the case may be, in an action on such contract brought by one who is not holder for value, and in good faith.

CHAPTER 7. *Of Assignments for Creditors.*

SEC. 1. No general assignment of property by an insolvent or in contemplation of insolvency for the benefit of creditors of the assignor shall be valid unless it be made for the benefit of all his creditors in proportion to the amount of their respective claims.

SEC. 2. In the case of an unconditional assignment of property for the benefit of all the creditors of the assignor the assent of the creditors shall be presented.

SEC. 3. In any case of assignment for the benefit of creditors the debtor shall annex to such assignment an inventory, under oath or affirmation, of his estate, real and personal, according to the best of his knowledge, and also a list of his creditors and the amount of their respective demands; but such inventory shall not be conclusive as to the amount of the debtor's estate; and such assignment shall vest in the assignee the title to any other property belonging to the debtor at the time of making the assignment, and comprehended within the general terms of the same. Every assignment shall be duly acknowledged and recorded in the county where the person making the same resides, or where the business in respect of which the same is made, has been carried on.

SEC. 4. The assignee named in such assignment shall forthwith give notice thereof by publication in some newspaper published in the county, if any, and if none, then in the nearest county thereto, which publication shall be continued at least six weeks; and shall also forthwith send a notice thereof by mail to each creditor of whom he shall be informed, directed to their usual place of residence, and notifying the creditors to present their claims, under oath or affirmation, to him, within three months thereafter.

SEC. 5. The assignee shall also forthwith file with the clerk of the district court of the county where such assignment shall be recorded, a true and full inventory and valuation of said estate, under oath or affirmation, so far as the same has come to his knowledge, and shall then and there enter

5 into bonds to said clerk, for the use of the creditors, in double the amount
6 of the inventory and valuation, with one or more sufficient sureties, to be
7 approved by said clerk, for the faithful performance of said trust, and the
8 said clerk shall give a receipt therefor, and the assignee may thereupon pro-
9 ceed to perform any duty necessary to carry into effect the intention of said
10 assignment as respects the collection of debts, and the sale of real or per-
11 sonal estate.

SEC. 6. At the expiration of three months from the time of first publish-
2 ing notice as before provided, the assignee shall report and file with the
3 clerk of the district court as aforesaid, a true and full list, under oath or affir-
4 mation, of all such creditors of the assignor as shall have claimed to be such,
5 with a true statement of their respective claims, and also an affidavit of pub-
6 lication of notice, and a list of the creditors, with their places of residence,
7 and the date of mailing, to whom notice has been sent by mail duly
8 verified.

SEC. 7. Any person interested as creditor or otherwise by himself or
2 attorney, may appear within thirty days after filing such report, and file with
3 said clerk any exceptions to the claim or demand of any creditor exhibited
4 as aforesaid, and the clerk of said court shall forthwith cause notice thereof
5 to be given to the creditor, which shall be served as in case of an original
6 notice in the district court, and shall be returnable at the next term of the
7 district court in said county; and the said district court shall at the next
8 term, proceed to hear the proofs and allegations of the parties in the premi-
9 ses, and shall render such judgment thereon as shall be just, and may allow
10 a trial by jury thereon.

SEC. 8. At the first term of the said district court, after the expiration
2 of the three months aforesaid, if no exception be made to the claim of any
3 creditor, or if exceptions have been made, and the same have been adjudi-
4 cated and settled by the court, the said court shall order the assignee to make
5 from time to time fair and equal dividends, among the creditors of the assets
6 in his hands, in proportion to their claims, and as soon as may be, and within
7 one year thereafter, to render a final account of said trust to said district
8 court, and said court may allow such commissions and allowances to said
9 assignee in the final settlement as may be considered by the court just and
10 right.

SEC. 9. The assignee, in the execution of assignments shall at all times
2 be subject to the order and supervision of the district court when in session,
3 or the judge of said court when not in session, and the said court or judge
4 may, by citation and attachment, compel the assignee from time to time file
5 reports of his proceedings, and of the situation and condition of the trust,
6 and to proceed in the faithful execution of the duties required by this chap-
7 ter, and to obey the order of such court or judge, in relation to the complete
8 and final settlement, distribution and paying over of the proceeds derived
9 from said trust, or any part thereof, until a final settlement and distribution
10 is made.

SEC. 10. No assignment shall be declared fraudulent or void for want of
2 any list or inventory as provided in the third section of this chapter. The
3 district court of the county may, upon application of the assignee or any
4 creditor, compel the appearance in person of the debtor before such court,
5 by citation returnable forthwith, or at the next term thereof, and by attach-
6 ment to answer under oath such matters as may then and there be inquired of
7 of him, and such debtor may then and there be fully examined, under oath

8 as to the amount and situation of his estate, and the names of the creditors
9 and amounts due to each, with their places of residence; and may compel
10 the delivery to the assignee of any property or estate embraced in the assign-
11 ment.

SEC. 11. The assignee shall, from time to time, file with the clerk of the
2 district court, an additional inventory and valuation of any additional prop-
3 erty or estate which may come into his hands under said assignment, after
4 the filing of the first inventory, as above provided, in the same manner
5 as in the case of the first inventory, and the clerk may thereupon require
6 additional security by bond, as upon a first inventory.

SEC. 12. Any creditor may claim debts to become due as well as debts
2 due, but on debts not due a reasonable abatement shall be made when the
3 same are not drawing interest, and all creditors who shall not exhibit their
4 claim within the term of three months from the publication of notice as
5 aforesaid, shall not participate in the dividends until after the payment in
6 full of all claims presented within said term and allowed by the district
7 court.

SEC. 13. Any assignee as aforesaid shall have as full power and authority
2 to dispose of all estate, real and personal assigned, as the debtor had at the
3 time of the assignment, and to sue for and recover in the name of such as-
4 signee everything belonging or appertaining to said estate, real or personal,
5 and generally to act and do whatsoever the said debtor might have done in
6 the premises, but no sale of any real estate belonging to said trust shall be
7 made without notice, published as in case of sales of real estate on execu-
8 tion, unless the district court shall order and direct otherwise.

SEC. 14. In case any assignee shall die before the closing of his trust, or
2 in case any assignee shall fail or neglect for the period of twenty days after
3 the making of any assignment to file an inventory and valuation, and give
4 bonds as required by this chapter, it shall be the duty of the district or cir-
5 cuit court of the county, where such assignment may be recorded, on the ap-
6 plication of any person interested as creditor or otherwise, to appoint some
7 discreet and qualified person or persons to execute the trust embraced in
8 such assignment; and such person on giving bond with sureties as required
9 above of the assignee named in such assignment, shall possess all the pow-
10 ers conferred upon such assignee, and shall be subject to all the duties
11 hereby imposed as fully as though named in the assignment; and in case
12 any security shall be discovered to be insufficient, or on complaint before the
13 district court it should be made appear that any assignee was guilty of wast-
14 ing or misapplying the trust estate, said district court may direct and require
15 additional security, and may remove such assignee and may appoint others in
16 stead to fulfil the duties of said trust; and such person so appointed, on
17 giving bond, shall have full power to execute such duties, and to demand
18 and sue for all estate in the hands of the person removed, and to demand
19 and recover the amount and value of all moneys and property or estate so
20 wasted and misapplied, which he may neglect or refuse to make satisfaction
21 for, from such person and his sureties.

CHAPTER 8. *Of Mechanics' Liens.*

2 SEC. 1. No person is entitled to a mechanics' lien who takes collateral
3 security on the same contract.

2 SEC. 2. Every mechanic, builder, artisan, workman, laborer, or other
3 person, who shall do any work or labor upon, or furnish any materials, ma-
4 chinery, or fixtures for any building, erection, or other improvement upon
5 land, including contractors, sub-contractors, material furnishers, mechanics
6 and laborers engaged in the construction of any railroad or other work of
7 internal improvement, or for repairing the same under or by virtue of any
8 contract with the owner or proprietor thereof, or his agent, trustee, contrac-
9 tor, or sub-contractor, upon complying with the provisions of this act, shall
10 have for his work or labor done, or materials, machinery, or fixtures furn-
11 ished, a lien upon such building, erection, or improvement, and upon the
12 land belonging to such owner or proprietor on which the same is situated,
13 to secure the payment of such work or labor done, or materials, machinery,
or fixtures furnished.

2 SEC. 3. Every sub-contractor wishing to avail himself of the benefits of
3 this chapter shall give notice to the owner or proprietor, or his agent or
4 trustee, before or at the time he furnishes any of the things aforesaid, or per-
5 forms any of the labor, of his intention to furnish or perform the same, and
6 the probable value thereof; and if afterward the things are furnished or
7 labor done, the sub-contractor shall settle with the contractor therefor, and
8 the settlement in writing, signed by the contractor and certified by him to
9 be just, shall be presented to the owner or proprietor, or his agent or trust-
10 ee, and left with him, and within thirty days from the time the things shall
11 have been furnished, or the labor performed, the sub-contractor shall file
12 with the clerk of the district court of the county in which the building, erec-
13 tion, or other improvement is situated, a copy of the settlement between him
14 and the contractor, which shall be a lien on the building, erection, or other
15 improvement, for which the things were furnished, or for which the labor
16 was performed, and shall at the time file a correct description of the prop-
17 erty to be charged with the lien, the correctness of all which shall be verified
by affidavit.

2 SEC. 4. Any such sub-contractor may at any time within six months
3 after his work or labor is done, or his materials furnished, make a statement
4 thereof in writing, supported by affidavit that the same is just and true, and
5 that the amount claimed is still justly due and owing to him, and may file
6 the same with the clerk of the district court, in manner as aforesaid, and
7 thereafter give notice thereof with a copy of such statement to the owner or
8 proprietor, his agent or trustee, and to the contractor; and from and after
9 the service of such notice his lien therefor shall have the same force and ef-
10 fect and be prosecuted in like manner as a lien by the contractor, but shall
11 be enforced against the property only to the extent of the balance due to the
12 contractor at the time of the service of such notice upon the owner or prop-
13 erty, his agent or trustee.

2 SEC. 5. In case the contractor shall for any reason fail or refuse to make

2 and sign a settlement in writing with the sub-contractor when the same is
3 demanded, then the subcontractor may make a just and true statement of
4 work and labor done, or things furnished by him, giving all credits, which
5 he shall present to the owner or proprietor, or his agent, or trustee, and shall
6 also within said thirty days file a copy of the same, verified by affidavit,
7 with the clerk of the district court of the county in which the building, erec-
8 tion, or other improvement is situate, together with a correct description of
9 the property to be charged with the lien.

2 SEC. 6. The certificate of settlement made as aforesaid, or the statement
3 of the sub-contractor, shall be a justification to the employer in withholding
4 from the contractor, the amount appearing thereby to be due to the sub-con-
5 tractor, until he is satisfied that the same has been paid, and the employer
6 shall become the surety of the contractor to the sub-contractor for the amount
7 due for such work, and labor or things, not however exceeding the value
8 thereof as notified under sections three, four, and five of this chapter.

2 SEC. 7. The notices mentioned in the preceding sections, may be served
3 by the sheriff or any constable of the county in which such building, erection
4 or other impr vement is so situated, and the return thereon of such sheriff
5 or constable shall be received in evidence without further proof.

2 SEC. 8. It shall be the duty of every person, except as has been provided
3 for sub-contractors, who wishes to avail himself of the provisions of this
4 chapter, to file with the clerk of the district court of the county in which the
5 building, erection or other improvement to be charged with the lien is situated,
6 and within ninety days after all the things aforesaid shall have been furnished
7 or the work or labor done or performed, a just and true account of the de-
8 mand due or owing to him after allowing all credits, and containing a correct
9 description of the preperty to be charged with said lien and verified by affi-
10 davit. But the failure to file the claim, account, settlement, or demand, in
11 the time named in this section and in section three, shall not operate to de-
12 feat the claim or demand, nor the lien of the person supplying the labor or
13 material, as against the owner, nor the contractor, nor as against any one
14 except purchasers or incumbrancers, without notice, whose rights accrued af-
15 ter the ninety days and before the account, or settlement or claim, or lien
is filed.

2 SEC. 9. It shall be the duty of the clerk of the district court to endorse
3 upon every account the date of its filing, and make an abstract thereof in a
4 book by him to be kept for that purpose and properly indexed, containing
5 the date of its filing, the name of the person filing the lien, the amount of
6 said lien, the name of the person against whose property the lien is filed,
7 and a description of the property to be charged with the same, for all of
8 which he shall receive the sum of one dollar from the person filing the lien,
9 which shall be taxed and collected as other costs, in case there be suit
thereon.

2 SEC. 10. The liens for work or labor done, or things furnished shall have
3 priority in the order of the filing of the accounts thereof as aforesaid, and
4 shall be preferred to all other liens and incumbrances which may be attached
5 to or upon such building, erection or other improvement, and to the land on
6 which the same is situated, or either of them, made subsequent to the com-
7 mencement of said building, erection or other improvement.

2 SEC. 11. The entire land upon which any such building, erection or oth-
3 er improvement is situated, including as well that part of said land which is
not covered with such building, erection, or other improvement, as that part

4 thereof covered with the same shall be subject to all liens created hereby to
 5 the extent and only to the extent of all the right, title and interest, owned
 6 therein by the owner or proprietor of such building, erection or other im-
 7 provement, for whose immediate use or benefit such labor was done or
 8 things were furnished, and when the interest owned in said land, by such
 9 owner or proprietor of such building, erection or other improvement is only
 10 a lease-hold interest, the forfeiture of such lease for the non-payment of
 11 rent, or for non-compliance with any of the other stipulations therein, shall
 12 not forfeit or impair such liens so far as concerns the buildings, erections and
 13 improvements thereon, put by such owner or proprietor charged with such
 14 lien, but such building, erection or improvement may be sold to satisfy said
 15 lien, and be moved within thirty days after the sale thereof, by the pur-
 16 chaser.

SEC. 12. The lien for the things aforesaid, or work, shall attach to the
 2 buildings, erections or improvements, for which they were furnished or the
 3 work was done, in preference to any prior lien, or incumbrance, or mort-
 4 gage upon the land, upon which said building, erections or improvements
 5 have been erected or put, and any person enforcing such lien, may have such
 6 building, erection, or improvement sold under execution, and the purchaser
 7 may remove the same within a reasonable time thereafter.

SEC. 13. Any person having a lien under or by virtue of this chapter,
 2 may bring suit to enforce the same, and to obtain the benefits thereof in the
 3 district or circuit court of the county wherein the property on which the
 4 lien is attached is situated, without regard to its amount.

SEC. 14. The pleadings, and other proceedings in cases arising under this
 2 chapter shall be the same as in ordinary civil actions. The petition among
 3 other things, shall allege the facts necessary for securing a lien under this
 4 chapter, and a description of the property charged therewith.

SEC. 15. In all suits under this chapter, the parties to the contract shall
 2 and all other persons interested in the matter in controversy, and in the
 3 property charged with the lien may be made parties, but such as are not
 4 made parties shall not be bound by any such proceedings.

SEC. 16. The court shall ascertain by a trial in the usual way, the amount
 2 of indebtedness for which such lien is established, and render judgment for
 3 the same.

SEC. 17. When the debtor has not been served with notice, according to
 2 law, and has not appeared, but has been lawfully notified by publication, the
 3 judgment if for the plaintiff shall be that he recover the amount of indebt-
 4 edness found to be due, to be levied out of the property charged with the
 5 lien therefor, which said property shall be correctly described in said judg-
 6 ment.

SEC. 18. When the debtor has been served with notice according to law,
 2 or appears to the action, the judgment, if for the plaintiff, shall be against
 3 such debtor as in ordinary cases, with the addition, that if no sufficient prop-
 4 erty of the debtor can be found to satisfy such judgment and costs of suit,
 5 then the residue thereof be levied as provided in the next preceding section.

SEC. 19. All suits to enforce the several liens provided for in this chap-
 2 ter, may be commenced at any time within two years from the time of filing
 3 the statement or claim for the lien as herein provided; but upon written de-
 4 mand by the owner of the property or his agent, served on the claimant of
 5 the lien, such suit shall be commenced within thirty days from the service of
 6 such notice; and, if the claimant shall fail to bring his suit within thirty

7 days after such demand shall be served on him by the owner, his lien shall
8 be forfeited.

2 SEC. 20. Every person for whose immediate use, enjoyment, or benefit,
3 any building erection or improvement shall be made, shall be included by
4 the words "owner or proprietor" thereof, under this act, not excepting such
5 as may be minors over the age of eighteen years or married women.

2 SEC. 21. Whenever any indebtedness, which is a lien upon any such
3 real estate, erection, or building or other improvement shall be paid and
4 satisfied it shall be the duty of the creditor, if required, to go before some
5 officer authorized to take the acknowledgments of conveyances of real estate
6 and acknowledge satisfaction of said lien.

2 SEC. 22. Such satisfaction being acknowledged and certified, shall be
3 filed with the clerk of the district court, who shall thereupon enter satisfac-
4 tion of such lien upon the record or the margin thereof, in the same manner
5 as the satisfaction of a mortgage is entered and shall be allowed the same
6 fee therefor as is allowed for entering the satisfaction of a mortgage, to be
7 paid by the creditor at the time the service is performed.

2 SEC. 23. If any creditor fail, refuse or neglect to acknowledge satisfac-
3 tion as aforesaid, within ten days after payment, and request as aforesaid,
4 he shall be liable to any person injured, to the amount of such injury.

2 SEC. 24. All persons furnishing things or doing work provided for by
3 this act, shall be considered sub-contractors, except such as have therefor
4 contracts directly with the owner, proprietor, his agent or trustee.

2 SEC. 25. The lien herein given shall be transferable and assignable, but
3 when for labor alone shall be exempt from execution.

2 SEC. 26. Nothing herein contained shall be so construed as to give a
3 sub-contractor or laborer a lien for any amount greater than that originally
4 contracted for between the employer and contractor.

CHAPTER 9. *Of Limited Partnerships.*

2 SECTION 1. Limited partnerships for the transaction of any lawful busi-
3 ness within the state may be formed by two or more persons, upon the terms,
4 with the rights and powers, and subject to the conditions and liabilities
5 herein prescribed.

2 SEC. 2. Such partnerships may consist of one or more persons, who shall
3 be called general partners, and who shall be jointly and severally responsi-
4 ble as general partners now are by law; and of one or more persons who
5 shall contribute in actual cash payments, a specific sum as capital to the
6 common stock, who shall be called special partners, and who shall not be
7 liable for the debts of the partnership, beyond the funds so contributed to
8 the capital.

2 SEC. 3. The general partners only shall be authorized to transact busi-
3 ness and sign for the partnership, and to bind the same.

2 SEC. 4. The persons desirous of forming such partnership, shall make
3 and severally sign a certificate, which shall contain,

- 3 1. The name or firm under which such partnership is to be conducted.
- 4 2. The general nature of the business intended to be transacted.

- 5 3. The names of all the general and special partners interested therein,
6 distinguishing which are general and which are special partners,
7 and their respective places of residence.
8 4. The amount of capital which each special partner shall have contrib-
9 uted to the common stock.
10 5. The period at which the partnership is to commence, and the period
11 at which it will terminate.

SEC. 5. The certificate shall be acknowledge or proved as to the several
2 persons signing the same, before some one authorized to administer oaths
3 and take acknowledgments of deeds.

SEC. 6. The certificate so acknowledged, shall be filed in the office of the
2 clerk of the district court, of the county in which the principal place of
3 business of the partnership shall be situated, and shall also be recorded by
4 him at large, in a book to be kept for that purpose, open to public inspec-
5 tion. If the partnership shall have places of business situated in different
6 counties, a transcript of the certificate, and of the acknowledgment thereof
7 duly certified by the clerk of the district court in whose office it shall be
8 filed under his official seal shall be filed and recorded in like manner in the
9 office of the clerk of the district court of every such county.

SEC. 7. At the time of filing the original certificate, with the evidence of
2 the acknowledgment thereof, as before directed, an affidavit of one or more
3 of the general partners shall also be filed in the same office, stating that the
4 sums specified in the certificate, to have been contributed by each of the
5 special partners to the common stock, have been actually and in good faith
6 paid in cash.

SEC. 8. No such partnership shall be deemed to have been formal until a
2 certificate shall have been made, acknowledged, filed and recorded, nor until
3 an affidavit shall have been filed, as above directed, and if any false state-
4 ment be made in such certificate or affidavit, all the persons interested in
5 such partnership, shall be liable for all the engagements thereof as general
6 partners.

SEC. 9. The partners shall publish the terms of the partnership when
2 registered, for at least six weeks immediately after such registry in two
3 newspapers, to be designated by the clerk of the district court of the county
4 in which such registry shall be made, and to be published in the senatorial
5 district in which their business shall be carried on, and if such publication
6 be not made the partnership shall be deemed general.

SEC. 10. Affidavits of the publication of such notice by the printers of the
2 newspapers in which the same shall be published, may be filed with the
3 clerk of the district court directing the same, and shall be evidence of the
4 facts therein contained.

SEC. 11. Every renewal or continuance of such partnership beyond the
2 time originally fixed for its duration, shall be certified, acknowledged and
3 recorded, and an affidavit of a general partner be made and filed, and notice
4 be given in the manner herein required for its original formation, and every
5 such partnership which shall be otherwise renewed or continued, shall be
6 deemed a general partnership.

SEC. 12. Every alteration which shall be made in the names of the part-
2 ners, in the nature of the business, or in the capital or shares thereof, or in
3 any other matter specified in the original certificate, shall be deemed a dis-
4 solution of the partnership, and every such partnership which shall in any
5 manner be carried on after any such alteration shall have been made,

6 shall be deemed a general partnership, according to the provisions of the
7 last section.

2 SEC. 13. The business of the partnership shall be conducted under a firm
3 in which the names of the general partners only shall be inserted, without
4 the addition of the word "company" or any other general term, and if the
5 name of any special partner shall be used in such firm, with his privity, he
6 shall be deemed a general partner.

2 SEC. 14. Suits in relation to the business of the partnership may be
3 brought and conducted, by and against the general partners in the same
4 manner as if there were no special partners.

2 SEC. 15. No part of the sum which any special partner shall have con-
3 tributed to the capital stock, shall be wit drawn by him, or paid or transfer-
4 red to him in the shape of dividends, profits or otherwise, at any time during
5 the continuance of the partnership, but any partner may annnally receive
6 lawful interest on the sum so contributed by him, if the payment of such in-
7 terest shall not reduce the original amount of such capital, and if after the
8 payment of such interest, any profits shall remain to be divided, he may also
9 receive his portion of such profits.

2 SEC. 16. If it shall appear, that, by the payment of interest or profits to
3 any special partner, the original capital has been reduced, the partner re-
4 ceiving the same, shall be bound to restore the amount necessary to make
5 good his share of capital, with interest.

2 SEC. 17. A special partner may, from time to time, examine into the
3 the state and progress of the partnership concerns, and may advise as to
4 their management, but he shall not transact any business on account of the
5 partnership, nor be employed for that purpose as agent, attorney, or other
6 wise. If he shall interfere, contrary to these provisions he shall be deemed a
7 general partner.

2 SEC. 18. The general partners shall be liable to account to each other,
3 and to the special partners, for their management of the concern, both in law
4 and equity, as other partners now are by law.

2 SEC. 19. Every partner who shall be guilty of any fraud in the affairs of
3 the partnership, shall be liable civilly, to the party injured, to the extent of
4 his damage, and shall also be liable to an indictment for a misdemeanor,
5 punishable by fine or imprisonment, or both, in the discretion of the court
6 by which he shall be tried.

2 SEC. 20. Every sale, assignment, or transfer of any of the property or
3 effects of such partnership, made by such partnership when insolvent or in
4 contemplation of insolvency, or after, or in contemplation of the insolvency
5 of any partner, with the intent of giving a preference to any creditor of such
6 partnership or insolvent partner, over other creditors of such partnership,
7 and every judgment confessed, lien created, or security given by such part-
8 nership, under the like circumstances, and with the like intent, shall be void,
9 as against the creditors of such partnership.

2 SEC. 21. Every such sale, assignment, or transfer of any of the property
3 or effects of a general or special partner, made by such general or special
4 partner, when insolvent or in contemplation of insolvency, or after, or in
5 contemplation of the insolvency of the partnership, with the intent of
6 giving to any creditor of his own, or of the partnership a preference
7 over creditors of the partnership, and every judgment confessed, lien
8 created or security given by any such partner under the like circum-
9 stances and with the like intent be void, as against the creditors of the
10 partnership.

2 SEC. 22. Every special partner who shall violate any provisions of the
3 two last preceding sections, or who shall concur in or assent to, any such vio-
4 lation by the partnership, or by any individual partner, shall be liable as a
5 general partner.

2 SEC. 23. In case of the insolvency or bankruptcy of the partnership, no
3 special partner shall, under any circumstances, be allowed to claim as a
4 creditor, until the claims of all the other creditors of the partnership shall
5 be satisfied.

2 SEC. 24. No dissolution of such partnership by the acts of the parties,
3 shall take place previous to the time specified in the certificate of its forma-
4 tion, or in the certificate of its renewal, until a notice of such dissolution
5 shall have been filed and recorded in the office of the clerk of the district
6 court in which the original certificate was recorded, and published once in
7 each week for four weeks, in a newspaper printed in each of the counties
8 where the partnership may have places of business.

CHAPTER 10. *Of Warehousemen and Carriers.*

2 SEC. 1. All warehouse receipts, certificates or other evidences of the
3 deposit of property, issued by any warehouseman, wharfinger or other per-
4 son engaged in storing property for others, shall be in the hands of the
5 holder thereof, presumptive evidence of title to said property both in law
6 and equity.

2 SEC. 2. No warehouseman, wharfinger, or other person, shall issue any
3 receipt or any other voucher for any goods, wares, merchandize, grain, or
4 other produce or commodity, to any person, purporting to be the owner
5 thereof, unless such goods, wares, merchandize, grain, or other produce or
6 commodity, shall have been actually received into store by such warehouse-
7 man, wharfinger or other person, and shall be in store and under his control
8 at the time of issuing such receipt.

2 SEC. 3. All goods, wares, merchandize, grain, or other produce or com-
3 modity, shall so remain in store until otherwise ordered by the holder of
4 said receipt, subject only to the condition of the receipt, and the contract
5 between the parties as to the time of its remaining in store.

2 SEC. 4. No warehouseman, wharfinger or other person, shall issue any
3 second receipt for any goods, wares, merchandize, grain, or other produce
4 or commodity, while any former receipt for any such goods or chattels as
5 aforesaid, or any part thereof, shall be outstanding and uncanceled.

2 SEC. 5. No warehouseman, wharfinger or other person, shall sell or en-
3 cumber, ship, transfer, or in any manner remove beyond his immediate con-
4 trol, any goods, wares, merchandize, grain, or other produce or commodity,
5 for which a receipt shall have been given as aforesaid, without the written
6 consent of the person holding such receipt, except to enforce his lien there-
7 on for storage and warehouse charges, as provided for in this chapter.

2 SEC. 6. Every person aggrieved by the violation of any of the four sections
3 next preceding may have and maintain an action at law against the person
4 violating any of the provisions of said sections, before any court of compe-
5 tent jurisdiction, and shall not only recover actual damages, but shall be
6 entitled to exemplary damages, which he may have sustained by reason of
7 any such violation, whether such person shall have been convicted under a
8 criminal charge for the same act or not.

2 SEC. 7. All goods, wares, merchandize, or other property transported
 3 by, or stored or left with, any warehouseman, forwarding and commission
 4 merchant, or other depository, express company, or carriers, shall be subject
 5 to a lien for the just and lawful charges on the same, and for the transport-
 ation, advances, and storage thereof.

2 SEC. 8. If any goods, wares, merchandize, or other property, shall for
 3 six months remain in the possession, uncalled for and unclaimed, of any for-
 4 warding or commission merchant, warehouseman, or other depository, ex-
 5 press company, or other common carrier, with the just and legal charges un-
 6 paid thereon, the person having the same in charge or possession shall first
 7 give notice to the owner or consignee, if his whereabouts is known, and if
 8 not known, shall go before some justice of the peace of the township, city
 9 or village where the same are held, if any there be therein, and if not then
 10 before the next nearest justice of the peace of the county, and make affida-
 11 vit, stating the time and place where such goods, wares, merchandize, or
 12 other property were received, the marks or brands by which such goods are
 13 designated, if any; and, if not so designated, than such other descriptions or
 14 designations as may best answer the purpose of indicating what the goods
 15 are, and shall also state the probable value of the same, and to whom con-
 16 signed; also the charges paid upon such goods, accompanied by the original
 17 receipt for such charges, and by the bill of lading, also the other charges, if
 18 any, due and unpaid, and whether the whereabouts of the owner or con-
 19 signee of such goods is known to the affiant, and if so, whether notice was
 20 first given to him, as hereinbefore provided; which affidavit shall be filed
 21 by the said justice of the peace in his office, and retained by him in the files
 22 of his office for the inspection of any one interested in the same, and he
 23 shall also enter in his estray-book a statement of the contents of the affida-
 24 vit, and time and place where and by whom the same was made, for which
 he shall receive the sum of one dollar fee, to be paid by the affiant.

2 SEC. 9. After the preliminary steps are taken in compliance with section
 3 seven of this chapter, if such goods still remain unclaimed and uncalled
 4 for, and the charges are not paid thereon, then the person in possession of
 5 the goods, either by himself or his agent, where the probable value of the
 6 goods does not exceed the sum of one hundred dollars, shall advertise the
 7 same for sale for the period of fourteen days, by posting five notices in five
 8 of the most public places in the city or locality where said goods are held,
 9 giving such description of them as will indicate what the goods to be sold
 10 are; but when the goods exceed the probable value of one hundred dollars,
 11 then the length of notice given shall be four weeks, and in addition to the
 12 five notices posted there shall be a publication of the notice of sale, for the
 13 same length of time, in some newspaper of general circulation in the locality
 14 where the goods are held, if there be one, and if not, then in the next near-
 15 est newspaper published in that neighborhood; at the end of which period,
 16 if the goods are still unclaimed or uncalled for, or charges unpaid, the agent
 17 or party in charge of said goods shall sell the same at public auction, be-
 18 tween the hours of ten o'clock A. M. and four o'clock P. M., for the highest
 19 price the same will bring in cash, which sale may be continued from day to
 20 day, by public announcement to that effect at the time of adjournment, un-
 21 til all the goods are sold, and, from the proceeds of such sale, the said party
 22 who held said goods shall take and appropriate a sufficient sum to pay all
 23 charges on said goods, and all costs and expenses of sale; the cost of adver-
 24 tising to be no more than in the case of a constable or sheriff's sale, and the
 same to be conducted in a similar manner.

SEC. 10. Perishable property, such as fruit, fresh fish, oysters, game, &c., shall be retained twenty-four hours, and if not claimed within that time, and charges paid, after the proper affidavit is made as required by section seven of this chapter, may be sold either at public or private sale, in the discretion of the party holding the property, for the highest price that the same will bring, and the proceeds of the sale disposed of as above provided. But in both cases, if the owner or consignee of said unclaimed property shall reside in the same city, town, or locality in which said property shall be, and shall be known to the agent or party having the same in charge, then personal notice shall be given to said owner or consignee, in writing, that said goods are held subject to his order, on payment of charges, and that unless he pays said charges, and removes the property, the same will be sold as provided by law.

SEC. 11. After the charges due and unpaid on the goods, and the expenses and costs of sale have been taken out of the proceeds of sale as above provided, the excess in the hands of the agent or person who was in charge of the goods sold, shall be by him forthwith deposited with the county treasurer of the county where the goods were held and sold, subject to the order of the owner, said ownership being properly authenticated under oath. He shall also file with the county treasurer a schedule of the property, with the name of the consignee or owner, if known, of each piece of property sold, the sum realized from the sale of each separate package, describing the same, together with a copy of the advertisement as hereinbefore provided, and a full statement of the receipts of the sale, and the amount disbursed to pay charges, costs, and expenses of sale, all of which shall be under the oath of the party or his agent, as to the truth and correctness thereof, which schedule, statement, oath and advertisement shall all be filed and preserved in the treasurer's office, for the inspection of any one interested in the same.

SEC. 12. Should the owner of the property so sold not make a demand upon the county treasurer for any money that may be in the treasury to his credit, according to the provisions of this chapter, the sum so unclaimed and uncalled for shall be accounted for by the county treasurer, and placed to the credit of the county in the next subsequent settlement made by the treasurer with the county, and should the sum so uncalled for or unclaimed remain unclaimed and uncalled for during the period of one year, it shall then be paid into the school fund to be distributed as other funds may be by law, which may be raised by tax on other property of the county. But nothing herein contained shall be a bar to any legal claimant from prosecuting and proving his claim for such money at any time within ten years, and, the claim being within that period prosecuted and proved, it shall be paid out of the county treasury in which it was originally placed without interest.

SEC. 13. The proprietors of all omnibusses, transfer companies or other common carriers, doing business within the limits of this state, and their agents, shall be liable for damages occasioned to baggage or other property belonging to travelers, through careless or negligent handling while in possession of said companies or carriers. And in addition to the damages recoverable therefor, the parties recovering the same shall also be entitled to an allowance of not less than three dollars for every day's detention caused thereby or by a suit brought to recover the same.

The Following
Page(s) are Not Yet
Available

**If you have a hardcopy page suitable for scanning,
LLMC would like to hear from you.**

Thank you.

1-800-235-4446

or

llmc@llmc.com

TITLE III. OF THE DOMESTIC RELATIONS.

CHAPTER 1. *Of Husband and Wife.*

2 SEC. 1. The personal property of the wife does not vest in the husband,
3 but if left under his control it will, in favor of third persons acting in good
4 faith, and without knowledge of the real ownership, be presumed to have
5 been transferred to him, except as hereinafter provided.

2 SEC. 2. If the wife has such property which she leaves under his control
3 she must, in order to avoid the entire surrender of her interest therein, file
4 for record with the recorder of deeds a notice, stating the amount in value of
5 such property and that she has a claim therefor out of the estate of her hus-
6 band, and if during her lifetime he dies or becomes insolvent, she shall be
7 deemed a preferred creditor of the estate to that amount without interest
8 and may hold and control the same in her own right; but this preference
9 shall not prejudice the interests of those creditors who became such after
10 the property was thus placed under the husband's control and before the
11 filing of the notice aforesaid. unless they had knowledge of her right in that
12 respect.

2 SEC. 3. The provisions of the preceding section shall not prevent the
3 necessity of proof on the part of the wife of the actual amount of property
4 thus in good faith placed by her under the control of her husband, but the
5 notice aforesaid will after the lapse of five years from the time of the record-
6 ing thereof be presumptive evidence of the facts therein stated in this
7 respect.

2 SEC. 4. Specific articles of personal property may be owned by the wife
3 exempt from the husband's debts, although left under his control, if during
4 his lifetime and prior to its being disposed of by him or levied upon for his
5 debts notice of her ownership is filed for record with the recorder of deeds
6 of the county. But such notice shall not exempt her property from liability
7 for his debts contracted after it was left under his control and before the
8 filing of the notice aforesaid except as against those having knowledge of her
9 rights.

2 SEC. 5. The notices aforesaid must be recorded in the book kept for re-
3 cording mortgages and conveyances of personal property and indexed in
4 like manner.

2 SEC. 6. In case of bank stock written securities, things in action, or
3 other property which does not ordinarily pass by mere delivery or by oral
4 contract without an indorsement, assignment, or other written evidence of
5 such transfer, knowledge of the ownership of the wife will be presumed
6 without the recording required by the preceding two sections, unless such
7 property has been conveyed to the wife by the husband.

2 SEC. 7. Married women may receive grants or gifts of property from
3 their husbands without the intervention of trustees, but this provision ap-
4 plies only to form and manner, and leaves the substantial rights of all parties
5 unchanged.

2 SEC. 8. Neither husband nor wife is liable for the debts or liabilities of
3 the other incurred before marriage, and except as herein otherwise declared,
4 they are not liable for the separate debts of each other; nor are the wages,
5 earnings or property of either, nor is the rent or income of such property
6 liable for the separate debts of the other.

2 SEC. 9. Contracts may be made by a wife and liabilities incurred, and
3 the same enforced by or against her to the same extent and in the same
4 manner as if she were unmarried.

2 SEC. 10. The expenses of the family, the education of the children, and
3 such other obligations as come within the equity of this provision, are
4 chargeable upon the property of both husband and wife or of either of them,
5 and in relation thereto they may be sued jointly or separately.

(NOTE.—Sections 1456—1461 of the code of 1851, Rev. §§ 2508—13 are omitted as entirely
superfluous since the act of 1870, (secs. 8 and 9 above) gave the wife the power of acting as
though unmarried in all cases. For the same reason the words "the husband" are omitted
in sec. 10—since the wife as well as the husband may now be sued separately.)

2 SEC. 11. The husband can not remove the wife nor their children from
3 their homestead without the consent of the wife, and if he abandons her she
4 is entitled to the custody of their minor children, unless the district or cir-
5 cuit court upon application for that purpose shall for good cause otherwise
6 direct.

2 SEC. 12. Where the wife shall be insane, and for that reason incapable
3 of executing a deed and relinquishing dower, the husband may petition the
4 circuit court of the county where such petitioner shall reside, or of the
5 county where said real estate is situated, setting forth the facts, and praying
6 for an order authorizing the husband or some other person to execute a
7 deed or deeds of conveyance for said wife, and thereby relinquish the
8 dower of the wife in such lands.

2 SEC. 13. The petition shall be verified by the oath of the petitioner, and
3 shall be filed in the office of the clerk of the proper county, and heard at the
4 next term of said court holden in said county. Before the final hearing the
5 court shall appoint some discreet person attorney for the wife of said peti-
6 tioner, whose duty it shall be to ascertain to the propriety, good faith
7 and necessity of the prayer of the petitioner, and who shall have power to
8 resist said application and subpoena witnesses, or to take depositions to
9 disprove the petition, and prove the impropriety of granting said
10 petition.

2 SEC. 14. Upon the hearing of said petition, if the court is satisfied that
3 the same is made in good faith, and that the petitioner is the proper person
4 to exercise the power and make the conveyances, and that such power is
5 necessary and proper, said court shall enter up a decree, thereby fully au-
6 thorizing said husband to execute in the name of the wife all such convey-
7 ances, or the court may appoint some other person whose duty it shall be to
8 execute the conveyances by said decree authorized.

2 SEC. 15. All deeds executed as herein provided, shall be valid in law,
3 and shall convey all the dower interest of such insane wife in the real estate
4 so conveyed, provided said power shall cease and become void as soon as
5 the wife shall become sane and of sound mind, and apply to the court to re-
6 voke said power, and said court shall revoke said power, and such revoca-
7 tion shall in no wise effect conveyances previously made.

CHAPTER 2. *Of Marriage.*

2 SEC. 1. Marriage is a civil contract requiring the consent of parties capa-
3 ble of entering into other contracts, except as herein otherwise declared.

2 SEC. 2. A marriage between a male person of sixteen and a female of
3 fourteen years of age is valid, but if either party has not attained the age
4 thus fixed the marriage is a nulity or not at the option of such party made
5 known at any time before he or she is six months older than the age thus
6 fixed.

2 SEC. 3. Previous to any marriage within this state, a license for that pur-
3 pose, must be obtained from the clerk of the circuit court of the county
4 wherein the marriage is to be solemnized, agreeable to the provisions of this
5 chapter.

2 SEC. 4. Such license must not in any case be granted where either party
3 is under the age necessary to render the marriage absolutely valid, nor shall
4 it be granted where either party is a minor without the previous consent of
5 the parent or guardian of such minor, nor where the condition of either par-
6 ty is such as to disqualify him for making any other civil contract.

2 SEC. 5. Unless the clerk of the circuit court is acquainted with the age
3 and condition of the parties for the marriage of whom the license is applied
4 for, he must take the testimony of competent and disinterested witnesses on
5 the subject.

2 SEC. 6. He must cause due entry of the application for the issuing of the
3 license to be made on the records of the circuit court, stating that he was ac-
4 quainted with the parties and knew them to be of competent age and condi-
5 tion, or that the requisite proof of such facts was made to him by one or
6 more witnesses, stating their names.

2 SEC. 7. If either party is a minor the consent of the parent or guardian
3 must be filed in the clerk's office, after being admitted by the said parent or
4 guardian or proved to be genuine, and a memorandum of such facts must be
5 also entered on the records of the court.

2 SEC. 8. If the clerk of the circuit court grants a license contrary to the
3 provisions of the preceding sections he is guilty of a misdemeanor, and if a
4 marriage is solemnized without such license being procured, the parties so
5 married, and all persons aiding in such marriage, are likewise guilty of a
6 misdemeanor.

2 SEC. 9. The license shall not be issued until the amount of one dollar
3 has been paid into the county treasury, and the receipt thereof filed with
4 the clerk of the circuit court.

2 SEC. 10. Marriages must be solemnized either :

- 3 1. By a justice of the peace or mayor of the city, wherein the marriage
4 takes place;
- 5 2. By some judge of the supreme, district, or circuit court of this state ;
- 6 3. By some officiating minister of the gospel, ordained or licensed ac-
7 cording to the usages of his denomination.

2 SEC. 11. After the marriage has been solemnized, the officiating minister
3 or magistrate shall on request give each of the parties a certificate thereof.

2 SEC. 12. Marriages solemnized (with the consent of parties) in any other
3 manner than is herein prescribed are valid, but the parties themselves and
4 all other persons aiding or abetting shall forfeit to the school fund the sum
5 of fifty dollars each.

2 SEC. 13. The person solemnizing marriage shall forfeit a like amount
3 unless within ninety days after the ceremony he make return thereof to the
4 clerk of the circuit court.

2 SEC. 14. The clerk of the circuit court shall keep a register containing
3 the names of the parties, the date of the marriage, and the name of the
4 person by whom the marriage was solemnized, which (or a certified trans-
5 script therefrom) is receivable in all courts and places as evidence of the
6 marriage and the date thereof.

2 SEC. 15. The provisions of this chapter, so far as they relate to the pro-
3 curing of a license and the solemnizing of marriages, are not applicable to
4 members of any particular denomination having as such any peculiar mode
5 of entering the marriage relation, and having conscientious scruples against
6 obtaining such license.

2 SEC. 16. But where any mode is thus pursued which dispenses with the
3 services of a clergyman or magistrate, the husband is responsible for the re-
4 turn directed to be made to the circuit court and is liable to the above named
5 penalty if the return is not made.

2 SEC. 17. Illegitimate children become legitimate by the subsequent mar-
3 riage of their parents.

CHAPTER 3. *Of Divorce and Alimony.*

2 SECTION 1. The district court in the county where the plaintiff or defen-
3 dant resides, has jurisdiction of all cases of divorce and alimony, and of
4 guardianship connected therewith.

2 SEC. 2. The petition for divorce, in addition to the facts on account of
3 which the plaintiff claims the relief sought, must state that he has been for
4 the last six months a resident of the state, and that the application is not
5 made through fear or restraint, or out of any levity, but in sincerity and
6 truth for the purpose set forth in the petition. It must also be sworn to by
7 the plaintiff.

2 SEC. 3. Divorces from the bonds of matrimony may be decreed against
3 the husband in the following cases :

- 3 1. When the defendant at the time of his marriage was impotent ;
- 4 2. When he had a lawful wife then living ;
- 5 3. When he has committed adultery subsequent to the marriage ;
- 6 4. When he willfully deserts his wife and absents himself without a rea-
7 sonable cause for the space of two years ;
- 8 5. When he is convicted of felony after his marriage ;
- 9 6. When, after marriage, he become addicted to habitual drunken-
10 ness.
- 11 7. When he is guilty of such inhuman treatment as to endanger the life
12 of his wife.

2 SEC. 4. The husband may in all cases obtain a divorce from the wife for
3 like causes.

2 SEC. 5. If the defendant does not appear and answer the petition at the
3 proper time, the court, if satisfied that the complainant is the injured party,
4 may decree a dissolution of the marriage contract; or when the defendant
5 can be found, it may in its discretion bring him in by attachment, and compel him to answer.

2 SEC. 6. When a divorce is decreed the court may make such order
3 in relation to the children and property of the parties and the maintenance of the wife as shall be right and proper. Subsequent changes may
4 be made by the court in these respects when circumstances render them
5 expedient.

2 SEC. 7. When a divorce is decreed, the guilty party forfeits all rights
3 acquired by the marriage.

CHAPTER 4. *Of Minors.*

2 SECTION 1. The period of minority extends, in males to the age of twenty-
3 one years, and in females to that of eighteen years, but all minors attain their
4 majority by marriage.

2 SEC. 2. A minor is bound, not only by contracts for necessaries, but also
3 by his other contracts unless he disaffirms them within a reasonable time
4 after he attains his majority and restores to the other party all money or
5 property received by him by virtue of the contract and remaining within his control at any time after his attaining his majority.

2 SEC. 3. No contract can be thus disaffirmed in cases where, on account
3 of the minor's own misrepresentations as to his majority or from his having
4 engaged in business as an adult, the other party had good reason to believe
5 the minor capable of contracting.

2 SEC. 4. Where a contract for the personal service of a minor has been
3 made with him alone, and those services are afterwards performed, payment
4 made therefor to such minor in accordance with the terms of the contract is
5 a full satisfaction for those services, and the parent or guardian can not recover therefor a second time.

CHAPTER 5. *Of the Guardianship of Minors and Lunatics.*

2 SECTION 1. The father is the natural guardian of the persons of his minor
3 children. If he dies or is incapable of acting the mother becomes the guardian.

2 SEC. 2. The natural and actual guardian of any minor child may by will
3 appoint another guardian for such minor. If, without such will, both parents be dead or disqualified to act as guardian the circuit court may appoint
4 one.

2 SEC. 3. Although the parents are living and of sound mind, yet if the
3 minor has property not derived from either of them, a guardian must be appointed by the court to manage such property.

2 SEC. 4. The father, or in case of his death, absence, or incapacity, the
3 mother may be appointed the guardian to take charge of the property of his
3 minor child, if deemed by the court a suitable person for that purpose.

2 SEC. 5. If the minor be over the age of fourteen years, and of sound
2 intellect he may select his own guardian, subject to the approval of the
3 court.

2 SEC. 6. When a guardian for the property of any minor child has been
2 appointed by the circuit court in any county, the said court shall have the
3 same power and authority over any lands and tenements of such minor child,
4 situate in any other county, that said court may by law exercise over the
5 lands and tenements of such minor, in the county where such guardian has
6 been appointed. But when any order is made by such court affecting the
7 title of lands lying in another county, a certified copy of the same, and of
8 all the papers on which it is founded shall be transmitted to the clerk of the
9 circuit court, in the county where such lands are situated.

2 SEC. 7. Guardians appointed to take charge of the property of a minor
2 must give bonds with surety to be approved by the court, in a penalty double
3 the value of the personal estate and of the rents and profits of the real es-
4 tate of the minor, conditioned for the faithful discharge of their duties as
5 such guardians according to law. They must also take an oath of the same
6 tenor as the condition of the bond.

2 SEC. 8. Within forty days after their appointment they must make out
2 an inventory of all the property of the minor, which shall be appraised in
3 the same manner as the property of a deceased person. The inventory must
4 be filed in the office of the clerk of the circuit court.

2 SEC. 9. Guardians of the persons of minors have the same power and
2 control over them that parents would have if living.

2 SEC. 10. Guardians of the property of minors must prosecute and de-
2 fend for their wards. They must also in other respects manage their inter-
3 ests, under the direction of the court. They may thus lease their lands or
4 loan their money during their minority, and may do all other acts which the
5 court may deem for the benefit of the wards.

2 SEC. 11. When not in violation of the terms of a will by which a minor
2 holds his real property, it may, under the discretion of the circuit court be
3 sold or mortgaged on the application of the guardian, either when such sale
4 or mortgage is necessary for the minors' support or education, or where his
5 interest will be thereby promoted by reason of the unproductiveness of the
6 property or of its being exposed to waste or of any other peculiar circum-
7 stances.

2 SEC. 12. The petition for that purpose must state the grounds of the ap-
2 plication, must be verified by oath, and a copy thereof with a notice of the
3 time at which such application will be made to the court must be served
4 personally upon the minor, at least ten days prior to the time fixed for such
5 application.

2 SEC. 13. The court in its discretion may direct a postponement of the
2 matter, and may order such farther publication through the newspapers or
3 otherwise, as it may deem expedient.

2 SEC. 14. It may also direct a reference for the purpose of ascertaining
2 the propriety of ordering the sale or mortgage as applied for.

2 SEC. 15. Before any such sale or mortgage can be executed the guardian
2 must give security to the satisfaction of the court, the penalty of which shall
3 be at least double the value of the property to be sold or of the money to be

4 raised by the mortgage, conditioned that he will faithfully perform his duty
5 in that respect and account for and apply all moneys received by him under
6 the direction of the court.

2 SEC. 16. When the application for the sale of property is resisted the
3 court may in its discretion award costs to the prevailing party, and may
4 when satisfied that there was no reasonable ground for making the applica-
5 tion direct the costs to be paid by the guardian from his own funds.

2 SEC. 17. Deeds may be made by the guardian in his own name, but they
3 must be returned to the court and the sale or mortgage be approved before
4 the same are valid.

2 SEC. 18. The same rule that is prescribed in the sale of real property by
3 executors shall be observed in relation to the evidence necessary to show the
4 regularity and validity of the sales above contemplated.

2 SEC. 19. No person can question the validity of such sale after the lapse
3 of five years from the time it was made.

2 SEC. 20. A failure to comply with any order of the court in relation to
3 guardianship shall be deemed a breach of the condition of the guardian's
4 bond, which may accordingly be put in suit by any one aggrieved thereby,
5 for which purpose the court may appoint another guardian of the minor if
6 necessary. The court may also commit him to jail until he complies with
such order.

2 SEC. 21. The court may also direct guardians to give new or supple-
3 mental security, or may remove them for good cause shown, which cause
4 must be entered on the records.

2 SEC. 22. Where a new guardian is appointed, the court may order the
3 effects of the minor which are in the hands of his predecessor to be de-
4 livered up to such new guardian.

2 SEC. 23. Where minors—non-residents of the state of Iowa have prop-
3 erty in this state either real or personal, a resident guardian may be appoin-
4 ted, on proper application made to the circuit court of the county in which
5 such property or any part thereof may be, who shall qualify in the same
6 manner and shall have the same powers, and be subject to the same rules as
guardians of resident minors.

2 SEC. 24. The foreign guardian of any non-resident minor may be ap-
3 pointed the guardian in this state, of such minor, by the circuit court of the
4 county wherein he has any property, for the purpose of selling or otherwise
5 controlling that and all other property of such minor within this state,
6 unless a guardian has previously been appointed under the preceding sec-
tion.

2 SEC. 25. Such appointment may be made upon his filing with the clerk
3 of the circuit court of the county wherein there is any such property, an
4 authenticated copy of the order for his appointment. He shall thereupon
5 qualify like other guardians except as in the next succeeding section.

2 SEC. 26. Upon the filing of an authenticated copy of the bond and the
3 inventory rendered by the guardian in a foreign state, if the court is satis-
4 fied with the sufficiency and the amount of the security, it may dispense
5 with the filing of an additional bond.

2 SEC. 27. Foreign guardians of non-resident minors may be authorized
3 by the circuit court of the county wherein such minor has personal property
4 to receive the same on complying with the provisions of the following sec-
5 tions :

2 SEC. 28. Such foreign guardian shall file in the office of the clerk of the

2 circuit court in the county where the property is situated, a certified copy of
3 his official bond, duly authenticated by the court granting the letters of guar-
4 dianship, and shall also execute a receipt for the property received by
5 him.

2 SEC. 29. Upon the filing of the bond, as provided by the last section, and
3 the court being satisfied with the amount of said bond, said court shall or-
4 der the personal property of the minor to be delivered to the guardian; and
5 the court shall spread the bonds and receipt on its records, and direct the
6 clerk to notify, by mail, the court granting the letters of guardianship of the
7 amount of property allowed to the guardian, and the date of the delivery of
the same.

2 SEC. 30. All guardians of minors are required to appear at least once in
3 each year before the circuit court, and render an account of all moneys or
4 other property in their possession, together with all the interest which may
5 have accrued on moneys loaned, belonging to the minor or minors.

2 SEC. 31. In case the said guardian shall fail to appear before said court
3 within the time above specified, he shall forfeit and pay into the county trea-
4 sury the sum of fifty dollars, as in other actions of misdemeanor.

2 SEC. 32. Guardians shall receive such compensation as the court may
3 from time to time allow. The amount allowed, and the service for which
the allowance was made, must be entered upon the records of the court.

Guardianship of Idiots and Lunatics, and their children.

2 SEC. 33. The circuit court, upon satisfactory proof that any inhabitant of
3 the county is an idiot or lunatic, and that it is necessary in order to preserve
4 his property, shall appoint a guardian, who shall by virtue of such appoint-
5 ment be the guardian of the minor children of his ward, unless the court
shall appoint some other person their guardian.

2 SEC. 34. When any person having a wife shall be declared to be an idiot
3 or lunatic, it shall be lawful to appoint the wife of such person his guardian,
4 if it be made to appear to the satisfaction of the judge that she is competent
5 to perform the duties of such appointment, and any married woman appoint-
6 ed such guardian, shall in her said capacity, have power to enter into official
7 bonds, and her sureties thereon shall be liable in the same manner and to the
same extent as though said bond was executed by a single woman.

2 SEC. 35. All laws relating to guardians for minors and their wards, such
3 guardians and their sureties, in force for the time being, shall be applicable
4 to guardians for idiots and lunatics and their children, so far as the same are
in conformity with the provisions of this act.

2 SEC. 36. Such guardian may sue in his own name describing himself as
3 guardian of the ward for whom he sues, and when his guardianship shall
4 cease by his death, removal, or otherwise, or by the decease of his ward, any
5 suit, action, or proceeding then pending shall not abate, but his successor or
6 guardian, or such idiot or lunatic, if he be restored to his reason, or the exe-
7 cutor or administrator of such idiot or lunatic, as the case may require, shall
8 be made party to the suit or other proceedings, in like manner as is or may
9 be provided by law for making an executor or administrator party to a pro-
ceeding of a like kind, when the plaintiff dies during its pendency.

2 SEC. 37. Whenever the sale of the real estate of such ward is necessary
3 for his support, or the support of his family, or the payment of his debts, or
4 will be for the interest of the estate of such idiot or lunatic or his children,
5 the guardian may sell the same under like proceedings as required by law to
6 authorize the sale of real estate by the guardian of a minor.

2 SEC. 38. The guardian of any idiot or lunatic, whether appointed by a
3 court in this state or elsewhere, may complete the real contracts of his ward
4 or any authorized contracts of a guardian who has died or been removed, in
5 like manner, and by like proceeding as the real contract of a decedent may
6 under an order of court, be specially performed by his executor or admin-
7 istrator.

2 SEC. 39. If the estate of the idiot or lunatic is insolvent, or will probably
3 be insolvent, the same shall be settled by the guardian in like manner, and
4 like proceedings may be had as is or may be required by law for the settle-
5 ment of the insolvent estate of a deceased person.

2 SEC. 40. The foreign guardian of a foreign idiot or lunatic appointed in
3 any other state of the United States or in the territories thereof, may possess,
4 manage or dispose of the real or personal estate of his ward, situated in this
5 state in like manner and with like authority as guardians of idiots or lunatics
6 appointed by the courts of this state, after complying with the following
7 requisitions:

8 1. An authenticated copy of the foreign commission of idiocy or lunacy
9 proved, allowed and recorded in the county where such estate is situated,
10 in like manner as is or may be provided by law for the admission to record
11 of an authenticated copy of a will made in any other of the United
12 States.

13 2. Evidence satisfactory to the court here, before whom such foreign com-
14 mission is approved, that such idiocy or lunacy still continues.

15 3. The foregoing guardian shall file his bond with sureties residing in
16 this state or elsewhere to the acceptance of the court, conditioned from the
17 faithful administration of his guardianship.

2 SEC. 41. Whenever the circuit court shall be satisfied that a lunatic is
3 restored to reason, or that letters of guardianship have been improperly is-
4 sued, it shall make an entry upon the records of the court that said guardi-
5 anship terminate, and the guardianship shall thereupon cease, and the ac-
6 counts of the guardian shall be settled by the court.

2 SEC. 42. The priority of claim to the custody of any insane person shall
3 be determined as follows:

- 4 1. The legally appointed guardian.
- 5 2. The husband or wife.
- 6 3. The parents.
- 7 4. The children.

CHAPTER 8. *Master and Apprentice.*

2 SEC. 1. Any minor child may be bound to service until the attainment
3 of the age of legal majority as hereinafter described.

2 SEC. 2. Such binding must be written by indenture specifying the age of
3 the minor and the terms of agreement. If the minor is more than twelve
4 years of age and not a pauper, the indenture must be signed by him of his
5 own free will.

2 SEC. 3. A written consent must be appended to or indorsed upon, such
3 agreement and signed by one of the following persons, to wit :

3 1 By the father of the minor ; but if he is dead, or has abandoned his
4 family, or is for any cause incapacitated from giving his assent, then

4 2 By the mother ; and if she be dead, or unable, or incapacitated for
5 giving such consent, then

6 3 By the guardian ; and if there be no guardian, then by the judge or
7 clerk of the circuit court.
8

2 SEC. 4. The judge of the circuit court may bind minors who are pau-
3 pers, till they have attained the age of majority, without obtaining their
4 assent.

2 SEC. 5. The written indenture must in that case be signed by the master
3 and said judge.

2 SEC. 6. The indenture must in all cases where there is a parent or guar-
3 dian be in three parts, one being left with the master, another with the
4 clerk of the circuit court, and the third with the person by whose assent he
5 is bound.

2 SEC. 7. The powers, liabilities and duties of the master, and the rights
3 of the apprentice are the same as those of parent and child respectively,
4 except as to inheritances and except as is otherwise provided by law.

2 SEC. 8. The parent, guardian, or officer, by whose act or consent any
3 minor is thus bound must watch over the interest of the minor, and if the
4 case require must enter complaint as provided for in the following section.

2 SEC. 9. Upon complaint by the minor or by any other person made to
3 the judge of the circuit court, stating under oath that the master is ill-treat-
4 ing his apprentice or is in any other manner palpably failing in the dis-
5 charge of his duty in regard to him, and stating the particulars with reason-
6 able certainty, the court shall summon the master to appear and answer
7 such complaint.

2 SEC. 10. The complaint with the proper notice indorsed thereon must
3 be served and returned in the same manner as in the commencement of an
4 action and the time for appearance shall be regulated by the same rules.

2 SEC. 11. The answer of the master must also be under oath and if any
3 issue be joined thereon it must be tried as in other cases in the circuit court.

2 SEC. 12. If the court or jury before whom the case is pending finds the
3 cause of complaint admitted by the master or proved upon the trial, to be
4 of sufficient magnitude to justify the discharge of the minor from farther
5 service, judgment shall be rendered accordingly, and a certificate of such
6 judgment placed in said minor's hands.

2 SEC. 13. From any judgment in such cases, either the minor or the mas-
3 ter may appeal in the same manner as is provided for in ordinary cases.

2 SEC. 14. The above proceedings form no bar to the bringing of a suit by
2 or on behalf of the minor for damages or for compensation for services.

2 SEC. 15. If the apprentice, bound as aforesaid, refuses to serve according
2 to the terms of the indenture, upon complaint made in the manner afore-
3 said, the judge shall issue a warrant to cause the apprentice to be brought
4 forthwith before him and shall also cause notice of the proceedings to
5 be given to the parent, guardian, or officer, by whose act or consent the
6 minor was bound as an apprentice, if to be found in the county.

2 SEC. 16. A reasonable space of time not exceeding three days shall be
2 allowed to the minor to consult his parent, guardian, or other friends previ-
3 ous to making his answer to the complaint.

2 SEC. 17. The answer must be made, and the issue thereon tried, in the
2 manner hereinafter provided.

2 SEC. 18. If he shows sufficient cause for refusing to serve he may be
2 discharged from service in the manner hereinbefore provided.

2 SEC. 19. Instead of proceeding as aforesaid the master may, for any re-
2 fusal to serve or for any gross misbehavior on the part of the apprentice, file
3 a complaint for the purpose of releasing himself from the force and effect of
4 the indenture aforesaid.

2 SEC. 20. Proceedings shall thereupon be had similar to those provided
2 in case of a complaint by or in behalf of the apprentice, and judgment ren-
3 dered in like manner, with the same right of appeal.

2 SEC. 21. The death of the master or his removal from the state works a
2 dissolution of the indenture, unless otherwise provided therein or unless the
3 apprentice elects to continue in his service. And in the event of a dissolu-
4 tion, the apprentice shall receive such allowance for services previously ren-
5 dered as may be thought necessary under the circumstances of the case.

2 SEC. 22. Upon complaint being made to the circuit court of the proper
2 county, verified by affidavit, that the father or mother of a minor child is
3 from habitual intemperance and vicious and brutal conduct, or from vicious,
4 brutal and criminal conduct towards said minor child, an unsuitable person
5 to retain the guardianship and control the education of such child, the court
6 may if it find the allegations in the complaint manifestly true, appoint a
7 proper guardian for the child, and may if expedient also direct that such
8 child be bound as an apprentice to some suitable person until he attains his
9 majority. But nothing herein shall be so construed as to take such minor
10 child if the mother be a proper guardian.

2 SEC. 23. The same proceedings may take place, and a like order be
2 made where the mother, who has for any cause become the guardian of her
3 minor child, is in like manner found to be manifestly an improper person to
4 retain such guardianship.

2 SEC. 24. The complainant in such cases must be sworn to his complaint
2 and file it in the office of the judge, and a copy thereof, with a notice there-
3 on endorsed, stating the time when the matter will be brought before the
4 circuit court for adjudication, must be served personally on the parent from
5 whom the guardianship is sought to be taken at least ten days before the
6 time so fixed for the adjudication.

2 SEC. 25. Issues joined shall be tried in the same manner as in ordinary
2 civil actions.

2 SEC. 26. Preference shall be given to such cases over the ordinary busi-
2 ness of the court, but trials actually commenced need not be suspended for
3 that purpose.

2 SEC. 27. The master shall send the said minor child, after the same be
3 six years old, to school at least four months in each year if there be a school
4 within the district, and in all cases and at all times the master shall clothe
5 the minor child in a comfortable and becoming manner.

CHAPTER 7. *Of the Adoption of Children.*

2 SEC. 1. Any person competent to make a will is authorized in manner
3 hereinafter set forth, to adopt as his own, the minor child of another, con-
4 ferring thereby upon such child all the rights, privileges, and responsibili-
5 ties which would pertain to the child, if born to the person adopting in law-
6 ful wedlock.

2 SEC. 2. In order thereto, the consent of both parents, if living and not
3 divorced or separated, and if divorced or separated, or if unmarried, the
4 consent of the parent lawfully having the care, and providing for the wants
5 of the child, or if either parent is dead, then the consent of the survivor; or
6 if both parents be dead, or the child shall have been and remain abandoned
7 by them, then the consent of the mayor of the city where the child is living,
8 or if not in a city, then of the circuit judge of the county where the child is
9 living, shall be given to such adoption, by an instrument in writing, signed
10 by the parties or party consenting, and stating the names of the parent, if
11 known, the name of the child, if known, the name of the person adopting
12 such child, and the residence of all if known, and declaring the name by
13 which such child is hereafter to be called and known, and stating also that
14 such child is given to the person adopting, for the purpose of adoption as
his own child.

2 SEC. 3. Such instrument in writing shall be also signed by the person
3 adopting, and shall be acknowledged by all the parties thereto in the same
4 manner as deeds affecting real estate are required to be acknowledged: *pro-*
5 *vided*, that when both parents of the child execute the same, the mother
6 shall be examined apart from her husband, by the officer taking the same,
7 and he shall certify whether or not she executed the same freely and with-
8 out compulsion or undue influence of her husband, and if not the in-
9 strument shall not be valid; and when duly acknowledged, the same shall
10 be recorded in the county where the person adopting resides, in the office,
11 and with the records of deeds of real estate, and shall be indexed with the
12 name of the parent by adopting as grantor, and the child as grantee in its
original name if stated in the instrument.

2 SEC. 4. Upon the execution, acknowledgment and record of such in-
3 strument, the rights, duties and relations between the parent and child, the
4 adoption shall thereafter in all respects, including the right of inheritance,
be the same that exist by law between parent and child by lawful birth.

2 SEC. 5. In case of maltreatment committed or allowed by the adopted
3 parent, or palpable neglect of duty on his part, toward such child, the
4 custody thereof may be taken from him and entrusted to another at his ex-
5 pense if so ordered by the court, and the same proceedings may be had
therefor so far as applicable as are authorized by law in such a case in the

6 relation of master and apprentice, or the court may, on showing of the facts,
7 require from the adopted parent, bond with security, in a sum to be fixed by
8 him, the county being the obligee, and for the benefit of the child, condi-
9 oned for the proper treatment and performance of duty toward the child,
10 on the part of the parent: *provided*, that no action of the court or judge in
11 the premises shall affect or diminish the acquired right of inheritance on the
12 part of the child, to the extent of such right in a natural child of lawful
13 birth.

The Following
Page(s) are Not Yet
Available

**If you have a hardcopy page suitable for scanning,
LLMC would like to hear from you.**

Thank you.

1-800-235-4446

or

llmc@llmc.com

TITLE IV. OF THE ESTATES OF DECEDENTS.

CHAPTER 1. *Of Probate Jurisdiction.*

2 SEC. 1. The circuit court in each county has original and exclusive juris-
3 diction of all matters relating to the probate of wills, the appointment and
4 supervision of executors, administrators and guardians of minors, idiots and
5 lunatics, the settlement of decedents estates, and the care of the estates of
6 minors and insane persons, and all others under guardianship; all proceed-
7 ings for the examination or settlement of the accounts of executors, admin-
8 istrators or guardians; all applications for the sale of real estate belonging
9 to minors or persons under guardianship; and of all other actions and pro-
 ceedings of which the county court formerly had jurisdiction.

2 SEC. 2. For the transaction of probate and all other business formerly
3 within the jurisdiction of the county court, and not requiring notice, and for
4 the issuing of citation and other notices to appear upon such business, the
5 clerk, in the absence of the circuit judge, shall at all times keep the said
6 court open by himself or deputy, and shall have all the powers formerly ex-
7 ercised by the county judge out of session, subject however to the super-
 vision and approval of the circuit judge.

2 SEC. 3. Where the judge of the circuit courts is personally interested in
3 any probate matter pending therein, he shall order the same transferred to
4 the district court, which shall have jurisdiction therein the same as the cir-
5 cuit court would otherwise have, and its proceedings shall be entered on the
6 records of the circuit court.

2 SEC. 4. When a case is originally within the jurisdiction of the courts of
3 two or more counties, that court which first takes cognizance thereof, by the
4 commencement of proceedings can retain the same throughout.

2 SEC. 5. Where administration is duly granted by the circuit court upon
3 the estate of any deceased person in any county of this state, the said court
4 shall have the same power and authority over any lands and tenements, of
5 the decedent situate in any other county in this state, which said court may
6 by law exercise over the lands and tenements, of such decedent in the
 county where said administration is granted.

2 SEC. 6. Any process or authority emanating from the court in probate
3 matters, may for good cause be revoked and a new one issued.

2 SEC. 7. All bonds relating to probate matters shall be filed in the office
3 of the clerk of the circuit court, and shall not be deemed sufficient until ex-
 amined by the clerk, and his approval indorsed thereon.

CHAPTER 2. *Of Wills and Letters of Administration.*

SECTION 1. Any person of full age and sound mind may dispose, by will,
2 of all his property except what is sufficient to pay his debts, or what is
3 allowed as a homestead, or otherwise given by law as privileged property
4 to his wife and family.

SEC. 2 Property to be subsequently acquired may also be devised when
2 the intention is clear and explicit.

SEC. 3. Personal property to the value of three hundred dollars may be
2 bequeathed by a verbal will if witnessed by two competent witnesses.

SEC. 4. A soldier in actual service, or a mariner at sea, may dispose of
2 all his personal estate by a will so made and witnessed.

SEC. 5. All other wills, to be valid, must be in writing witnessed by two
2 competent witnesses, and signed by the testator or by some person in his
3 presence and by his express direction.

SEC. 6. No subscribing witness to any will can derive any benefit there-
2 from unless there be two disinterested and competent witnesses to the same.

SEC. 7. But if, without a will, he would be entitled to any portion of the
2 testator's estate, he may still receive such portion to the extent in value of
3 the amount devised.

SEC. 8. Posthumous children unprovided for by the father's will shall
2 inherit the same interest as though no will had been made.

SEC. 9. The amount thus allowed to a posthumous child, as well as that
2 of any other claim which it becomes necessary to satisfy in disregard of or
3 in opposition to the contemplation of the will, must be taken ratably the in-
4 terests of heirs, devisees, and legatees.

SEC. 10. The word "devisee" as used in this title shall when applicable
2 be construed to embrace "legatees," and the word "devised" shall in like
3 cases be understood as comprising the force of the word "bequeathed."

SEC. 11. If a devisee die before the testator, his heirs shall inherit the
2 amount so devised to him unless from the terms of the will a contrary intent
3 is manifest.

SEC. 12. Wills can be revoked, in whole or in part, only by being can-
2 celed or destroyed by the act or direction of the testator with the intention
3 of so revoking them or by the executor of subsequent wills.

SEC. 13. When done by cancelation the revocation requires to be wit-
2 nessed in the same manner as the making of a new will.

SEC. 14. Wills duly sealed up and indorsed may be deposited with the
2 clerk of the court, whose duty it is to file and preserve the same until the
3 death of the testator, unless they themselves sooner demand them.

SEC. 15. Any person having the custody of a will, shall at the first
2 stated term of the court after being informed of the death of the testator,
3 bring the same into open court, when it shall be publicly read; or such will
4 may be filed with and opened by the clerk in vocation.

SEC. 16. If any person having the custody of a will fail to produce the
2 same as required by the preceding section, after receiving reasonable notice
3 so to do, he may be brought in by order and attachment and committed to

4 jail until he produces said will, and he shall be further liable to any person
5 aggrieved for all the damages occasioned by his failure to produce the same.

2 SEC. 17. After the will is thus produced and read, a day shall be fixed
3 by the court or clerk for proving the same, which day shall be during a term
4 of court and may be postponed from from time to time in the discretion of
5 the court.

2 SEC. 18. Notice of such hearing shall be given, signed by the clerk of
3 the court, addressed to all whom it may concern, and published in a weekly
4 or daily newspaper, printed in the county where the will is filed, for three
5 consecutive weeks, the last publication to be at least ten days before the time
6 fixed for such hearing. But the court may in its discretion prescribe a dif-
ferent kind of notice.

2 SEC. 19. After being proved and allowed by the circuit court, the will
3 together with the certificate hereinafter required shall be recorded in a book
4 kept for that purpose.

2 SEC. 20. Wills shall not be carried into effect unless thus allowed, and
3 aside allowance is conclusive as to the due execution of the will unless set
4 such by an original or appellate proceeding.

2 SEC. 21. When proved and recorded, the court shall direct the will, or
3 an authenticated copy thereof, to be placed in the hands of the executor
4 therein named or otherwise appointed.

2 SEC. 22. If no executors are named therein, or if the executors named
3 fail to qualify and act, it shall be retained until an executor is appointed and
4 qualified in the manner herein prescribed.

2 SEC. 23. Wills, when proved and allowed, shall have a certificate there-
3 of indorsed or annexed thereto, signed by the clerk and attested by the seal
4 of the court; and every will so certified, or the record thereof, or a trans-
5 cript of such record duly authenticated, may be read in evidence in all courts
6 without further proof.

2 SEC. 24. Where no executors are designated by the will, one or more
3 may be appointed by the proper court in term, or in vacation by the clerk
4 thereof, subject to the approval of the court.

2 SEC. 25. A married woman may act as executor, independent of her hus-
3 band. Her marriage subsequent to the appointment does not render it in-
4 valid.

2 SEC. 26. If a minor under eighteen years of age is appointed an execu-
3 tor, there is a temporary vacancy as to him until he reaches that age.

2 SEC. 27. If a person appointed executor refuses to accept the trust, or
3 neglects to appear within thirty days after due notice of his appointment
4 and give bond as hereinafter prescribed, or if an executor removes his resi-
5 dence from the state, a vacancy will be deemed to have occurred.

2 SEC. 28. In case of a vacancy the court may appoint an administrator
3 with the will annexed; or if there be another executor competent to act it
4 may allow him to proceed by himself in administering the estate, when
5 there is no executor left competent to act, an administrator with the will an-
6 nexed may be appointed in vacation by the clerk, subject to the approval of
the court.

2 SEC. 29. The substitution of other executors shall occasion no delay in
3 the administration of the estate. The periods hereinafter mentioned, with-
4 in which acts are to be performed after the appointment of executors, shall
5 all unless otherwise declared be reckoned from the issuing of the commission
to the first general executor.

2 SEC. 30. The circuit court shall have the power to appoint trustees in all
 3 cases where a vacancy occurs in the office of a trustee appointed by will, or
 4 the purpose of preserving or protecting the interests of devisees, heirs, or
 5 other persons interested.

2 SEC. 31. Trustees appointed by will, or by the court must qualify and
 3 give bonds the same as executors, and shall be subject to control or removal
 3 by the court in the same manner.

Of Foreign Wills.

2 SEC. 32. Wills proved and allowed in any other state or country shall
 3 be allowed and recorded in any county in this state in which it may be de-
 4 sired to use them, upon the production of a copy thereof to the proper court
 5 and duly authenticated by the attestation of the clerk of the court in which
 6 such will was proved, together with the certificate of the judge or presiding
 7 officer that such attestation is in due form of law. If there be no clerk, such
 8 attestation may be made by the judge or presiding officer ; and in all cases,
 9 if the clerk or officer making it have a seal of office, such seal shall be an-
 9 nexed.

2 SEC. 33. The executors appointed by such will, or administrators with
 3 the will annexed, and any trustee appointed by such will or by any court of
 4 this state to perform any duty or to carry into effect any trust created by
 5 such will, shall have the rights, powers, and authority, and be subject to
 6 the same liabilities, actions, and provisions of law, respecting their duties
 6 and trusts, as under a will executed and proved within this state.

2 SEC. 34. The courts of this state shall in all such cases have the same
 3 jurisdiction and powers as are given to such courts respecting the same
 4 matters arising under wills duly executed and admitted to probate in this
 4 state.

2 SEC. 35. If administration of the estate of a deceased non-resident has
 3 been granted in accordance with the laws of the state or country where he re-
 4 sided at the time of his death, the person to whom it has been committed,
 5 may upon his application, and upon qualifying himself in the same manner
 6 as is required of other executors, be appointed to administer upon the
 7 property of the deceased in this state, unless another has been previously
 7 appointed.

2 SEC. 36. The original letters or other authority conferring his power
 3 upon such executor, or an attested copy thereof, must be filed with the
 3 clerk of the proper court before such appointment can be made.

2 SEC. 37. In other cases where an executor is not appointed by will, ad-
 3 ministration shall be granted :

- 3 1. To the wife of the deceased ;
- 4 2. To his next of kin ;
- 5 3. To his creditors ;
- 6 4. To any other person whom the court may select.

2 SEC. 38. The court may unite individuals belonging to the same or dif-
 3 ferent classes as administrators whenever it deems such a course expedient.

2 SEC. 39. To each of the above classes in succession a period of twenty
 3 days commencing with the burial of the deceased, is allowed, within which
 3 to apply for administration upon the estate.

2 SEC. 40. The court must appoint no person an administrator who is man-
3 festly unsuitable for the discharge of the trust, or who is a minor, unless as
4 herein otherwise provided.

2 SEC. 41. If the persons of each class as above ordered respectively fail
3 to apply for such administration within the twenty days above allotted to
4 his class, without sufficient cause being shown for such failure, or if for any
5 reason all those who apply are improper persons to receive the appointment,
6 the right of administration descends to the next following class.

2 SEC. 42. Every executor or administrator, except as herein otherwise de-
3 clared, before entering on the discharge of his duty, must give bond in such
4 penalty as the clerk approves, conditioned for the faithful discharge of the
5 duties imposed on him by law, according to the best of his abilities.

2 SEC. 43. He must also take and subscribe an oath, the same in substance
3 as the condition of the bond aforesaid; which oath and bond must be filed
4 with the clerk or the court appointing him.

2 SEC. 44. New bonds may be required by the court to be given, and in a
3 new penalty and with new sureties whenever the same is deemed expe-
4 dient.

2 SEC. 45. After the filing of the bond aforesaid, the clerk shall issue let-
3 ters, testamentary or of administration, as the case may be, under the seal
4 of the court, giving the executor or administrator the power authorized by
5 law.

SPECIAL LETTERS OF ADMINISTRATION.

2 SEC. 46. When for any cause there is a delay in granting letters testa-
3 mentary or of administration, the court in term, or the clerk in vacation may
4 in their discretion appoint one or more special administrators to collect and
5 preserve the property of the deceased, who shall qualify as above required.

2 SEC. 47. No appeal from the decision appointing such special executors
3 shall prevent their proceeding in the discharge of their duties.

2 SEC. 48. They shall make and file an inventory of the property of the
3 deceased, in the same manner in all respects as is required of general execu-
4 tors or administrators, and shall preserve said property from injury.

2 SEC. 49. For this purpose they may do all needful acts under the direc-
3 tion of the court, but shall take no steps in relation to the allowance of
4 claims against the estate.

2 SEC. 50. Upon the granting of full administration the powers of the
3 special administrators shall cease and all the business shall be transferred to
4 the general executor or administrator.

2 SEC. 51. Administration shall not be originally granted after the lapse of
3 five years from the death of the decedent, or from the time his death was
4 known in case he died out of the state.

CHAPTER 3. *Of the Settlement of the Estate.*

2 SEC. 1. Within thirty days after their appointment, unless for good cause
3 an extension of that time is specially given by the court, or if in vacation
4 by the clerk, the executors shall make and return to the clerk an inventory
5 of all the personal effects of the deceased of every description, which have
6 come within their knowledge, embracing all book accounts which appear by
the books or papers of the deceased to be unsettled.

2 SEC. 2. When the deceased leaves a widow, no property which in her
3 hands as the head of the family would be exempt from execution shall be
4 deemed assets or administered upon as such, but the same, after being in-
5 ventoried without appment, shall remain with her and the family until
6 disposed of according to law.

2 SEC. 3. Upon the death of a sole surviving parent leaving a minor child
3 the court may make such order and allowance for its temporary support as
4 may be suitable and proper.

2 SEC. 4. All personal property (except as aforesaid) found in the county
3 must be appraised by appraisers, who shall be appointed by the court and
4 shall each receive one dollar per day for his services.

2 SEC. 5. They shall set off and allow to the widow and children under the
3 age of fifteen years of such decedent sufficient provisions or other property to
4 support them for twelve months from his death; and if they or either of
5 them have, since his death and previous to such allowance, consumed for their
6 support, any portion of the estate, the appraisers shall take the same into
consideration in determining the amount of the allowance.

2 SEC. 6. When there is not sufficient personal property, or property of a
3 suitable kind for such allowance, the appraisers shall certify what sum or
4 further sum in money is necessary for the support of such widow or
5 children.

2 SEC. 7. The appraisers shall not include in the appraisal the provis-
3 ions, property or money set off and allowed by them to the widow or child-
4 ren, but the same shall be stated in a separate schedule signed by them and
5 returned to the clerk.

2 SEC. 8. The court may, on the petition of the widow or other person in-
3 terested, review the allowance so made to the widow or children, and
4 increase or diminish the same, and make such order in the premises as it
5 shall deem right and proper.

2 SEC. 9. If any portion of the decedent's personal property be in another
3 county, the same appraisers may serve, or others may be appointed by the
4 court or clerk, whose duties and compensation shall be as aforesaid.

2 SEC. 10. A supplemental inventory must be made out in like manner
3 whenever the existence of other property is discovered.

2 SEC. 11. The court may summon before it any person suspected of
3 having taken wrongful possession of any of the effects of the deceased, or
4 of having had such effects under his control, and may subject him to an ex-
5 amination under oath, and if upon such examination it appear to the court
6 that such suspected person has the wrongful possession of any property or
7 effects of the deceased, the court shall order such property or effects to be
delivered to the executor of the estate.

2 **SEC. 12.** If he disobey such order or summons, or refuse to answer the
3 interrogatories propounded, he may be committed to the jail of the county
until a compliance be yielded.

2 **SEC. 13.** The executor, with the approbation of the court, may compound
3 with any debtor of the estate who may be thought unable to pay his whole
debt, or in order to avoid doubtful litigation.

2 **SEC. 14.** The interest of a deceased mortgagee shall be included among
3 his personal assets, and upon its being paid off satisfaction shall be entered
by the executor.

2 **SEC. 15.** The avails of any life insurance are not subject to the
3 debts of the deceased except by special contract or arrangement,
4 but shall in other respects be disposed of like other property left by the
deceased.

2 **SEC. 16.** When a person by his will makes such a disposition of his
3 effects as to prejudice the rights of creditors, the will may still be sustained
4 by the giving of security to the satisfaction of the court for the payment of
5 the claims of the creditors to the extent of the value of the property thus
devised.

2 **SEC. 17.** When no different direction is given in the will, debts due the
3 estate shall as far as practicable be collected, and the debts owing by the
estate paid off therewith, to the extent of the means thus obtained.

2 **SEC. 18.** The court on the application of the executor, shall from time
3 to time direct the sale of such portions of the personal effects as are of
4 a perishable nature, or which, from any cause, would otherwise be likely
5 to depreciate in value, and also such portions as are necessary to pay off
6 the debts and charges upon the estate, in addition to the means above pro-
vided.

2 **SEC. 19.** If the personal effects are found inadequate to satisfy such
3 charges, a sufficient portion of the real estate may be ordered to be sold for
that purpose.

2 **SEC. 20.** Application for that purpose can be made only after a full
3 statement of all the claims against the estate, and after rendering a full ac-
count of the disposition made of the personal estate.

2 **SEC. 21.** Before any order to that affect can be made all persons inter-
3 ested in such real estate shall be served with notice in the same manner as
is prescribed for the commencement of civil actions.

2 **SEC. 22.** If convenient, the real estate must be divided into parcels and
3 each appraised in the manner above provided for personal property, and the
appraisement filed in like manner.

2 **SEC. 23.** When a part can not be sold without material prejudice to the
3 general interests of the estate, the court may order the sale of the whole, or
of such part as can be sold advantageously.

2 **SEC. 24.** Property may be permitted to be sold at private sale whenever
3 the court is satisfied that the interests of the estate will be thereby promoted.

2 **SEC. 25.** In other cases sales must be made at public auction after giving
3 the same notice as would have been necessary for the sale of such property
on execution.

2 **SEC. 26.** No property can be sold at private sale for less than the ap-
3 praisement price without the express approbation of the judge of the county
court.

2 **SEC. 27.** Property may be ordered to be sold on a partial credit of not
3 more than twelve months.

SEC. 28. Any heir or other person interested in the estate, who may wish to prevent a sale of the whole or any part thereof, may accomplish that purpose by giving bonds to the satisfaction of the court, conditioned that he pay all demands against the estate to the extent of the value of the property thus kept from sale as soon as called upon by the county court for that purpose.

SEC. 29. If the conditions of such bonds are broken the property is still liable for those debts unless it has passed into the hands of an innocent purchaser, and the executors may take possession thereof and sell the same under the direction of the court, or they may prosecute the bond, or both at once if the court so direct.

SEC. 30. If the conditions of the bond are complied with the property passes by devise, distribution, or descent in the same manner as though there had been no debts against the estate.

SEC. 31. Where real estate is sold, conveyances thereof executed by the executors pass to the purchaser all the interest of the deceased therein; but such conveyances shall not be valid until approved by the court.

SEC. 32. Such approval shall be entered of record. A certificate thereof must be indorsed on the deed, with the signature of the clerk and the seal of the court affixed thereto; and the deed so indorsed shall be presumptive evidence of the validity of the sale, and of the regularity of all the proceedings connected therewith.

SEC. 33. No action for the recovery of any real estate sold by an executor can be sustained by any person claiming under the deceased, unless brought within five years next after the sale.

SEC. 34. If there be no heirs or devisee of a decedent present and competent to take possession of the real estate left by such decedent, the executor or administrator of the personal estate may take possession of such real estate, and demand and receive the rents and profits thereof, and do all other acts relating thereto which may be for the benefit of the persons entitled to such real estate.

SEC. 35. Such executor or administrator, under the order and direction of the court, may apply the profits of such real estate to the payment of taxes, debts, and claims against the estate of the deceased, in case the personal assets are insufficient.

SEC. 36. Such executor or administrator shall account to such heirs or devisees for the rents, profits, or use of such real estate, deducting therefrom the payments made under the preceding section, together with a reasonable compensation for his own services, to be fixed by the court.

SEC. 37. When there are minor heirs for whom no guardian has been appointed, the executor or administrator shall pay out of any assets in his hands all taxes assessed against the estate not otherwise provided for, and he shall be credited therefor as for the payment of other claims against the estate.

SEC. 38. When the interests of creditors will not thereby be prejudiced, a testator may prescribe the entire manner in which his estate shall be administered on, may exempt the executor from the necessity of giving bond, and may prescribe the manner in which his affairs shall be conducted until his estate is finally settled, or until his minor children become of age.

SEC. 39. The court in its discretion may also authorize an executor or administrator to continue the prosecution of any business in which the deceased was engaged at the time of his death, in order to wind up his affairs

4 with greater advantage; but such authority shall not exempt him from re-
5 turning a full inventory and appraisement as in other cases.

2 SEC. 40. The executors or administrators first appointed and qualified for
3 the settlement of an estate, shall within thirty days after the receipt of their
4 letters, publish such notice of their appointment as the court, or if in vaca-
5 tion, the clerk, may direct; which direction shall be endorsed on the letters
when issued.

2 SEC. 41. Claims against the estate must be clearly stated, sworn to, and
3 filed; if the claim be less than one hundred dollars, ten days' notice of the
4 hearing, endorsed on a copy of the claim, must be served upon one of the
5 executors, in the manner required for commencing actions in the circuit
court.

2 SEC. 42. The executor may, with the approbation of the court, admit
3 claims with the correctness of which he is satisfied, but not until the claim-
4 ant has sworn to their correctness. The like rule shall be observed in rela-
5 tion to payments or set-off to any demand due the estate.

2 SEC. 43. Where claims are filed and not allowed, as provided in the pre-
3 ceding sections, the claimant's remedy thereon shall be by action in the cir-
4 cuit court, if the claim exceeds one hundred dollars.

2 SEC. 44. In matters of accounts of executors and guardians, the circuit
3 court shall have authority to appoint one or more referees, who shall have
4 all the powers, and perform all the duties of referees appointed by the dis-
5 trict court in a civil action.

2 SEC. 45. Demands though not yet due may be presented, proved, and
3 allowed as other claims.

2 SEC. 46. Contingent liabilities must also be presented and proved, or the
3 court or executor shall be under no obligation to make any provision for
4 satisfying them when they may afterwards accrue.

2 SEC. 47. Claims against an estate and set-offs thereto may in the discre-
3 tion of the court be proved up before one or more referees to be agreed upon
4 between the parties or approved by the court, and their decision being enter-
5 ed upon the record becomes a decision of the court.

2 SEC. 48. Unsatisfied judgments rendered prior to the death of the dece-
3 dent, sworn to as provided in section 41, shall be entered in the catalogue of
4 claims, but possess no preference over other claims, except the lien allowed
5 by law. And should the executor wish to made defense to said judg-
6 ment, or establish a set-off thereto, or cross-demand against the owner there-
of, he may do so by action in the circuit court.

2 SEC. 49. Suits pending at the time of such death may be prosecuted to
3 judgement and then placed in the catalogue of established claims. But no
4 lien is created by such judgment.

2 SEC. 50. If either of the executors is interested in favor of a claim
3 against the estate he shall not serve in any matter connected with that case.
4 And if all the executors are thus interested the court shall appoint some
5 competent person a temporary executor in relation to such claims.

2 SEC. 51. As soon as the executors are possessed of sufficient means over
3 and above the expenses of administration they shall pay off the charges of
4 the last sickness and funeral of the deceased.

2 SEC. 52. They shall in the next place pay any allowance which may be
3 made by the court for the maintenance of the widow and minor children.

2 SEC. 53. Other demands against the estate are payable in the following
3 order:

- 3 1 Debts entitled to preference under the laws of the United States ;
- 4 2 Public rates and taxes ;
- 5 3 Claims filed within six months after the notice given by the executors
- 6 4 of their appointment ;
- 7 5 All other debts ;
- 8 6 Legacies ;

2 Sec. 54. All claims of the fourth of the above classes not filed and proved
3 within one year and a half of the giving of the notice aforesaid are forever
4 barred, unless the claim is pending in the district or supreme court or unless
5 peculiar circumstances entitle the claimant to equitable relief.

2 Sec. 55. After the expiration of the time for filing the claims of the
3 third of the above classes, the executors shall proceed to pay off all claims
4 against the estate in the order above stated as fast as the means of so doing
5 come into their hands.

2 Sec. 56. Claims of the fourth class may be paid off at any time after the ex-
3 piration of six months aforesaid without any regard to those claims not filed
4 at the time of such payment. And even legacies may be paid off at any
5 time after the expiration of one year from the date of the notice of appoint-
6 ment of the executor: *provided*, sufficient be left on hand to satisfy all the
7 claims filed at the date of such payment, the claims of the fourth class as
8 well as the legacies being within the limits above fixed, preferred to the un-
9 filed claims whether the estate be solvent or not.

2 Sec. 57. No payment can be made to a claimant in any one class until
3 these of a previous class are satisfied.

2 Sec. 58. Demands not yet due shall be paid off if the holders will con-
3 sent to such a rebate of interest as the court thinks reasonable. Otherwise
4 the money to which such claimant would be entitled shall be safely invested
5 until his debt becomes due.

2 Sec. 59. Within their respective classes, debts shall be paid off in the
3 order in which they have been proved up subject to the provisions of the fol-
4 lowing section ; but the court shall permit them to be proved up in the
5 order in which they are filed.

2 Sec. 60. If there are not likely to be means sufficient in all to pay
3 off the whole of the debts of any one class, the court shall from time to time
4 strike a dividend of the means on hand among all the creditors of that class,
5 and the executors shall pay the several amounts accordingly.

2 Sec. 61. The executors may with the approbation of the court use funds
3 belonging to the estate to pay off incumbrances upon lands owned by the
4 deceased, or to purchase lands claimed or contracted for by him prior to his
5 death.

2 Sec. 62. Specific legacies of property may be turned over to the rightful
3 claimant at any time upon his giving unquestionable real estate security to
4 restore the property or refund the amount at which it was appraised if want-
5 ed for the payment of debts.

2 Sec. 63. Legacies payable in money may be paid on like terms whenever
3 the executors possess the means which can be thus used without prejudice to
4 the interest of any claim already filed.

2 Sec. 64. After the expiration of the one year and a half allowed for the
3 filing claims as above provided, such legacies may be paid off without re-
4 quiring the security provided for in the preceding two sections, if the means
5 are still retained to pay off all the claims proved or pending as hereinbefore
6 contemplated.

2 SEC. 65. If the testator has not prescribed the order in which lega-
3 cies are to be paid off, and if no security is given as above provided in or-
4 der to expedite their time of payment, they may be paid off in the order in
5 which they were contained in the will, where the estate is sufficient to pay
all.

2 SEC. 66. Or, when not incompatible with the manifest intention of the
3 testator, the court may direct all payments of money to legatees to be made
4 ratably.

2 SEC. 67. Such must be the mode pursued when there is danger that the
3 estate will prove insufficient to pay off all the legacies, unless security be
4 given to refund as above provided.

2 SEC. 68. If the executors fail to make payment of any kind in accord-
3 ance with the order of the court, they and their sureties may be summoned
4 to appear before the court at a time to be specified in the summons not less
5 than ten days from the time of service, to show cause why they have so
failed as aforesaid.

2 SEC. 69. If no sufficient cause be shown the court shall render judgment
3 on the bond of the executors for the amount of money directed to be paid
4 together with costs, and shall issue execution accordingly.

2 SEC. 70. When any of the obligors in the bond is not served with such
3 summons, a similar course may be pursued to that authorized in parallel
4 cases in the district court and with like consequences.

4 The personal property of the deceased not necessary for the payment of
5 debts nor otherwise disposed of as hereinbefore provided, shall be distrib-
6 uted to the same persons and in the same proportions as though it were real
7 estate.

8 The distributive shares shall be paid over as fast as the executor can
9 properly do so.

10 The property itself shall be distributed in kind whenever that can be done
11 satisfactorily and equitably. In other cases the court may direct the prop-
12 erty to be sold and the proceeds to be distributed.

13 When the circumstances of the family require it the court, in addition to
14 what is hereinbefore set apart for their use, may direct a partial distribution,
15 of the money or effects on hand at any time after filing the inventory, upon
16 the execution of security like that required of legatees in like cases.

CHAPTER 4. *Of the Descent and Distribution of Intestate Property.*

2 SECTION 1. The personal property of the deceased not necessary for the
3 payment of debts nor otherwise disposed of as hereinbefore provided, shall
4 be distributed to the same persons and in the same proportions as though it
were real estate

2 SEC. 2. The distributive shares shall be paid over as fast as the executor
3 can properly do so.

2 SEC. 3. The property itself shall be distributed in kind whenever that
3 can be done satisfactorily and equitably. In other cases the court may direct
4 the property to be sold and the proceeds to be distributed.

2 SEC. 4. When the circumstances of the family require it the court, in
3 addition to what is hereinbefore set apart for their use, may direct a partial

3 distribution of the money or effects on hand at any time after filing the in-
4 ventory, upon the execution of security like that required of legatees in
5 like cases.

2 SEC. 5. One-third in value of all the real estate in which the husband at
3 any time during the marriage had a legal or equitable interest, which has
4 not been sold on execution or other judicial sale, to which the wife has made
5 no relinquishment of her right, shall under the direction of the court be
6 set apart by the executor, administrator, or heir, as her property in fee-
7 simple on the death of the husband, if she survive him. Continuous cohab-
8 itation as husband and wife is presumptive evidence of marriage for the pur-
9 pose of giving the right aforesaid.

2 SEC. 6. Such share shall be so set off as to include the ordinary dwelling
3 house and the land given by law to the husband as a homestead, or so much
4 thereof as will be equal to the share allotted to her by the last section unless
5 she prefers a different arrangement. But no different arrangement shall be
6 permitted where it would have the effect of prejudicing the rights of cred-
7 itors.

2 SEC. 7. The share thus allotted to her may be set off by the mutual con-
3 sent of all the parties interested when such consent can be obtained, or it
4 may be set off by referees appointed by the court.

2 SEC. 8. The application for such admeasurement by referees may be
3 made at any time after twenty days and within ten years after the death of
4 the husband, and must specify the particular tracts of land in which she
5 claims her dower, and ask the appointment of referees.

2 SEC. 9. The court shall fix the time for making the appointment and di-
3 rect such notice thereof to be given to all parties interested therein as it
4 deems proper.

2 SEC. 10. The referees may employ a surveyor if necessary; and they
3 must cause the widow's share to be marked off by metes and bounds, and
4 make a full report of their proceedings to the court as early as practicable.

2 SEC. 11. The court may require a report by such a time as it deems rea-
3 sonable, and if the referees fail to obey this or any other order of the court
4 it may discharge them and appoint others in their stead, and may impose on
5 them the payment of all costs previously made unless they show good cause
6 to the contrary.

2 SEC. 12. The court may confirm the report of the referees, or it may set
3 it aside and refer the matter to the same or other referees, at its discretion.

2 SEC. 13. Such confirmation after the lapse of thirty days, unless ap-
3 pealed from according to law, shall be binding and conclusive as to the ad-
4 measurement, and she may bring suit to obtain possession of the land thus
5 set apart for her.

2 SEC. 14. Nothing in the last section shall prevent any person interested
3 from controverting the general rights of the widow to the dower thus ad-
4 measured.

2 SEC. 15. If the referees report that the property or any part thereof can-
3 not be readily divided as above directed, the court, if satisfied with such
4 report, may order the whole to be sold, and one-third of the proceeds paid
5 over to the widow; but such sale shall not take place if any one interested to
6 prevent it, will give security, to the satisfaction of the court, conditioned to
7 pay the widow the appraised value of her share, with ten per cent. interest
8 on the same within such reasonable time as the court may fix, not exceeding
9 one year from the date of such security. If no such arrangement is made,

9 the widow may keep the property, by giving like security to pay off the
 10 claims of all others interested, upon the like terms. With any money thus
 11 paid to her the widow may procure a homestead which shall be exempt from
 12 liability for all debts, past or prospective, from which the former homestead
 13 would have been exempt in her hands. And in order that the sale herein
 14 provided for may not be forced at unfavorable times, or contrary to the
 15 wishes or interests of those interested, it is further provided that such sale
 16 shall not be ordered so long as those in interest shall express a contrary de-
 17 sire and shall agree upon some mode of sharing and dividing the rents,
 18 profits or use of such property, or shall consent that the court divide it by
 19 rents, profit or use.

2 SEC. 16. The widow's right to one-third of the real estate, given by
 3 the preceding sections, cannot be affected by any will of her husband if she
 4 objects thereto, and relinquishes all rights conferred upon her by the will.

2 SEC. 17. All the provisions hereinbefore made in relation to the widow
 3 of a deceased husband, shall be applicable to the husband of a deceased
 4 wife. Each is entitled to the same right in the estate of the other, and the
 5 like interest shall in the same manner descend to their respective heirs. The
 6 estate by courtesy is hereby abolished.

2 SEC. 18. Subject to the rights and charges hereinbefore contemplated,
 3 the remaining estate of which the decedent died seized shall, in the ab-
 4 sence of other arrangements by will, descend in equal shares to his chil-
 5 dren.

2 SEC. 19. If any one of his children be dead, the heirs of such child shall
 3 inherit his share in accordance with the rules herein prescribed, in the same
 4 manner as though such child had outlived his parent.

2 SEC. 20. If the intestate leave no issue, the one-half of his estate shall
 3 go to his parents and the other half to his wife; if he leave no wife, the por-
 4 tion which would have gone to her shall go to his parents.

2 SEC. 21. If one of his parents be dead, the portion which would have
 3 gone to such deceased parent shall go to the surviving parent, including the
 4 portion which would have belonged to the intestate's wife, had she been
 5 living.

2 SEC. 22. If both parents be dead, the portion which would have fallen to
 3 their share, or to either of them, by the above rules, shall be disposed of in
 4 the same manner as if they or either of them had outlived the intestate and
 5 died in the possession and ownership of the portion thus falling to their
 6 share, or to either of them, and so on, through ascending ancestors and
 7 their issue.

2 SEC. 23. If heirs are not thus found the portion uninherited shall go to
 3 the wife of the intestate or to her heirs if dead, according to like rules; and
 4 if he has had more than one wife who either died or survived in lawful
 5 wedlock, it shall be equally divided between the one who is living and the
 6 heirs of those who are dead, or between the heirs of all if all are dead, such
 7 heirs taking by right of representation.

2 SEC. 24. If, still, there be property remaining uninherited, it shall es-
 3 cheat to the state.

2 SEC. 25. When the judge or clerk of any circuit court has reason to be-
 3 lieve that any property within that county should by law escheat to the state
 4 he must forthwith inform the auditor of state thereof, and must also appoint
 5 some suitable person administrator to take charge of the property, unless an
 6 executor or administrator has already been appointed for that purpose in
 7 some county in the state.

2 SEC. 26. The administrator must thereupon give such notice of the death
3 of the deceased and the amount and kind of the property left by him within
4 this state, as in the opinion of the judge or clerk appointing him will be
5 best calculated to notify those interested as far as practicable, and as the cir-
6 cumstances of the case require.

2 SEC. 27. The property may thereupon be sold or the money appropri-
3 ated, by the administrator, for the benefit of the school fund, under the di-
4 rection of the auditor of state: and such sale shall be conducted and
5 the proceeds thereof treated like those of other school lands.

2 SEC. 28. The money, or any portion thereof shall be paid over to any
3 one who shows himself entitled thereto within ten years after the sale of the
4 property or the appropriation of the money as an escheat, but not after-
5 wards.

2 SEC. 29. Illegitimate children inherit from the mother, and the mother
3 from the children.

2 SEC. 30. They also inherit from the father whenever they have been
3 recognized by him as his children, but such recognition must have been gen-
4 eral and notorious or else in writing.

2 SEC. 31. Under such circumstances, if the recognition of relationship
3 has been mutual, the father may inherit from his illegitimate child.

2 SEC. 32. Property given by an intestate, by way of advancement to an
3 heir shall be considered part of the estate so far as regards the division and
4 distribution thereof, and shall be taken by such heir towards his share of
5 the estate at what it would now be worth if in the condition in which it was
6 so given to him. But if such advancement exceeds the amount to which
7 he would be entitled he cannot be required to refund any portion thereof.

CHAPTER 5. *Of Accounting and Miscellaneous Provisions..*

2 SEC. 1. Within one year from the issuing of the first commission to the
3 executor, and sooner if required by the court, he shall render his account to
4 the court showing the then condition of the state, its debts and its
5 effects. And from time to time as may be convenient and as may be re-
6 quired by the court, he shall render further accounts until the estate is finally
7 settled.

2 Such accounts shall embrace all matters directed by the court and perti-
3 nent to the subject.

2 SEC. 2. The executor may be examined under oath by the court upon
3 any matters relating to his accounts when the vouchers and proofs in rela-
4 tion thereto are not sufficiently full and satisfactory.

2 SEC. 3. He must account for all the property inventoried, at the price at
3 which it was appraised, as well as for all other property which has come
4 into his hands belonging to the estate.

2 SEC. 4. The appraisement is only presumptive evidence of the value of
3 an article, and shall be so regarded either for or against the executor.

2 SEC. 5. He shall derive no profit from the sale of property for a price
3 higher than the appraisement, nor is he chargeable with any loss occurring
4 without any fault of his own.

2 SEC. 6. Whenever the court shall make an order affecting any executor,
 3 administrator, or guardian of an estate or person in the discharge of his
 4 duty, and such order cannot be personally served upon him, service of such
 5 order may be made by publication of a notice, stating the substance thereof,
 6 in some weekly newspaper published in the county where such order was
 made for four weeks in succession.

2 SEC. 7. When there is no newspaper published in such county, then said
 3 notice may be published in the newspaper published nearest to the county
 4 seat of the county in which said order is made, which publication may be
 4 proved as required in like cases in the district court.

2 SEC. 8. Service made as above, shall be as effectual as if personally
 3 served, and suits and proceedings may be prosecuted or commenced, had
 4 and maintained, in all respects, as if such notice or notices, order or orders,
 had been personally served.

2 SEC. 9. After letters testamentary, or of administration with the will
 3 annexed, or of administration, shall have been granted to any person, he
 4 may be removed and his letters suspended whenever the interests of the
 4 estate require it, for any of the following causes:

5 1. When by reason of age, continued sickness, imbecility of mind,
 6 or change of residence, or if any such executor or administrator
 7 shall, from any other cause, become incapable of discharging his
 8 trust in such manner as the interest and proper management of the
 9 estate may require.

10 2d. When any such executor or administrator shall fail or refuse to re-
 11 turn inventories or accounts of sales of the estate, or to make re-
 12 ports of the condition of the estate and apply for orders of the
 13 court to sell personal or real estate for the payment of debts and
 14 claims against the same when it shall be necessary, or shall waste
 15 or be guilty of any mal-administration thereof.

16 3. Where it shall be shown to the court by his sureties that such execu-
 17 tor or administrator has become or is likely to become insolvent, in
 18 consequence of which such sureties have or will suffer loss.

2 SEC. 10. Application for the reward of executors or administrators, or
 3 for the purpose of requiring additional sureties, shall be made in the court
 3 from which letters were issued by any person interested in the estate.

2 SEC. 11. Such application must be in writing, and verified by oath, and
 shall specify the grounds of complaint.

2 SEC. 12. Upon the filing of such application, a citation shall issue to the
 3 person complained of, requiring him to appear and answer the complaint,
 4 which citation shall be served ten days before hearing such complaint, unless
 4 sufficient cause be shown for making it returnable forthwith.

2 SEC. 13. If the executor or administrator is not a resident of the county
 3 where such complaint is made, notice thereof shall be served upon him in
 4 the same manner as original notices are now, or may hereafter be required
 5 to be served upon the defendants to civil actions in the district court, who
 may be non-residents of the county in which the action is brought.

2 SEC. 14. If the determination of the court upon the hearing of the com-
 3 plain, is against the executor or administrator, he may be removed and his
 4 letters suspended, and he may be required to file, under oath a full account
 5 of his acts relative to the management of the estate, and may be examined
 5 under oath as to any matter touching the same.

2 SEC. 15. Upon the removal of any executor or administrator, he shall

2 be required by order of the court to deliver to the person who may be en-
 3 titled thereto, all the property in his hands or under his control, belonging
 4 to the estate.

2 SEC. 16. If such executor or administrator disobeys the order of the
 3 court in filing his account, or refuses to be examined under oath, or to deliver
 4 the property, as provided in this act, he may be committed to the jail of the
 5 county until a compliance be yielded.

2 SEC. 17. In case of any unnecessary or unreasonable delay on the part
 3 of any executor or administrator, the court may, by citation, compel him to
 4 render an account of the estate, as if a complaint had been made for that
 5 purpose.

2 SEC. 18. Whenever the letters of any executor or administrator are re-
 3 voked or superceded, all his authority shall cease, and all acts thereafter as
 4 such shall be absolutely void.

2 SEC. 19. Any executor failing to account upon being required to do so
 3 by the court, shall be liable on his bond for all damage caused by such fail-
 4 ure.

2 SEC. 20. Executors shall be allowed the following commissions upon the
 3 personal estate sold or distributed by them, and for the proceeds of real
 4 estate sold for the payment of debts, which shall be received in full compen-
 5 sation for all their ordinary services:

- 5 For the first one thousand dollars the rate of five per cent.;
- 6 For the overplus between one and five thousand dollars, at the rate of
- 7 two and a half per cent.;
- 8 For the amount over five thousand dollars, at the rate of one per cent.

2 SEC. 21. Such farther allowances as are just and reasonable may be made
 3 by the court for actual, necessary, and extraordinary expenses or services.

2 SEC. 22. Any person interested in the estate may attend upon the settle-
 3 ment of accounts of the executioner and contest the same. Accounts set-
 4 tled in the absence of any person adversely interested and without notice to
 5 him may be opened within three months on his application.

2 SEC. 23. Mistakes in settlement may be corrected at any time before
 3 final settlement and discharge of the executor, and even after that time on
 4 showing such grounds for relief in equity as will justify the interference of
 5 the district court.

2 SEC. 24. If judgment is rendered against an executor for costs in any
 3 suit prosecuted or defended by him in that capacity, execution shall be
 4 awarded against him as for his own debt if it appear to the court that such
 5 suit was prosecuted or defended without reasonable cause. In other cases
 6 the execution shall be awarded against him in his representative capacity
 7 only.

2 SEC. 25. Upon final settlement by the executor an order shall be entered
 3 discharging him from farther duties and responsibilities.

MISCELLANEOUS PROVISIONS.

2 SEC. 26. When a person, under such an obligation to convey real estate
 3 as might have been enforced against him if living, dies before making such
 4 conveyance, the district court may enforce a specific performance of such

4 contract by the executor and require him to execute the conveyance accord-
5 ingly.

2 SEC. 27. It is not necessary to make any other than the executor party de-
3 fendant to such proceedings in the first instance, but the court in its discre-
4 tion may direct other persons interested to be made parties and may cause
5 them to be notified thereof in such manner as they may deem expedient.
6 Heirs and devisees may on their own motion at any time be made de-
fendants.

2 SEC. 28. In an action against several executors they are considered one
3 person, and judgment may be taken and execution issued against all as such
4 although only part were duly served with notice.

2 SEC. 29. An executor has no authority to act in a matter wherein his
3 principal was merely an executor or trustee.

2 SEC. 30. Any person who, without being regularly appointed an execu-
3 tor, intermeddles with the property of a deceased person is responsible to the
4 regular executor, when appointed, for the value of all property taken or
5 received by him and for all damages caused by his acts to the estate of the
6 deceased, but his liability extends no far her.

2 SEC. 31. In an action against the heirs and devisees, where the judgment
3 is to be against them in proportion to the respective amounts received by
4 them from the estate, costs awarded against them shall be in like pro-
5 portion.

2 SEC. 32. In such cases any one may tender the amount due from him to
3 the plaintiff, which shall have the same effect so far as he is concerned as
4 though he was the sole defendant.

2 SEC. 33. One of several executors may receive and receipt for money.
3 Such receipt shall be given by him in his own name only, and he must indi-
4 vidualy account for all the money thus received and receipted for by him-
5 self; and this shall not charge his co-executor except so far as it can be
6 shown to have come into his hands.

2 SEC. 34. The clerk of the circuit court shall keep a probate record book,
3 and the following records therein:

3 *First*—The name of every deceased person whose estate is administered
4 upon, and who dies seized of any real estate situate within the county
5 and the date of his death.

6 *Second*—The names of all the heirs at law and widow of such deceased
7 person, and the ages and places of residence of such heirs so far as the
8 same can be ascertained.

9 *Third*—A note of every sale of real estate made under the order of the
10 court, with a reference to the volume and page of the court record,
11 where a complete record thereof, as required by the next section, may
12 be found.

2 SEC. 35. In every case where a sale of real estate is made under the or-
3 der of the circuit court, either by an executor, administrator, or guardian,
4 the clerk shall enter a complete record thereof in the court records, inclu-
5 ding complete records of all papers filed, and all orders made, and of the
6 deed and the approval thereof.

2 SEC. 36. In order to ascertain the facts required to be stated in such rec-
3 ord, the clerk may require each executor or administrator to furnish him
4 with a list of the names, ages, and place of residence of the heirs, or a
5 statement that there are no heirs, or that after using due diligence he has

5. been unable to ascertain their names, ages, or residence; which list or state-
6 ment shall be sworn to by the person making it. The clerk may also exam-
7 ine the records if necessary, in order to ascertain whether a deceased person
8 died seized of real estate.

SEC. 37. He shall also keep a book known as "records of bonds," in
2 which he shall record all bonds given by executors, administrators, and
3 guardians, and he shall receive as compensation for each bond so recorded
4 the sum of fifty cents.

THE CODE OF IOWA

AS REPORTED TO THE

FOURTEENTH GENERAL ASSEMBLY

BY THE COMMISSIONERS

FOR

THE REVISION OF THE STATUTES.

PART III.

OF THE COURTS, AND THE PROCEDURE THEREIN.

DES MOINES:
G. W. EDWARDS, STATE PRINTER.
1872.

PART III.

OF CIVIL PRACTICE AT LAW AND IN EQUITY.

CHAPTER 108. *Preliminary Provisions.*

SECTION 2605. Remedies in civil cases in the courts of this state, are divided into classes—1st, Actions; 2d, Special Proceedings.

SEC. 2606. A civil action is a common proceeding in a court of justice, by one party against another, for the enforcement or protection of a private right, or the redress or prevention of a private wrong. It may also be brought, in certain cases, for the recovery of a penalty or a forfeiture.

SEC. 2607. Every other remedy in a civil case is a special proceeding.

SEC. 2608. The forms of all actions and suits heretofore existing are abolished; and hereafter, there shall be but one form of action for the enforcement or protection of private rights, and the redress or prevention of private wrongs, which shall be called a civil action.

SEC. 2609. In such action the party complaining is known as the plaintiff, and the adverse party as the defendant.

SEC. 2610. The proceedings in a civil action may be of two kinds; 1, ordinary—2, equitable.

SEC. 2611. The plaintiff may prosecute his action by equitable proceedings, in all cases where courts of equity, before the adoption of this code, had jurisdiction; and must so proceed in all cases where jurisdiction was exclusive.

SEC. 4173. [from ch. 163.] The rules of proceeding prescribed for civil actions by ordinary proceedings in the district court, shall be followed in all proceedings, of a special character, whether before the district court or any other tribunal, so far as applicable and not otherwise regulated.

SEC. 4179. [from ch. 163.] The action on a note, together with a mortgage or deed of trust, for the foreclosure of the same, shall be by equitable proceedings, and tried by the second method of trying equitable actions. An action on the bond or note alone, without regard therein to the mortgage or deed of trust, shall be by ordinary proceedings.

2 SEC. 4138. [from ch. 163.] The action for mechanic's lien shall be prose-
 3 cuted by or dinary proceedings, and therewith shall be no other cause of
 3 action joined.

2 SEC. 4184. An action for divorce shall be prosecuted by equitable pro-
 3 ceedings of the second method of trial of equitable actions, and no cause of
 3 action, save for alimony, shall be joined therewith.

2 SEC. 4185. [from ch. 163.] Actions by sureties, and by occupying claim-
 2 ants, and on a lost note or bond, shall be by ordinary proceedings.

2 SEC. 2612. In all other cases, except in this code otherwise provided, the
 2 plaintiff must prosecute his action by ordinary proceedings.

2 SEC. 2613. An error of the plaintiff as to the kind of proceedings adopted
 2 shall not cause the abatement or dismissal of the action, but merely a change
 3 into the proper proceedings, and a transfer of the action to the proper
 4 docket.

2 SEC. 2614. The error mentioned in the last section may be corrected by
 2 the plaintiff, without motion, at any time before the defendant has answered;
 3 or, afterwards, on motion, in court.

2 SEC. 2615. The defendant shall be entitled to have the correction made in
 3 in the following cases:—When the action has been commenced by equitable
 3 proceedings, he by motion made, at the time of filing his answer, may have
 4 them changed into ordinary proceedings, when it appears by the provisions
 5 of this code the plaintiff should have adopted ordinary proceedings, and in
 6 addition, that his answer presents a defense on which he is entitled to a trial
 7 by jury.

2 SEC. 2616. When the action has been commenced by ordinary proceed-
 2 ings, the defendant y motion made, at, or before the time of filing his an-
 3 swer, may have them changed into equitable proceedings when it appears by
 4 the provisions of this code the plaintiff should have adopted such proceed-
 5 ings.

2 SEC. 2617. Where the action has been properly commenced by ordinary
 2 proceedings, either party shall have the right, by motion, to have any issue,
 3 which before the adoption of this code was exclusively cognizable in equity,
 4 tried in the manner hereinafter prescribed in cases of equitable proceedings;
 5 and if all the issues are such as, before the adoption of this code, were cog-
 6 nizable in equity, though none were exclusively so, the defendant shall be
 7 entitled to have them all tried as in cases of equitable proceedings.

2 SEC. 2618. If the plaintiff's claim is for money due by contract, and the
 2 defendant puts in a defense of exclusively equitable cognizance, upon the
 3 plaintiff filing an affidavit that he verily believes that he will succeed in the
 4 action, and that the collection of his claim after judgment will be endangered
 5 by the delay arising from such defense being put in, the court shall require the
 6 defendant to give security for the payment of any judgment the plaintiff
 7 may obtain in the action, and upon his failure to give such security, shall
 8 order the defendant to pay into court an amount sufficient to discharge the
 9 plaintiff's claim and his probable costs; upon which order execution may
 10 be issued as upon a judgment, and the amount collected upon execution
 11 shall be brought into court and await the decision of the action, and be paid
 12 to the plaintiff or defendant, according to such decision. But no such secu-
 13 rity shall be required if the trial of the equitable defense takes place
 14 during the term at which it is put in, nor until all defenses to the action,
 15 other than those of equitable cognizance, are tried or disposed of in favor
 16 of the plaintiff.

SEC. 2619. An error as to the kind of proceedings adopted in the action,

2 is waived by failure to move for its correction at the time and in the man-
 3 ner precribed in this chapter; and all errors in the decisions of the court
 4 on any of the motions named in this chapter, are waived, unless excepted to
 5 at the time; which may be done by the clerk noting at the end of such deci-
 6 sion words of the following import: "To which decision the plaintiff (or
 7 defendant) excepts."

2 SEC. 2620. The provisions of this code concerning the prosecution of a
 3 civil action, apply to both kinds of proceeding, whether ordinary or equita-
 3 ble, unless the contrary appears.

2 SEC. 2621. Judgment obtained in an action by ordinary proceedings,
 3 shall not be annulled or modified by any order in an action by equitable pro-
 4 ceedings, except for a defense which has arisen or been discovered since the
 5 judgment was rendered. But such judgment does not prevent the recovery
 6 of any claim, though such claim might have been used by way of set-off,
 7 counter claim, or cross-demand, in the action on which the judgment was
 7 recovered.

2 SEC. 2622. The rule of the common law that statutes in derogation
 3 thereof are to be strictly construed, has no application to this code. Its pro-
 4 visions and all proceedings under it, shall be liberally construed with a view
 4 to promote its object and assist the parties in obtaining justice.

2 SEC. 4112. [From ch. 161.] A person whose religious faith and practice are
 3 to keep the seventh day of the week as a day set apart by divine command,
 4 and dedicated to rest and religious uses, cannot be compelled to attend as a
 5 juror on that day, and shall in other respects be protected in the enjoyment
 6 of his opinions to the same extent as those who keep the first day of the
 6 week.

2 SEC. 4127. [From ch. 161.] No action to obtain a discovery shall be
 3 brought except that where any person or corporation is liable, either jointly or
 4 severally with others, by the same contract, an action may be brought against
 5 any of the parties who are liable, to obtain discovery of the names and resi-
 6 dences of the others who are liable. In such action, the plaintiff shall state
 7 in his petition, in effect, that he has used due diligence, without success, to
 8 obtain the information asked to be discovered, and that he does not believe
 9 the parties to the contract, who are known to him, have property sufficient to
 10 satisfy his claim. The petition shall be verified as other petitions, and the
 11 cost of such action shall be paid by the plaintiff, unless the discovery be re-
 11 sisted.

2 SEC. 4128. [From ch. 161.] Successive actions may be maintained upon
 3 the same contract or transaction, whenever, after the former action, a new
 3 cause of action has arisen therefrom.

CHAPTER 109. *Organization of Supreme Court.*

SEC. 2623. The supreme court shall be held at the capital of this state.

2 SEC. 2624. There shall be two terms a year, one commencing on the first
 2 Monday in June, and the other on the first Monday of December.

2 SEC. 2625. The sheriff of the county where the court is held, or his dep-
 2 uty, must attend upon the court.

SEC. 2626. The amount appropriated by the general assembly therefor,

2 shall limit the contingent expenses, which shall be allowed said court, and
 3 all the bills for such expenses shall contain the items thereof, and shall be
 4 certified to as correct by one of the judges of said court before being au-
 5 dited.

SEC. 2627. (Chap. 23, 10th G. A.) "The presence of three judges is
 2 necessary for the transaction of business, but one alone may adjourn from
 3 day to day, or to any particular day, or until the next term."

SEC. 2628. When the court is equally divided in opinion, the judgment
 2 of the court below shall stand affirmed, but the decision is of no further
 3 force or authority.

SEC. 2629. If all the judges fail to attend on the first day of the
 2 term, the clerk must enter the fact upon the record, and the court shall stand
 3 adjourned until the next day. The same proceedings shall be repeated from
 4 day to day, until the fourth day of the term, when if none of the judges ap-
 5 pear, the court shall stand adjourned until the next term.

SEC. 2630. No process or proceeding is in any manner affected
 2 by an adjournment or failure to hold court, but all shall stand continued to
 3 the next term, without any special order to that effect.

SEC. 2631. The supreme court has appellate jurisdiction over all judg-
 2 ments and decisions of all other courts of record, as well as in case of civil
 3 actions as in proceedings of a special or independent character.

SEC. 2632. An appeal may also be taken to the supreme court from the
 2 following orders :

- 3 1. An order made affecting a substantial right in an action, when such
 4 order, in effect, determines the action and prevents a judgment
 5 from which an appeal might be taken.
- 6 2. A final order made in special proceedings affecting a substantial right
 7 therein, or made on a summary application in an action after
 8 judgment.
- 9 3. When an order grants or refuses, continues or modifies a provisional
 10 remedy ; or grants, refuses, dissolves, or refuses to dissolve an in-
 11 junction or attachment ; when it grants or refuses a new trial, or
 12 when it sustains or overrules a demurrer.
- 13 4. An intermediate order involving the merits and materially affecting
 14 the final decision ;
- 15 5. An order or judgment on habeas corpus.

SEC. 2633. If any of the above orders are made by a judge the same is
 2 reviewable in the same way as if made by a court.

SEC. 2634. The court may also in its discretion prescribe rules for allow-
 2 ing appeals, on such other intermediate orders or decisions as is deemed ex-
 3 pedient, and for permitting the same to be taken and tried during the pro-
 4 gress of the trial in the court below ; but such intermediate appeals must
 5 not retard proceedings in the court from which the appeal is taken.

SEC. 2635. The courts may issue all writs and process necessary for the
 2 exercise and enforcement of its appellate jurisdiction.

SEC. 2636. The opinions of the court on all questions reviewed an
 2 appeal, as well as such motions, collateral questions and points of practice
 3 as they may think of sufficient importance, shall be reduced to writing, and
 4 filed with the clerk of the court.

SEC. 2637. All dissenting opinions must be written and filed in the
 2 same manner.

SEC. 2638. The records and reports must in all cases show whether
 2 a decision was made by a full bench, and whether either, and if so, which
 3 of the judges dissented from the decision.

SEC. 2639. The supreme court has a general supervision over all other courts of record to prevent and correct abuses where no other remedy is provided by law.

SEC. 2640. The supreme court shall hold argument terms at the city of Davenport in the county of Scott and at the city of Du Buque in the county of Du Buque twice a year; at Davenport on the first Monday in April and October, and at Dubuque on the third Monday in April and October.

SEC. 2641. All the the causes on the docket shall be heard each term, unless by the parties, for good cause shown, continued, and such as are thus continued shall go to the succeeding term of the court at the capitol.

SEC. 2642. Appeals from the counties of Scott, Clinton, Iowa, Cedar, Muscatine, Louisa, and Washington must be taken to a term held at Davenport, and from the Counties of Du Buque, Clayton, Alamakee, Winnesheik, Hancock, Mitchell, Chickasaw, Floyd, Worth, Cerro Gordo, Tama, Hardin, Bremer, Butler, Black Hawk, Grundy, Buchanan, Delaware, Fayette, Jones, Linn, Benton, Howard, Jackson, Hamilton, Franklin and Worth to a term held at Dubuque. But with the consent of the appellee expressed in writing on the notice of appeal, the appellant may take such appeal to the capital.

SEC. 2643. Appeals from the other counties of the state shall not go to the Davenport or Dubuque terms unless by consent of parties expressed on the notice of appeal.

REVISION CHAPTER 111.

District and Circuit Courts.

SEC. 2653. The judicial districts and circuits and the terms and places of holding the district and circuit courts therein shall remain as at present fixed until otherwise directed—provided that in any county where, by the laws now in force, terms of such courts are holden within any incorporated city or town not being the seat of justice of such county, the said city or town shall provide, and furnish the necessary rooms and places for such terms of courts free from charge to such county.

SEC. 2654. In counties where no time is now fixed for holding a court, the judge may appoint the terms by a written notice to the clerk thereof.

SEC. 2655. The clerk shall thereupon prepare as many written notices of the time and place of holding such court as there are townships in the county, and the sheriff shall post up one of such notices in a public place in each of said townships at least three weeks prior to the time therein fixed for holding the court.

SEC. 2656. A special term may be ordered in any county at any regular term of the court in that county.

SEC. 2657. Such special term may also be called at any time by the judge for the trial of those causes in which both parties consent.

SEC. 2658. The court in ordering a special term shall direct whether a grand or petit jury, or both or neither shall be summoned.

2 SEC. 2660. When a county is not provided with a regular court house
3 at the place where the courts are to be held, they shall be held at such place
3 as the board of supervisors provide.

2 SEC. 2661. If no suitable place be thus provided the court may direct
2 the sheriff to procure one.

2 SEC. 2662. The district judges may interchange and hold each other's
2 courts; and so may the circuit judges.

2 SEC. 2663. The district court shall have and exercise general original
2 jurisdiction both civil and criminal when not otherwise provided, and shall
3 have appellate jurisdiction in all criminal matters including actions or special
4 proceedings arising under the provisions of chapters 58 and 184 of this
5 code. Such court shall have a general supervision over all inferior courts and
6 officers except the circuit court or judge thereof, in all criminal matters
7 to prevent and correct abuses where no other remedy is provided by law.

3 SEC. 2663. "A." [Chap. 86, 12 G. A., and chap. 153, 13 G. A.] The
3 circuit court shall have jurisdiction concurrent with the district court
4 in all civil actions at law, and of foreclosures of mortgages, trust-
4 deeds, and contracts for the sale of real estate, and to try and de-
5 termine equitable issues arising in actions at law pending in that court, and
7 also in all actions of partition, or for the assignment of dower, all applica-
8 tion for the writ of *ad quod damnum*, and of all appeals in special proceed-
9 ings for the assessment of damages on the establishment or location of high-
10 ways, railroads and other public improvements, or the taking of private
11 property for public use. Said courts shall have exclusive jurisdiction in all
12 appeals and writs of error from inferior tribunals in civil cases, and shall
13 have and exercise a general supervision over all inferior courts and officers
14 in all civil matters to prevent and correct abuses when no other remedy is
15 provided.

2 SEC. 2664. The clerk shall keep a record of the proceedings of the court
2 under the direction of the judge. He shall from time to time read over all
3 entries therein in open court, which when correct shall be signed by the
4 judge.

2 SEC. 2665. When it is not practicable to have all the records prepared
2 and thus approved during the term, they may be read, corrected and ap-
3 proved at the next succeeding term, but such delay shall not prevent an ex-
4 ecution from issuing in the mean time, and all other proceedings may take
5 place in the same manner as though the record had been approved, and
6 signed. Entries authorized to be made in vocation shall be read, approved,
7 and signed at the next term of the court.

2 SEC. 2666. The record aforesaid is under the control of the court, and
2 may be amended, or any entry therein expunged at any time during the
3 term at which it is made, or before it is signed by the judge as aforesaid.

2 SEC. 2667. Entries made, approved, and signed at a previous term, can
2 be altered only to correct an evident mistake.

2 SEC. 2668. If the judge does not appear on the day appointed for hold-
2 ing the court, the clerk shall make an entry thereof in his record, and ad-
3 journ the court till the next day, and so on until the third day, unless the
4 judge appear, provided three days are allowed for such term.

2 SEC. 2669. If the judge does not appear by five o'clock of the third
2 day, and before the expiration of the time allotted to the term of the court,
3 it shall stand adjourned till the next regular term.

2 SEC. 2670. If the judge is sick, or for any other sufficient cause, is unable
2 to attend court at the regularly appointed time, he may, by a written order,

3 direct an adjournment to a particular day therein specified, and the clerk shall,
4 on the first day of the term, or as soon thereafter as he receives the order
6 adjourn the court as therein directed.

Sec. 2671. No recognizance or other instrument or proceeding shall be
2 rendered invalid by reason of there being a failure of the term, but all pro-
3 ceedings pending in court shall be continued to the next regular term, unless
4 an adjournment be made as authorized in the last preceding section.

Sec. 2672. In cases of such continuances or adjournments, persons rec-
2 ognized or bound to appear at the regular term which has failed as aforesaid,
3 shall be held bound in like manner, to appear at the time so fixed, and their
4 sureties (if any) shall be liable in case of their non-appearance, in the same
5 manner as though the term had been held at the regular time, and they had
6 failed to make their appearance thereat.

Sec. 2673. Upon any final adjournment of the court, all business not
2 otherwise disposed of will stand continued generally.

Sec. 2673 A. [Chapt. 41, 13 G. A.] The district judge of each judicial
2 district shall, on or before the first Monday in December, A. D., 1873, and
3 every alternate year thereafter, designate, by an order made under his hand,
4 the time for holding the terms of each circuit court in his district for the
5 two years ensuing, which order shall be filed with the clerk of the circuit
6 court in each county in each judicial district.

Sec. 2673. B. When an indictment for a misdemeanor has been found in
2 the district court, and the defendant is in custody or on bail, such court, with
3 the consent of the defendant, may order the trial to be had at the next term
4 of the circuit court in the same county. In such cases the circuit court shall
5 have the same powers as the court in which the indictment was found; and
6 it shall be the duty of the district-attorney to attend the trial of such
7 causes.

Sec. 2673. C. The circuit court shall be a court of record; shall have
2 and use its own seal, having on the face thereof the words "Circuit Court,"
3 and the name of the county and state.

CHAPTER 112. *General Provisions.*

SECTION 2674. No judge of any court of record shall practice as an
2 attorney, or counsellor at law, or give advice in relation to any action pend-
3 ing or about to be brought in any of the courts of this state.

Sec. 2675. In 1872 and every sixth year thereafter, there shall be
2 appointed by the governor, by and with the consent of the senate, three
3 commissioners of legal inquiry, who shall hold their office for six years, and
4 any vacancy, by resignation or otherwise, may be filled by the governor,
5 subject to the approval of the senate then, or next to be in session.

Sec. 2676. Each of the judges of the supreme, district and circuit
2 court, shall report to the chairman of such commission as fast as the same
3 shall fall under his observation, any omission, discrepancy or other evident
4 imperfection of the law of civil or criminal procedure.

Sec. 2677. Such commission may report to the legislature at each
2 regular session, such amendments in civil or criminal procedure, as they may

3 deem advisable, in order to carry out the intent and general spirit of the
4 system of practice herewith adopted.

SEC. 2678. They shall not, nor shall any of them receive, either directly
2 or indirectly, any compensation for their services.

SEC. 2679. The district or circuit court of any county may provide by
2 general rule, that in actions brought, or to be brought, in such court, the
3 time of filing an answer, reply, demurrer, or motion, shall be other than that
4 provided in this code, and such other rules as may be necessary to the end
5 that in those counties where the same seems to such court desirable, issues
6 may be made up in vacation.

SEC. 2680. The said courts may adopt also such other rules as they may
2 deem expedient, consistent with law, and may revise the same as often as
3 they think expedient.

SEC. 2681. The prime object of such rules shall be to carry out the pur-
2 poses of the statute, to preserve, as far as is consistent with law, the sub-
3 stance of previous remedies, dispensing with all needless forms with the
4 view of arriving at the prompt attainment of justice.

SEC. 2682. All process issued by the clerk of a court shall bear date the
2 day it is issued, to be tested in the name of the clerk who issued the same,
3 and be under the seal of the court.

SEC. 2683. All judicial proceedings must be public unless otherwise spe-
2 cially provided by statute, or otherwise agreed upon by the parties.

SEC. 2684. All courts have power to administer oaths connected with any
2 matter pending before them, either by any judge, justice, or clerk thereof,
3 or by any other person appointed for that purpose by them.

SEC. 2685. A judge or justice is disqualified from acting as such except
2 by mutual consent of parties, in any case wherein he is a party or interest-
3 ed, or where he is related to either party by consanguinity or affinity, within
4 the fourth degree, or where he has been attorney for either party in the ac-
5 tion or proceeding. But this section does not prevent them from disposing
6 of any preliminary matter not affecting the merits of the case.

SEC. 2686. No court can be opened, nor can any judicial business be trans-
2 acted on Sunday, except,

- 3 1. To give instructions to a jury then deliberating on their verdict ;
- 4 2. To receive a verdict or discharge a jury ;
- 5 3. To exercise the powers of a single magistrate in a criminal proceed-
6 ing.

SEC. 2687. All courts must sit at the places designated for that purpose,
2 pursuant to statute, unless by common consent some other place is fixed
3 upon.

CHAPTER 113. *Contempts.*

SECTION 2688. The following acts or omissions are deemed to be con-
2 tempts, are and punishable as such, by any of the courts of this state, or by
3 any judicial officer acting in the discharge of an official duty as hereinafter
4 provided:

- 5 1. For contemptuous or insolent behavior toward such court while en-
6 gaged in the discharge of a judicial duty which may tend to impair the re-
7 spect due to its authority ;

8 2. For any willful disturbance calculated to interrupt the due course of its
9 official proceedings;

10 3. For illegal resistance to any order or process made or issued by it.

11 4. For disobedience to any subpoena issued by it and duly served, or re-
12 fusing to be sworn, or to answer as a witness;

13 5. For unlawfully detaining a witness or party to an action or proceeding
14 pending before such court, while going to, or remaining at, the place where
15 the action or proceeding is thus pending;

16 6. For any other act or omission specially declared a contempt by law.

SEC. 2689. In addition to the above, the supreme or district courts may
2 punish the following acts or omissions as contempts :

3 1. Failure to testify before a grand-jury, when lawfully required to do
4 so ;

5 2. Assuming to be an officer, attorney, or counselor of the court, and acting
6 as such without authority ;

7 3. Misbehavior as a juror, by improperly conversing with a party, or with
8 any other person in relation to the merits of an action in which he is acting
9 or is to act as a juror, or receiving a communication from any person in re-
10 spect to it without immediately disclosing the same to the court ;

11 4. Disobedience by an inferior tribunal, magistrate, or officer, to any lawful
12 judgment, order, or process of a superior court, or proceeding in any matter
13 contrary to law, after it has been removed from such tribunal, magistrate, or
14 officer.

SEC. 2690. The punishment for contempts may be by fine or imprison-
2 ment, or both; but where not otherwise specially provided, the supreme
3 and district courts are limited to a fine of fifty dollars and an imprisonment
4 not exceeding one day, and all other courts are limited to a fine of ten
5 dollars.

SEC. 2691. But if the contempt consists in an omission to perform an
2 act which is yet in the power of the person to perform, he may be imprisoned
3 until he performs it. In that case the act to be performed must be specified
4 in the warrant of commitment.

SEC. 2692. Unless the contempt is committed in the immediate view and
2 presence of the court, or comes officially to its knowledge, an affidavit showing
3 the nature of the transaction is necessary as a basis for further action in the
4 premises.

SEC. 2693. Before punishing for contempt, unless the offender is already
2 in the presence of the court, he must be served personally with a rule to
3 show cause against the punishment, and a reasonable time given him there-
4 for; or he may be brought before the court forthwith, or on a given day, by
5 warrant, if necessary. In either case he may, at his option, make a written
6 explanation of his conduct under oath, which must be filed and preserved.

SEC. 2694. Where the action of the court is founded upon evidence given
2 by others, such evidence must be in writing, and be filed and preserved, and
3 if the court act upon their own knowledge in the premises, a statement of the
4 facts upon which the order is founded, must be entered on the records of the
5 court, or be filed and preserved when the court keeps no record.

SEC. 2695. When the offender is committed, the warrant must state the
2 particular facts and circumstances on which the court acted in the premises,
3 and whether the same was in the knowledge of the court, or was proved by
4 witnesses.

SEC. 2696. No appeal lies to an order to punish for a contempt, but the
2 proceedings may, in proper cases, be taken to a higher court for revision by
3 certiorari.

2 SEC. 2697. The punishment for a contempt constitutes no bar to an in-
 3 dictment; but if the offender is indicted, and convicted for the same offense
 4 the court in passing sentence, must take into consideration the punishment
 4 before inflicted.

2 SEC. 2698. Any officer authorized to punish for a contempt, is a court
 2 within the meaning of this chapter.

CHAPTER 141. *Attorneys and Counselors.*

2 SEC. 2699. All persons who, by the law heretofore in force, were permit-
 2 ted to practice as attorneys and counselors, may continue to practice as such.

2 SEC. 2700. (Includes chapt. 21—13th G. A). Any person twenty one
 2 years of age who is actually an inhabitant of this state and who satisfies any
 3 court of record of this state that he or she possesses the requisite learning, and
 4 that he or she is of good moral character, may by such court be licensed to
 5 practice in all the courts of the state upon taking the usual oath of office.

2 SEC. 2701. The supreme court, may, on motion, admit any practicing
 2 attorney of the district court to practice in the supreme court upon his tak-
 3 ing the usual oath of office.

2 SEC. 2702. Any practicing attorney of another state having professional
 2 business in the courts of this state may be admitted to practice in either of
 3 such courts upon taking the oath aforesaid.

2 SEC. 2703. The form of the oath aforesaid shall be in substance as
 2 follows: "You do solemnly swear that you will support the constitution of
 3 the United States, and of this state, and that you will faithfully discharge
 4 the duty of an attorney and counselor of this court, according to the best of
 5 your ability."

2 SEC. 2704. It is the duty of an attorney and counselor:

- 2 1. To maintain the respect due to the courts of justice and judicial
 3 officers;
- 4 2. To counsel or maintain no other actions proceedings, or defenses
 5 than those which appear to him legal and just except the defense
 6 of a person charged with a public offense;
- 7 3. To employ, for the purpose of maintaining the causes confided to him
 8 such means only as are consistent with truth, and never to
 9 seek to mislead the judges by any artifice or false statement of fact
 10 or law;
- 11 4. To maintain inviolate the confidence, and at any peril to himself to
 12 preserve the secret, of his client;
- 13 5. To abstain from all offensive personalities, and to advance no fact
 14 prejudicial to the honor or reputation of a party or witness,
 15 unless required by the justice of the cause with which he is
 16 charged;
- 17 6. Not to encourage either the commencement or continuance of an ac-
 18 tion or proceeding from any motive of passion or interest.
- 19 7. Never to reject, for any consideration personal to himself, the cause of
 20 the defenseless or the oppressed.

2 SEC. 2705. An attorney and counselor who is guilty of deceit or
 3 collusion, or consents thereto with intent to deceive a court, or judge, or a
 4 party to an action or proceeding, is liable to be disbarred, and shall forfeit to
 the injured party treble damages, to be recovered in a civil action.

SEC. 2706. An attorney and counsellor has power :

- 2 1. To execute in the name of his client a bond for an appeal, *certiorari*,
- 3 or writ of error, or any other paper necessary and proper for the
- 4 prosecution of a suit already commenced.
- 6 2. To bind his client to any agreement in respect to any proceeding
- 7 within the scope of his proper duties and powers, but no evidence
- 8 of any such agreement is receivable except the statement of the
- 9 attorney himself, his written agreement signed and filed with the
- 10 clerk, or an entry thereof upon the records of the court ;
- 11 3. To receive money, claimed by his client in an action or proceeding,
- 12 during the pendency thereof or afterwards, unless he has been
- 13 previously discharged by his client, and upon payment, thereof,
- 14 and not otherwise, to discharge the claim or acknowledge satisfac-
- 15 tion of the judgment.

2 SEC. 2707. The court may, on motion, for either party and on the
 3 showing of reasonable grounds therefor, require the attorney for the adverse
 4 party, or for any one of several adverse parties to produce or prove by his own
 5 oath or otherwise, the authority under which he appears, and until he does
 6 so, may stay all proceedings by him on behalf of the parties for whom he
 assumes to appear.

2 SEC. 2708. (Chapter 167- 13 G. A.) An attorney has a lien for a gen-
 3 eral balance of compensation, upon any papers of his client, which have
 4 come into his possession in the course of his professional employment ;
 5 upon money in his hands belonging to his client ; and upon money due to
 6 his client and in the hands of the adverse party or his attorney in [an] ac-
 7 tion or proceeding in which the attorney was employed, from the time of
 8 giving notice of the lien to that party, which, after judgment may be en-
 9 tering of in the margin of the judgment-record, a memorandum to the
 10 claim and amount due, signed by the attorney and attested by the clerk of
 the court.

2 SEC. 2709. Any person interested in such matter may release such lien,
 3 by giving security, in a penalty double the amount claimed by the attorney,
 4 and conditioned to pay the amount that may be finally found due for his
 service.

2 SEC. 2710. Any court of record may revoke or suspend the license of
 3 any attorney or counselor at law, to practice therein, and a revocation or sus-
 4 pension by the district court in one county operates to the same extent in
 the courts of all other counties.

2 SEC. 2711. The following are sufficient causes for such revocation or sus-
 3 pension :

- 3 1 When he has been convicted of a felony or of a misdemeanor involving
- 4 moral turpitude, in either of which cases the record of conviction is
- 5 conclusive evidence ;
- 6 2 When he is guilty of a willful disobedience or violation of the order of
- 7 the court, requiring him to do or forbear an act connected with, or
- 8 in the course of his profession ;
- 9 3 For a willful violation of any of the duties of an attorney or counselor
- 10 as hereinbefore prescribed ;

11 4 For doing any other act to which such a consequence is by law at
12 tached.

SEC. 2712. The proceedings to remove or suspend an attorney may be
2 commenced by the direction of the court, or on motion of any individual.
3 In the former case the court must direct some attorney to draw up the accus-
4 ation; in the latter the accusation must be drawn up and sworn to by the
5 person making it.

SEC. 2713. If the court deem the accusation sufficient to justify farther
2 action, it shall cause an order to be entered, requiring the accused to appear
3 and answer on a day therein fixed, either at the same or a subsequent term,
4 and shall cause a copy of the accusation and order to be served upon him
5 personally.

SEC. 2714. To the accusation he may plead or demur, and the issues
2 joined thereon shall in all cases be tried by the court, all the evidence being
3 reduced to writing, filed and preserved.

SEC. 2715. If the accused plead guilty or fail to answer, the court shall
2 proceed to render such judgment as the case requires.

SEC. 2716. In case of a removal or suspension being ordered by a dist-
2 rict or circuit court an appeal therefrom lies to the supreme court, and all
3 the original papers, together with a transcript of the record shall thereupon
4 be transferred to the supreme court to be there considered and finally acted
5 upon. A judgment of acquittal by the district court is final.

SEC. 2717. An attorney who receives the money or property of his
2 client in the course of his professional business, and refuses to pay or deliver
3 it in a reasonable time after demand, is guilty of a misdemeanor.

SEC. 2718. When the attorney claims to be entitled to a lien upon the
2 money or property, he is not liable to the penalties of the two preceding
3 sections until the person demanding the money proffers sufficient security
4 for the payment of the amount of the attorney's claim when it is legally
5 ascertained.

SEC. 2719. Nor is he in any case liable as aforesaid provided he gives
2 sufficient security that he will pay over the whole or any portion thereof to
3 to the claimant when he is found entitled thereto.

CHAPTER 115. *Jurors.*

SECTION 2720. All qualified electors of the state, of good moral
2 character, sound judgment, and in full possession of the senses of hearing
3 and seeing, are competent jurors in their respective counties.

SEC. 2721. The following persons are exempt from liability to
2 act as jurors, to-wit:—All persons holding office under the laws of the
3 United States or of this state; all practising attorneys, physicians, and cler-
4 gymen; all acting professors or teachers of any college, school, or other
5 institution of learning; and all persons disabled by bodily infirmity, or over
6 sixty-five years of age, or specially exempted by any other statute from
7 serving on juries.

SEC. 2722. Any person may also be excused from serving on a
2 jury when for any reason his own interests or those of the public will be
3 materially injured by his attendance, or when the state of his own health,

4 or the death, or the sickness of a member of his family, requires his
5 absence.

Sec. 2723. (Includes part of sec. 3, chap. 167—13 G. A.) Two jury lists
2 one consisting of seventy-five persons to serve as grand jurors, and in coun-
3 ties containing a population of twenty thousand or less inhabitants, one
4 consisting of one hundred and fifty persons, but in counties containing a
5 greater number of inhabitants such last list shall consist of two hundred and
6 fifty persons, to serve as petit jurors; such lists to be composed of persons
7 competent and liable to serve as jurors, shall annually be made in each
8 county from which to select jurors for the years commencing on the first
9 day of January.

Sec. 2724. Should there be less than that number of such per-
2 sons in any county, the list shall comprise all those who answer the above
3 description.

Sec. 2725. On or before the first Monday in September, in each year,
2 the county auditor shall apportion the number to be selected from each
3 township as nearly as practicable, in proportion to the number of votes
4 polled therein at the last general election, and shall deliver a statement
5 thereof to the sheriff.

Sec. 2726. The sheriff shall cause a written notice to be delivered to one
2 of the judges of election in the several townships of the county, on or be-
3 fore the day of the general election in each year, informing them of the
4 number of jurors apportioned for the ensuing year to their respective town-
5 ships.

Sec. 2727. The judges shall thereupon make the requisite selection,
2 and return list of names as selected to the auditor with the returns of the
3 election, and in case the judges of election shall fail to make and return
4 said list as herein required, the county canvassers shall at the meeting to
5 canvass the votes polled in the county make such lists for the delinquent
6 townships.

Sec. 2728. The auditor shall thereupon file said lists in his office, and
2 cause a copy thereof to be recorded in the election book.

Sec. 2729. (chapter 167, 13th G. A.) Grand jurors shall be selected
2 for the first term in the year at which said jurors are required, com-
3 mencing next after the first day of January in each year, and shall serve
4 for one year. Petit jurors shall be selected for each term wherein they are
5 required, but no person shall be required to attend as petit juror more than
6 two terms of court in the same year; and, in counties containing a popula-
7 tion of more than five thousand inhabitants, it shall be cause for challenge
8 that the person has already served two terms as juror during that year.

Sec. 2730. At least twenty days previous to the first day of any term, at
2 which a jury of either kind is to be selected, the clerk or his deputy must
3 write out the names on the lists aforesaid, which have not been previously
4 drawn as jurors during that year, on separate ballots, and the county
5 auditor and sheriff having compared said ballots with the jury-lists and rec-
6 tified the same, if necessary, shall place the ballots in a box to be provided
7 for that purpose.

Sec. 2731. After thoroughly mixing the same, the clerk or his deputy
2 shall draw therefrom the requisite number of jurors to serve as aforesaid.

Sec. 2732. (Chapter 167, 13th G. A.) When grand jurors are to
2 be selected, their number must be fifteen, and they shall serve for one
3 entire year thereafter; the number of petit jurors shall be fifteen unless the
4 judge of the district or circuit court shall, for the court over which he

5 presides, in writing, direct the county auditor to select a greater number, in
6 which case such greater number shall be selected; and separate lists shall
7 be made for the district and circuit courts.

8 SEC. 2732. Within three days after such drawing the clerk must issue
9 a precept to the sheriff, commanding him to summon the said jurors to
10 appear before the court for which they were selected, at eleven o'clock,
11 a. m., of the first day of the next term thereof, (naming the month
12 and day,) unless the judge of the court has previously directed a different
13 hour or day for their appearance, in which case such direction must be
14 observed.

15 SEC. 2733. A (chapter 86, 12th G. A. and chapter 153, 13th G. A.)
16 No grand jury shall be selected or summoned to attend any term of the cir-
17 cuit court. Nor any petit jury except for the first and third terms thereof,
18 held in each year unless the judge in writing should direct otherwise.

19 SEC. 2734. The sheriff shall immediately obey such precept, and
20 on or before the appearance of said jurors must make return thereof,
21 and on failure to do so without sufficient cause, is liable to be fined for a
22 contempt in any amount not exceeding fifty dollars.

23 SEC. 2735. If a person summoned as a juror, as aforesaid, fail to
24 appear, the court may issue a rule returnable to that or the succeeding term,
25 requiring him to appear and show cause why he should not be fined for a
26 contempt, and unless he render a reasonable excuse for his failure to attend,
27 the court may fine him in any amount not exceeding ten dollars and costs.

28 SEC. 2736. Except when required at a special term which has
29 been called in vacation, the grand jury need not be summoned after the first
30 term, but must appear at the next term without summons under the same
31 penalty as though they had been regularly summoned.

32 SEC. 2737. If the requisite number of jurors does not appear by
33 the time appointed as aforesaid, the court may at any time thereafter direct
34 the sheriff to summon, forthwith, the number necessary to make up the defi-
35 ciency.

36 SEC. 2738. Where from any cause the persons summoned to serve as
37 grand jurors, or petit jurors, fail to appear, or when from any cause, the court
38 shall decide that the grand or petit jurors have been illegally elected or
39 drawn, the court may set aside the precept under which the jurors were
40 summoned, and cause a precept to be issued to the sheriff, commanding him
41 to summon a sufficient number of persons from the body of the county to
42 serve as jurors at the term of court then being holden, which precept may be
43 made returnable forthwith, or at some subsequent day of the term, in the
44 discretion of the court.

45 SEC. 2739. Within ten days after the close of each term, the
46 clerk of the court must make out a certificate to each juror of the amount to
47 which he is entitled for his services which must be allowed by the board
48 of supervisors and paid, as other demands against the county.

CHAPTER 116. *Limitation of Actions.*

49 SEC. 2740. The following actions may be brought within the
50 times herein limited respectively after their causes accrue, and not after-
51 wards except when otherwise specially declared, that is to say:

- 4 1. Actions of slander, libel, malicious prosecution, injuries to the person,
5 or for a statute penalty, within two years;
- 6 2. Those against a sheriff or other public officer, growing out of a liabil-
7 ity incurred by the doing of an act in an official capacity, or by the
8 omission of an official duty, including the non-payment of money
9 collected on execution, within three years;
- 10 3. Those founded on unwritten contracts, those brought for injuries to
11 property or for relief on the ground of fraud in cases heretofore
12 solely cognizable in a court of chancery, and all other actions not
13 otherwise provided for in this respect, within five years;
- 14 4. Those founded on written contracts, on judgments of any courts, (ex-
15 cept those courts provided for in the next section,) and those
16 brought for the recovery of real property, within ten years;
- 17 5. Those founded on a judgment of a court of record, whether of this or
18 of any other of the United States, or of the federal courts of the
19 United States, within twenty years.

2 SEC. 2740. (Chap. 148, 9th G. A.) Lapse of time shall in no
3 case bar any action brought or to be brought on any contract for any
4 part of the school fund, nor shall such lapse of time prevent the introduc-
5 tion of evidence in any such action, any provision of chapter 16, of the re-
6 vision of 1860 to the contrary notwithstanding.

2 SEC. 2741. (Chap. 167, 13th G. A.) In actions for relief on the ground
3 ground of fraud, and in actions for trespass to property, the cause of action
4 shall not be deemed to have accrued until the fraud or trespass complained
5 of shall have been discovered by the party aggrieved.

2 SEC. 2743. When there is a continuous open current account, the
3 cause of action shall be deemed to have accrued on the date of the last item
4 therein as proved on the trial.

2 SEC. 2744. The delivery of the original notice to the sheriff of the
3 the proper county with intent that it be served immediately, (which intent
4 shall be presumed unless the contrary appears,) or the actual service of that
5 notice by another person, is a commencement of the action.

2 SEC. 2745. The time during which a defendant is a non-resident
3 of the state shall not be included in computing any of the periods of limita-
4 tion above prescribed.

2 SEC. 2746. (Chap. 167, 13th G. A.) But when a cause of action
3 has been fully barred by the laws of any country where the defendant
4 has previously resided, such bar shall be the same defense here as though
5 it had arisen under the provisions of this chapter; but this section shall not
6 apply to causes of action arising within this state.

2 SEC. 2747. The above limitation of actions for the recovery of
3 real property shall not apply to minors so far as to prevent them from hav-
4 ing at least one year after attaining their majority within which to com-
5 mence such actions.

2 SEC. 2748. If the person entitled to a cause of action die within
3 one year next previous to the expiration of the limitation above provided
4 for, the limitation above mentioned shall not apply until one year after
5 such death.

2 SEC. 2749. If after the commencement of an action the plain-
3 tiff therein for any cause except negligence in its prosecution, and a new
4 suit be brought within six months thereafter, the second suit shall for the
5 purposes herein contemplated be deemed a continuation of the first.

2 SEC. 2750. The above limitations and provisions shall not apply
3 to evidences of debt intended to circulate as money, but shall in other
4 respects be applicable to all actions brought by or against all bodies corpo-
rate and politic, except when otherwise expressly declared.

2 SEC. 2751. Causes of action founded on contract are revived by an ad-
3 mission that the debt is unpaid, as well as by a new promise to pay the
4 same. But such admission or new promise must be in writing, signed by
the party to be charged thereby.

2 SEC. 2752. A defendant may plead a set-off or counter-claim to any
3 cause of action, notwithstanding such set-off or counter claim is barred by
4 the statute, provided that the claim pleaded as such set-off was owned by the
defendant at the time the same became barred by the statute.

CHAPTER 117. *Parties to an Action.*

2 SEC. 2757. Every action must be prosecuted in the name of the real
3 party in interest, except as provided in the next section.

2 SEC. 2758. An executor or administrator, a guardian, a trustee of an
3 express trust, a party with whom, or in whose name a contract is made for
4 the benefit of another, or party expressly authorized by statute, may sue in
5 his own name without joining with him the party for whose benefit the suit
is prosecuted.

2 SEC. 2759. All persons having an interest in the subject of the action,
3 and in obtaining the relief demanded, may be joined as plaintiffs, except
where it is otherwise provided in this code.

2 SEC. 2760. In case of an assignment of a thing in action, the action by
3 the assignee shall be without prejudice to any set-off or other defense exist-
4 ing before notice of assignment; but this section shall not apply to negoti-
5 able instruments transferred in good faith and upon valuable consideration
before due.

2 SEC. 2761. Any person may be made a defendant who has or claims an
3 interest in the controversy adverse to the plaintiff; or who is a necessary
4 party to a complete determination or settlement of the question involved in
the action.

2 SEC. 2762. Persons having an united interest must be joined on
3 the same side, either as plaintiffs or defendants. But when some who
4 should thus be made plaintiffs refuse to join, they may be made defendants;
the reason thereof being set forth in the petition.

2 SEC. 2763. When the question is one of a common or general inter-
3 est to many persons, or when the parties are very numerous and it is
4 impracticable to bring them all before the court, one or more may sue or
defend for the benefit of the whole.

2 SEC. 2764. Where two or more persons are bound by contract, or by
3 judgment, decree or statute, whether jointly only or jointly and severally,
4 or severally only, and including the parties to negotiable paper, common
5 orders, and checks, and sureties on the same, or separate instruments—the
6 action thereon may, at the plaintiff's option, be brought against any or all of
7 them. When any of those so bound are dead, the action may be brought
against any or all of the survivors, with any or all of the representatives of

8 the decedents—or against any or all such representatives. An action or
 9 judgment against any one or more of several persons jointly bound, shall
 10 not be a bar to proceedings against the others.

2 **Sec. 2765.** The court may determine any controversy between parties
 3 before it when it can be done without prejudice to the rights of others, or
 4 by saving their rights. But when a determination of the controversy be-
 5 tween the parties before the court, cannot be made without the presence of
 6 other parties, the court must order them to be brought in.

2 **Sec. 2766.** When in an action for the recovery of real or personal prop-
 3 erty, any person having an interest in the property applies to be made
 4 a party, the court may order it to be done by the proper amendment.

2 **Sec. 2767.** Upon affidavit of a defendant before answer in any ac-
 3 tion upon contract for the recovery of personal property that some third
 4 party without collusion with him, has, or makes a claim to the subject of the
 5 action, or on proof thereof as the court may direct, the court may make an
 6 order for the safe keeping, or for the payment or deposit in court or deliv-
 7 ery of the subject of the action to such person as it may direct, and an or-
 8 der requiring such third person to appear in a reasonable time and main-
 9 tain or relinquish his claims against the defendant, and in the meantime
 10 stay the proceedings. If such third party, being served with a copy of the
 11 order, fails to appear, the court may declare him barred of all claim in re-
 12 spect to the subject of the action against the defendant therein. If such
 13 third person appears, he shall be allowed to make himself defendant in the
 14 action in lieu of the original defendant who shall be discharged from all lia-
 15 bility to either of the other parties, in respect to the subject of the action upon
 16 his compliance with the order of the court for payment, deposit or delivery
 thereof.

2 **Sec. 2768.** The provisions of the last section shall be applicable to an
 3 action brought against a sheriff, or other officer, for the recovery of per-
 4 sonal property taken by him under an attachment or execution, or for the
 5 proceeds of such property so taken and sold by him. And the defendant in
 6 any such action shall be entitled to the benefit of these provisions against
 7 the party in whose favor the attachment or execution issued, upon exhibit-
 8 ing to the court the process under which he acted, with his affidavit that
 9 the property, for the recovery of which, or its proceeds, the action was
 brought, was taken under such process.

2 **Sec. 2769.** In an action against a sheriff, or other officer, for the recovery
 3 of property taken under an attachment or execution, the court may upon
 4 application of the defendant and of the party in whose favor the process is-
 5 sued, permit the latter to be substituted as the defendant, sureties for the
 6 costs being given.

2 **Sec. 2770.** An action to recover the possession of specific personal prop-
 3 erty taken under a landlord's attachment, when it is brought by the tenant or
 4 his assignee or under-tenant, may be against the party who sued out the at-
 5 tachment; and the property claimed by such action may, under the writ
 6 therefor, be taken from the officer who seized it, when he has no other claim
 7 to hold it than that derived from the writ. The indorsement of a levy on
 8 the property made upon the process by the officer holding it, shall be a
 9 sufficient taking of the property to sustain action against the party who sued
 out the writ.

2 **Sec. 2771.** (Chapt. 167, 13 G. A.) A married woman may in all cases
 3 sue and be sued without joining her husband with her, except in cases where
 the cause of action exists in favor or against both.

2 SEC. 2772. When sued alone, judgment shall be enforced against her
3 separate property.

2 SEC. 2773. If husband and wife are sued together, the wife may defend
3 for her own right; and if either neglect to defend, the other may defend for
4 such one also.

2 SEC. 2776. (Chapt. 167, 13 G. A.) When a husband being a father has
3 deserted his family, the wife being a mother may prosecute or defend in his
4 name any action which he might have prosecuted or defended, and shall
5 have the same powers and rights therein as he might have had, and under
6 like circumstances the same right shall apply to the husband upon the de-
7 sertion of the wife.

2 SEC. 2777. The action of an infant must be brought by his guardian or
3 next friend; but the court has power to dismiss it if it is not for the benefit
4 of the infant, or to substitute the guardian of the infant or other person as
5 next friend.

2 SEC. 2778. The defense of an infant must be by his regular guardian, or
3 by a guardian appointed to defend him, where no regular guardian appears,
4 or where the court directs a defense by a guardian appointed for that pur-
5 pose. No judgment can be rendered against an infant until after a defense
6 by a guardian.

2 SEC. 2779. The appointment cannot be made until after service of the
3 notice in the action as directed by this code, and may then be made by the
4 court or judge thereof, or during vacation by the clerk of the district court;
5 but the court shall have power to remove such guardian and appoint an
6 other instead, whenever the interests of the infant requires such a change.

2 SEC. 2780. The appointment may be made on the application of the in-
3 fant if he is of the age of fourteen years, and applies at or before the term to
4 which the notice is served. If he is under the age of fourteen, or does not
5 so apply, the appointment may be made upon the application of any friend
6 of the infant, or on that of the plaintiff in the action.

2 SEC. 2781. The action of a person of unsound mind must be brought by
3 his guardian, or if he has none, by his next friend. When brought by his
4 next friend the action is subject to the power of the court in the same man-
5 ner as the action of an infant so brought.

2 SEC. 2782. The defense of an action against a person of unsound mind, must
3 be by his guardian or a guardian appointed by the court to defend for him,
4 when no guardian appears, or when the court directs a defense by a guardi-
5 an. The guardian to defend may be appointed at the application of any
6 friend of the defendant, or on that of the plaintiff, and no appointment can
7 be made until after service of the notice, as directed in this code, and no
8 judgment can be rendered against him until after a defense by guardian.

2 SEC. 2783. Where a party is found to be of unsound mind during the
3 pendency of an action, the fact being stated on the record, if he is plaintiff,
4 his guardian may be joined with him in the action as such; if he is defen-
5 dant, the plaintiff may on ten days' notice thereof to his guardian, have an
6 order making the guardian a defendant also.

2 SEC. 2784. No judgment can be rendered against a prisoner in the peni-
3 tentiary, until after a defense made for him by his attorney, or if there is
4 none, by a person appointed by the court to defend for him.

2 SEC. 2785. A co-partnership may sue or be sued in its firm name; and
3 when so sued, the individual property of any member of such firm may, on
4 *scire facias*, be made liable to the judgment, unless he show cause to the

4 contrary. A co-partnership may also sue or be sued in the individual
5 names of its members.

2 SEC. 2786. When an action is founded on a written instrument,
3 suit may be brought by or against any of the parties thereto, by the same
4 name and description as those by which they are designated in such instru-
5 ment.

2 SEC. 2787. When a bond or other instrument given to the state or to
3 any officer or person, is intended for the security of the public generally, or
4 of particular individuals, suit may be brought thereon in the name of any
5 person intended to be thus secured, who has sustained any injury in conse-
6 quence of a breach thereof; or by such party in the name of the obligee, the
7 body politic may sue in the name of the obligee in the bond, and in case
8 a motion is allowable, such party may, in the same manner, make such a
9 motion.

2 SEC. 2788. When the precise name of any defendant cannot be ascer-
3 tained, he may be described as accurately as practicable, and when the name
4 is ascertained it shall be substituted in the proceedings.

2 SEC. 2789. Corporations, foreign or domestic, may bring suit in the
3 courts of this state in their corporate name.

2 SEC. 2790. An unmarried female may prosecute, as plaintiff, an action
3 for her own seduction, and recover such damages as may be found in her
4 favor.

2 SEC. 2791. A father, or in case of his death or desertion of his family, or
3 imprisonment, the mother, may prosecute as plaintiff for the seduction of the
4 daughter; and the guardian for the seduction of the ward, though the
5 daughter or ward be not living with, nor in the service of the plaintiff at
6 the time of the seduction, or afterwards, and there be no loss of service; but
7 when the action is brought by the guardian, the damages recovered shall
8 inure to the benefit of the ward.

2 SEC. 2792. A father, or in case of his death or imprisonment or deser-
3 tion of his family, the mother may prosecute as plaintiff an action for the
4 expenses and actual loss of service resulting from the injury or death of a
5 minor child.

2 SEC. 2793. The state shall commence and prosecute suits according to
3 the laws of the land, as between cases between individuals, except that no
4 security shall, in such case, be required.

2 SEC. 2794. No action shall abate by the transfer or assignment of any
3 interest therein during its pendency. In case of the marriage of a female
4 party, the fact being suggested on the record, the husband may be made a
5 party with his wife whenever necessary. In case of any other transfer of
6 interest, the action may be continued in the name of the original party, or
7 the court may allow the person to whom the transfer or assignment is made
8 to be substituted in the action, proper orders being made as to security for
9 costs.

CHAPTER 118. *Place of Bringing Suit.*

SECTION 2795. Actions for the following causes must be brought in the county in which the subject of the action, or some part thereof is situated :

1. For the recovery of real property or of an estate therein, or for the determination in any form of such right or interest.

2. For the partition of real property.

3. For the foreclosure of a mortgage of real property, or for the sale of real property under any incumbrance or charge.

4. For injuries to real property.

5. For the possession of personal property.

SEC. 2796. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose :

1. An action for the recovery of a fine, penalty, or forfeiture imposed by a statute, except that when the offense for which the claim is made was committed on a water course or road, which is the boundary of two counties, the action may be brought in either of them.

2. An action against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue or under color of his office, or against one who by his command or in his aid, shall do anything touching the duties of such officer, or for neglect of official duty.

3. An action upon the official bond of a public officer.

SEC. 2797. An action when aided by attachment may be brought in any county of the state, whenever any part of the property sought to be attached may be found, when the defendant, whose property is thus pursued, is a non-resident of this state. If such defendant is a resident of this state, such action must be brought in the county of his residence, or that in which the contract was to be performed, except that if an action be duly brought against such defendant in any other county by virtue of any provisions of this chapter, then such action may, if legal cause for an attachment exist, be aided by an attachment.

SEC. 2798. When by its terms a contract is to be performed in any particular place, action for a breach thereof, may be brought in the county wherein such place is situated.

SEC. 2799. An action against a railroad company, or an owner of a line of mail stages, or other coaches, for an injury to person or property, upon the road or line, or upon a liability as a carrier, may be brought in any county through or into which said road or line passes.

SEC. 2800. Except where otherwise provided herein, personal actions must be brought in a county wherein some of the defendants actually reside. But if none of them have any residence within this state, they may be sued in any county wherein either of them may be found.

SEC. 2801. When a corporation, company, or individual has an office or agency in any county for the transaction of business, any suits growing out of or connected with the business of that office or agency, may be brought in the county where such office or agency is located.

2 **SEC. 2802.** If a suit be brought in the wrong county, it may be there
 3 prosecuted to a termination, unless the defendant, before answer, demand a
 4 change of venue to the proper county. In which case the court shall order
 5 the same at the costs of the plaintiff, and may award the defendant a reason-
 6 able compensation for his trouble and expenses in attending at the wrong
 7 county.

2 **SEC. 2081. A.** (Chapter 169, 9th G. A.) In all cases of suits against railroad
 3 companies, the same may be instituted in any county through which the
 4 road of said company passes, and service made upon any station or ticket
 5 agent of said company, transacting the business of said company shall be
 6 deemed sufficient notice.

CHAPTER 119. *Change of Venue.*

2 **SEC. 2803.** (Chapter 267-13-G. A.) A. change of venue, in any
 3 civil action may be had in any of the following cases:

4 1st. Where the county in which the suit is pending is a party thereto.

5 2d. Where the judge is a party, or is directly interested in the suit, or is
 6 connected by blood or affinity with any person so interested nearer than
 7 the fourth degree.

8 3d. When either party files an affidavit verified by himself and three
 9 disinterested persons not related to the party making the motion nearer than
 10 the fourth degree, stating that the inhabitants of the county, or the judge is
 11 so prejudiced against him, or that the adverse party or his attorney has such
 12 an undue influence over the inhabitants of the county that he cannot obtain a
 13 fair trial. Where it is so made to appear to the judge, that a jury of twelve
 14 men cannot be obtained in the county where said action is pending, then,
 15 upon application of either party as aforesaid, a change of venue shall be
 granted to the nearest county in which a jury can be obtained.

2 **SEC. 2804.** The application for a change of venue may be made, either
 3 to the court or to the judge in vacation, and if made in term time, shall not
 4 be awarded until issue be made up, unless objection be to the court; nor
 5 shall such application be allowed after a continuance, except for a cause not
 6 known to the affiant before such continuance, and after one change, no party
 7 is entitled to another, for any cause in existence, when the first change was
 obtained.

2 **SEC. 2805.** (chapter 167—13 G. A.) The venue shall be changed
 3 to some other county in the same district, unless the objections are to the
 4 judge, or unless the objections made are claimed to hold to all the other coun-
 5 ties of the district, and shall be to the most convenient county to which no
 6 objection is made. Whenever a change of venue shall be granted on ac-
 7 count of prejudice or disability of the judge, the case shall be transferred to
 8 the circuit court of the same county, unless the same objection exists to the
 9 judge of the circuit court, unless such change of venue be applied for in
 10 cases where the circuit court has no jurisdiction, in which case the cause
 shall be transferred to some other district court.

2 **SEC. 2806.** If the change is ordered by the judge in vacation he
 3 he must immediately transmit to the clerk, where the cause is pending, the
 4 affidavit, if any, and the order for the change.

SEC. 2807. In such case, as well as where the order is made in open court, the clerk must forthwith transmit to the clerk of the proper court, strongly enveloped and sealed, a transcript of the record and proceedings in such cause with all the original papers filed therein, having first made out and filed in his own office, authenticated copies of all such original papers, but if less than all of several plaintiffs or defendants take such change, the clerk shall so transmit not the original papers, but a copy thereof instead, and shall retain the original papers in his office, and as to those who take no change, the cause shall proceed as if no change had been taken by any party.

SEC. 2808. Upon filing such transcript and papers in the office of the clerk of the court to which the same were certified, the cause shall be docketed without fee, and proceeded in as though it had originated therein.

SEC. 2809. The costs occasioned by such change of venue, including those of the transcript and transmission, and those growing out of the preparation of the other party for trial, shall unless such change be taken under subdivision 2 of section 2803, be taxed against the applicant and not as a part of the costs of the case, and the clerk may require payment of the costs of the transcript and transmission, before the case is transmitted as aforesaid.

SEC. 2810. If change of venue be taken in vacation, and the applicant therefor has not procured the transmission of the papers to the proper county before the first day of the next term thereafter, then such party shall be held to have waived his change of venue, and the cause shall be retained in the court where pending for trial therein, unless such non-transmission be the entire fault of the clerk. And if such change be taken during a term of court, unless the cause be so transmitted as aforesaid, or the costs of the clerk therefor be paid or secured by the morning of the second day thereafter, or before said cause be reached for trial, if sooner reached, then such cause shall be retained for trial in the court where pending, and tried as if no change had been prayed.

SEC. 2810. (chapter 86—12 G. A.) Any case pending either in the district court or circuit court of any county may, by the consent of parties, be transferred to the other of said courts within the same county, with the same effect as if a change of venue had been granted from one county to another, and the original papers shall be transferred without costs, and without retaining copy thereof. Whenever a change of venue shall be granted on account of prejudice or disability of the judge, the cause shall be transferred to the district court of the county unless the same objections exist to the judge of the district court.

CHAPTER 120. *The Manner of Commencing Actions.*

SEC. 2811. Actions in any court of record are to be commenced by serving the defendant with the notice herein described.

SEC. 2812. Such notice must be signed by the plaintiff or his attorney, and must inform the defendant of the name of the plaintiff, and that on or before a date therein named, a petition will be filed in the office of the clerk of the court wherein suit is brought, naming it and stating generally the

5 nature of the claim, or claims, if more than one, without the need of stating
 6 the facts constituting the cause thereof (as for example on account for a
 7 promissory note—for work—for goods sold—for assault and battery—for slan-
 8 der—for the recovery of personal or real property, or in some other such general
 9 way,) and if the action is for money, how much is claimed—and that unless he
 10 appears thereto and defends, before noon of the second day of the term, at
 11 which said defendant is required by law to appear—naming it—or at such
 12 other time, as may be by general rule of such court prescribed, default will
 13 be entered against him, and judgment rendered thereon. If the defendant
 14 fail to appear, judgment shall not be rendered for a larger amount than the
 15 sum therein claimed and costs.

2 **Sec. 2813.** If the petition is not filed by the date thus fixed, and ten
 2 days before the term, the action will be deemed discontinued.

2 **Sec. 2814.** The notice may be served by any person not a party to the
 2 action.

2 **Sec. 2815.** The defendant, if served otherwise than by publication shall
 2 be held to appear at the next term after service, provided—

- 3 1. He be served within the county where suit is brought in such time as to
 4 leave at least ten days between the day of service and the first day
 5 of the next term.
- 6 2. He be served without the county, but within the judicial district, so as to
 7 leave at least fifteen such days.
- 8 3. He be served elsewhere within the state so as to leave twenty such
 9 days.
- 10 5. He be served without the state so as to leave ten such days for every
 11 one thousand miles or fraction thereof, extending between the
 12 county of suit and the place of service, which distance shall be ju-
 13 dicially noticed by the court. If not so served, he shall be held to
 14 appear at the second term thereafter.

2 **Sec. 2816.** The notice shall be served as follows:

- 3 1. By reading the notice to the defendant or offering to read it in case he
 4 neglects or refuses to hear it read, and in either case by delivering
 5 him personally a copy of the notice, or if he refuses to receive
 6 it, offering to deliver it.
- 7 2. If not found within the county of his residence, by leaving a copy of
 8 the notice at his usual place of residence, with some member of the
 9 family over fourteen years of age.
- 10 3. By taking an acknowledgment of the service endorsed on the notice,
 dated, and signed by the defendant.

2 **Sec. 2817.** If served personally, the return must state the time and
 3 manner and place of making the service, and that a copy was delivered to de-
 4 fendant, or offered to be delivered. If made by leaving a copy with the
 5 family, it must state at whose house the same was left, and that it was the
 6 usual place of residence of the defendant—and the township, town or
 7 city in which the house was situated, the name of the person with whom
 8 the same was left, or a sufficient reason for omitting to do so, and that such
 8 person was over fourteen years of age, and was a member of the family.

2 **Sec. 2818.** If notice is served out of the county where suit is pending,
 2 either within or without the state, return may be made by mail and the
 3 postage thereon taxed among the costs.

2 **Sec. 2819.** If notice is placed in the hands of the sheriff of the county
 2 wherein action is brought, he must note thereon the date when thus left with

3 him, and must proceed to serve the same without delay, if possible, within
 4 his county, and must file the same with his return thereon immediately
 5 thereafter in the office of the clerk of the district court. If placed in the
 6 hands of the sheriff of any other county, he must serve the same if possible
 7 within his county at once, and return the same by mail to the party from
 8 whom he received it, with his return thereon, immediately thereafter.

SEC. 2820. If a notice be not duly filed by the sheriff, or if the return
 2 thereon is defective, the officer making the same may be fined by the court
 3 not exceeding ten dollars, and shall also be liable to the action of any per-
 4 son aggrieved thereby. But the court may permit an amendment according
 5 to the truth of the case.

SEC. 2821. Notice shall not be served on Sunday, unless the plaintiff
 2 make oath thereon that personal service will not be possible unless then
 3 made, and a notice indorsed with such affidavit shall be served by the sher-
 4 iff, or may be served by another, as on a secular day.

SEC. 2822. The plaintiff may notify either of the defendants that no
 2 personal claim is made against him, in which case a copy of that notice must
 3 accompany the return. If after such notice and return such defendant un-
 4 reasonably defend, he must pay costs to the plaintiff.

SEC. 2823. If service be made within the state, the truth of the return is
 2 proven by the signature of the sheriff, or his deputy, when made by either
 3 of them in his own county, and the court shall take judicial notice thereof.
 4 If made without the state or by one not such officer within the state, the re-
 5 turn may be proven by the affidavit of him making the same, certified by
 6 one empowered to administer oaths.

SEC. 2823. A (Chapt. 93, 9th G. A.) If a county is defendant service may
 2 be made on the chairman of the board of supervisors or county auditor. But
 3 no action shall be brought against any county on any unliquidated demand
 4 until the same has been presented to such board and payment demanded.

SEC. 2824. (Chapt. 167, 13th, and Chapt 169, 9th G. A.) When an ac-
 2 tion has been brought against any civil corporation service may be made
 3 upon a trustee or officer thereof, or on any clerk, agent or station or ticket
 4 agent engaged in the active management of the business of such corporation.
 5 If no such trustee officer agent, clerk, station or ticket agent of any civil
 6 corporation organized under the laws of this state can be found service may
 7 be made on such corporation by publication.

SEC. 2825. If brought against a corporation having no officers, or a part-
 2 nership, service may be made upon any member thereof, or upon any agent
 3 employed in the general management of their business.

SEC. 2827. When a corporation, company, or individual, has, for the
 2 transaction of any business, an office or agency in any county, other than
 3 that in which the principal resides, service may be made on any agent or
 4 clerk employed in such office or agency, in all actions growing out of, or
 5 connected with, the business of that office or agency.

SEC. 2828. When the defendant is a minor under the age of fourteen
 2 years, the service must be made on him, and also on his father or mother
 3 or guardian, and if there be none of these within the state, then on the
 4 person within this state having the care and control of such minor, or
 5 with whom he shall reside, or in whose service he shall be employed.
 6 When the infant is over fourteen years of age, service on him shall be suf-
 7 ficient.

SEC. 2829. When the defendant is a person of unsound mind, service
 2 must be made upon him and upon his guardian, and if he have no guardian,

3 then upon his wife or the person having the care of him, or with whom he
4 lives, or the keeper of the asylum in which he may be confined.

SEC. 2829 A. [Chap. 109—13 G. A.] When, in the case of any pro-
2 ceeding in court, it would otherwise be necessary to serve personally any
3 person who is a patient in the hospital, with a notice or process of any
4 kind, and when, in the opinion of the superintendent, such personal service
5 would injuriously affect such patient, the superintendent shall acknowledge
6 service of the same in behalf of the patient, setting forth in connection
7 such opinion, by indorsement to that effect upon the notice or other
8 process, or a copy thereof, and the same shall stand in lieu of personal ser-
9 vice.

SEC. 2830- When the defendant is a prisoner in the penitentiary, a copy
2 of the petition must be with the notice delivered to the prisoner, and a
3 copy of the notice shall also be delivered to his wife, if he have any.

SEC. 2831. Service may be made by publication in either of the follow-
2 ing cases :

- 3 1. In actions brought for the recovery of real property, or an estate or
4 interest therein.
- 5 2. In an action for the partition of real property.
- 6 3. In an action for the sale of real property under a mortgage lien or
7 other incumbrance or charge.
- 8 4. In actions to compel the specific performance of a contract of sale of
9 real estate, or in actions to establish or set aside a will, where in
10 such cases any or all of the defendants reside out of this state, and
11 the real property is within this state.
- 12 5. In actions brought against a non-resident of this state, or a foreign
13 corporation having in this state property or debts owing to such
14 defendant, sought to be taken by any of the provisional remedies,
15 or to be appropriated in any way.
- 16 6. In actions which relate to, or the subject of which is real or personal
17 property in this state, when any defendant has or claims a lien or
18 interest, actual or contingent therein, or the relief demanded con-
19 sists wholly or partly in excluding him from any interest therein,
20 and such defendant is a non-resident of the state or a foreign
21 corporation.
- 22 7. In all actions where the defendant being a resident of the state
23 has departed therefrom, or from the county of his residence,
24 with intent to delay or defraud his creditors, or to avoid the ser-
25 vice of a notice, or keeps himself concealed therein with the like
26 intent.
- 27 8. Where the action is fo. a divorce.

SEC. 2832. Before service can be made by publication, an affidavit must
2 be filed that personal service of notice cannot be made within this state, on
3 the defendant to be served by publication. When such affidavit is filed
4 the party may proceed to make service by publication.

SEC. 2833. (Chapter 142, 13th G. A.) The publication must be made by
2 publishing the notice required in section 2812, without addition, four con-
3 secutive weeks which last publication shall be at least ten days before the
4 next term of court, in some newspaper published at least weekly, and
5 printed in the county where the petition is filed, and if there be none printed
6 in such county, then in such paper printed at the next nearest county of this
7 state, which paper shall in either case be determined by the plaintiff, or his
8 attorney.

2 SEC. 2834. (Chapter 174, 9th G. A.) Service by publication shall be
 3 deemed complete when the affidavit prescribed in section 2832 is filed and
 4 the notice is published in the manner and for the time prescribed in the
 5 preceeding section, and the defendant shall be held to appear at the next
 6 term, and the affidavit of proof of publication shall be filed before the de-
 7 fault is taken, but the same may be filed without regard to the ten days.

2 SEC. 2835. Actual personal service of the notice either within or without
 3 the state, supersedes the necessity of publication.

2 SEC. 2836. In actions where it shall be necessary to make an unknown
 3 person defendant, the petition shall be sworn to, and shall state what inter-
 4 est such person has or claims to have, how the same was derived or is
 5 claimed to have, been derived, as exactly as possible, that the name and the
 6 residence of such person are unknown to plaintiff, and that he has sought
 7 diligently to learn the same, and thereon proceedings may be had against
 8 such person without naming him as follows:

2 SEC. 2837. The court shall approve a notice collected from the averments
 3 of the petition, which notice shall contain the name of the plaintiffs, a de-
 4 scription of the property, and all the allegations of the petition concerning
 5 the interest of the unknown person and the mode of devolution thereof, the
 6 relief demanded, also the name of the court and the term at which appear-
 7 ance must be made. Said notice must be entitled in the full name of the
 8 plaintiff against the unknown claimants of property, and shall be signed by
 9 the plaintiff's attorney.

2 SEC. 2838. The court, on its approval of said notice, shall indorse the
 3 same thereon and order that the said notice be published in some newspaper
 4 of this state, designating such paper as shall be most likely to give notice
 5 to such unknown person.

2 SEC. 2839. Such notice shall be filed in the cause, and its contents, with-
 3 out more, shall be published in the paper designated, at least weekly for six
 4 successive weeks, and at the end of said time, service shall be deemed com-
 5 plete, and such unknown person in court at the next term thereafter.

2 SEC. 2840. The mode of appearance may be:

- 2 1. By delivering to the plaintiff or the clerk of the court a memorandum
 3 in writing to the effect that the defendant appears, signed either by
 4 the defendant in person or by his attorney, dated the day of its
 5 delivery, and to be filed in the case,
- 6 2. By announcing to the court an appearance, which shall be entered of
 7 record,
- 8 3. By an appearance, even though specially made, by himself or his at-
 9 torney, for any purpose connected with the cause; or for any pur-
 10 pose connected with the service, or insufficiency of the notice. And
 11 an appearance, special or other, to object to the substance or service
 12 of the notice, shall render any further notice unnecessary, but may
 13 entitle the defendant to a continuance, if it shall appear to the court
 14 that he has not had the full timely notice required, of the substantial
 15 cause of action stated in the petition. But if the petition contains
 16 more than one cause of action, a mere appearance shall not be
 17 deemed an appearance to any cause except such as the defendant
 18 shall have had due notice of, and such causes shall be dismissed.

2 SEC. 2841. When the action is against two or more defendants, and one
 3 or more shall have been served, but not all of them, the plaintiff may pro-
 4 ceed as follows:

- 4 1. If the action be against defendants jointly indebted upon contract, he
5 may proceed against the defendants served, and if he recover judgment
6 it may be entered against all the defendants thus jointly indebted,
7 so far as that it may be enforced against the joint property
8 of all, and the separate property of the defendants served, and it
9 shall not be valid against those not served until they have had full
10 opportunity to show cause against the judgment.
- 11 2. If the action be against defendants severally liable, he may without
12 prejudice to his rights against those not served, proceed against the
13 defendants served in the same manner as if they were the only de-
14 fendants.
- 15 3. Or the plaintiff may continue till the next term, and proceed to bring
16 in the other defendants; but at such second term the suit shall
17 proceed against all who have been served in due time, and no
18 further delay shall be allowed to bring in the others, unless all that
19 appear shall consent to such delay.

2 SEC. 2842. When a petition has been filed affecting real estate, the action
3 is pending so as to charge third persons with notice of its pendency, and
4 while pending no interest can be acquired by third persons in the subject
5 matter thereof as against the plaintiff's title, if the real property affected be
6 situated in the county where the petition is filed.

2 SEC. 2843. (Chapt. 167, 13th G. A.) When any real property is the
3 subject of any action, and the same is situated in any other county than the
4 one in which the action is brought, the plaintiff must, in order to affect third
5 persons with constructive notice of the pendency of the action, file with the
6 clerk of the district court of such county, a notice of the pendency of the
7 action, and a description of the property in that county affected
8 thereby, and from the time of such filing, only, shall the pendency of the
9 action be constructive notice to subsequent vendees or incumbrancers thereof,
10 who shall be bound by all proceedings taken after the filing of such notice
11 to the same extent as if a party to the action, and the clerk of such county
12 must, immediately on receipt of such notice, index and record the same in
13 the incumbrance-book. And within two months after the determination of
14 such action there shall be filed with such clerk a certified copy of the final
15 order, judgment, or decree, who shall enter and index the same in the same
16 manner as though rendered in that county, or such notice of pendency shall
17 cease to be constructive notice.

CHAPTER 121. *Joinder of actions.*

2 SEC. 2844. Causes of action of whatever kind, where each may be prose-
3 cuted by the same kind of proceedings, provided that they be by the same
4 party, and against the same party in the same rights, and if suit on all as to
5 venue may be brought in that county, may be joined in the same petition,
6 but the court to prevent confusion therein, may direct all or any portion of
7 the issues joined therein, to be tried separately, and may determine the or-
8 der thereof.

SEC. 2845. The plaintiff may strike from his petition any cause of action or any part thereof, at any time before the final submission of the case to the jury or to the court, when the trial is by the court.

SEC. 2846. The court at any time before the defense, shall on motion of the defendant, strike out of the petition, any cause or causes of action improperly joiled with others.

SEC. 2847. All objections to the misjoinder of causes of actions shall be deemed to be waived, unless made as provided in the last section, and all errors in the decision of the court thereon are waived unless excepted to at the time.

SEC. 2848. When a motion is sustained on the ground of misjoinder of causes of action, the court, on motion of the plaintiff, shall allow him, with or without costs, in its discretion, to file several petitions, each including such of said causes of action as might have been joined, and an action shall be docketed for each of said petitions, and the same shall be proceeded in without further service, and the court shall determine, by order, the time of pleading therein.

CHAPTER 122. *Pleading.*

SECTION 2849. The defendant shall, in an action commenced by ordinary proceedings, demur or answer, or do both, as to the original petition, before noon of the second day of the term.

SEC. 2850. In such action, the plaintiff shall demur or reply as to the original answer, or do both, before noon of the third day of the term, and as to amended or supplemental answer, or an answer in the nature of an answer over, after motion or demurrer by the party answering, before noon of the second day after the day on which such answer shall have been filed.

SEC. 2851. The defendant shall, if the original reply be filed before noon of the third day of the term, demur thereto before noon of the fourth day of the term, and to an amended or supplemental reply, before noon of the second day after the day on which such pleading shall have been filed.

SEC. 2852. [chapt. 174—9th G. A.] In an equitable action the defendant shall demur before noon of the second day of the term, and shall answer in the same time, if the notice shall have been served sixty days before such term, and if not, then in sixty days from the day of completed service; but when the sixty days from the service extend beyond the term, if the defendant does not appear and claim that time to answer, and the petition is verified by affidavit, the plaintiff will be entitled to a default, as in ordinary proceedings.

SEC. 2853. If the answer, the action being commenced by equitable proceedings, is filed on the second day of the term, the plaintiff shall demur before noon of the third day thereafter, and must reply thereto on or before the fiftieth day after said filing.

SEC. 2854. The defendant must demur to an equitable reply before noon of the second day of the term, after the filing thereof.

SEC. 2855. If any pleading is by any rule or order, or for any legal reason filed after the time herein fixed, then the adverse party shall have in which

3 to file his subsequent pleading, the same number of days as would have been
4 allowed him had such late pleading been filed in the time herein affixed.

2 SEC. 2856. (chapt. 167—13th G. A.) The appearance term shall not be
3 the trial term for equitable actions triable by the first method, except in
4 cases in which notice has been served sixty days before such term, and in
5 which also the answer shall be merely a denial and the proof document-
6 ary.

2 SEC. 2857. The day on which the judge actually opens court shall be for
3 the purpose of timing the pleadings, considered the first day of the term.

2 SEC. 2758. Every pleading must, however, be filed on or before the cause
3 is called for trial, although the time allowed for such pleading shall not then
4 have elapsed.

2 SEC. 2859. Taking into consideration in each case, the business of the
3 attorney, and also the opportunities in such county afforded the client to have
4 consulted him before the term, the court, for good cause shown, may, on re-
5 quest, extend the time of filing any pleading beyond the time herein affixed,
6 but shall do so with due regard to making up the issues at as early a day as
7 under the circumstances is possible.

2 SEC. 2860. The court shall have the power to tax against the losing party
3 to any motion or demurer contemplated in this chapter, the sum of five dol-
4 lars, or any smaller sum, depending on the merits of the controversy raised
5 by such motion or demurer, as costs, in favor of the party who thereon
6 succeeds. But after the filing of any such motion or demurrer, and before the
7 same is called up for argument, such motion or demurrer may be confessed,
8 and the proper amendment made without the costs contemplated in this
9 section; but a second confession of a motion or demurrer to a like pleading,
10 shall not exempt from the costs contemplated in this section, but shall incur
11 them as would an adjudication.

2 SEC. 2861. When a petition, answer, or reply shall be adjudged insuffi-
3 cient in whole or in part upon demurrer, or the whole or some part thereof
4 stricken out on motion, the proper party may file a further like pleading
5 within such time as the court may then direct, and the same shall hold as
6 to the answer or reply of a party whose demurrer is overruled, and in either
7 case, in default of such pleading being so filed, the court shall proceed with
8 the cause in the same manner as if no such original pleading had been filed.

2 SEC. 2862. If such second petition, answer or reply be filed, and in like
3 manner be adjudged insufficient, or the whole or some part thereof in like
4 manner, be stricken out, the party filing such second pleading shall be taxed
5 ten dollars, or some smaller sum, in the discretion of the court, as costs and
6 file a like pleading instanter; or in default thereof, the court shall proceed
7 with the cause in the same manner as if no second pleading had been filed.

2 SEC. 2863. If a third petition, answer, or reply be adjudged insufficient
3 as above, or the whole or some part be stricken out, the party filing such
4 pleading shall be taxed fifteen dollars, or a smaller sum, in the discretion of
5 the court, as costs, and no further petition, answer, or reply shall be filed, but
6 judgment shall be rendered as for want of such pleading.

2 SEC. 2864. All motions assailing any pleading shall be in writing, and
3 filed in the case, and shall specify the causes on which they are founded,
4 and no cause not so specified shall be argued or considered in support of the
5 motion.

2 SEC. 2865. Motions assailing pleadings for any of the objections stated
3 in this chapter, shall be regulated as regards the time of filing them as de-
4 murrers are.

2 SEC. 2866 A motion after a motion,, or a demurrer after a demurrer, to
3 the same pleading, shall not be allowed; but each motion and each demurrer
4 shall state all the objections to any pleading which are intended to be made
5 to it, except that a demurrer, on the ground of insufficient statement of facts
6 to constitute a cause of action, defense, set-off, counter-claim, cross demand,
7 or reply, unless the points thereof have been already made, or could have
 been made in a prior demurrer.

2 SEC. 2867. A motion assailing any pleading, or any count thereof, for
3 any of the objections stated in this chapter, shall suspend the necessity of
4 any other pleading to such pleading or count, until the motion shall have
5 been determined, whereupon the court shall direct on or before what time
 the next pleading shall be filed; the same shall obtain as to a demurrer.

2 SEC. 2868. All pleadings, including demurrers, and all motions made in
 writing, shall be filed with the case.

2 SEC. 2869. No motion or demurrer shall be argued until the morning
3 after that on or before which the same shall have been filed, as provided
4 in the preceding section, unless by consent, or unless the case be sooner
 reached.

2 SEC. 2870. A motion or demurrer once filed shall not be withdrawn,
3 without the consent of the adverse party entered thereon, or of the court;
4 in which last case the court may award to the other party, costs, as im-
5 posed on adjudication thereof, and shall fix the time of filing the next
 pleading.

2 SEC. 2871. (Chapter 75—9 G. A.) The filing of a pleading in the
3 clerk's office, and memorandum of such filing made in the appearance
4 docket, within the time allowed, shall be equivalent to a filing in open
 court.

2 SEC. 2872. All technical forms of actions and of pleading, all common
3 counts, general issues, and all fictions are abolished, and hereafter the forms
4 of pleadings in civil actions, and the rules by which their sufficiency is to be
 determined, are those prescribed in this code.

2 SEC. 2873. The pleadings are the written statements of the parties of
3 the facts constituting their respective claims and defenses.

2 SEC. 2874. The only pleadings allowed are :

- 2 1. The petition of the plaintiff.
- 3 2. The demurrer or answer by the defendant.
- 4 3. The demurrer or reply by the plaintiff.
- 5 4. The demurrer by the defendant.

The Petition.

2 SEC. 2875. The first pleading by the plaintiff is the petition. The petition
3 must contain.

- 3 1. The name of the court and the county in which the action is brought.
- 4 2. The names of the parties to the action, plaintiffs and defendants, fol-
5 lowed by the word "petition," if the proceedings are ordinary, and
6 by the words "petition in equity," if the proceedings are equitable.
- 7 3. A statement in ordinary and concise language, without repetition, of
8 the facts constituting the plaintiff's cause of action.
- 9 4. A demand of the relief to which the plaintiff considers himself en-
10 titled, and if such demand be for money, the amount thereof must
11 be stated.

- 12 5. Where the petition contains more than one cause of action, each
13 must be stated wholly in a count by itself, and must be sufficient in
14 itself; but one prayer for judgment may include a sum, based on
15 all counts looking to a money remedy.
16 6. In a petition by equitable proceedings, each cause of action shall also
17 be separated into paragraphs, numbered as such for more conveni-
18 ent reference, and each paragraph shall contain, as near as may be
19 convenient, a complete and distinct statement.

The Demurrer.

- 2 SEC. 2866. The defendant may demur to the petition only where it ap-
3 pears on its face, either.
4 1. That the court has no jurisdiction of the person of the defendant or
5 the subject of the action, or,
6 2. That the plaintiff has not legal capacity to sue, or,
7 3. That there is another action pending between the same parties for
8 the same cause, or,
9 4. That there is a defect of parties, plaintiffs, or defendants, or,
10 5. That the petition does not state facts sufficient to constitute a cause of
11 of action, or that it states some fact which avoids the cause of action,
12 or,
6. For causes stated in sections 2918, 2920, 2961, 2963, of this chapter.

2 SEC. 2877. The demurrer must distinctly specify, and consecutively num-
3 ber as the grounds of objection, some matter of error, intended to be argued
4 as a defect in the pleading; unless it do so it shall be disregarded; and
5 it shall not be enough to state the objection in the terms of the preceding
6 section, except that a demurrer to an equitable petition for the fifth reason
7 of section 2876 may be stated in the terms thereof.

2 SEC. 2878. When any of the matters enumerated in section 2876 do not
3 appear on the face of the petition, the objection may be taken by an answer.
4 If no such objection is taken either by demurrer or answer, the defendant shall
5 be deemed to have waived the same, except only the objection that the peti-
6 tion does not state state facts sufficient to constitute a cause of action, or
7 states a fact which avoids the cause of action.

2 SEC. 2879. The defendant may demur to one or more of the several
3 causes of action all eged in the petition and answer as to the residue.

Answer.

- 2 SEC. 2880. The answer shall contain :
3 1. The style of the court, the name of the county, and the name of the
4 plaintiffs and defendants, but when there are several plaintiffs and
5 defendants, it shall be only necessary to give the first name of each
6 class, with the words—and others.
7 2. A general denial of each allegation of the petition, or else of any
8 knowledge or information thereof sufficient to form a belief, which
latter may be by this or any equivalent statement,—of the truth of

- 9 no allegation of the petition has this defendant knowledge or infor-
 10 mation sufficient to form a belief; or,
 11 3. A specific denial of each allegation of the petition controverted by
 12 the defendant, or any knowledge or information thereof sufficient
 13 to form a belief.
 14 4. A statement of any new matter constituting a defense, in ordinary and
 15 concise language, without repetition.
 16 5. A statement of any new matter constituting a set-off, or a counter-
 17 claim, or a cross-demand, or a cross-petition, in ordinary and con-
 18 cise language, without repetition.
 19 6. The defendant may set forth in his answer as many causes of defense,
 20 set-off, counter-claim, or cross-demand, whether legal or equitable,
 21 as he may have.

SEC. 2881. Matter of defense as distinguished from set-off, counter-claim,
 2 or cross-demand, is either negative, as for example, that which contradicts,
 3 in whole or in part, some fact-proposition of the petition, or it is affirmative;
 4 as for example, that which states new matter either to avoid some fact-prop-
 5 osition of the petition, or to avoid the legal conclusion of the petition, and
 6 all such negative matter, whether wholly or partly so, should be stated in
 7 one division of the answer.

SEC. 2882. Each affirmative defense shall be stated in a distinct division
 2 of the answer, and must be sufficient in itself and must intelligibly refer to
 3 that part of the petition to which it is intended to apply.

SEC. 2883. In the defense part of an answer or reply, it shall not be
 2 necessary to make any prayer of judgment.

SEC. 2884. Each set-off, counter-claim or cross demand, or cross-petition,
 2 must be specially stated in a distinct division.

SEC. 2885. An equitable division must also be separated into para-
 2 graphs and numbered as required in regard to an equitable cause of action
 3 in the petition.

SEC. 2886. A set-off can only be pleaded in an action founded on con-
 2 tract, and must be a cause of action arising on contract, or ascertained by the
 3 decision of a court.

SEC. 2887. A co-maker or surety when sued alone, may, with the con-
 2 sent of his co-maker or principal, avail himself by way of set-off, of a debt
 3 or liquidated demand due from the plaintiff at the commencement of the suit
 4 to such co-maker or principal, but the plaintiff may meet such set-off in the
 5 same way as if made by the co-maker or principal himself.

SEC. 2888. Where it appears that a new party is necessary to a final det-
 2 cision upon a set-off, the court shall permit the new party to be made, if i
 3 also appears that owing to the insolvency or non residence of the plaintiff,
 4 or other cause, the defendant will be in danger of losing his claim unless
 5 permitted to use it as a set-off.

SEC. 2889. The counter-claim must be a cause of action in favor of the
 2 defendants, or some of them, against the plaintiffs, or some of them, arising
 3 out of the contracts or transactions set forth in the petition, as the foundation
 4 of the plaintiff's claim, or connected with the subject of the action.

SEC. 2890. When it appears that a new party is necessary to a final de-
 2 cision upon a counter-claim, the court may either permit the new party to
 3 be made, by a notice to reply to the counter-claim in the answer, or may di-
 4 rect that it be stricken out of the answer, and made the subject of a separate
 5 action.

2 SEC. 2891. A statement by way of cross-demand is any new matter con-
 3 stituting any cause of action in favor of the defendant, or all the defendants
 4 if more than one, against the plaintiff, or all the plaintiffs if more than one,
 5 and which the defendant or defendants might have brought when suit was
 6 commenced, or which was then held, either matured or not, if matured when
 so plead.

2 SEC. 2892. When a defendant has a cause of action, affecting the subject
 3 matter of the action, against a co-defendant, or a person not a party to the
 4 action, he may make in his answer a cross-petition against the co defendant
 or other person.

5 The defendants thereto may be notified as in other cases, and defense
 6 thereto shall be made in the time and manner prescribed in regard to the
 7 original petition, and with the same right of obtaining provisional remedies
 8 applicable to the case.

9 The prosecution of the cross-petition shall not delay the trial of the original
 10 action, when a judgment can be rendered therein that will not prejudice the
 11 rights of the parties to the cross-petition.

2 SEC. 2893. The guardian of an infant or person of unsound mind, or at-
 3 torney for a person in prison, must deny in the answer all the material alle-
 4 gations of the petition, prejudicial to such defendant.

2 SEC. 2864. When the facts stated in the answer, or any division thereof
 3 are not sufficient to constitute a defense, set-off, counter-claim, or cross de-
 4 mand, the adverse party may demur, and shall be held therein, to the same
 5 certainty in the statement of his grounds therefor—as obtains in a demurer
 to the petition.

Reply.

2 SEC. 2895. There shall be no reply except upon the allegations of a
 3 counter-claim, or set off, or cross-demand in the answer.

2 SEC. 2896. When the answer contains new matter constituting a set-off,
 3 counter-claim or cross-demand, the plaintiff may reply to such new matter.
 4 1. Denying generally or specifically, each allegation controverted by him,
 5 or any knowledge or information thereof, sufficient to form a belief as in
 6 case of answer, or—2. He may allege in concise and ordinary language,
 7 any new matter not inconsistent with the petition, constituting a defense to
 able the set-off, counter-claim or cross-demand.

2 SEC. 2897. Any number of defenses, negative or affirmative, are pleable
 to a set-off, counter-claim or cross-demand.

2 SEC. 2898. All the negative matter of the reply, whether wholly or
 3 partly so, shall be stated in one division—and each affirmative matter of
 4 defense in the reply, shall be sufficient in itself, and must intelligibly refer
 5 to the part of the answer to which it is intended to apply. A division of
 6 equitable matter must also be separated into paragraphs and numbered as
 required in case of such matter in the answer.

2 SEC. 2899. When the facts stated in the reply do not amount to a suffi-
 3 cient defense, the defendant may demur, subject to the same requirements
 4 of certainty in statements of grounds thereof, as obtain in demurer to the
 petition.

General Principles of Pleading.

2 SEC. 2900. The opposite party shall be deemed to join in a demurer,
3 whenever he shall not amend the pleading to which it is addressed.

2 SEC. 2901. In all cases in which a denial is made by answer or reply,
3 concerning a time, sum, quantity, or place alleged, the party denying shall
4 declare whether such denial is applicable to every time, sum, quantity, or
5 place, and if not, what time, sum, quantity or place, he admits.

2 SEC. 2902. The counts of the petition must be consecutively numbered
3 as such, and so must the divisions of the answer as such, and of the reply
4 as such.

2 SEC. 2903. If the matter of the petition, answer, or reply, is not put
3 into distinct counts or divisions, and numbered as herein contemplated, or
4 if one such division contains in the petition more than one cause of action,
5 or if one division in the answer contains more than one affirmative defense,
6 or set-off, or counter-claim, or cross-demand, or if one division in the reply
7 contains more than one affirmative defense to any set-off, counter-claim, or
8 cross-demand, the party so neglecting to divide and number, may, on mo-
9 tion, be ordered to divide and number, and the party so pleading double in
10 the contemplation of this section, may be on motion, ordered to elect on
11 which part of such double count or division he will stand, and to strike
12 out the rest of it—or to re-divide such count or division, made bad by such
dupiicity.

2 SEC. 2904. Every pleading must be subscribed by the party, or his attor-
3 ney, and when any pleading in a case shall be verified by affidavit, all sub-
4 sequent pleadings except demurrers shall be verified also, and in all cases
5 of verification of a pleading the affidavit shall be to the effect that the affi-
6 ant believes the statements thereof to be true.

2 SEC. 2905. Where a corporation is a party, the affidavit may be made
3 by any officer thereof.

2 SEC. 2906. When there are several parties united in interest, the affida-
3 vit may be made by any one of them.

2 SEC. 2907. [Chap. 167—13 \S . A.] If the pleading be founded on a
3 written instrument, for the payment of money only, and such instrument
4 be in possession of the agent or attorney, the affidavit may be made by such
5 agent or or attorney, so far as relates to the statement of the cause of action
6 thereon; but, when relief is asked, other than a money judgment or decree
7 of foreclosure, the affidavit must contain averments showing competency, as
hereinafter provided.

2 SEC. 2908. If the statements of the pleading are known to any person,
3 other than the party, such person may make the affidavit.

2 SEC. 2909. When the affidavit is made by any other than the party,
3 it must also contain averments showing the affiant competent to make the
4 affidavit according to the foregoing provisions.

2 SEC. 2910. The verification shall not be required to the answer of a
3 guardian of an infant, or person of unsound mind, or a prisoner.

2 **SEC. 2911.** The verification shall not be required when the admission
 3 of the truth of the allegations of the petition or answer might subject the
 4 party to a criminal or penal prosecution, and when it can be seen from the
 5 pleading to be answered, that at an admission of the truth of its allega-
 6 tions might so subject the party, his general affidavit that such might be the
 7 effect of the admission, without stating the facts leading him to such a con-
 8 clusion, shall be received in lieu of a verification of the pleading.

2 **SEC. 2912.** Verification shall not be required to a pleading grounded on
 3 an injury to the person or the character.

2 **SEC. 2913.** The affidavit of verification may be made before any person,
 3 either within or without this state, duly qualified to administer an oath,
 4 and must be signed by the person making the same, and the officer before
 5 whom the same is taken, shall certify that it was signed in his presence, by
 6 the person (naming him) and by him, before such officer sworn to or affirm-
 7 ed. That purporting to be the certificate of such officer, as signed officially,
 8 if made within this state, shall be presumptive evidence that it is such cer-
 9 tificate, and that its averments are true, and if made without this state shall
 10 be so taken, when made before any one by our law qualified to take depo-
 11 sitions, but if taken before any officer not so qualified, his official certificate
 12 must be authenticated as is required by section 4058 of this code.

2 **SEC. 2914.** The verification of the pleading does not apply to the amount
 3 claimed, except in actions founded on contract, express or implied, for the
 4 payment of money only.

2 **SEC. 2915.** The verification shall not make other or greater proof nec-
 3 essary on the side of the adverse party.

2 **SEC. 2916.** If a pleading be not duly verified, it may be struck out, on
 3 motion, but such defect will be deemed waived if the other party respond
 4 thereto, or proceed to trial without such motion.

2 **SEC. 2917.** Every material allegation of the petition not controverted by
 3 the answer, and every material allegation in the answer of new matter
 4 constituting a set-off, counter-claim or cross-demand, not controverted by the
 5 reply, must for the purposes of the action, be taken as true. But the allega-
 6 tions of new matter in the answer, not relating to a set-off, counter-claim or
 7 cross-demand, or of new matter in a reply, is to be deemed controverted by
 8 the adverse party, as upon a direct denial or avoidance as the case may re-
 9 quire. An allegation of value, or of amount of damage, shall not be deem-
 10 ed true by a failure to controvert it, and an averment that of the truth of
 11 any stated allegation or allegations the party has not sufficient knowledge or
 12 information to form a belief, shall be deemed a sufficient denial to prevent
 13 the same from being taken as true. A party desiring to admit any allega-
 14 tions of fact, which by this section would otherwise be deemed controverted
 15 by mere force of law, may at any time file a written admission thereof.

2 **SEC. 2918.** If the action, set-off, counter-claim, or cross-demand, is
 3 founded on an account, a bill of particulars must be incorporated into, or
 4 attached to, and filed with the pleading, or such pleading will be demur-
 5 rable, and if not incorporated into it, must be verified as the pleading.
 6 And if the same be not a statement of such particulars as may be nec-
 7 essary to give the court and the other party, reasonable knowledge of the
 8 nature and the grounds of the cause of action, set-off, counter-claim, or
 9 cross-demand, the court may, on motion, order it to be made more spe-
 10 cific. Such bill of particulars shall be deemed a part of the pleadings to
 11 which it is annexed, and shall be answered or replied to as such, and as

11 such shall define and limit the proof, subject, however, to amendment as
 12 hereafter provided. The items of a bill of particulars shall be consecu-
 13 tively numbered, and the party adverse shall answer specifically every
 14 item; but he may make one and the same allegation or denial concern-
 15 ing any number of items to which such allegation or denial is applicable,
 16 specifying the number of items thus answered together, when less than
 17 the whole.

2 SEC. 2919. If the adverse party shall deny that any item is due or
 payable, or that he owes the party as alleged, he must state all the substan-
 3 tative grounds on which he rests such denial, and shall specify whether some
 4 and what part of the whole, of such items or demand is denied.

2 SEC. 2920. If the action, set-off, counter-claim, or cross-demand is
 founded on a note, bill, bond, or other writing, as evidence of indebted-
 3 ness, the original or copy thereof must be set out in or annexed to the
 4 pleading, if in the power of the party to procure it. If not so done, the
 5 reason thereof must be stated in the pleading. If there be no such copy so
 6 set out or annexed, and no sufficient reason stated for such omission, it will
 7 be sufficient ground for a demurrer to such pleading.

2 SEC. 2921. In pleading a judgment or other determination of a court or
 officer of special jurisdiction, it shall not be necessary to state the facts con-
 3 ferring jurisdiction, but such judgment or determination may be stated to
 4 have been duly given or made.

2 SEC. 2922. In pleading the performance of conditions precedent in a
 contract, whether such conditions are expressed or implied, it shall not be
 3 necessary to state the facts constituting such performance, but a general
 4 statement that the party duly performed all the conditions on his part, or to
 5 that substantial effect, shall be sufficient.

2 SEC. 2923. A plaintiff suing as a corporation, partnership, executor,
 guardian, or in any other way implying corporate, partnership, representa-
 3 tive, or other than individual capacity, need not state the facts constituting
 4 such capacity or relation, but may aver generally, or as a legal conclusion,
 5 such capacity or relation; and where a defendant is held in such capacity or
 6 relation, a plaintiff may aver such capacity or relation, in the same general
 7 way.

2 SEC. 2924. If the general allegation contemplated in the three preceding
 sections is made in a petition, and is not controverted in the answer, or
 3 made in the answer in relation to a set-off, counter-claim, or cross-demand,
 4 and not controverted in the reply, each allegation not so controverted shall,
 5 on the trial, be taken as true.

2 SEC. 2925. If either of the allegations contemplated in sections 2921,
 2922, 2923, is intended to be controverted, it shall not be sufficient to con-
 3 trovert it in terms of the allegation contradictory of the general proposition
 4 intended to be controverted, but it is necessary to state specifically the facts
 5 relied on as a denial of such proposition.

2 SEC. 2926. In pleading a private statute, or a right derived therefrom,
 it shall be sufficient to refer to such statute by its title and the day of its
 3 passage, and the court shall thereupon take judicial notice thereof.

2 SEC. 2927. Every court of this state shall take judicial notice of the
 rules of any other court thereof.

2 SEC. 2928. In an action for slander or libel, it shall not be necessary to
 state in the petition any extrinsic fact for the purpose of showing the appli-
 3 cation to the plaintiff of any defamatory matter out of which the cause of
 4 action arose, but it shall be sufficient to state generally that the same was
 5 spoken or published concerning the plaintiff, nor shall it be necessary to

6 state any prefatory or extrinsic fact for the purpose of showing that such
 7 words were used in a defamatory sense, but it shall be sufficient gene-
 8 rally to state that the words or matter were used in a defamatory sense,
 9 specifying such defamatory sense, and where the words or matter set forth,
 10 with or without the alleged meaning, show a cause of action, it shall be suf-
 11 ficient.

2 SEC. 2929. In actions of slander or libel, the defendant may, in his an-
 3 swer, allege both the truth of the matter charged as defamatory, and any
 4 mitigating circumstances sufficient in law to reduce the amount of damages ;
 5 or he may allege either one of these without the other, and the allegation of
 6 the truth of the matter charged shall not, if the defendant fail to establish
 7 it, be deemed, in itself, proof of the malice of such words, but the jury shall
 8 decide upon the whole case, whether such defense was, or was not, made
 9 with malicious intent, and whether he prove the justification or not, he may
 10 give in evidence the mitigating circumstances, but each defense must be
 11 separately stated and numbered, and if the defendant relies on more than
 12 one mitigating circumstance sufficient in law to reduce the amount of
 13 damages, each of such circumstances must be separately stated and num-
 14 bered, and sufficient in itself, and if the defendant relies on the truth of the
 15 matter charged, nothing herein is intended to relax the law of pleading
 16 heretofore in force, as regards the certainty of statement required in such a
 mode of defense.

2 SEC. 2930. Any person shall be entitled to intervene in an action who
 3 has an interest in the matter in litigation, in the success of either of the
 4 parties to the action, or an interest against both. An intervention takes
 5 place when a third party is permitted to become a party to an action
 6 between other persons, either by joining the plaintiff in claiming what is
 7 sought by the petition, or by uniting with the defendant in resisting
 8 the claim of the plaintiff, or by demanding any thing adversely to both
 9 the plaintiff and defendant. A third person may intervene either before
 or after issue has been joined in the cause, and before the trial commences.

2 SEC. 2931. The court shall determine upon the intervention at the same
 3 time that the action is decided, and the intervenor has no right to delay ;
 4 and if the claim of the intervenor is not sustained, he shall pay all costs of
 the intervention.

2 SEC. 2932. The intervention shall be by petition filed in the court in
 3 which the action is pending, and it must set forth the facts constituting the
 4 grounds on which the intervention rests, and shall be taken notice of by the
 5 adverse party, as any other pleading, on being served by copy, and shall be
 6 responded to in the time which is allowed for other pleadings of the kind
 7 used in such response, and all the pleadings therein shall be governed by
 8 the same principles and rules as obtain in other pleadings provided for in
 9 this chapter. But if such petition is filed during term, the court shall di-
 rect the time in which an answer shall be filed thereto.

2 SEC. 2934. One cause of action, defense, set-off, counter-claim, cross-de-
 3 mand, or reply, shall be expressed in but one statement, and not in vari-
 4 ous counts or divisions, If such be done, the adverse party may move to
 5 strike out all but one of such counts or divisions, supporting his motion by
 6 an affidavit that the same are for only one cause of action, whereupon the
 7 other party shall either so strike out at the cost of the motion, or declining,
 8 must show on trial as many distinct causes as he has counts or divisions, or
 shall pay all the costs of the whole trial.

SEC. 2935. Where a transaction has taken place between the plaintiff

2 and defendant, constituting in favor of the plaintiff a cause of action against
 3 the defendant, and where another contemporaneous or subsequent transac-
 4 tion growing out of and based upon the former transaction, has also taken
 5 place between them, which may or may not have operated a merger or dis-
 6 placement of the former cause of action—then, if such plaintiff is not clear
 7 upon which of such transactions he is entitled to recover, he may state in his
 8 petition, in distinct counts, the facts constituting each of such causes of ac-
 9 tion, and may pray for the relief proper to such cause of action, and must
 10 also state that he claims to recover but for one of such causes; where-
 11 upon the defendant may allow judgment to go against him on either of such
 12 causes in bar of the other; or if the defendant contests both of such causes,
 13 the plaintiff may, on proper proof recover on either, or having obtained ver-
 14 dict on both, may state on which one he will have judgment, which judg-
 15 ment, shall be in bar of the other.

16 The same principle shall obtain in regard to a set-off. counter-claim, or
 17 cross-demand.

SEC. 2936. Where a transaction has occurred, and if certain facts thereof
 2 should be proved, such proof would entitle the plaintiff to one kind or de-
 3 gree of relief, while if other facts thereof were proved, such proof would
 4 entitle the plaintiff to another kind or degree of relief; then if the plaintiff
 5 cannot determine which group of facts he can prove, but believes he can prove
 6 the one or the other of such groups, he may state as cause of action in dis-
 7 tinct counts, each of such group of facts, with the relief which he demands
 8 thereon, and that he asks judgment only on one of such group of facts.
 9 Whereupon the parties shall have the same rights, and the same proceedings
 10 may be had as are provided for in section 2935, and the verification of the
 11 causes of action of this section shall be in effect that the plaintiff believes
 12 one or the other of them true, but can not determine which.

SEC. 2937. Contradictory causes of defense or reply may be stated in
 2 an answer or reply, and when the pleading is verified, it must be to the same
 3 effect as required in the last section.

SEC. 2938. Two or more parties making the same defense or reply, may
 2 do so jointly.

SEC. 2939. The pleading may include one count only when the same
 2 contract was made by each of the adverse parties, but must include different
 3 counts describing the different contracts of the adverse parties when, as
 4 in the case of maker and indorser, the same contract was not made by
 5 all.

SEC. 2940. Whenever a party claims a right derogatory from the gen-
 2 eral law, or when his claim is founded upon an exception of any kind, he
 3 shall set forth such claim or such exception particularly in his pleading.

SEC. 2941. Propositions which state matters of law, as contra distin-
 2 guished from those which state matters of fact, must not be stated in a
 3 pleading, but if a proposition which has a meaning which would make it
 4 matter of law has also another and a common sense meaning which would
 5 make it matter of fact, it shall be taken in the latter meaning and shall be
 6 demed a proposition of fact.

SEC. 2942. Any defense showing that a contract, written or oral, or any
 2 instrument sued on, is void or voidable; or the fact that the alleged instru-
 3 ment was delivered to a third person, as an escrow, or showing matter of
 4 justification, excuse, discharge, or release, and any cause of defense which
 5 admits the facts of the adverse pleading, but by some other matter seeks to
 6 avoid their legal effect, must be specially pleaded.

2 SEC. 2943. Any defense that admits that an allegation of the other
3 pleading is true, as an allegation of fact, but assumes that it is not true as
4 an allegation of law, and seeks to avoid it by new matter, must be specially
5 pleaded.

2 SEC. 2944. Under a mere denial of an allegation, no evidence shall be
3 introduced by the party so denying, which does not tend to negative such
4 an allegation of fact, or to negative some proposition of fact, as contradis-
5 tinguished from one of law, which the party having made the controverted
6 allegation, is bound to prove, in order to sustain such allegation.

2 SEC. 2945. Propositions which are statements of evidence, as contradis-
3 tinguished from propositions which are statements of the ultimate results of
4 evidence, should not be stated in any pleading.

2 SEC. 2946. The court may, on motion of any person aggrieved thereby,
3 cause irrelevant or redundant matter to be stricken from any pleadings, at
4 the cost of any party, whose pleading contains them.

2 SEC. 2947. A material allegation in a pleading, is one essential to the
3 claim or defense, and which could not be stricken from the pleading with-
4 out leaving it insufficient.

2 SEC. 2948. When the facts on which any pleading is founded, are stated
3 in a manner so general, or so indefinite, or so uncertain that the precise
4 nature of the cause of action, or defense, or set off, or counter claim, or cross-
5 demand is not so apparent as to enable the adverse party to respond intel-
6 ligibly thereto, the court may, on motion, require the pleading to be made
7 more specific, definite, and certain by amendment, and no pleading which
8 recites or refers to a contract, shall be deemed sufficiently specific, unless it
9 states whether the same is in writing or not. Such motion shall point
10 out wherein the amendment is required or shall be disregarded, and if the
11 reason for such demand of more specific statement exists outside of the
12 pleadings, the motion must state the same and be sworn to.

2 SEC. 2949. The title of a cause shall not be changed in any of its stages
3 of transit from one court to another.

2 SEC. 2950. Matters of which judicial notice is taken, need not be stated
3 in a pleading.

2 SEC. 2951. In the construction of a pleading, for the purpose of deter-
3 mining its effect, its allegations shall be liberally construed, with a view to sub-
4 stantive justice between the parties.

2 SEC. 2952. When a party claims by conveyance, he may state it accord-
3 ing to its legal effect or name.

2 SEC. 2953. When a party claims by inheritance, either by immediate,
3 or mediate descent, he shall allege how he is heir, as a son, nephew, or
4 otherwise.

2 SEC. 2954. It shall not be necessary to allege the commencement of
3 either a particular or a superior estate, unless it be essential to the merits
4 of the case.

2 SEC. 2955. When time forms a material point in the merits of a cause,
3 the day, month, and year, or when there is a continued act, the period of
4 its duration must be alleged. When time is not material, it need not be
5 stated, and if stated, need not be proved.

2 SEC. 2956. In actions for injuries to goods and chattels, their kind or
3 species shall not be alleged.

2 SEC. 2957. It shall be necessary to allege a place, only when it is de-
3 scriptive of the subject matter of the action, and forms a part of the sub-
4 stance of the issue.

2 SEC. 2958. In actions for injuries to real property, the petition shall de-
3 scribe the property, and when the injury is to an incorporeal hereditament,
4 shall describe the property in respect of which the right is claimed, as well
5 as the right itself, either by the name by which the property is designated
6 in the national survey, or by its abutments, or by its courses and distances, or
7 by any name which it has acquired by reputation, certain enough to identify
8 it.

2 SEC. 2959. When the party intends to prove malice, to affect damages,
3 he must aver the same.

2 SEC. 2960. In an action, set off, counter claim, or cross-demand on a
3 bond with conditions, the party suing thereon shall, in his pleading, notice
4 the conditions and allege facts constituting the breach or breaches relied
5 on.

2 SEC. 2961. When a pleading shows affirmatively, that its cause of claim
3 is barred by the statute of limitations, it may be assailed by demurrer.

2 SEC. 2962. When the defendant pleads the statute of limitations, re-
3 sponding to such plea, the plaintiff may, without leave or cost, or incurring
4 delay, amend his petition, by a count averring as another cause of action,
5 the proper admission or new promise, with what other matter may be nec-
6 essary to constitute sufficient cause of such claim, and the plaintiff may
7 recover on either of such claims as he may show himself entitled. But he
8 may in the first instance, rely on and state as cause of action, the matter
9 displacing the bar of the statute as contemplated in the amendment herein
10 stated.

2 SEC. 2963. When any pleading shows affirmatively, that its cause of
3 claim should be evidenced by writing, according to the law of evidence,
4 and that the same is not so evidenced, it may be assailed by demurrer.

2 SEC. 2964. Where such cause of action, set-off, counter-claim, or cross-
3 demand, as should be evidenced by writing, is so evidenced, then the same
4 must be stated to be so, and the writing, or a copy thereof, must be annexed
5 to the pleading, unless a reasonable excuse be set forth in the pleading for
6 not annexing the same, else it shall not be received in proof on trial.

2 SEC. 2965. If a party state more facts, or a greater title or estate than is
3 necessary to entitle him to the relief claimed, and such facts, estates, or title
4 be denied to the full extent, he shall not be compelled to prove more than is
5 necessary to constitute a claim to the relief prayed, or to any lower degree of
6 relief, included in the relief prayed. And if a party states in his answer or
7 reply, more than is needed for his defense, he shall not be compelled to prove
8 more than is needed for his defense.

2 SEC. 2967. (Chap. 28, 9th G. A.) When any action, defense, set-off,
3 counter claim, or cross demand is founded on a written instrument, which is
4 referred to in any pleading, and the original or a copy thereof is annexed
5 thereto (or copied therein) the signature thereto or to any indorsement
6 thereon shall be deemed genuine and admitted, unless the party whose sig-
7 nature it purports to be, shall deny the same under oath, in his pleading, or
8 in a writing to be filed at the same time, with or before his pleading, if there
9 be one, and if not, then in the time allowed for a pleading, and when any
10 other writing, purporting to have been signed by one of the parties is refer-
11 red to in a pleading, and the original or copy thereof is filed with the plead-
12 ing, the signature thereto shall be taken to be genuine, and the instrument
13 may be read in evidence against such party, unless he denies the same in
14 writing under oath before the trial is commenced, *provided* that the person
15 whose signature it purports to be, before filing his affidavit shall, on demand,
16 be entitled to examine the original instrument.

2 SEC. 2968. (Chap. 167, 18th G. A.) All exhibits referred to in the
3 pleadings, the original of which are attached thereto, or are filed with the
4 pleadings, may be introduced as evidence on the trial of equitable causes by
5 first method, without proof as to their genuineness, unless the same have
6 been positively denied under oath.

2 SEC. 2969. Either party may be allowed, on motion, to make a supple-
3 mental petition, answer or reply, alleging facts material to the case, which
4 have happened or have come to his knowledge since the filing of the former
5 petition, answer, or reply, nor shall such new pleading be considered a
6 waiver of former pleadings.

2 SEC. 2970. Matter in abatement may be stated in the answer or reply, as
3 one or more of the causes of defense or reply, either together with or with-
4 out other causes of defense in bar, and no one of such causes shall be deemed
5 to overrule the other; nor shall a party after trial, on matter of abatement
6 be allowed in the same action to answer or reply matter in bar.

2 SEC. 2971. Any defense arising after the commencement of any action,
3 shall be stated according to the fact, without any formal commencement or
4 conclusion, and any answer which does not state whether the defense therein
5 set up arose before or after action, shall be deemed to be of matter arising
6 before action.

Amendments.

2 SEC. 2972. No variance between the allegation in a pleading and the
3 proof is to be deemed *material*, unless it has actually misled the adverse
4 party to his prejudice in maintaining his action or defense upon the merits.
5 Whenever it is alleged that a party has been so misled, that fact must be
6 shown by proof to the satisfaction of the court, and such proof must also
7 show in what respect he has been so misled, and thereupon the court may
8 order the pleading to be amended upon such terms as may be just.

2 SEC. 2973. When the variance is not material as provided in the last
3 section, the court may direct the fact to be found according to the evidence,
4 and may order an immediate amendment without costs.

2 SEC. 2974. When, however, the allegation of the claim or defense to
3 which the proof is directed is unproved, not in some particular or particulars
4 only, but in its general scope and meaning, it shall not be deemed a case of
5 variance within the last two sections, but a failure of proof.

2 SEC. 2975. The plaintiff may amend his petition without leave, at any
3 time before the answer is filed, without prejudice to the proceedings already
4 had; but a notice of such amendment shall be served on the defendant or
5 his attorney, and the defendant shall have the same time to answer or demur
6 thereto, as he had to the original petition.

2 SEC. 2976. Upon a demurrer being overruled, the party demurring may
3 answer or reply.

2 SEC. 2977. The court may, on motion of either party, at any time in fur-
3 therance of justice, and on such terms as may be proper, permit such party
4 to amend any pleadings or proceedings by adding or striking out the name
5 of any party, or by correcting a mistake in the name of a party, or a mistake
6 in any other respect, or by inserting other allegations material to the case,
7 or when the amendment does not change substantially the claim or defense
8 by conforming the pleadings or proceedings to the facts proved. (The court
9 may likewise, in its discretion, on terms, and for good cause proved, allow

9 an answer or reply to be filed after the time limited by this code, when such
10 time has not been by order extended.) And whenever any proceeding taken
11 by a party, fails, in any respect to conform to the provisions of this code, it
12 may permit an amendment of such proceeding so as to make it conformable
13 thereto.

2 SEC. 2978. The court must, in every stage of an action, disregard any
3 error or defect in the proceeding, which does not affect the substantial rights of
4 the adverse party ; and no judgment shall be reversed or affected by reason
5 of such error or defect.

2 SEC. 2979. When either party shall amend any pleading or proceeding,
3 the case shall not be continued in consequence thereof, unless the court shall
4 be satisfied by affidavit or otherwise, that the adverse party could not be
5 ready for trial in consequence of such amendment. But if the court is thus
6 made to become satisfied, a continuance may be granted to some day in the
7 same term, or to the next term of said court.

2 SEC. 2980. Whenever two or more actions are pending in the same court
3 which might have been joined the defendant may, on motion and notice to
4 the adverse party, require him to show cause why the same shall not be
5 consolidated, and if no sufficient cause be shown, the same shall be consoli-
6 dated.

2 SEC. 2981. Courts may permit the amendments authorized by this chap-
3 ter to be made, without being verified as prescribed in section 2904, unless
4 a new and distinct cause of action, defense, set off, counter-claim, or cross-
5 demand is thereby introduced.

2 SEC. 2982. If an original pleading be lost or withheld by any one, the
3 court may order a copy thereof to be substituted.

2 SEC. 2983. All matters of supplement or amendment, whether of addi-
3 tion or subtraction, shall not be made by erasure or interlineation of the origi-
4 nal or by addition thereto but upon a separate paper, which shall be filed, and
5 shall constitute, with the original, but one pleading. But if it be stated in
6 such paper, that it is a substitute for the former pleading intended to be
7 amended, in that case it shall be deemed such substitute, but the pleading
8 superseded by the substitute shall not be withdrawn from the files.

2 SEC. 2984. No record shall be amended or impaired by the clerk, or
3 other officer of the court, or by any person without the order of such court or
4 of some court of competent authority.

Interrogatories.

2 SEC. 2985. Either party may annex to his petition, answer or reply, writ-
3 ten interrogatories to any one or more of the adverse parties concerning any
4 of the material matters in issue in the action, the answer to which an oath
5 may be read by either party as a deposition between the party interrogating
6 and the party answering.

2 SEC. 2986. The party answering shall not be confined to responding
3 merely to the interrogatories, but may state any new matter concerning the
4 same cause of action, which shall likewise be read as a deposition.

2 SEC. 2987. These shall be answered at the same time the petition is re-
3 quired to be answered, and when annexed to the answer or reply, shall be
4 answered at or before the calling of the cause for trial, if such pleading has
5 been filed four clear days.

2 SEC. 2988. The trial of an action by ordinary proceedings shall not be
 3 postponed on account of the failure to answer interrogatories, if the party
 4 interrogated is present in the court at the trial, so that he may be orally ex-
 5 amined; nor, in case of absence, unless an affidavit be filed showing the
 6 facts, the party believes will be proved by the answers thereto, and that the
 7 party has not filed the interrogatories for the purpose of delay; whereupon,
 8 if the party will consent that the facts stated in the affidavit shall be consid-
 9 ered as admitted by those interrogated, the trial shall not be postponed for
 that cause.

2 SEC. 2989. The party in answering such interrogatories, shall distinguish
 3 clearly between what is stated from his personal knowledge, and what is
 4 stated from information or belief merely. An unqualified statement of a
 5 fact shall be considered as made of his personal knowledge.

2 SEC. 2990. The answer to the interrogatories shall be verified by the
 3 affidavit of the party answering, to the effect that the statements in them
 4 made of his own personal knowledge are true and those made from the infor-
 5 mation of others he believes to be true.

2 SEC. 2991. Where a party filing interrogatories shall also file an affidavit
 3 that he verily believes the subject of the interrogatories, or any of them, is
 4 in the personal knowledge of the opposite party, and that his answer thereto
 5 if truly made from such knowledge, will sustain the claim of defense, or any
 6 part thereof, and the opposite party shall fail to answer therein within the
 7 time allowed therefor, or by the court extended, the claim or defense, or the
 8 part thereof, according to such affidavit, shall be deemed to be sustained,
 and judgment given accordingly.

2 SEC. 2992. The court may compel answers to interrogatories, by pro-
 3 cess of contempt, and may, on the failure of the party to answer them after
 4 reasonable time allowed therefor, dismiss the petition, or quash the answer
 of the party so failing.

CHAPTER 123. *Trial and its Incidents.*

2 SEC. 2993. Issues arise in the pleadings where a fact or conclusion of
 3 law is maintained by one party and controverted by the other. They are of
 4 two kinds: 1st, of law; 2d, of fact.

2 SEC. 2994. An issue of fact arises, 1. Upon a material allegation of fact
 3 in the petition denied by the answer. 2. Upon a material allegation of
 4 fact in a set-off, counter-claim, or cross-demand, presented in the answer and
 5 denied by the reply. 3. Upon allegations of fact being new matter, in the
 6 answer or reply, which shall be considered as controverted by the opposite
 party without further pleading.

2 SEC. 2995. An issue of law arises upon a demurrer to the petition, an-
 3 swer, or reply, or to some part of either, or upon any allegation of fact in a
 4 pleading by the one party, the truth of which is neither controverted by the
 other party nor by the law for him.

2 SEC. 2996. Issues both of law and fact may arise upon different parts of
 3 the pleadings in the same action. In such cases the issues of law must be first
 4 tried; but by going to trial on an issue of fact without objection, a party
 will be deemed to have waived his demurrer

2 SEC. 2997. A trial is a judicial examination of the issues in an action,
 whether they be issues of law or of fact.

2 SEC. 2998. Issues of law must be tried by the court, unless referred as
 3 provided in section 3089. An issue of fact in an action by ordinary pro-
 4 ceedings, must be tried by a jury, unless a jury trial shall be waived, as
 5 provided in section 3087, or a reference be ordered, as provided in section
 3090.

How Equitable Issues Tried.

2 SEC. 2999. Equitable issues may be tried according to two distinct
 3 methods, called first and second methods of equitable trials, and these
 4 methods shall differ one from the other in the following particulars, and
 5 none others:

- 5 1. As to the form of evidence. In all cases tried according to the first
 6 method, the evidence shall be in writing, while those cases tried by
 7 the second method, the evidence shall be as in ordinary actions.
- 8 2. As to who may determine the facts therein. In a trial by the first
 9 method, the issues shall be tried by the court, who may, however,
 10 to inform his conscience, order the whole issue, or any part
 11 thereof, or any specific question of fact involved therein, to be
 12 tried by a jury, or may refer the same, and may in either case
 13 accept or reject the finding of the jury or referee, and may, with
 14 or without a statement of any finding of facts, render such judg-
 15 ment as he considers equitable. While in a trial by the second
 16 method, either party shall be entitled to have the whole issue, or
 17 any part thereof, or any specific question of fact involved therein,
 18 tried by a jury, under the instructions of the court, as in a case by
 19 ordinary proceedings, or to have the same tried by the court acting
 20 as a jury, and finding in writing the facts, which finding of facts in
 21 either case shall be of ultimate facts and not of evidence of such
 22 facts, and shall be stated on the record as a special verdict, and the
 23 judgment shall be the legal conclusions based upon and supported
 24 by the facts so found as herein contemplated.
- 25 3. As to what is triable on appeal. In an appeal taken on a case tried
 26 in the first method, all the evidence shall go to the supreme court,
 27 which shall try the case on both the law and facts as apparent
 28 of record. While in cases tried by the second method, no evi-
 29 dence shall, on appeal, go to the supreme court; except such as
 30 may be necessary to explain and apply any bill of exceptions, and
 31 such court shall try only the legal errors thereof, duly presented,
 32 as in a case by ordinary proceedings, including the sufficiency of
 33 the facts stated on the record, as the basis of the judgment to war-
 34 rant the same.

2 SEC. 3000. The first method shall obtain in all cases, except, 1. In
 3 divorce cases. 2. In foreclosure of tax-title cases, and of mortgages. 3.
 4 In default cases. 4. In cases where all the parties thereto consent to try by
 the second method, in which cases the second method shall obtain.

2 SEC. 3001. The consent in the last section contemplated, must be
 3 expressed in open court, and entered of record, or must be in writing and
 4 signed by the parties or attorneys of the parties, and filed in the cause.

2 SEC. 3002. The plaintiff in his petition, or the defendant in his answer,
 3 may state his consent to try the case by the second method, and if the other
 4 party within ten days thereafter, file his consent thereto in the clerk's office,
 the cause shall be so tried.

2 **Sec. 3003.** Or if all the parties at any time before trial enter into such
3 consent, the cause shall be so tried.

Precedence of Causes.

2 **Sec. 3004.** A civil cause shall not be tried save by consent of the bar, in
3 any other order than that in which it stands upon the docket.

2 **Sec. 3005.** The clerk shall keep a calender of all the causes pending in
3 his court, arranging in one part thereof, criminal causes, in the order of their
4 commencement; in another part thereof, ordinary actions, in the same
5 order, and in another, equitable actions in the same order and
6 shall enter the causes thereon as soon as the same are commenced, by
7 the filing of the petition or transcript therein, and shall under the direc-
8 tion of the court or judge, apportion the same to as many days of the term,
9 as shall be thought necessary, and shall on the order of any party, in any cause,
10 issue subpoenas for witnesses returnable on the —day on which such cause
11 is set for on trial, and the clerk shall furnish at such term, the court and the
12 bar, each, with a copy of such calendar.

2 **Sec. 3006.** The criminal causes shall first be called in their order, and
3 disposed of by trial, or continuance, in such order, unless the court for good
4 cause shall direct otherwise, and after the civil calendar is entered upon, no
5 criminal cause shall be allowed to intervene. But the court shall not pro-
6 tract the trial of the civil causes beyond a day of the term after which all
7 defendants in criminal causes who desire to be tried at such term, may be so
8 tried, during which re entry upon the criminal calendar, the causes shall be
9 tried, or continued in their order.

2 **Sec. 3007.** (Chapter 167, 13th G. A.) Except where otherwise provided,
3 causes, including those brought to foreclose mortgages, and to enforce ven-
4 dors' liens, shall be tried at the first term after due, legal, and timely service
5 has been made, unless reasonable causes for continuance be shown.

Continuance.

2 **Sec. 3008.** When time is asked for making application for continuance,
3 the cause shall not lose its place on the calendar, or it may be continued at
4 the option of the other party, and at the cost of the party applying therefor;
5 for which cost the judgment may at once be entered by the clerk, unless the
6 contrary be agreed between the parties.

2 **Sec. 3009.** A continuance shall not be granted for any cause growing
3 out of the fault or negligence of the party applying therefor; subject to this
4 rule, it may be allowed for any cause which satisfies the court that substan-
5 tial justice will thereby be more nearly obtained.

2 **Sec. 3010.** Motions for continuance on account of the absence of evi-
3 dence, must be founded on the affidavit of the party, his agent, or attorney
4 stating facts as distinguished from legal conclusions which show the materi-
5 ality of the evidence sought to be obtained, and showing that efforts which
6 constitute due diligence have been used to obtain its presence.

2 **Sec. 3011.** If such motion be on account of the absence of a witness, the
3 affidavit so sworn to, as in the last section, must state, 1. The name and
4 residence of such witness, or if that be not known, a sufficient reason why
5 not known, and also in either case facts showing reasonable grounds of belief

5 that his attendance or testimony will be procured at the next term. 2. It
 6 must also state efforts constituting due diligence which have been used to
 7 obtain such witness or his testimony. 3. It must also state what particular
 8 facts, as distinguished from legal conclusions, the affiant believes the witness
 9 will prove, and that the affiant believes them to be true, and that he knows
 10 of no other witness by whom such facts can be fully proved.

SEC. 3012. If the affidavit does not contain a sufficient statement of the
 2 facts herein required, the court shall overrule the same, as insufficient in
 3 statement of facts.

SEC. 3013. If on the contrary, the court finds the statement sufficient, it
 2 shall so determine, and the cause shall be continued unless the opposite party
 3 will admit that the witness, if present, would swear to the facts thus stated,
 4 in which event the cause shall not be continued, but the party moving there-
 5 for shall read as the evidence of such witness, the facts by the court held to
 6 be sufficiently stated.

SEC. 3014. The motion must be filed on the second day of the term, if it
 2 is then certain that it will have to be made before the trial, and as soon
 3 thereafter as it becomes certain that it will so need to be made, and shall
 4 not be allowed to be made when the cause is called for trial, except for cause
 5 which could not, by reasonable diligence, have been before that time discov-
 6 ered, and if made after the second day of the term, the affidavit must state
 7 facts constituting an excuse for the delay in making it. If time is taken
 8 when the case is called to make such motion, the motion shall be made and
 9 determined as soon as the court opens after the next ordinary adjournment.

SEC. 3015. The application shall not be amended but once, unless by per-
 2 mission, and to supply a clerical error.

SEC. 3016. To such motion, both as original and as amended, the adverse
 2 party may at once, or within such reasonable time as the court shall allow,
 3 file written objections stating wherein he claims that the same is insufficient
 4 and on such motion and objections no argument shall be heard unless the
 5 court desire it.

SEC. 3017. Such motion and objections shall be a part of the record, and
 2 error in refusing a continuance, or in compelling an election, may be re-
 3 viewed.

SEC. 3018. No copy need be served of a motion for continuance, or of
 2 objections thereto, but a notice of such motion shall be entered on the notice
 3 book.

SEC. 3019. Every continuance granted upon the application of either
 2 party, shall be at the costs of such party, unless otherwise ordered by the
 3 court.

SEC. 3020. The court shall grant continuances whenever the parties
 2 agree thereto, and provide as to costs as may be stipulated.

SEC. 3022. A case continued remains for all purposes except a trial on
 2 the facts.

SEC. 3023. Where the defenses are distinct, any one of several defend-
 2 ants may continue as to himself.

Separate Trial.

SEC. 3024. A separate trial between the plaintiff and any or all of sev-
 2 eral defendants, may be allowed by the court, whenever, in its opinion, jus-
 3 tice will be thereby promoted.

SEC. 3025. Where there are several causes of action united in a petition,
2 or where in any controversy there are several issues, and the court shall be
3 of the opinion that all or any of them should be tried separately by the
4 court or jury, it may direct such separate trial, and such separate trial may
5 be had at the same, or at different terms of the court, as circumstances in
6 the discretion of the court may require.

Selection of Jury.

SEC. 3026. When a jury trial is demanded, the clerk shall select twelve
2 jurors by lot, from the regular panel.

SEC. 3027. A challenge is an objection made to the trial and is of two
2 kinds :

- 3 1. To the panel.
- 4 2. To an individual juror.

SEC. 3028. Where there are several parties, plaintiffs, or defendants,
2 and no separate trial is allowed : they are not allowed to sever their chal-
3 lenges, but must join in them.

SEC. 3029. A challenge to the panel can be founded only on a material
2 departure from the forms prescribed by statute in respect to the drawing
3 and return of the jury.

SEC. 3030. A challenge to the panel must be taken before a juror is
2 sworn, and must be in writing, specifying plainly and distinctly the facts
3 constituting the ground of challenge.

SEC. 3031. A challenge to the panel may be taken by either party, and
2 upon the trial thereof, the officers, whether judicial or ministerial, whose
3 irregularity is complained of, as well as any other persons, may be exam-
4 ined to prove or disprove the facts alleged as the ground of the challenge.

SEC. 3032. If the facts of the challenge be allowed by the court, the
2 jury must be discharged, so far as the trial in question is concerned ; if it be
3 disallowed, the court shall direct the jury to be impaneled.

SEC. 3033. A challenge to an individual juror is either peremptory or
2 for cause.

SEC. 3034. It must be taken when the juror appears and before he is
2 sworn, but the court may, for good cause, permit it to be taken after the
3 juror is sworn, and before the jury is completed.

SEC. 3035. A peremptory challenge is an objection to a juror for which
2 no reason need be given, but upon which the court shall exclude him.

SEC. 3036. [Chap. 174—9 G. A.] Each party shall have the right to
2 challenge peremptorily, five jurors and no more ; and the parties shall chal-
3 lenge alternately, commencing with the plaintiff, and the challenges for
4 cause being first exhausted or waived, the parties shall then, in turn, in the
5 same order, exercise the right of peremptory challenge.

SEC. 3037. After each challenge, the vacancy shall, if required, be filled
2 before further challenges are made, and any new juror thus introduced, may
3 be challenged for cause, as well as peremptorily. A challenge for cause is
4 an objection to a particular juror, and is either—

- 5 1. General, that the juror is disqualified from serving in any case ;
- 6 or,
- 7 2. Particular, that he is disqualified in the case on trial.

Sec. 3038. General causes of challenge are:

- 2 1. A conviction for felony.
- 3 2. A want of any of the qualifications prescribed by statute to render a
- 4 person a competent juror.
- 5 3. Inability to understand the English language, unsoundness of mind,
- 6 or such defects in the faculties of the mind or the organs of the
- 7 body, as render him incapable of performing the duties of a
- 8 juror.

Sec. 3039. Particular causes of challenge are of two kinds:

- 2 1. For such a bias as, when the existence of the fact is ascertained; in
- 3 judgment of law disqualifies the juror, and which is known in this
- 4 chapter as implied bias.
- 5 2. For the existence of a state of mind on the part of the juror in refer-
- 6 ence to the case, which, in the exercise of a sound discretion, leads
- 7 to the inference that he will not act with entire impartiality, and
- 8 which is actual bias.

Sec. 3040. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

- 2 1. Consanguinity or affinity within the ninth degree, to the adverse
- 3 party.
- 4 2. Standing in the relation of guardian and ward, attorney and client,
- 5 master and servant, or landlord and tenant, or being a member of
- 6 the family, or in the employment of the adverse party.
- 7 3. Being a party adverse to the challenging party in a civil action, or
- 8 having complained against, or been accused by him in a criminal
- 9 prosecution.
- 10 4. Having sat already upon the trial of the same issues.
- 11 5. Having served as a grand juror, or a petit juror, in a criminal case
- 12 based upon the same transaction.
- 13 6. Having formed or expressed an unqualified opinion or belief as re-
- 14 gards the liability of the adverse party, or on the merits of the
- 15 controversy.
- 16

Sec. 3041. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Sec. 3042. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry thereon.

Sec. 3043. In all challenges the court shall determine the law and the fact, and must either allow or disallow the challenge.

Sec. 3044. When the requisite number of jurors can not otherwise be obtained, the sheriff shall select talesmen to supply the deficiency, from the body of the county.

Sec. 3045. The parties may, at any time, either before the jury is sworn, or after, agree to take the verdict of the majority, which agreement being stated to the court and stated on the record to have been made, shall bind the parties, and in such case a verdict signed by any seven or more and duly rendered, when read and not disapproved by said majority, shall, in every particular, be as binding as if made by a full jury; or when both parties require it a struck jury may be ordered; whereupon eighteen jurors shall be called into the box, and the plaintiff first and then the defendant, shall strike out one juror in turn until each has struck six, and the remaining six shall try the cause.

Order During Trial.

SEC. 3046. When the jury has been sworn the court shall proceed in the following order :

1. The party on whom rests the burden of proof, may briefly state his claim, and the evidence by which he expects to sustain it.
2. The other party may then briefly state his defense, and the evidence by which he expects to sustain it.
3. The party on whom rests the burthen of proof in the whole action, must first produce his evidence; the adverse party must then produce his evidence.
4. The parties then will be confined to rebutting evidence, unless the court, for good reasons, in furtherance of justice, permit them to offer evidence in their original case.
5. but one counsel on each side shall examine the same witness, and upon interlocutory questions, the party moving the court or objecting to testimony shall be heard first; the respondent may then reply by one counsel, and the mover rejoin, confining his remarks to the points first stated, and a pertinent answer to respondent's argument. Debate on the question shall then be closed, unless the court request further argument.

SEC. 3047. The parties may then either submit or argue the case to the jury. In the argument the party having the burthen of the issue, shall have the opening and closing, but shall disclose in the opening all the points relied on in the cause; and if in the close, he should refer to any new material point or fact, not relied upon in the opening, the adverse party shall have the right of reply thereto, which reply shall close the argument in the case.

SEC. 3048. If the party holding the affirmative waive the opening, he shall be limited in the close, simply to a reply to his adversary's argument, otherwise the other party shall have the concluding argument.

SEC. 3049. Every plaintiff or defendant shall be entitled to appear by one attorney, and if there be but one plaintiff or defendant, he may appear by two, and where there are several defendants having the same or separate defense and appearing by the same or different attorneys, the court shall before argument, arrange their order.

SEC. 3050. The court may restrict the time of any attorney in any argument to itself, but shall not do so in any case before a jury.

Instructions.

SEC. 3051. When the argument is concluded, either party may request instructions to the jury on the points of law, which shall be given or refused by the court. Instructions asked shall be stated in writing by the party, if any one of the other party, or if the court require it. The party on whom is the burden of proof as aforesaid, shall first demand his instructions, then the other party, and the first party may then ask such alone, as go in reply.

SEC. 3052. There shall be but two instructions at most, written on one sheet of paper, and the paper shall be written only on one side thereof, and

3 the writer shall leave a margin on the left hand side thereof of about two
4 inches, (and each instruction demanded shall distinctly and intelligibly refer
5 to the cause of action to which it is intended to be applied, if there be sev-
6 eral, or if one cause of action be divisible into different parts, then to such
7 part as it is intended to be applied.)

2 SEC. 3053. If the court refuse a written instruction as demanded, but
3 give the same with a modification which the court may do, such modifi-
4 cation shall not be by interlineation or erasure, but shall be well defined,
5 and shall follow some such characterizing words as "changed thus," which
6 words shall themselves indicate that the same was refused as demanded.

2 SEC. 3054. The court must read over all the instructions which it intends
3 to give and none other to the jury, and must announce them as given,
4 and shall announce as refused without reading to the jury, all those
5 which are refused, and must write the words "given" or "refused" as the
6 case may be, on the margin of each instruction.

2 SEC. 3055. If the giving or refusal be excepted to, the same may be
3 without any stated reason therefor, and all instructions demanded must be
4 filed, and shall become part of the record.

2 SEC. 3056. Any decision or instruction of the court in favor of either
3 party, may be abandoned by such party at any time before the case is com-
4 mitted to the jury, unless testimony calculated to influence the minds of the
5 jury has been afterwards admitted or rejected, or when the opposite party
6 cannot be placed in the same position which he would have occupied had
7 such decision or instruction not been given.

2 SEC. 3057. After argument, the court may also, of its own motion, charge
3 the jury, which charge shall be exclusively in writing.

2 SEC. 3058. The charge shall be expressed in paragraphs, and numbered
3 consecutively.

2 SEC. 3059. Every part or paragraph of the charge shall be deemed ap-
3 proved, unless excepted to before the retiring of the jury; if so excepted to,
4 that fact and by whom excepted to, whether by plaintiff or defendant, shall
5 be stated by the court, on the margin, against such instruction or part of the
6 charge.

2 SEC. 3060. The court shall not make any oral explanation of any in-
3 struction or charge.

Rules regarding Jury.

2 SEC. 3061. Whenever in the opinion of the court, it is proper for the
3 jury to have a view of the real property which is the subject of controversy,
4 or of the place in which any material fact occurred, it may order them to be
5 conducted in a body, under the charge of an officer, to the place which shall
6 be shown to them by some person appointed by the court for that purpose;
7 while the jury are thus absent, no person other than the person so appointed
8 shall speak to them on any subject connected with the trial.

2 SEC. 3062. When the case is finally submitted to the jury, they may de-
3 cide in court or retire for deliberation. If they retire, they shall be kept
4 together in some convenient place without food and without drink, except
5 water, under charge of an officer, until they agree upon a verdict, or are
6 discharged by the court. The officer having them under his charge shall
7 not suffer any communication to be made to them, or make any himself,
8 except to ask them if they have agreed upon their verdict, unless by

8 order of the court, and he shall not before their verdict is rendered com-
 9 municate to any person the state of their deliberations, or the verdict agreed
 10 upon.

2 **Sec. 3063.** If the jury are permitted to separate, either during the trial
 3 or after the case is submitted to them, they must be advised by the court,
 4 that it is the duty of each one of them not to converse with any other of
 5 them, or with any person, nor to suffer himself to be addressed by any per-
 6 son on any subject of the trial, and that during the trial it is the duty of
 7 each one of them to avoid, as far as possible, forming any opinion there-
 on until the cause is finally submitted to them.

2 **Sec. 3064.** If, after the empanneling of the jury and before verdict, a
 3 juror becomes sick so as to be unable to perform his duty, he may be
 4 discharged. In such case, unless otherwise arranged by the consent of
 5 the parties, the vacancy thus made, must be filled, and the trial com-
 6 mence anew, or the court may, in its discretion, order the jury to be dis-
 charged.

2 **Sec. 3065.** The jury may be discharged by the court on account of any
 3 accident or calamity requiring their discharge, or by the consent of both
 4 parties, or when on an amendment a continuance is ordered, or after they
 5 have been kept together until it satisfactorily appears that there is no
 probability of their agreeing.

2 **Sec. 3066.** In all cases where the jury are discharged during the trial or
 3 after the cause is submitted to them, it may be tried again immediately, or
 4 at a future time, as the court may then direct.

2 **Sec. 3067.** The court may also, at any time after having entered
 3 upon the trial of any cause, where it may deem it right for the purpo-
 4 ses of justice, order an adjournment for such time, within the term and
 5 subject to such terms and conditions as to costs and otherwise, as it may
 think just.

2 **Sec. 3068.** Upon retiring for deliberation, the jury may take with them
 3 all books of accounts, and all papers, which have been received as evidence
 4 in the cause, except depositions, which shall not be so taken, unless all the
 5 testimony is in writing, and none of the same has been ordered to be struck
 out.

2 **Sec. 3069.** When the jury is absent, the court may adjourn from time
 3 to time, in respect to other business, but it is to be deemed open for every
 4 purpose connected with the cause submitted to the jury, until a verdict is
 rendered or the jury discharged.

2 **Sec. 3070.** At any time before the cause is finally submitted to the court
 3 or jury, either party may be permitted by the court to give further testi-
 4 mony to correct an evident oversight or mistake, but terms may be imposed
 upon the party obtaining the privilege.

2 **Sec. 2071.** After the jury have retired for deliberation, if they desire to
 3 be informed as to any point of law arising in the case, they may request the
 4 officer to conduct them into court, which he shall do, when the informarion
 5 required shall be given, in the presence of, or after notice to the parties or
 their counsel.

2 **Sec. 3072.** Such information shall be in writing and shall be held ap-
 3 proved, unless it be excepted to in the same way as the charge, and no dis-
 4 cussion thereon shall be allowed to either party.

2 **Sec. 3073.** The verdict must be written and signed by a foreman cho-
 3 sen by the jury itself, and when agreed the jury must be conducted into

3 court, their names called, and the verdict rendered by him, and read by
 4 the clerk to the jury and the inquiry made whether it is their verdict.
 5 If any juror disagrees, the jury must be sent out again, but if no disagree-
 6 ment is expressed and neither party requires the jury to be polled, the ver-
 7 dict is complete and the jury discharged from the case.

SEC. 3074. When the verdict is announced, either party may require the
 2 jury to be polled, which shall be done by the court or clerk, asking each ju-
 3 ror if it is his verdict. If any one answer in the negative, the jury must be
 4 sent out for further deliberation.

SEC. 3075. When by consent of the parties and the court, the jury have
 2 been permitted to seal their verdict and separate before it is rendered, such
 3 sealing is equivalent to a rendition and a recording thereof in open court,
 4 nor shall such jury be polled or permitted to disagree thereto, unless such a
 5 course has been agreed upon between the parties in open court and entered
 6 on the record.

SEC. 3076. If, while the jury are kept together, either during progress
 2 of the trial, or after their retirement for deliberation, the court order them to
 3 be provided with suitable food and lodging, they must be so provided by the
 4 sheriff, at the expense of the county.

SEC. 3077. The verdict of a jury is either general or special. A general
 2 verdict is one in which they pronounce generally for the plaintiff or for the
 3 defendant upon all or upon any of the issues.

SEC. 3078. A special verdict is one in which the jury finds facts only;
 2 it must present the ultimate facts as established by the evidence, and not the
 3 evidence to prove them so that nothing remains to the court but to draw
 4 from them its conclusions of law.

SEC. 3079. In all actions, the jury, in their discretion, may render a gen-
 2 eral or a special verdict, and in any case in which they render a general
 3 verdict, they may be required by the court, and must be so required, on the
 4 request of any party to the action, to find specially upon particular questions
 5 of fact to be stated to them in writing, or to find that the facts stated in
 6 the petition, answer, or reply, or in all or either of them, or in any count of
 7 either of them, or in case any count of either of them be divisible, then
 8 that any defined part thereof is true, or not true, and such special finding is
 9 to be recorded with the verdict.

SEC. 3080. When the special finding of facts is inconsistent with the
 2 general verdict, the former controls the latter, and the court may give judg-
 3 ment accordingly.

SEC. 3081. When by the verdict either party is entitled to recover money
 2 of the adverse party, the jury in their verdict must assess the amount of
 3 such recovery.

SEC. 3082. In actions for the recovery of specific personal property, the
 2 jury must assess the value of the property, as also the damages for taking or
 3 detention, whenever, by their verdict there will be a judgment for the recov-
 4 ery or return of the property, and when required so to do by either party,
 5 must find the value of each article thereof.

SEC. 3083. When there are several defendants, the verdicts and judg-
 2 ments,—whether the pleadings are joint or several, shall be moulded accord-
 3 ing to the facts, and to meet the exigencies of the case.

SEC. 3084. The verdict shall be sufficient in form if it expresses the in-
 2 tention of the jury.

SEC. 3085. The verdict shall, in all cases, be filed with the clerk, and
 2 entered upon the record, after having been put into form by the court, if
 3 necessary.

Trials by the Court.

2 SEC. 3086. Upon a decision of a demurer, if the unsuccessful party fail
3 to amend or plead over, the same consequences shall ensue as though a ver-
4 dict had dassed against the plaintiff, or the defendant had made default, as
5 the case may be.

2 SEC. 3087. Trial by jury may be waived by the several parties to an
3 issue of fact in the following cases :

- 3 1. By suffering default or by failing to appear at the trial.
- 4 2. By written consent, in person or by attorney, filed with the clerk.
- 5 3. By oral consent in open court, entered in the minutes.

2 SEC. 3088. Upon the trial of questions of fact by the court, in an action
3 by ordinary proceedings, it shall not be necessary for the court to state its
4 finding, except generally for the plaintiff or defendant, unless one of the
5 parties, before any testimony is offered, requests it, in which case its decision
6 shall be given in writing, stating the facts found, and the legal conclusions
7 founded thereon, separately, all of which shall be entered on the record.

2 SEC. 3089. All or any of the issues in an action, whether of fact or of
3 law, or both, may be referred, upon the consent of the parties, either written
4 or oral, in court entered upon the record.

2 SEC. 3090. When the parties do not consent, the court may, upon the
3 motion of either, or upon its own motion, direct a reference in either of the
4 following cases :

- 4 1. When the trial of an issue of fact shall require the examination of
5 mutual accounts, or when the account being on one side only, it
6 shall be made to appear to the court that it is necessary that the
7 party on the other side should be examined as a witness to prove
8 the account, in which case the referees may be directed to hear
9 and report upon the whole issue, or upon any specific question of
10 fact involved therein ; or,
- 11 2. When the taking of an account shall be necessary for the information
12 of the court, before judgment, or for carrying a judgment or order
13 into effect.
- 14 3. When a question of fact, other than upon the pleadings shall arise,
15 upon motion or otherwise, in any stage of an action.
- 16 4. When a question of fact shall arise in any action by equitable pro-
17 ceedings.

2 SEC. 3091. Where not otherwise declared in the order of reference, all
3 the referees must meet to hear proofs, arguments, and to deliberate, but a
4 decision by the majority shall be regarded as their decision.

2 SEC. 3092. When appointed by the court, the judge thereof may fill va-
3 cancies in vacation.

2 SEC. 3093. The referees shall stand in the place of the court, and shall
3 have the same power, so far as necessary, to discharge their duty.

2 SEC. 3094. The trial by referees shall be conducted in the same manner
3 as a trial by the court. They have the same power to summon and enforce
4 by attachment, the attendance of witnesses to punish them as for a contempt
5 for non-attendance, or refusal to be sworn, or to testify, and to administer
6 all necessary oaths in the trial of the case, to take testimony by commission,
7 grant continuances, to preserve order, and punish all violations thereof.

2 SEC. 3095. The report of the referees on the whole issue, must state the
3 facts found, and the conclusions of law, separately, and shall stand as the find-
4 ing of the court. except as otherwise provided in equitable actions tried by
5 the first method ; and judgment may be entered thereon in the same manner
6 as if the action had been tried by the court—the report may be excepted to
and reviewed in like manner.

2 SEC. 3096. When the reference is to report the facts, the report shall
3 have the effect of a special verdict, except as is otherwise provided in equit-
4 able actions tried by the first method.

2 SEC. 3097. The referees shall sign any true bill of exceptions taken to
3 any ruling by them made in the case whereto any party demands a bill of
4 exceptions ; and the party shall have the same rights to obtain such bill as
5 exist in the court, and such bills shall be returned with their report.

2 SEC. 3098. In all cases of reference, the parties, except when an infant
3 may be a party, may agree upon a suitable person or persons, not exceeding
4 three, and the reference shall be ordered accordingly ; and if the parties do
5 not agree, the court shall appoint one or more referees, not exceeding three,
6 who shall be persons free from exception, and having the qualifications of
7 jurors, or the court may allow each party to select one, and itself to select a
third.

2 SEC. 3099. A judge of the court, when a case is pending, may in vacation,
3 upon the written consent of the parties, make an order of reference. In such
4 case the order of reference shall be written in the written agreement to
5 refer, and shall be filed with the clerk of the court, with the other papers in
the case.

2 SEC. 3100. The referees must make an affidavit well and faithfully to
3 hear and examine the case, and make a just and true report therein accord-
4 ing to the best of their understanding. The oath may be administered by
5 any person authorized to administer an oath, and the affidavit shall be re-
turned with the report.

2 SEC. 3101. The referees shall be allowed such compensation for their ser-
3 vices, as the court may deem just, which shall be taxed as a part of the costs
4 in the case.

2 SEC. 3102. The order shall not be made until the case is at issue as to
3 these parties, whose rights are to be examined on the reference. The order
4 may direct when the referee shall proceed to a hearing, and when he shall
5 make his report ; but in the absence of such direction, he shall do so on
6 the morning of the tenth day after the day on which was made the order
7 of reference, and shall file his report as soon as done ; of the time thus fixed
8 or determined, the parties shall take notice, and non-attendance of either
9 party within an hour of such time, shall be attended with like consequences
10 as if the case were in court, which consequence shall be reported, as any
other fact or finding of the referee.

2 SEC. 3103. The referee must be called on by the court to accept or refuse
3 the appointment, and his acceptance shall be entered of record ; and he shall
4 be under the control of the court, who may, on the motion of either party,
5 make all proper orders with a view to his proceeding with all due dispatch,
6 and the court or judge may, on his motion, on good cause shown, enlarge
the time of making his report.

2 SEC. 3104. Any one of such referees may issue and sign subpoenas, and
3 other process, administer oaths, necessary for the discharge of their duties,
4 and the full exercise of all their powers.

SEC. 3105. The form of procedure which, in the court itself, regulates

2 service, pleading proof, trial, and the preparation, progression, and method
 3 of each of these shall obtain before the referee, and in every incident of the
 4 proceeding before him the rights and responsibilities of parties, and of
 5 their attorneys, and of the referee, shall be the same as if the referee was
 6 the court, engaged in the same matter.

Exceptions.

2 SEC. 3106. An exception is an objection taken to a decision of the court,
 3 or party acting as the court, on matter of law. The party objecting to the
 4 decision, must object at the time the decision is made, and at once present
 5 his bill of exceptions; unless the court or adverse party object, he may have
 6 time to do so, not extending beyond the term.

2 SEC. 3107. No stated form of exception is required. So much of the
 3 evidence as is necessary to explain the ruling, should be stated, and the rul-
 4 ing and that it was excepted to when made, unless the fact otherwise appear.
 5 If the exception is to the admission or exclusion of evidence, oral or writ-
 6 ten, the ground of the objection must be also stated, and no other shall be
 7 regarded.

2 SEC. 3108. When the decision objected to is entered on the record, and
 3 the grounds of the exception appear in the entry, or when any error appears
 4 of record, the exception may be taken by the party causing to be noted at
 5 the end of the decision, or in connection therewith, that he excepts.

2 SEC. 3109. Where an instruction is marked "excepted to," such terms
 3 shall sufficiently indicate that it was excepted to at the proper time, and an
 4 exception when presented for signature, need not include therein, spread
 5 out at length, any writing filed in court, but may incorporate the same, by
 6 any unmistakable reference thereto, and the clerk in making a transcript of
 7 the bill of exception shall write therein at length, all of such writing in-
 8 cluded therein by reference

2 SEC. 3110. When the decision is not entered on the record, or when the
 3 grounds of objection do not sufficiently appear in the record, the party ex-
 4 cepting must reduce his exception to writing, and present it to the court for
 5 its signature. If the judge deems it true he shall sign it. If he does not
 6 deem it true, he shall at once state to the party offering it, what correction
 7 he desires to make thereto, if the party accept the same, or if he and the
 8 judge can agree upon any correction, the judge shall, having made the same,
 9 sign such exception, and it shall be filed and become part of the record.
 10 But if the judge and the party cannot agree on such exception, the party
 11 shall announce the same to the judge, who shall thereupon deliver the ex-
 12 ception back to the party. The party may then proceed to procure the sig-
 13 natures of two or more by-standers to the exception, and the court shall
 14 allow him a reasonable time therefor, and shall in no manner interfere with
 15 his endeavor to do so. If the party procure the signature of two by-standers,
 16 attesting that the exception is true, and that the court has refused to sign
 17 the same, the exception shall be filed by the clerk, and shall become part of
 18 the record. The truth of such exception may be controverted and maintained
 19 by affidavits not exceeding five in number, and all affidavits impugning the
 20 exception shall be filed with the clerk on the morning of the first day after
 21 that on which the exception was filed, and those sustaining it on the next
 morning thereafter. Such affidavits shall also become part of the record,

22 and the supreme court shall, on becoming satisfied that any exception is
23 true, consider the same.

SEC. 3111. No exception shall be regarded in the supreme court, unless
2 the ruling has been on a material point, and the effect thereof prejudicial to
3 the substantive rights of the party excepting.

New Trials.

SEC. 3112. A new trial is a re examination in the same court of an issue
2 of fact, after a verdict by a jury, report of a referee, or a decision by the
3 court. The former report, verdict, or decision, shall be vacated, and a new
4 trial granted, on the application of the party aggrieved, for any of the fol-
5 lowing causes affecting materially the substantial rights of such party :

- 6 1. Irregularity in the proceedings of the court, jury referee, or prevail-
7 ing party, or any order of court or referee, or abuse of discretion,
8 by which the party was prevented from having a fair trial.
- 9 2. Misconduct of the jury or prevailing party.
- 10 3. Accident or surprise, which ordinary prudence could not have guarded
11 against.
- 12 4. Excessive damages, appearing to have been given under the influence
13 of passion or of prejudice.
- 14 5. Error in the assessment of the amount of recovery, whether too large
15 or too small, where the action is upon a contract or for the injury
16 or detention of property.
- 17 6. That the verdict, report, or decision, is not sustained by sufficient evi-
18 dence, or is contrary to law.
- 19 7. Newly discovered evidence, material for the party applying, which
20 he could not, with reasonable diligence, have discovered and pro-
21 duced at the trial.
- 22 8. Errors of law occurring at the trial, excepted to by the party making
23 the application.

SEC. 3113. A new trial shall not be granted on account of the smallness
2 of damages in an action for an injury to the person or reputation, nor in any
3 other action where the damages shall equal the actual pecuniary injury sus-
4 tained.

SEC. 3114. The application for a new trial must be made at the term
2 the verdict, report, or decision is rendered, and except for the cause of
3 newly discovered evidence, material for the party applying, which he could
4 not with reasonable diligence have discovered and produced at the trial,
5 shall be within three days after he verdict or decision was rendered.

SEC. 3115. The application must be made by motion upon written
2 grounds, filed at the time of making the motion, the causes enumerated in
3 sub-divisions two, three, and seven, of section —, must be sustained by af-
4 fidavits showing their truth, and may be controverted by affidavits.

SEC. 3116. Where the grounds for a new trial could not with reasonable
2 diligence have been discovered before, but are discovered after the term at
3 which the verdict, report of referee, or decision was rendered or made, the
4 application may be made by petition, filed as in other cases, not later than
5 the second term after the discovery, on which notice shall be served and re-
6 turned as an original notice, and the defendant held to appear as in an origi-
7 nal action. The facts stated in the petition shall be considered as denied

8 without answer. The case shall be tried as other cases, by ordinary pro-
 9 ceedings, but no petition shall be filed more than one year after the final
 10 judgment was rendered.

SEC. 3117. The costs of all new trials shall either abide the event of the
 2 suit, or be paid by the party to whom such new trial is granted, according to
 3 the order of the court, to be made at the time of granting such new trial.

SEC. 3118. The court may determine not to grant a new trial, unless cer-
 2 tain terms or conditions named by the court shall be agreed to by the oppo-
 3 site party; in the event of his agreement to which, the terms or conditions
 4 named shall be entered on the record, and no new trial shall be granted if
 5 the party refuse to agree to the terms or conditions upon which a new trial
 6 shall be awarded.

SEC. 3119. Upon any motion made for a new trial, or for judgment, not-
 2 withstanding the verdict, by reason of the non-averment of some material
 3 fact, the party whose pleading is thus alleged defective, may, if the court
 4 deem it necessary, file a statement of the omitted fact, which, if true, would
 5 remedy the alleged defects, and such statement shall be filed before the
 6 hearing of the motion, and shall suspend the same. If the facts thus stated
 7 would not, if proved, defeat the object of the motion, it shall be granted.
 8 If such new averments would, if proved, defeat the object of the motion,
 9 and be not admitted, they must be denied or confessed, and avoided by the
 10 opposite party, within such time as the court shall direct, unless the same are
 11 denied by legal operation, and in such case the law of pleading and of pro-
 12 cedure; applicable to actions and pleadings of that kind shall obtain; except
 13 that the party stating the new fact shall be held the plaintiff therein, and the
 14 statement and response shall not need to be verified.

SEC. 3120. If the facts thus stated be admitted, or found to be true, the
 2 party stating the same shall be entitled to such judgment as he would
 3 have been entitled to, if such facts had been stated in the original pleading,
 4 and admitted as proved on the trial, together with the costs of, and occa-
 5 sioned by the new pleading and the proceedings therein; but if the fact be
 6 found untrue, the opposite party shall be entitled to his costs of, and occa-
 7 sioned by the new pleading and the proceedings therein, in addition to any
 8 other costs to which he may be entitled.

Judgment.

SEC. 3121. Every final adjudication of the rights of the parties in an
 2 action, is a judgment; and such adjudication may consist of many judg-
 3 ments, one of which judgments may determine for the plaintiff or defendant
 4 on the claim of either as an entirety, or when a claim consists of several
 5 parts or items, such judgment may be for either of them on any specific
 6 part or item of such aggregate claim, and against him on the other part
 7 thereof, or a judgment may in either of these ways determine on the claims
 8 of co-parties on the same side against each other.

SEC. 3122. To avoid a re-examination of questions and issues which
 2 have been once satisfactorily settled, and a re-opening of such parts of a
 3 cause as have been satisfactorily tried, any party who succeeds in part of his
 4 cause, or in part of his causes, and fails as to part, may have the entry in
 5 such case express judgment for him for such part as he succeeds upon, and
 6 against him on the other part.

2 SEC. 3123. Judgment may be rendered for or against one or more of
3 several plaintiffs, and for or against one or more of several defendants,
4 whether such plaintiffs or defendants be jointly or severally liable, and the
5 court may determine the ultimate rights of the parties, on the same side as
6 between themselves, and may grant to any party any affirmative relief which
7 he may be entitled to, and render judgment accordingly, and may render
8 such and so many judgments, joint, separate, and cross, as may be necessary
9 to express the rights of the parties.

2 SEC. 3124. Where matter in abatement is plead in connection with
3 other matter not such, the finding of the jury or court must distinguish
4 between matter in abatement and matter in bar, and the judgment must, if
5 it is rendered on the matter in abatement, and not on the merits, so declare.

2 SEC. 3125. Where any other than a general execution of the common
3 form is required, the party must state in his pleading the facts entitling him
4 thereto, and the judgment may be entered in accordance with the finding of
5 the court or jury thereon.

2 SEC. 3126. In an action against several defendants, the court may, in its
3 discretion, render judgment for or against one or more of them, whenever a
4 several judgment is proper, leaving the action to proceed against the others

2 SEC. 3127. An action may be dismissed, and such dismissal shall be
3 without prejudice to a future action :

- 3 1. By the plaintiff before the final submission of the case to the jury, or
4 to the court, when the trial is by the court;
- 5 2. By the court, when the plaintiff fails to appear when the case is called
6 for trial;
- 7 3. By the court, for want of necessary parties, when not made according
8 to the requirement of the court;
- 9 4. By the court, on the application of some of the defendants, when
10 there are others whom the plaintiff fails to prosecute with dili-
11 gence;
- 12 4. By the court, for disobedience by the party of an order concerning
13 the pleadings or any proceeding in the action.

2 SEC. 3128. In all other cases upon the trial of the action, the decision
3 must be upon the merits.

2 SEC. 3129. In any case when a set-off, counter claim, or cross-demand
3 has been filed, the defendant shall have the right of proceeding to the
4 trial of his claim, although the plaintiff may have dismissed his action, or
5 failed to appear.

2 SEC. 3130. The defendant may also, at any time before the final sub-
3 mission of the cause to the jury or to the court, when the trial is by the
4 court, dismiss his set off, counter-claim, or cross-demand, without prejudice.

2 SEC. 3131. Any party to any claim may dismiss the same in vacation
3 and the clerk shall make the proper entry of dismissal on the record, and if
4 the costs are not paid, may enter judgment against such party therefor, in
5 favor of the party entitled thereto, and issue execution therefor at the order
6 of such party, the party so dismissing shall be liable for no costs made by
7 the other party after notice to him of such dismissal.

2 SEC. 3132. Though all the defendants have been served with notice,
3 judgment may be rendered against any of them severally, where the plain-
4 tiff would be entitled to judgments against such defendants, if the action
5 had been against such alone.

2 SEC. 3133. The relief granted to the plaintiff, if there be no answer, can
3 not exceed that which he shall have demanded in his petition. But in any

3 other case the court may grant him any relief consistent with the case made
4 by the petition and embraced within the issue.

2 **SEC. 3134.** Whenever damages are recoverable, the party may claim and
3 recover if he shows himself entitled thereto, any amount of damages which
he might have hitherto recovered for the same stated cause of action.

2 **SEC. 3135.** If only part of the claim is controverted by the pleading,
judgment may at any time, be rendered for the part not controverted.

2 **SEC. 3136.** When a trial by jury has been had, judgment must be enter-
ed by the clerk in conformity with the verdict, unless it is special or the
3 court orders the case to be reserved for future argument or consideration.

2 **SEC. 3137.** When the verdict is special, or when there has been a special
3 finding on particular questions of fact, or issues, or when the court has
ordered the case to be reserved, it shall order what judgment shall be
4 entered.

2 **SEC. 3138.** When by the statements of the pleadings, one party is enti-
tled by law to judgment in his favor, judgment shall be so rendered by the
3 court, though a verdict has been bound against such party, unless the other
4 party proceed as provided in section 3119.

2 **SEC. 3139.** If a set-off, counter claim, or cross-demand established at the
time, exceed the plaintiff's claim so established, judgment for the defendant
3 must be given for the excess; or if it appears that the defendant is entitled
4 to any other affirmative relief, judgment must then be given therefor.

2 **SEC. 3140.** All judgments and orders must be entered on the record of
the court and specify clearly the relief granted, or order made in the ac-
3 tion.

2 **SEC. 3141.** Where a judgment is set aside or satisfied by execution or
otherwise, the clerk shall at once enter a memorandum thereof on the col-
3 umn left for that purpose in the judgment docket.

2 **SEC. 3142.** In cases where the title to land is involved and expressly set-
tled or determined, the clerk shall make a complete record of the whole
3 cause, and enter it in the proper book. But in no other case need a com-
4 plete entry be made except at the request of a party who will pay the ex-
5 pense of such record.

2 **SEC. 3143.** Any judgment in a case pending which may be agreed upon
between the parties interested therein, may at any time be entered, and if
3 not done in open court, the judgment agreed to shall be in writing, signed
4 and filed with the clerk, who shall thereupon enter the same accordingly,
5 and execution thereon may issue forthwith, unless therein otherwise agreed
upon between the parties.

2 **SEC. 3144.** In all actions where the plaintiff recovers a sum of money,
the amount to which he is entitled may be awarded him by the judgment
3 generally without any distinction being therein made as to whether such sum
4 is recovered by way of a debt or damages.

2 **SEC. 3145.** The provisions of this chapter relative to juries are intended
to be applied to the court when acting as a jury on the trial of a cause so far
3 as they are applicable and not incompatible with other provisions herein con-
4 tained.

2 **SEC. 3146.** A defendant against whom a judgment has been rendered,
or any person interested therein having some good matter of discharge which
3 has arisen since the judgment, may, upon motion, in a summary way, have
4 the same discharged either in whole or in part, according to the circum-
5 stances.

2 SEC. 3147. The court shall have power, on motion, to inquire into the
3 facts attending or connected with the assignment of a judgment, or the entry
4 of the same to the use of any party, and to strike out such use, or to declare
5 such assignment void, either in whole or in part, whenever such assign-
6 ment or use shall be determined to be inequitable or fraudulent, or in bad
7 faith.

Default.

2 SEC. 3148. If a party fail to file or amend his pleading by the time pre-
3 scribed by the rules of pleading, or in the absence of rules, by the time fixed
4 by the court ; or if having plead, his answer, or reply, on motion or demur-
5 rer is held insufficient or is struck out, and he fail to amend or to answer or
6 reply further as required by the rules of or by the court, or if he withdraw
7 his pleading without authority, or permission to replead, judgment by default
8 may be rendered against him on demand of the adverse party, made before
9 such pleading is filed.

2 SEC. 3149. Where no appearance is made, default shall not be had until
3 the court determines, from an inspection of the record, that notice has been
4 given as required by this code.

2 SEC. 3150. Default may be set aside on such terms as the court may
3 deem just, among which must be that of pleading issuably and instanter, but
4 not unless an affidavit of merits be filed, and a reasonable excuse shown for
5 having made such default, nor unless application therefor be made at the
6 term in which default was entered, or if entered in vacation, then on the first
7 day of the succeeding term.

2 SEC. 3151. When the action is for a money demand, and the amount of
3 the proper judgment is a mere matter of computation, the clerk shall ascer-
4 tain the amount. When long accounts are to be examined, the court may
5 refer the matter. In other cases, the court shall assess the damages, unless
6 a jury be demanded by the party not in default. The proper amount having
7 been ascertained by either of the above methods, judgment shall be rendered
8 therefor.

2 SEC. 3152. The party in default may appear at the time of the assessment
3 and cross-examine the witnesses against him, but for no other purpose.

2 SEC. 3153. When the proceeding are of an equitable character, the court
3 upon hearing the pleadings and proofs, and hearing the testimony offered,
4 shall render such judgment as is consistent with the rules heretofore observ-
5 ed in chancery cases.

2 SEC. 3154. A defendant served by publication alone, shall be allowed at
3 any time before judgment, to appear and defend the action, and upon a sub-
4 stantial defense being delared, time may de given, on reasonable terms, to
5 prepare for trial.

2 SEC. 3155. When the plaintiff files with the petition, his own affidavit,
3 stating that any of the allegations of the petition recited in said affidavit are
4 true, and known to be so by the defendant, and that they can not be proved
5 or shown otherwise than by his testimony or his answer, so far as affiant
6 knows or believes; such allegations, unless denied by an answer, shall be
7 taken as true.

2 SEC. 3156. (Chapt. 150, 9th G. A.) When judgement by default is ren-
3 dered against a defendant who has not been personally served, the court
4 before issuing process to enforce such judgment, may if deemed expedient,

4 require the plaintiff to give security to abide the future order of the court as
5 contemplated in the following section :

6 **Sec. 3160.** When a judgment has been rendered against a defendant or
7 defendants, served by publication only, and who do not appear, such defend-
8 ants, or any one or more of them, or any person legally representing him or
9 them, may at any time within two years after the rendition of the judgment,
10 appear in court, and move to have the action re-tried ; and security for the
11 costs being given, they shall be admitted to make defense ; and thereupon
12 the action shall be re-tried as to such defendants, as if there had been no
13 judgment, and upon the new trial, the court may confirm the former judg-
ment, or may modify or set it aside, and may order the plaintiff to restore
any money of such defendant paid to him under it, and yet remaining in his
possession, and pay to the defendant the value of any such property which
may have been taken in attachment in the action, or under the judgment,
and not restored.

2 **Sec. 3161.** The plaintiff may at any time after the judgment, cause a
3 certified copy thereof to be served on a defendant, served by publication
4 only, whereupon the period in which such defendant is allowed to appear
and have a new trial, shall be reduced to one year after such service.

2 **Sec. 3162.** The service of the copy of the judgment shall be, whether
3 made within or without the state, actual and personal, by delivery of copy,
and made and returned, as in case of original notice.

2 **Sec. 3163.** The title of a purchaser in good faith to any property sold
3 under attachment or judgment, shall not be affected by the new trial permit-
4 ted by section 3160, except the title of property obtained by the plaintiff
and not bought of him in good faith by others.

2 **Sec. 3164.** No personal judgment shall be rendered against a defendant
3 served by publication only, who has not made an appearance. But a personal
4 judgment shall be rendered against a defendant whether he appear or
5 not who has been served in any mode in this code provided, other than by
publication, whether served within or without this state.

Conveyance by Commissioner.

2 **Sec. 3165.** Real property may be conveyed by a commissioner appointed
3 by the court—

4 1. Where, by judgment in an action, a party is ordered to convey such
5 property to another.

6 2. Where such property has been sold under a judgment or order of the
court and the purchase money paid.

2 **Sec. 3166.** The deed of the commissioner shall so refer to the judgment,
3 orders and proceedings authorizing the conveyance as that the same may be
readily found.

2 **Sec. 3167.** A conveyance made in pursuance of a judgment shall pass to
3 the grantee the title of the parties ordered to convey the land.

2 **Sec. 3168.** A conveyance made in pursuance of a sale ordered by the
3 court, shall pass to the grantee the title of all the parties to the action or
proceeding.

2 **Sec. 3169.** A conveyance by a commissioner, shall not pass any right
3 until it has been examined and approved by the court, which approval shall
be indorsed on the conveyance and recorded with it.

SEC. 3170. It shall be necessary for the conveyance to be signed by the commissioner only, without affixing the names of the parties whose title is conveyed; but the name of such parties shall be recited in the body of the conveyance.

SEC. 3171. The conveyance shall be recorded in the office in which, by law, it should have been recorded, had it been made by the parties whose title is conveyed by it.

CHAPTER 124. *Attachment and Garnishment.*

SEC. 3172. The plaintiff in a civil action may cause any property of the defendant which is not exempt from execution, to be attached at the commencement or during the progress of the proceeding, by pursuing the course hereinafter prescribed.

SEC. 3173. If it be subsequent to the commencement of the action, a separate petition must be filed, and in all cases the proceedings relative to the attachment are to be deemed independent of the ordinary proceedings and only auxilliary thereto.

SEC. 3174. (Chapter 161, 13, G. A.) The petition which asks an attachment must in all cases be sworn to. It must state: 1st, that the defendant is a foreign corporation, or acting as such; or, 2d, that he is a non-resident of the state; or, 3d, that he is about to remove his property out of the state without leaving sufficient remaining for the payment of his debts; or, 4th, that he has disposed of his property (in whole or in part) with intent to defraud his creditors; or, 5th, that the defendant is about to dispose of his property with intent to defraud his creditors; or, 6th, that he has absconded, so that the ordinary process cannot be served upon him; or, 7th, that he is about to remove permanently out of the county, and has property therein not exempt from execution, which he refuses to pay or secure the debt due the plaintiff; or, 8th, that he is about to remove permanently out of the state, and refuses to pay or secure the debt due the plaintiff.

SEC. 3175. If the plaintiff's demand is founded on contract, the petition must state that something is due, and as nearly as practicable, the amount which must be more than five dollars in order to authorize an attachment.

SEC. 3176. The amount thus sworn to is intended as a guide to the sheriff, who must, as nearly as the circumstances of the case will permit, levy upon property fifty per cent greater in value than that amount.

SEC. 3177. If the demand is not founded on contract, the original petition must be presented to some judge of the supreme, district, or circuit court, who shall make an allowance thereon of the amount in value of the property that may be attached. The provisions of this section apply only to cases in the district court and circuit court.

SEC. 3178. The property of a debtor may be attached previous to the time when the debt becomes due, when nothing but time is wanting to fix an absolute indebtedness and when the petition in addition to that fact states: 1. That the defendant is about to dispose of his property with intent to defraud his creditors; or, 2. That he is about to remove from the state, and refuses to make any arrangements for securing the payment of the debt when it falls due, and which contemplated removal was not known to the plaintiff at the time the debt was contracted.

SEC. 3179. If the debt or demand on which the attachment suit is

2 brought, is not due at the time of the service of the attachment, the defendant
 3 is not required to file any pleadings until the maturity of such debt or de-
 4 mand; but he may, in his discretion, do so, and go to trial as early as the
 5 cause is reached.

2 SEC. 3180. And no final judgment shall be rendered upon such attach-
 3 ment, unless the party consents, as in the last section, until the debt or de-
 4 mand upon which it is based becomes due. But property of perishable
 5 nature may be sold as in other attachment cases.

2 SEC. 3180. "A" (chapter 14—10th G. A.) That in all cases where writs
 3 of attachment may now lawfully issue the same may be issued and served
 4 on Sunday: *provided*, that the petition asking for the writ shall state, in ad-
 5 dition to the facts now by law required to be stated, that the affiant believes
 6 he will lose his claim or property unless process issue on that day.

2 SEC. 3181. Before any attachment can be issued as aforesaid, the plain-
 3 tiff must file with the clerk a bond, for the use of the defendant, with sure-
 4 ties to be approved by the clerk, in a penalty at least double the value of
 5 the property sought to be attached, and in no case less than two hundred
 6 and fifty dollars, in the district court, nor less than fifty dollars if in a justice's
 7 court, conditioned that the plaintiff will pay all damages, which the defend-
 8 ant may sustain, by reason of the wrongful suing out of the attachment.

2 SEC. 3182. The defendant may, at any time before judgment, move the
 3 court for additional security on the part of the plaintiff, and if, on such motion
 4 the court is satisfied that the surety in the plaintiff's bond has removed from
 5 this state, or is not sufficient, it may vacate the writ of attachment, and di-
 6 rect restitution of any property taken under it, unless in a reasonable time,
 7 to be fixed by the court, and within two clear days thereafter, security is
 8 given by the plaintiff.

2 SEC. 3183. In an action on such bond the plaintiff therein may recover,
 3 if he shows that the attachment was wrongfully sued out, such damages as he
 4 has thereby suffered, and if sued out maliciously as well as wrongfully, the
 5 jury may, on such trial, give vindictive damages, in their discretion, nor
 6 need he wait until the principal suit is determined before he bring suit on
 7 the bond.

2 SEC. 3184. Where suits are properly commenced in the district court of
 3 any county, the auxiliary process of attachment may run at the same time
 4 into any other county where property of the defendant can be found, and
 5 several of them may, at the option of the plaintiff, be issued at the same time
 6 or in succession and subsequently, but only those executed shall be taxed in
 7 the costs, and if more property is attached in the aggregate than the plain-
 8 tiff is entitled to hold in that manner he must abandon the surplus and pay
 9 all costs incurred in relation to it.

2 SEC. 3185. (1856.) The clerk shall issue a writ of attachment directing
 3 the sheriff of the county wherein named to attach the property of the defend-
 4 ant to the requisite amount therein stated.

2 SEC. 3186. The sheriff shall in all cases, attach the amount of property
 3 directed, if sufficient, not exempt from execution, be found in his county
 4 giving that in which the defendant has a legal and unquestionable title, a
 5 preference over that in which his title is doubtful or only equitable.

2 SEC. 3187. Where there are several writs of attachment against the same
 3 defendant, they shall be executed in the order in which they were received
 4 by the sheriff.

2 SEC. 3188. If, after a writ of attachment has been placed in the hands of
3 the sheriff, any property of the defendant is moved from the county,
4 the sheriff may pursue and attach the same in an adjoining county, within
5 twenty-four hours after the removal.

2 SEC. 3189. (Chapter 167, 13, G. A.) Whenever it appears by the affida-
3 of the plaintiff, or by the return of the writ of attachment, that no property
4 is known to the plaintiff or the officer, on which the attachment can be exe-
5 cuted, or not enough to satisfy the plaintiff's claim, and, it being shown to
6 the judge of any court, by affidavit, that the defendant has property within
7 the state not exempt from writ, the defendant may be required by such
8 judge to attend before him, or before the court in which the action is pend-
9 ing, and give information on oath respecting his property.

2 SEC. 3190. The sheriff shall not, on attachment against a member of a
3 firm, take possession of partnership property: and in executing a writ of
4 attachment upon personal property held by the defendant jointly or in com-
5 mon with another person, he shall not take possession of such property until
6 there has been executed a bond to such other person, by one or more suffi-
7 cient sureties of the plaintiff, to the effect that he shall pay to such person
8 the damages he may sustain by the wrongful suing out of the attachment,
9 not exceeding double the amount of the plaintiff's claim, or double the
10 value of the property, if the latter be the larger sum; but such owner or
11 such firm may be garnished, and such property thereby reached.

2 SEC. 3191. If the defendant at any time before judgment causes a bond
3 to be executed to the plaintiff, by one or more sufficient sureties, to be ap-
4 proved by the court, or by the judge, to the effect that the defendant
5 shall perform the judgment of the court, the attachment shall be dis-
6 charged, and restitution made of any property taken under it, or the pro-
7 ceeds thereof.

2 SEC. 3192. The bond mentioned in the last section, may, in vacation, be
3 executed in the presence of the sheriff, having the writ of attachment in his
4 hands; or after the return of the writ before the clerk, with the same effect
5 upon the attachment, as if executed in court. The sureties in either case
6 to be approved by the officer before whom taken.

2 SEC. 3193. Such bond shall be part of the record, and if judgment go
3 against the defendant the same shall be entered against him and the sureties
4 of said bond.

2 In an action where an attachment has been granted, the execution
3 by or for the defendant, of a bond whereby the attachment is dis-
4 charged, or the possession of the attached property is obtained or retained
5 by him, shall be an appearance of such defendant in the action.

2 SEC. 3194. (1859 and 1860.) Stock or interest owned by the defendant in any
3 company, and also debts due him, or property of his held by third persons,
4 may be attached, and the mode of attachment must be as follows: 1. By
5 giving the defendant in the action, if found within the county, and also the
6 person occupying or in possession of the property, if it be in the hands of a
7 third person, notice of such attachment. 2. If the property is capable of
8 manual delivery, the sheriff must take it into his custody, if it can be found.
9 3. Stock in a company is attached by notifying the president or other
10 head of the company, or the secretary, cashier, or other managing agent
11 thereof, of the fact that the stock has been so attached. 4. Debts due the de-
12 fendant, or property of his held by third persons, and which cannot be
found, or the title to which is doubtful, are attached by garnishment thereof.

2 SEC. 3195. The attachment by garnishment is effected by informing the
 3 supposed debtor or person holding the property, that he is attached as gar-
 4 nishee, and by leaving with him a written notice to the effect that he is
 5 required not to pay any debt due by him to the defendant, or thereafter to
 6 become due, and that he must retain possession of all property of the said
 7 defendant then or thereafter being in his custody, or under his control, in
 8 order that the same may be dealt with according to law, and the sheriff shall
 9 summon such persons as garnishees as the plaintiff may direct.

2 SEC. 3196. A sheriff or constable may be garnished for money of the
 3 defendant in his hands. So may a judgment-debtor of the defendant, when
 4 the judgment has not been previously assigned on the record, or by writing
 5 filed in the office of the clerk, and by him minuted as an assignment on the
 6 margin of the judgment docket, and also an executor for money due from the
 7 decedent to the defendant may be garnished, but a municipal or political
 8 corporation shall not be garnished.

2 SEC. 3197. Where the property to be attached is a fund in court, the
 3 execution of the writ of attachment shall be by leaving with the clerk of the
 4 court a copy thereof, with notice specifying the fund.

2 SEC. 3198. If the garnishee die after he has been summoned by garnish-
 3 ment, and pending the litigation, the proceedings may be revived by or
 4 against his heirs or legal representatives.

2 SEC. 3199. Unless exempted, as provided in the next section, the notice
 3 must also require the garnishee to appear on the first day of the next term
 4 of the court, wherein the main cause is depending, or on the day fixed for
 5 trial if in a justice's court, and answer such interrogatories as may be then
 6 propounded to him, or that he will be liable to pay the entire judgment
 7 which the plaintiff eventually obtains against the defendant.

2 SEC. 3200. The plaintiff may, in writing, direct the sheriff to take the
 3 answer of the garnishee, and append the same to his return.

2 SEC. 3201. In such case the sheriff has power to administer an oath to
 3 garnishees, requiring them to make true answers to the questions to be pro-
 4 pounded, which questions shall be as follows :

- 4 1. Are you in any manner indebted to the defendant in this suit, or do
 5 you owe him money or property, which is not yet due? If so, state
 6 the particulars.
- 7 2. Have you in your possession, or under your control, any property,
 8 rights, or credits of the said defendant? If so, what is the value of
 9 the same, and state all particulars.
- 10 3. Do you know of any debts owing to the said defendant, whether due
 11 or not due, or any property, rights, or credits belonging to him,
 12 and now in the possession or under the control of others? If so,
 13 state the particulars.

2 SEC. 3202. If the garnishee refuses to answer fully and unequivocally
 3 all the foregoing interrogatories, he shall be notified and required to appear
 4 and answer on the first day of the next term of court, or on the day fixed
 5 for trial, as above provided, and so he may be required in any event, if the
 6 plaintiff so notify him.

2 SEC. 3203. The questions propounded to the garnishee in court, may be
 3 such as are above prescribed, to be asked by the sheriff, and such others as
 4 the court may think proper and right.

2 SEC. 3204. Where the garnishee is required to appear at court, unless he
 3 has refused to answer, as contemplated above, he is entitled to the pay and
 4 mileage of an ordinary witness, and may, in like manner, require payment
 5 beforehand, in order to be made liable for non-attendance.

2 SEC. 3205. If, when duly summoned, and his fees tendered, (when de-
3 manded,) he fail to appear and answer the interrogatories propounded to
4 him, without sufficient excuse for his delinquency, he shall be presumed to
5 be indebted to the defendant to the full amount of the plaintiff's demand,
6 and shall be dealt with accordingly.

2 SEC. 3206. But for a mere failure to appear, he is not liable to pay the
3 amount of the plaintiff's judgment, until he has had an opportunity to show
4 cause against the issuing of an execution.

2 SEC. 3207. A garnishee may, at any time after answer, exonerate himself
3 from further responsibility, by paying over to the sheriff the amount owing
4 by him to the defendant, and placing at the sheriff's disposal the property
5 of the defendant, or so much of said debts and property as is equal to the
6 value of the property to be attached, all of which may afterwards be treated
7 as though attached in the usual manner.

2 SEC. 3208. When the answer of the garnishee is made, whether at the
3 district court or before the justice, or before the sheriff, the plaintiff may
4 controvert by pleading filed, any facts contained in the answer, and speci-
5 fically set out by the plaintiff, and issue being thereupon joined, may be
6 tried in the usual manner. Upon such trial the answer of the garnishee is
7 competent testimony.

2 SEC. 3209. If in any of the above methods, it is made to appear that
3 the garnishee was indebted to the defendant, or had any of the defendant's
4 property in his hands, either at the time of being served with the garnishee
5 notice aforesaid, or at any time subsequent thereto, he is liable to the plain-
6 tiff, in case judgment is finally recovered by him to the full amount of that
7 judgment, or to the amount of such indebtedness, and of the property so
8 held by him, and a conditional judgment shall be entered up against him
9 accordingly, unless he prefers paying or delivering the same to the sheriff
0 as above provided.

2 SEC. 3210. If the debt of the garnishee to the defendant is not due, exe-
3 cution will be suspended until its maturity.

2 SEC. 3211. The garnishee shall not be made liable on a debt due by ne-
3 gotiable or assignable paper, unless such paper is delivered, or the garnishee
4 completely exonerated or indemnified from all liability thereon, after he may
5 have satisfied the judgment.

2 SEC. 3212. The judgment in the garnishment suit, condemning the prop-
3 erty or debt in the hands of the garnishee, to the satisfaction of the plain-
4 tiff's demand, is conclusive between the garnishee and defendant.

2 SEC. 3213. The docketing of the original case shall contain a statement
3 of all the garnishments therein, and when judgment is rendered against a
4 garnishee, the same shall distinctly refer to the original judgment.

2 SEC. 3214. An appeal lies, in all garnishment cases, at the instance of
3 the plaintiff, the defendant, the garnishee, or an intervenor claiming the
4 property or money.

2 SEC. 3215. Property attached otherwise than by garnishment is bound
3 thereby, from the time of the service of the attachment only.

2 SEC. 3216. The court before whom the action is pending, or the judge
3 thereof, in vacation, may at any time appoint a receiver to take possession
4 of property attached under the provisions of this chapter, and to collect,
5 manage, and control the same, and pay over the proceeds according to the
6 nature of the property and exigency of the case.

2 SEC. 3217. All money attached by the sheriff, or coming into his hands
3 by virtue of the proceeding in attachment, shall forthwith be paid over to
4 the clerk to be by him retained till the further action of the court.

2 **SEC. 3218.** The sheriff shall make such disposition of other attached
3 property as may be directed by the court or judge, and where there is no
4 direction upon the subject, he shall safely keep the property, subject to the
5 order of the court.

6 **SEC. 3219.** The defendant, or any person in whose possession any at-
7 tached property is found, or any person making affidavit that he has an
8 interest in it, may, at any time before judgment, discharge the property at-
9 tached, or any part thereof, by giving bond with security, to be approved by
10 the sheriff, in a penalty at least double the value of the property sought to
11 be released, but if that sum would exceed three times the claim, then in
such sum as equals three times the claim, conditioned that such property, or
its estimated value, shall be delivered to the sheriff to satisfy any judgment
which may be obtained against the defendant in that suit, within twenty
days after the rendition thereof. This bond shall be filed with the clerk of
the court.

2 **SEC. 3220.** To determine the value of property in cases where a bond is
3 to be given, unless the parties agree otherwise, the sheriff shall summon
4 two disinterested persons having the qualification of jurors, who, after being
5 sworn by him to make the appraisement faithfully and impartially,
6 shall proceed to the discharge of their duty. If such persons disagree as to
7 the value of the property, the sheriff shall decide between them.

2 **SEC. 3221.** In an action brought upon the bond above contemplated, it
3 shall be a sufficient defense that the property for the delivery of which the bond
4 was given, did not, at the time of the levy, belong to the defendant against
5 whom the attachment was issued.

6 **SEC. 3222.** (Chap. 167, 13th G. A.) When the sheriff thinks the prop-
7 erty attached in danger of serious and immediate waste and decay, or when
8 the keeping of the same will necessarily be attended with such expense as
9 greatly to depreciate the amount of proceeds to be realized therefrom, or
10 when the plaintiff makes affidavit to that effect, the sheriff may summon
11 three persons, having the qualifications of jurors, to examine the same. The
12 sheriff shall give the defendant, if within the county, two clear days' notice
13 of such hearing, and he may appear before such jury and have a personal
14 hearing. If they are of the opinion that the property requires soon to be
15 disposed of, they shall specify in writing a day beyond which they do not
16 deem it prudent that it should be kept in the hands of the sheriff. If such
day occur before the trial day, he shall thereupon give the same notice as for
goods in execution, and for the same length of time, unless the condition of
the property renders a more immediate sale necessary. The sale shall be
made accordingly. If the defendant give his written consent, such sale
may be made without such finding of three men.

2 **SEC. 3223.** The money arising from such sale shall remain in the hands
3 of the clerk to abide the event of the suit.

2 **SEC. 3224.** The sheriff shall return upon every writ of attachment,
3 what he has done under it. The return must show the property attached,
4 the time it was attached, and the disposition made of it, by a full and par-
5 ticular inventory; also, the appraisement above contemplated, when such
6 has been made. When garnishees are summoned, their names, and the time
7 each was summoned, must be stated. And where real property is attached, the
8 sheriff shall describe it with certainty to identify it and where he can do so, by a
9 reference to the book and page where the deed under which the defendant holds
is recorded. He shall return with the writ all bonds taken under it. Such

10 return must be made immediately after he shall have attached sufficient
 11 property, or all that he can find; or, at latest, on first day of the term on
 12 which the defendant is notified to appear.

Specific Attachments.

SEC. 3225. (Chater 167, 13, G. A.) In an action to enforce a mortgage
 2 of, or lien upon personal property, or for the recovery, sale, or partition of
 3 such property, or by a plaintiff having a future estate or interest therein, for
 4 the security of his rights, where it satisfactorily appears by the petition
 5 verified on oath or by affidavits or the proofs in the cause that the plaintiff
 6 has a just claim, and that the property has been or is about to be sold, concealed
 7 or removed from the state, or where plaintiff states on oath that he has reason-
 8 able cause to believe, and does believe, unless prevented by the court, the
 9 property will be sold, concealed, or removed from the state, an attachment
 10 may be granted against the property.

SEC. 3226. In an action by a vendor of property, fraudulently purchased,
 2 to vacate the contract and have a restoration of the property, or compensation
 3 therefor, where the petition shows such fraudulent purchase of property,
 4 and the amount of the plaintiff's claim, and is verified by his oath, an at-
 5 tachment against the property may be granted.

SEC. 3227. (Chap. 167, 13th G. A.) The attachments in the cases men-
 2 tioned in the last two sections, may be granted by the court in which the
 3 action is brought, or by the judge of any court, upon such terms and con-
 4 ditions as to security on the part of the plaintiff, for the damages which may
 5 be occasioned by them, and with such directions as to the disposition to be
 6 made of the property attached as may be just and proper under the circum-
 7 stances of each case.

SEC. 3228. In every case the plaintiff shall be required to give security
 2 for the damages to the defendant, in an adequate sum to be specified in the
 3 order granting the attachment; and where it may be proper the court or judge
 4 may direct that the defendant in possession of the attached property, shall
 5 be permitted to retain it upon giving such bond with security, and for such
 6 sum as the court or judge may prescribe.

SEC. 3229. No writ of attachment shall be issued by the clerk until
 2 the bond on the part of the plaintiff required by the order of the court
 3 or judge, is executed in his office, by one or more sufficient sureties of the
 4 plaintiff.

SEC. 3230. The writ of attachment shall describe the specific property
 2 against which it is issued, and shall have indorsed upon it the direction of the
 3 court or judge, as to the disposition to be made of the attached property. It
 4 shall be directed, executed, and returned, as other writs of attachment.

SEC. 3231. The court may, in any of the cases mentioned under this
 2 head of specific attachments, direct the terms and conditions of the bond to
 3 be executed by the defendant, with security, in order to obtain a discharge
 4 of the attachment.

SEC. 1. [Chap. 133—10 G. A.] In all cases in which any person or
 2 persons are now or may hereafter become indebted to the state of Iowa, or
 3 to any officer or agent of the state, for the use or benefit of the state, it shall
 4 be the duty of the proper district attorney, or for the attorney-general of the
 5 state, to demand payment or security therefor, whenever, in the opinion of

6 said district attorney or attorney-general, the debt is not sufficiently secured,
7 and the state is in danger of losing the debt, and any security given in com-
8 pliance with said demand shall be deemed lawful and binding and upon
9 sufficient consideration.

2 **SEC. 2.** In all suits now pending or hereafter instituted for money
3 due to the state of Iowa, or due to any state agent or officer, for the use of
4 the state, it shall be lawful for an attachment to issue against the property
5 or debts of the defendant or defendants not exempt from execution upon
6 the filing of an affidavit by the district attorney of the proper district, or of
7 the attorney-general of the state, that he verily believes that a specific
8 amount therein stated is justly due, and the defendant or defendants therein
9 has refused to pay or secure the same, and that unless an attachment is
10 issued against the property of defendant or defendants that there is danger
that the amount due will be ultimately lost to the state.

2 **SEC. 3.** That the attachment so issued shall be levied as in other cases
3 of attachment against any debts or property of the defendant or defendants
4 not exempt from execution, and no bond shall be required of the plaintiffs
5 in such case, and the sheriff shall not be authorized to require any indemni-
6 fying bond before levying the same.

2 **SEC. 4.** Any property taken in attachment under the provisins of
3 the two preceding sections, shall be subject to be released upon the execu-
4 tion of a delivery bond of, with sufficient security as provided by law in
5 other cases.

2 **SEC. 5.** In case any sheriff shall be held liable to pay any damages
3 by reason of the wrongful execution of any writ of attachment issued under
4 this act, and if a judgment be rendered therefor by any court of competent
5 jurisdiction, the amount of such judgment when paid by such sheriff shall
6 become a claim against the State of Iowa in her sovereign capacity in favor
7 of such sheriff, and a warrant therefor shall be drawn by the Auditor upon
proper proof

2 **SEC. 3232.** If judgment is rendered for the plaintiff, the court shall apply
3 in satisfaction thereof—

- 3 1. The money arising from the sales of attached property.
- 4 2. The proceeds of the debts and funds attached in the hands of the
5 garnishee. If these are not sufficient to satisfy the plaintiff's claim,
6 the court shall order a sale by the sheriff, of any other attached
7 property which may be under his control.

2 **SEC. 3233.** The court may, from time to time, make and enforce proper
3 orders respecting the property, sales, and the application of the moneys col-
4 lected.

2 **SEC. 3235.** The sheriff shall be allowed by the court the necessary ex-
3 penses of keeping the attached property, to be paid by the plaintiff and taxed
4 in the costs.

2 **SEC. 3235.** Any surplus of the attached property and its proceeds, shall
3 be returned to the defendant.

2 **SEC. 3236.** If judgment is rendered in the action for the defendant, the
3 attachment shall be discharged, and the property attached, or its proceeds
4 shall be returned to him.

2 **SEC. 3237.** Any person other than the defendant, may, before the sale
3 of any attached property, or before the payment to the plaintiff of the pro-
4 ceeds thereof, or any attached debt, present his petition verified by oath, to
5 the court, disputing the validity of the attachment, or stating a claim to the
6 property or money, or to an interest in, or lien on it, under any other attach-
7 ment, or otherwise, and setting forth the facts upon which such claim is

7 founded ; and the petitioner's claim shall be in a summary manner investi-
 8 gated. The court may hear the proof or order a reference, or may empan-
 9 nel a jury to inquire into the facts. If it is found that the petitioner has
 10 title to, a lien on, or any interest in such property, the court shall make such
 11 order as may be necessary to protect his rights. The costs of such proceed-
 12 ings shall be paid by either party, at the discretion of the court.

SEC. 3238. The fact stated as a cause of attachment, shall not be con-
 2 tested in the action by a mere defense. The defendant's remedy shall be
 3 on the bond, but he may, in his discretion, sue thereon, by way of counter-
 4 claim or cross-demand, and in such case, shall recover damages as in an orig-
 5 inal action on such bond.

SEC. 3239. A motion may be made to discharge the attachment, or any
 2 part thereof, at any time before trial, for insufficiency of statement of cause
 3 thereof, or for other cause making it apparent of record that the writ should
 4 not have issued, or should not have been levied on all or on some part of the
 5 property held.

SEC. 3240. When an attachment has been discharged, if the plaintiff
 2 then announce his purpose to appeal from such order of discharge, he shall
 3 have two days in which to perfect his appeal, and during that time such
 4 discharge shall not operate a return of the property, nor divest any lien, if
 5 such appeal be so perfected at the end thereof.

SEC. 3241. But if judgment in the cause of action be also given against
 2 the plaintiff, he must also, within the same time, take his appeal thereon, or
 3 such discharge shall be final.

SEC. 3242. The attachment law shall be liberally construed, and the
 2 plaintiff, before or during trial, shall be permitted to amend any defect of
 3 form, in the affidavit, bond, attachment, or other proceeding; and no attachment
 4 shall be dismissed for any defect in, or want of bond, if the plaintiff, his
 5 agent, or attorney, will at once substitute a sufficient bond, but the statement
 6 of cause of attachment shall not be amended, nor shall such cause be stated
 7 in the alternative but the cause or causes relied on shall each be stated in a
 8 direct and categorical manner, or shall be insufficient.

SEC. 3243. No levy of attachment on real estate shall be notice to a sub-
 2 sequent vendee or encumbrancer in good faith, unless the sheriff making
 3 such levy shall have entered in a book which shall be kept in the clerk's
 4 office of each county by the clerk thereof, and called encumbrance book, a
 5 statement that the land, describing it, has been attached, and stating the
 6 cause in which it was so attached, and when it was done, and signed by such
 7 sheriff—and such book shall be open as other books kept by such clerk, to
 8 public inspection.

SEC. 3244. The word "sheriff" as used in this chapter, is meant to apply
 2 to constables when the proceedings are in a justice's court, or the like officer
 3 of any other court.

SEC. 3245. When the proceedings are in a justice's court, the justice is
 2 to be regarded as the clerk of the court for all purposes herein contemplated.

CHAPTER 125. *Executions.*

SECTION 3246. Executions may issue at any time before the judgment is
 2 barred by the statute of limitations, and but one execution shall be in exist-
 3 ence at the same time.

SEC. 3247. Judgments or orders requiring the payment of money, or the
 2 delivery of the possession of property are to be enforced by execution. Obe-
 3 dience to those requiring the performance of any other act, is to be coerced
 4 by attachment for contempt.

SEC. 3248. Executions from any court of record may issue in
 2 the first instance into any county which the party ordering them may
 3 direct.

SEC. 3249. When a judgment has been obtained in one county of this
 2 state, and the judgment creditor desires to send an execution into another
 3 county, he must also, (if it has not been already done,) send to be filed in
 4 such county a transcript of such judgment, and the sheriff of such county to
 5 whom an execution may come from another county, shall return to the clerk
 6 of his county a copy of such execution and all his doings thereon, which shall
 7 be treated by the clerk of such county, and such entries made in regard there-
 8 to, as if such execution had issued in that case from his office, to the end
 9 that the record in his county may show all incumbrances by attachment or
 10 judgment on any lands therein, and all partial or total discharges of the
 11 same.

SEC. 3250. When sent into any county other than that in which
 2 the judgment was rendered, return may be made by mail. But money can
 3 not thus be sent, except by the direction of the party entitled thereto, or his
 4 attorney.

SEC. 3251. The execution must intelligibly refer to the judgment, stating
 2 the time and place at which it was rendered, the names of the parties to the
 3 action as well as to the judgment, its amount, and the amount still to be col-
 4 lected thereon, if for money; and, if not for money, it must state what spe-
 5 cific act is required to be performed. If it be against the property of the
 6 judgment debtor, it shall require the sheriff to satisfy the judgment and in-
 7 terest out of the property of the debtor subject to execution.

SEC. 3252. If it be against real or personal property in the hands of per-
 2 sonal representatives, heirs, devisees, legatees, tenants of real property, or
 3 trustees, it shall require the sheriff to satisfy the judgment and interest out of
 4 such property.

SEC. 3253. If it be for the delivery of the possession of real or personal
 2 property it shall require the sheriff to deliver the possession of the same, par-
 3 ticularly describing it, to the party entitled thereto, and may at the same
 4 time require the sheriff to satisfy any costs, damages, or rents and profits,
 5 with interest recovered by the same judgment out of the property of the
 6 of the party against whom it was rendered, subject to execution, and the
 7 value of property for which judgment was recovered; to be specified there-
 8 in, if a delivery thereof can not be had, and shall in that respect be deemed
 9 an execution against property.

SEC. 3254. When it requires the performance of any other act, a certified copy of the judgment may be served on the person against whom it is given, or upon the person or officer, who is required thereby, or by law to obey the same, and his obedience thereto enforced.

SEC. 3255. Every officer to whose hands an execution may legally come, shall give a receipt therefor, if required, stating the hour when the same was received, and shall make sufficient return thereof, together with the money collected, on or before the seventeenth day of such delivery.

SEC. 3257. The officer to whom an execution is legally issued, shall indorse thereon, the day and hour when he received it, and the levy, sale, or other act done by virtue thereof, with the date, and the dates and amounts of any receipts or payment in satisfaction thereof; the indorsements must be made at the time of the receipt or act done.

SEC. 3258. When a judgment is against a principal and his surety, it shall be the duty of the officer having the collection thereof, to exhaust the property of the principal before proceeding to sell that of the surety.

SEC. 3259. The term "surety," in the foregoing section, shall embrace accommodation indorsers, stayers, and all other persons whose liability on the claim is posterior to that of another; but the surety shall, if requested by the officer, show property of the principal, to entitle himself to the benefit of this provision.

SEC. 3260. After exhausting the property of the principal, it shall be the duty of the officer to subject the property of the other parties in the order of their liability in the execution. But the party subsequently liable, shall, if requested by the officer, show property of the party liable before him, so as to entitle himself to the benefit of this provision.

SEC. 3261. But all the parties will be considered as equally liable in all cases, unless the order of liability is shown to the court, and recited in the judgment and the clerk issuing execution on the judgment containing such recital, shall state the order of liability in the execution.

SEC. 3262. When an execution is delivered to an officer, he must proceed to execute the same with diligence; if executed, an exact description of the property, at length, with the date of the levy, shall be indorsed upon or appended to the execution, and if the writ was not executed, or only executed in part, the reason in such case must be stated in the return.

SEC. 3263. An execution may be issued and executed on Sunday, whenever an affidavit shall be filed by the plaintiff or some person in his behalf, stating that he believes he will lose his judgment unless process issue on that day.

SEC. 3264. If the sheriff die or go out of office before the return of any execution, his successor, or other officer authorized to discharge the duties of the office in such case, may proceed thereon in the same manner that the sheriff should have done.

SEC. 3265. Upon the rendition of judgment, execution may be at once issued, and shall be by the clerk, on the demand of the party entitled thereto, and upon its issuance the clerk shall enter on the judgment docket the date of its issuance, and to what county and what officer issued, and shall also enter on said docket the return of the officer with the date of the return, the dates and amount of all moneys received into or paid out of the office thereon, and these entries shall be made at the time of the thing done.

SEC. 3266. The clerk wilfully neglecting or refusing to perform any one

2 of the duties in this chapter imposed, shall be liable to a penalty of five hun-
3 dred dollars, and to damages to the party aggrieved, and shall be guilty of a
4 misdemeanor in office, and on conviction thereof, shall be removed from
5 office.

Levy.

2 **Sec. 3267.** The officer must execute the writ by levying on the property
3 of the judgment debtor, collecting the things in action by suit in his own
4 name, if necessary, or by selling the same, selling the other property and
5 paying to the plaintiff the proceeds, or so much thereof as will satisfy the
6 execution.

2 **Sec. 3268** The officer shall in all cases select such property, and in such
3 quantities, as will be likely to bring the exact amount required to be raised,
4 as nearly as practicable, and having made one levy, may at any time there-
5 after make other levies if he deem it necessary. But no writ of execution
6 shall be a lien on personal property before the actual levy thereof.

2 **Sec. 3269.** Stock or interests owned by the defendant in any company,
3 and also debts due him, and property of his own in the hands of third persons,
4 may be levied upon in the same manner provided for attaching the same.

2 **Sec. 3270.** In proceedings by garnishment on execution, the garnishee
3 shall be served as in case of attachment; his answer may be taken by the
4 officer in the same way and with the same results; he may be notified to
5 appear at the term of court in the same way, and with the same results,
6 and his default shall be attended with the same consequences. The plaintiff
7 may also, if the garnishee is called into court, have a case docketed against
8 him without docket fee, and upon his answer to the officer, issue may be
9 made and notice thereof given him, or issue may be made on his answer in
10 court without any notice thereon, if made at the same term; and in all
11 these and every other particular, the proceedings shall be the same as
12 under garnishment on attachment, as near as the nature of the case will
allow.

2 **Sec. 3271.** Proceedings by garnishment on execution shall not be in any
3 manner affected by the expiration of the execution or its return, and where
4 parties thereunder have been garnished, the officer shall return to the next
5 term thereafter a copy of the execution with all his doings thereon so far as
6 the garnishments thereon are concerned.

2 **Sec. 3272.** (Chapt.167, 13th G. A.) Judgments, bank-bills, and other
3 things in action, may be levied upon and sold, or appropriated as hereinaf-
4 ter provided, and assignments thereof by the officer shall have the same
5 effect as if made by the defendant, and may be treated as so made.

2 **Sec. 3273.** After the rendition of judgment, any person indebted to the
3 defendant in execution, may pay to the sheriff the amount of such indebt-
4 edness, or so much thereof as is necessary to satisfy the execution, and the
5 sheriff's receipt shall be a sufficient discharge therefor.

2 **Sec. 3274.** Public buildings owned by the state, or any county, city,
3 school district, or other corporation, and any other public property which is
4 necessary and proper for carrying out the general purpose for which any
5 such corporation is organized, are exempt from execution. The property of
6 a private citizen can in no case be levied upon to pay the debt of a corpo-
7 ration.

2 SEC. 3276. In case no property is found on which to levy, which is not
3 exempted by the last section, or if the judgment creditor elect not to issue
4 execution against such corporation, he is entitled to the amount of his judg-
5 ment, and costs in the ordinary evidences of indebtedness issued by that
6 corporation. And if the debtor corporation issues no scrip or evidences of
7 debt, a tax must be levied as early as practicable, sufficient to pay off the
8 judgment with interest and costs.

9 And when a tax has been so levied, and the same, or any part thereof, has
10 been collected, the treasurer shall on demand, without a warrant from the
11 clerk of the board of supervisors, pay the same to the creditor, or his attor-
12 ney, taking a receipt therefor, and if not demanded, may pay the same to
13 the clerk of the court where the judgment was rendered, taking his receipt
therefor." (Chapter 43, 13th G. A.)

2 SEC. 3277. If an officer who levies, or is required to levy an execution
3 on personal property, doubts whether it is subject to the execution, he may
4 give the plaintiff therein, or his agent or attorney, notice that an indemnity-
5 ing bond is required. Bond may, thereupon be given, by or for the plain-
6 tiff, with one or more sufficient sureties, to be approved by the officer, to the
7 effect that the obligors will indemnify him against the damages which he
8 may sustain in consequence of the seizure or sale of the property, and will
9 pay to any claimant thereof the damages he may sustain in consequence of
10 the seizure or sale, and will warrant to any purchaser of the property, such
11 estate or interest therein as is sold; and thereupon the officer shall proceed
12 to subject the property to the execution, and shall return the indemnifying
bond to the district court of the county, in which the levy is made.

2 SEC. 3278. If the bond mentioned in the last section is not given, the
3 officer may refuse to levy the execution, or if it has been levied, and the
4 bond is not given in a reasonable time after it is required by the officer,
5 he may restore the property to the person from whose possession it was ta-
6 ken, and the levy shall stand discharged.

2 SEC. 3279. The claimant or purchaser of any property, for the seizure
3 or sale of which an indemnifying bond has been taken and returned by the
4 officer, shall be barred of any action against the officer levying on the prop-
5 erty, if the surety on the bond was good when it was taken. Any such
6 claimant or purchaser may maintain an action upon the bond, and recover
damages as he may be entitled to.

2 SEC. 3280. Where property for the sale of which the officer is indemni-
3 fied, sells for more than enough to satisfy the execution under which it was
4 taken, the surplus shall be paid into the court to which the indemnifying
5 bond is directed to be returned. The court may order such disposition or
6 payment of the money to be made temporarily or absolutely, as may be
proper, in respect to the rights of the parties interested.

2 SEC. 3281. The sale of personal property on which an execution is lev-
3 ied, shall be suspended at the instance of any person other than the defend-
4 ant in execution, claiming the property, who shall execute, with one or more
5 sureties, sufficient for double its value, a bond to the plaintiff in the execu-
6 tion to the effect that, if it shall be adjudged that the property or any part
7 o. it is subject to the execution, he will pay to the plaintiff the value of the
8 property so subject, and ten per cent thereon, not exceeding the amount due
on the execution and ten per cent thereon.

2 SEC. 3282. For the purpose of taking the bond mentioned in the last
3 section, the officer shall select three disinterested persons having the quali-
4 fications of jurors, and administer to them an oath, to make a fair appraisalment

4 of each article of the property, whose appraisement in writing shall be re-
 5 cited in the bond. The bond, with the appraisement annexed thereto, shall
 6 be returned to the district court of the county in which the levy was made,
 7 at the next term thereafter.

2 **Sec. 3283.** The party to whom the bond is executed may move the court to
 3 which it is returned, for a judgment thereon against all or any of the obligors,
 4 or their representatives, having given to them ten days notice of the motion.
 5 The court may cause such issues to be tried as it may prescribe, and direct
 6 which party shall be considered plaintiff in the issues. If the property or
 7 any part of it is found subject to the execution, judgment shall be rendered
 8 in favor of the plaintiff therein for the value of the property so subject, and
 9 ten per cent thereon, not exceeding the amount due on execution and ten
 10 per cent thereon. An execution may be issued on the judgment forthwith,
 11 on which the same indorsement shall be made as on the execution in virtue
 of which the property had been seized.

2 **Sec. 3284.** Upon the trial of the motion, either party may object that
 3 the property was not fairly appraised; and thereupon the jury trying the
 4 facts shall hear evidence respecting, and find the value of the property.

2 **Sec. 3285.** The giving of the bond mentioned in section 3281 shall not
 3 discharge the leave of the execution upon the property claimed. But the
 4 officer may leave it, subject to the lien of the levy, with the person in whose
 5 possession it is found, pending the proceeding on the bond; and may, in the
 6 mean time, proceed with the execution against other property of the de-
 7 fendant.

2 **Sec. 3286.** The provisions of the preceding sections of this chapter, as to
 3 bonds, shall apply to proceedings upon executions, issued by justices of the
 4 peace. Indemnifying bonds shall be returned in such cases, with the exe-
 5 cutions under which they are taken, the bonds of claimants of property may
 6 be returned to the justice from whose office the execution issued, and motion
 7 thereon shall be made before him on five days' notice. He shall cause a
 8 jury as in a civil cause, to be impaneled to find whether the property was
 subject to the execution, and the judgment shall be subject to an appeal.

2 **Sec. 3287.** Whenever a sheriff or other officer shall levy an execution
 3 upon the property or effects held jointly or in partnership by the debtor or
 4 debtors in execution, with others, to satisfy the separate debt of such debtor
 5 or debtors, the sheriff or other officers shall not proceed to make sale thereof
 6 except as hereinafter provided, if the person or persons, or any of them
 7 holding such joint partnership interest with the debtor, shall assert an equit-
 8 able or other claim thereto, and in writing, notify the officer of the existence
 of such claim.

2 **Sec. 3288.** When a claim is asserted by the joint owners or partners to
 3 the property levied upon, the officer shall not, by virtue of his levy, deprive
 4 the joint owners or partners of the possession of the property levied upon
 5 except for the purpose of making an inventory thereof and having the same
 6 appraised.

2 **Sec. 3289.** The officer shall proceed to have the property levied upon,
 3 appraised as provided in section 3282, unless the value can be agreed upon.
 4 He shall return the inventory and the appraisement with the execution, to
 5 the officer from which it issued, and in his return shall state all the facts con-
 6 nected with the levy by him, and the claim set up by the joint owner or
 owners.

Sec. 3290. The execution creditor shall have a lien upon the property

2 levied upon, to the extent of his claim, if the same does not exceed the inter-
 3 est of the judgment debtor in the property, and which shall continue until
 4 the levy is disposed of.

SEC. 3291. Upon the execution being returned by the officer, that he had
 2 levied the same upon the property in which the debtor was joint owner or
 3 partner, and that the same was claimed by the other joint owners or part-
 4 ners, the execution creditor may proceed in an action by equitable proceed-
 5 ings, to subject to the satisfaction of the execution, the interest of the debtor
 6 so levied upon.

SEC. 3292. If such creditor, at the commencement of his action, or after-
 2 ward, shall file an affidavit that he verily believes the property levied upon
 3 will be removed from the county, or sold, or otherwise disposed of with in-
 4 tent fraudulently to defeat his lien, the court, or the judge thereof, in vaca-
 5 tion, may make an order directing the officer to possess himself of the prop-
 6 erty so levied upon, unless bond with approved security shall be executed to
 7 the plaintiff in the execution, binding the obligors in said bond to have the
 8 same forthcoming in obedience to any order or judgment of the court in
 9 the action, which bond shall be taken by the officer and returned by him to
 10 the court in which the action is pending.

Stay of Execution.

SEC. 3293. When judgment has been rendered against any one for the
 2 recovery of money, he may, by procuring one or more sufficient freehold se-
 3 curities to enter into a recognizance acknowledging themselves security for
 4 the defendant for the payment of the judgment, together with the interest
 5 and costs accrued and to accrue, have a stay of the execution from the time
 6 of rendering judgment, as follows :

7 If the sum for which judgment was rendered, inclusive of costs, does not
 8 exceed five dollars, one month.

9 If such sum and costs exceed five but not twenty dollars, two months.

10 If such sum and costs exceed twenty, but not forty dollars, three
 11 months.

12 If such sum and costs exceed forty, but not sixty dollars, four months.

13 If such sum and costs exceed sixty, but not one hundred dollars, six
 14 months.

15 If such sum and costs exceed one hundred, but not one hundred and fifty
 16 dollars, nine months.

17 If such sum and costs exceed one hundred and fifty dollars, twelve
 18 months.

SEC. 3294. The provisions of the foregoing section shall not be enjoyed
 2 by any one who does not take such stay within ten days from the expiration
 3 of the term at which judgment is rendered. No appeal shall be taken
 4 after such stay has been obtained, nor shall a stay be taken on a
 5 judgment entered as herein contemplated, against one who is surety in the
 6 stay of execution, nor shall such stay be allowed to any judgment obtained
 7 by a laboring man or mechanic for his wages.

SEC. 3295. The surety for stay of execution may be taken and approved
 2 by the clerk, and the recognizance entered of record. The undertaking in
 3 the recognizance shall be for the payment of the judgment, interests, and
 4 costs, that may accrue at or before the expiration of the term of the stay of
 5 execution.

2 SEC. 3296. When the surety is entered after execution issued, the clerk
3 shall immediately notify the sheriff of the stay, and he shall forthwith return
4 the execution, with his doings thereon.

2 SEC. 3297. All property levied on before stay of execution, and all writ-
3 ten undertakings for the delivery of personal property to the sheriff, shall be
4 relinquished by the officer, upon stay of execution being entered.

2 SEC. 3298. Every recognizance taken as above provided, shall have the
3 effect of a judgment confessed, from the date thereof, against the property
4 of the sureties.

2 SEC. 3299. At the expiration of the stay, it shall be the duty of the
3 clerk to issue a joint execution against the property of all the judgment
4 debtors and sureties, describing them as debtors or sureties therein.

2 SEC. 3300. When any court shall render judgment against two or more
3 persons, any of whom is surety for any other in the contract on which the
4 judgment is founded, there shall be no stay of execution allowed, if the
5 surety object thereto at the time of rendering the judgment, whereupon it
6 shall be ordered by the court that there be no stay, unless the surety for the
7 stay of execution will undertake specifically to pay the judgment, in case the
8 amount thereof can not be levied of the principal defendant.

2 SEC. 3301. Any surety for the stay of execution may file with the clerk
3 an affidavit, stating that he verily believes he will be liable for the judgment
4 interests and costs thereon, unless execution issues immediately; and the
5 clerk shall thereupon issue execution forthwith, unless other sufficient surety
6 be entered before the clerk, as in other cases.

2 SEC. 3302. If other sufficient surety be entered, it shall have the force of
3 the original surety entered before the filing of the affidavit, and shall dis-
4 charge the original surety.

2 SEC. 3303. Where a stay of execution has been taken, such confessed
3 judgment shall not release any judgment lien, by virtue of the original
4 judgment for the amount then due. The officer holding the said execution,
5 shall return thereon what amount was made from the principal debtor, and
6 how much from the surety.

Exemption.

2 SEC. 3304. The following property of private individuals is exempt from
3 execution: All wearing apparel kept for actual use and suitable to the con-
4 dition of the party, and trunks and other receptacles to contain the same;
5 one musket or rifle; the proper tools, instruments, or books, of any farmer,
6 mechanic, surveyor, clergyman, lawyer, physician, teacher, or professor; the
7 horse, or the team, consisting of not more than two horses or mules, or two
8 yoke of cattle, and the wagon, or other vehicle, with the proper harness or
9 tackle, by the use of which any physician, public officer, farmer, teamster,
10 or other laborer, habitually earns his living; all private libraries, family bi-
11 bles, portraits, pictures, and paintings, not kept for the purpose of sale; a
12 seat or pew, occupied by the debtor or his family, in any house of public
13 worship; and an interest in a public or private burying-ground, not exceed-
14 ing one acre for any defendant. To a printer there shall also be exempt a print-
15 ing press and the types, furniture, and material necessary for the use of such
16 printing press and a newspaper office connected therewith, not to exceed in
all the value of twelve hundred dollars.—[Chapter 31, 13th G. A.]

SEC. 3305. (Chap. 167, 13th G. A.) If the debtor is the head of a family, there is further exempt, his homestead, as provided by law; one cow and calf, one horse, unless a horse has been exempted from him under the last section; fifty sheep, and the wool thereon; five hogs, and all pigs under six months; the necessary food for all animals exempt from execution for sixty days; all flax raised by the defendant on not exceeding one acre of ground, and the manufactures therefrom; one bedstead and the necessary bedding for every two in the family; all cloth manufactured by the defendant, not exceeding one hundred yards in quantity; household and kitchen furniture, not exceeding one hundred dollars in value; all spinning-wheels and looms, and other instruments of domestic labor, kept for actual use; and the necessary provisions and fuel for the use of the family for six months. But no exemptions shall extend to property against an execution issued for the purchase-money thereof.

SEC. 3306. The word "family," as used in the last section, does not include strangers or boarders lodging with the family.

SEC. 3307. The earnings of such debtor for his personal services, or those of his family, at any time within ninety days next preceding the levy, are also exempt from execution and attachment.

SEC. 3308. [Chap. 167—13 G. A.] None of the exemptions contained in this chapter are for the benefit of a single man, not the head of a family, nor of non-residents, nor of those heads of families who have started to leave this state, but their property is liable to execution, with the exception in the two former cases, of ordinary wearing apparel, and trunks to contain the same; and in the latter case, of such wearing apparel, with such property, in addition to such wearing apparel, as the defendant may select, not to exceed seventy five dollars in value, to be selected by the debtor, and appraised according to the provisions of section —; but any person coming into this state, with the intention of remaining, is a resident within the meaning of this chapter.

SEC. 3309. Where a debtor absconds and leaves his family, such property shall be exempt in the hands of the wife and children, or either of them.

Sale.

SEC. 3310. The sheriff must give four weeks' notice of the time and place of selling real property, and three weeks' notice of that of personal property.

SEC. 3311. Notice shall be given by being posted up in at least three public places of the county, one of which shall be at the place where the last district court was held. In addition to which, in case of the sale of real estate, or where personal property to the amount of two hundred dollars or upwards is to be sold, there shall be two publications of such notice, in some newspaper printed in the county, if there be one. In constables' sales, there shall be no newspaper publication, and the notice shall be posted in three public places of the township of the justice, and one of them at his office door; the time of such notice shall be two weeks.

SEC. 3312. An officer selling without the notice above prescribed, shall forfeit one hundred dollars to the defendant in execution, in addition to the actual damages sustained by either party; but the validity of the sale is not thereby affected.

2 **SEC. 3313.** The sale must be at public auction, between nine o'clock in
3 the forenoon, and four o'clock in the afternoon, and the hour of the com-
4 mencement of the sale must be fixed in the notice.

2 **SEC. 3314.** When there are no bidders, or when the amount offered is
3 grossly inadequate, or when from any cause the sale is prevented from
4 taking place on the day fixed, the sheriff may postpone the sale for not
5 more than three days, without being required to give any farther notice
6 thereof; but he shall not make more than two such postponements, and
7 such postponement shall be publicly announced when the sale should have
8 taken place.

2 **SEC. 3315.** When the property sells for more than the amount required
3 to be collected, the overplus must be paid to the defendant, unless the officer
4 having another execution in his hands, on which said overplus may be
5 rightfully applied.

2 **SEC. 3316.** If the property levied on sell for less than sufficient for that
3 purpose, the plaintiff may order out another execution, which shall be credited
4 with the amount of the previous sale. The proceedings under this second
5 sale, shall conform to those hereinbefore described.

2 **SEC. 3317.** When the property is unsold for want of bidders, the levy
3 still holds good; and if there is sufficient time the property may again be
4 advertised and sold under the same execution, or the execution may be re-
5 turned and a vendition exponas issued.

2 **SEC. 3318.** If the defendant is in actual occupation and possession of
3 any part of the land levied on, the officer having the execution, shall, at
4 least twenty days previous to such sale, serve the defendant with written
5 notice stating that the execution is levied on said land, and mentioning the
6 time and place of sale; and sales made without the notice required in this
7 section, may be set aside, on motion made at the same or the next term
8 thereafter.

2 **SEC. 3319.** At any time before nine o'clock, A. M., of the day of the sale,
3 the defendant may deliver to the officer a plan of division of the land levied
4 on, subscribed by him, and it shall in that case, be the duty of the officer to
5 sell, according to said plan, so much of the land as may be necessary to sat-
6 isfy the debt and costs, and no more. If no such plan is furnished, the offi-
7 cer may sell without any division.

2 **SEC. 3320.** When the purchaser fails to pay the money when demanded,
3 the plaintiff or his attorney may elect to proceed against him for the amount;
4 otherwise the sheriff shall treat the sale as a nullity, and may sell the prop-
5 erty on the same day, or after a postponement as above authorized.

2 **SEC. 3321.** When any person has heretofore, or shall hereafter, purchase
3 at a sheriff's sale, any real estate on which the judgment upon which the
4 execution issued was not a lien at the time of the levy, and which fact was
5 unknown to the purchaser, the court shall set aside such sale on motion,
6 notice having been given to the debtor, as in case of action, and a new exe-
7 cution may be issued to enforce the judgment, and upon the order being
8 made to set aside the sale, the sheriff or judgment-creditor shall pay over
9 to the purchaser the purchase money; said motion may also be made by
10 any person interested in the real estate.

2 **SEC. 3322.** Money levied upon may be appropriated without being ad-
3 vertised or sold. The same may be done with bank bills, drafts, promissory
4 notes, or other papers of the like character, if the plaintiff will receive them

4 at their par value, as cash, or if the officer can exchange them for cash at
5 that value.

2 SEC. 3323. (chapter 167—13th G. A.) When a judgment has been obtain-
3 ed against the executor of one deceased, or *against the decedent in his life-*
4 *time*, which the personal estate of the deceased is insufficient to satisfy, the
5 plaintiff may file his petition in the office of the clerk of the court where the
6 judgment is a lien, against the executor, the heirs and devisees of real estate
7 (if such there be,) setting forth the facts, and that there is real estate of the
8 court to award execution against the same.

2 SEC. 3324. (chapter 150—13th G. A.) The person against whom the pe-
3 tition is filed shall be notified by the plaintiff to appear on the first day of
4 the term, and show cause, if any they have, why execution should not be
5 awarded.

2 SEC. 3325. (chapter 150—13th G. A.) The notice shall be served and returned
3 in the ordinary manner, and the same length of time shall be allowed for ap-
4 pearance as in civil actions, and service of such notice on non-resident de-
5 fendants may be had in such cases by publication.

2 SEC. 3326. At the proper time, the court shall award the execution, unless
3 sufficient cause be shown to the contrary.

2 SEC. 3327. The non-age of the heirs or devisees shall not be deemed
3 such sufficient cause.

2 SEC. 3328. Mutual judgments, the executions on which are in the hands
3 of the same officer may be set off, the one against the other; except that the
4 costs shall not be so set off, unless the balance of cash actually collected on the
5 large judgment is sufficient to pay the costs of both judgments, and such
6 costs shall be paid therefrom accordingly.

2 SEC. 3329. When real property has been levied upon, if the estate is
3 less than a lease hold, having two years of an unexpired term, the sale is
4 absolute.

2 SEC. 3330. When the estate is of a larger amount, the property is redeem-
3 able, as hereinafter prescribed.

2 SEC. 3331. At the time of the sale, the sheriff shall give to the purchas-
3 er a certificate containing a description of the property and the amount of
4 money paid by such purchaser; and stating that unless redemption is made
5 within one year thereafter, according to law, he or his heirs or assigns, will
6 be entitled to a deed for the same.

Redemption.

2 SEC. 3332. (chapter 167—13th G. A.) The defendant may redeem such
3 property at anytime within one year from the day of sale, as hereinafter pro-
4 vided, and will in the meantime be entitled to the possession of the property.
5 But in no action where the defendant has taken an appeal from the circuit
6 or district court, or stayed execution on the judgment, shall he be entitled to
7 redeem.

2 SEC. 3333. For the first six months after such sale, his right to redeem
3 is exclusive, but if no redemption is made by him at the end of that time,
4 any creditor of the defendant, whose demand is a lien upon such real estate,
5 may redeem the same at any time within nine months from the day of sale.
6 But a mechanic's lien, before judgment thereon, is not of such a character
7 as to entitle the holder to redeem.

2 **Sec. 3334.** Any creditor whose claim becomes a lien prior to the expira-
 3 tion of the time allowed by law for the redemption by creditors, may re-
 4 deem. A mortgagee may thus redeem before or after the debt secured by
 5 the mortgage falls due.

2 **Sec. 3335.** Creditors having the right of redemption, may redeem from
 3 each other within the time above limited, and in the manner herein pro-
 4 vided.

2 **Sec. 3336.** The terms of redemption in all cases, will be the reimburse-
 3 ment of the amount paid by the then holder, added to the amount of his
 4 own lien, with interest upon the whole at the rate of ten per cent per
 5 annum, together with costs, subject to the exception contained in the next
 6 section. But where a mortgagee, whose claim is not yet due, is the person
 7 from whom the redemption is thus to be made, a rebate of interest, at the
 8 rate of ten per cent per annum, must be made by such mortgagee on his
 9 claim.

2 **Sec. 3337.** When a senior creditor thus redeems from his junior, he is
 3 required to pay off only the amount of those liens which are paramount to
 4 his own, with the interest and costs appertaining to those liens.

2 **Sec. 3338.** When the junior creditor may in all such cases prevent a re-
 3 demption by the holder of the paramount lien, by paying off that lien, or by
 4 leaving with the clerk before hand the amount necessary therefor.

2 **Sec. 3339.** A junior judgment creditor may redeem from a senior judg-
 3 ment creditor, by paying to the party, the clerk or the sheriff, if execution
 4 has issued the full sum due, with interest and costs, and shall become there-
 5 by vested with the title to the judgment so redeemed.

2 **Sec. 3340.** If paid to the sheriff, he shall give to the party redeeming,
 3 a certificate that he has paid such sum for the redemption of the judgment,
 4 describing it, which being presented to the clerk, he shall enter such re-
 5 demption on the judgment docket, as he shall also do if the money is paid
 6 to himself.

2 **Sec. 3341.** Whenever a senior creditor redeems from a junior creditor,
 3 the latter may in return, redeem from the former, and so on, as often as the
 4 land is taken from him by virtue of a paramount lien.

2 **Sec. 3342.** After the expiration of nine months from the day of sale, the
 3 creditors can no longer redeem from each other, except as hereinafter pro-
 4 vided. But the defendant may still redeem at any time before the end of
 5 the year, as aforesaid.

2 **Sec. 3343.** Unless the defendant thus redeems, the purchaser, or the
 3 creditor who last redeemed, prior to the expiration of the nine months afore-
 4 said, will hold the property absolutely.

2 **Sec. 3344.** In case it is thus held by a redeeming creditor, his lien, and
 3 the claim out of which it arose, will be held to be extinguished, unless he
 4 pursues the course pointed out in the next section.

2 **Sec. 3345.** If he is unwilling to hold the property and credit the defen-
 3 dants therefor with the full amount of his lien, he must, within ten days
 4 after the nine months aforesaid, enter on the sale book the utmost amount
 5 that he is thus willing to credit on his claim.

2 **Sec. 3346.** Any unsatisfied lien creditor, within ten days after the expi-
 3 ration of the time thus allowed to make the entry required in the last sec-
 4 tion, may redeem the property by paying the amount of the legal disburse-
 5 ments of the last holder, as hereinbefore regulated, added to the amount
 6 thus entered on the sale book, together with interests and costs.

7 **Sec. 3347.** Such redemptioner shall also credit the defendant with the

2 full amount of his lien, unless within ten days after redeeming as aforesaid,
 3 he likewise makes a like entry on the sale book, in which case any unsatisfied
 4 lien creditor may in like manner redeem within ten days as aforesaid, and
 5 so on until there are no more unsatisfied liens, or until the expiration of the
 6 year for redemption, the defendant having the final privilege of redeeming
 7 from the last redemption at the end of the year.

2 **Sec. 3348.** The mode of making the redemption is by paying the money
 3 into the clerk's office for the use of the persons thereto entitled. The person
 4 so redeeming, if not defendant in execution, must also file his affidavit, or
 5 that of his agent or attorney, stating as nearly as practicable, the amount
 6 still unpaid and due on his own claim.

2 **Sec. 3349.** The clerk shall thereupon give him a receipt for the
 3 money, stating the purpose for which it was paid. He must also, at the
 4 same time, enter in the sale book a minute of such redemption, of the
 5 amount paid, and the amount of the lien of the last redemption, as sworn
 6 to by him.

2 **Sec. 3350.** A creditor redeeming as above contemplated, is entitled to
 3 receive an assignment of the certificate issued by the sheriff, to the original
 4 purchaser, as hereinbefore directed.

2 **Sec. 3351.** When the property has been sold in parcels, any distinct
 3 portion may be redeemed by itself.

2 **Sec. 3352.** When the interests of several tenants in common, have been
 3 sold on execution, the undivided portion of any or either of them may be
 4 redeemed separately.

2 **Sec. 3353.** The rights of a defendant in relation to redemption, are
 3 transferrable, and the assignee has the like power to redeem.

2 **Sec. 3354.** If the defendant or his assignee fail to redeem, the sheriff
 3 must, at the end of the year, execute a deed to the person who is entitled to
 4 the certificate as hereinbefore provided, or to his assignee. If the person
 5 entitled be dead, the deed shall be made to his heirs, but the property will
 6 be subject to the payments of the debts of the deceased, in the same manner
 7 as if acquired during his lifetime.

2 **Sec. 3355.** The purchaser of real estate at a sale on execution, need not
 3 place any evidence of his purchase upon record, until twenty days after the
 4 expiration of the full time of redemption. Up to that time the publicity of
 5 the proceedings is constructive notice of the rights of the purchaser but no
 6 longer.

2 **Sec. 3356.** Deeds executed by a sheriff in pursuance of such sales, are
 3 presumptive evidence of the regularity of all previous proceedings, in the
 4 case, and may be given in evidence without preliminary proof.

2 **Sec. 3357.** When real estate has been sold on execution, the purchaser
 3 thereof, or any person who has succeeded to his interest, may, after his
 4 estate becomes absolute, recover damages for any injury to the property
 5 committed after the sale and before possession is delivered under the con-
 6 veyance.

2 **Sec. 3358.** The term "defendant" as herein used, is intended to desig-
 3 nate the party against whom, and the term "plaintiff" the party in favor of
 4 whom, any execution has issued.

2 **Sec. 3359.** The provisions of this chapter are intended to embrace pro-
 3 ceedings in justices' courts, so far as they are applicable; and the terms
 4 "sheriff" and "clerk," are accordingly to be understood, as qualified in this
 5 chapter, in this the same manner, in respect, as in that relative to attachment.

Appraisement.

2 SEC. 3360. Goods, chattels, lands or tenements shall not be sold on execu-
 3 tion issued from any court, for less than two-thirds of the fair value thereof,
 4 at the time of sale, exclusive of all liens, mortgages, or incumbrances
 5 thereon, except as hereinafter provided.

2 SEC. 3361. The officer to whom any such writ shall be delivered to be
 3 executed, shall, before sale, unless otherwise directed by the execution debt-
 4 or, proceed to ascertain the fair value of such property.

2 SEC. 3362. [Chap. 51, 10th G. A.] For the purpose of ascertaining the
 3 value of property to be sold under execution, two disinterested householders
 4 of the neighborhood shall be selected as appraisers, one of whom shall be
 5 chosen by the execution debtor, his agent or attorney, or in case of the ab-
 6 sence from the county of the execution debtor, his agent and attorney,
 7 by the officer issuing the writ if he resides in the county where the same is
 8 to be executed, or if not there, by the clerk of the district court of said
 9 county, and the other by the owner of the judgment, his agent or attorney,
 10 or in the absence from the county of such owner, his agent and attorney, by
 11 the officer executing the writ, and said appraisers shall forthwith proceed to
 12 value such property according to its fair value at the time; and in case of
 13 their disagreement as to such value, they shall choose another disinterested
 14 householder of the neighborhood, and with his assistance they shall com-
 15 plete such valuation, the valuation to be sworn to by the appraisers.

2 SEC. 3363. [Chap. 51, 10th G. A.] If the execution debtor, his agent
 3 or attorney, or the officer issuing the writ, or the clerk of the district court,
 4 shall fail to choose an appraiser as provided in the above section within three
 5 days after notice of such levy served on him, his agent or attorney, or the of-
 6 ficer issuing the writ, or the clerk of the district court, as the case may be,
 7 by copy or reading, the officer having the writ shall choose an appraiser for
 8 him, who shall proceed in all respects as if he had been otherwise chosen ac-
 9 cording to law.

2 SEC. 3364. In case any of said appraisers shall fail to complete such
 3 valuation the plaintiff, his agent or attorney, or the officer, in their absence,
 4 or the execution debtor, or the appraisers if two remain, who were first
 5 chosen, as the case may be, shall choose an appraiser in the place of the one
 6 before chosen by him, or them, and refusing to act; or if such execution
 7 debtor shall in such case fail to choose such appraiser within two days after
 8 notice of such refusal to act by the appraiser chosen by him, such officer
 9 shall choose an appraiser for him, and any appraiser thus chosen shall pro-
 10 ceed in all respects as if he had been chosen in the first instance.

2 SEC. 3365. Upon the completion of such appraisement the said ap-
 3 praisers shall return to the officer a schedule of the property appraised,
 4 with the value of each lot, tract or parcel of real estate, and of the several
 5 articles of personal property which may have been levied upon by virtue of
 6 such execution. Whenever any property thus appraised, can not be sold for
 7 two-thirds of its valuation, it shall be the duty of the officer by whom such
 8 levy shall have been made, when he returns such execution, to return such
 9 appraisement therewith, stating in his return such failure to sell.

2 SEC. 3368. Such levy and return shall constitute and remain a lien on
3 the property thus remaining unsold, and a writ of *venditioni exponas* may
4 issue for the sale thereof as in other cases.

2 SEC. 3367. When any such writ of *venditioni exponas* shall issue, either
3 party may have a revaluation of the property levied upon, by paying the ex-
4 pense of such revaluation.

2 SEC. 3368. The officer to whom such execution may be directed shall
3 proceed to sell without unnecessary delay, but shall not offer the same prop-
4 erty more than once, under the same execution, unless the execution cred-
5 itor will pay the cost and charges of such additional offer to sell.

2 SEC. 3369. Execution shall not issue on any judgment more frequently
3 than once in six months, unless at the cost and charge of the plaintiff.

2 SEC. 3370. Property conveyed by a debtor with intent to hinder or delay
3 collection or defraud creditors, shall be sold without appraisement.

2 SEC. 3371. It shall be lawful for any judgment debtor to have his real
3 estate sold on execution subject to redemption as is provided by law, and in
4 case he so elect before a levy on the same by the officer having control of
5 the writ, and files his notice in writing, of election, with the clerk of the
6 court issuing the writ, the officer shall proceed to sell, subject to redemption,
7 and shall execute to the purchaser a certificate of purchase.

2 SEC. 3372. When the real estate is sold after appraisement according to
3 this act, the officer, on the payment of the purchase money, shall execute to
4 the purchaser or purchasers, a deed or deeds, which shall convey all the in-
5 terest on which the judgment operated as a lien, or which the debtor acquired
6 after the judgment and before the sale, and the said deed when executed ac-
7 cording to law shall be presumptive evidence of the regularity of the judg-
8 ment and sale.

2 SEC. 3373. The appraisers provided for in this chapter shall be allowed
3 fifty cents in each case for their services *provided*, that in all cases where the
4 time necessarily required exceeds five hours, they shall be allowed an addi-
5 tional compensation of ten cents per hour.

Revisor of Judgments.

2 SEC. 3481. An execution may be issued on a judgment at any time, until
3 the collection of it is barred by the statute of limitations, although no exe-
4 cution may have been previously issued thereon.

2 SEC. 3482. The death of one or all the plaintiffs shall not prevent an ex-
3 ecution being issued, but on such execution the clerk shall indorse the death
4 of such of them as are dead, and if all be dead, the names of the personal
5 representatives, or the last survivor, if the judgment passed to the personal
6 representatives, or the names of the survivor's heirs, if the judgment was
7 for real property.

2 SEC. 3483. The sheriff, in acting upon an execution indorsed as provi-
3 ded in the last section, shall proceed as if the surviving plaintiff or plaintiffs
4 or the personal representatives or heirs, were the only plaintiffs in the exe-
5 cution, and take bonds accordingly.

2 SEC. 3484. Before making the indorsements named above, an affidavi
3 shall be filed with the clerk by one of the plaintiffs or personal representa-
4 tives, or heirs, or their attorney, of the death, and that the persons named
5 as such are the personal representatives or heirs, and in the case of personal
6 representatives, they shall file with the clerk a certificate of their qualifica-
7 tions, according to law in this state.

2 SEC. 3485. The death of part only of the defendants shall not prevent
3 execution being issued, which, however, shall operate alone on the survivors
4 and their property.

2 SEC. 3486. The defendant may move the court to quash an execution on
3 the ground that the personal representatives, or heirs of a deceased plaintiff
4 are not properly stated in the indorsement on the execution, and during the
5 vacation of the court, may obtain an injunction, upon its being made to ap-
6 pear that the persons named are not entitled to the judgment on which the
7 execution was issued.

CHAPTER 126. *Proceedings Supplemental to Execution.*

2 SEC. 3375. When execution against the property of a judgment
3 debtor, or one of several debtors in the same judgment has been issued from
4 the district, circuit, or supreme court to the sheriff of the county where
5 such debtor resides, or if he do not reside in the state, to the sheriff of the
6 county where the judgment was rendered, or a transcript of a justice's
7 judgment has been filed and execution issued thereon, is returned unsatis-
8 fied in whole or in part, the owner of the judgment is entitled to an order
9 for the appearance and examination of such debtor.

2 SEC. 3376. The like order may be obtained at any time after the issuing
3 of an execution upon proof, by the affidavit of the party or otherwise, to
4 the satisfaction of the court or officer who is to grant the same, that any
5 judgment debtor has property which he unjustly refuses to apply towards the
6 satisfaction of the judgment.

2 SEC. 3377. Such order may be made by the court in which the judgment
3 was rendered, or by any judge thereof in vacation, or by the court of the
4 county to which the execution has been issued as aforesaid, or by the judge
5 thereof. And the debtor may be required to appear and answer before
6 either of such courts or officers, or before a referee appointed by the court
7 or judge who issued the order.

2 SEC. 3378. The debtor, on his appearance, may be interrogated in rela-
3 tion to any fact calculated to show the amount of his property, or the dispo-
4 sition which has been made of it, or any other matter pertaining to the
5 purpose for which the examination is permitted to be made. And the
6 interrogatories and answers shall be reduced to writing and preserved by the
7 court or officer before whom they are taken. All examinations and answers
8 under this chapter shall be on oath, and no person shall, on examination,
9 pursuant to this chapter, be excused from answering any question on the
10 ground that his examination will tend to convict him of a fraud, but his
11 answers shall not be used as evidence against him in a prosecution for such
12 fraud.

2 SEC. 3379. Witnesses may be required by the order of the court or judge,
3 or by subpoena from the referee, to appear and testify upon any proceedings
4 under this chapter in the same manner as upon the trial of an issue.

2 SEC. 3380. If any property, rights, or credits, subject to execution are
3 thus ascertained, an execution may be issued, and they may be levied upon
4 accordingly. The court or judge may order any property of the judgment
5 debtor not exempt by law, in the hands either of himself or any other person

5 or corporation, or due to the judgment debtor, to be delivered up, or in any
6 other mode applied towards the satisfaction of the judgment.

2 **Sec. 3381.** The court or judge may also, by order, appoint the sheriff of
3 the proper county, or other suitable person, a receiver of the property of the
4 judgment debtor, and may also, by order, forbid a transfer or other disposit-
5 ion of the property of the judgment debtor, not exempt by law, or may forbid
any interference therewith.

2 **Sec. 3382.** If it shall appear that the judgment debtor has any equitable
3 interest in real estate in the county in which proceedings are had, as mort-
4 gator, mortgagee, or otherwise, and the interest of said debtor can be ascer-
5 tained as between himself and the person or persons holding the legal
6 estate, or the person or persons having any lien on, or any interest in the
7 same, without controversy as to the interest of such person or persons,
8 holding such legal estate or interest therein, or lien on the same, the re-
9 ceiver may be ordered to sell and convey such real estate, or the debtor's
10 equitable interest therein. Such sale shall be conducted in all respects in
11 the same manner as is provided by this code for the sale of real estate upon
execution.

2 **Sec. 3383.** If the sheriff shall be appointed receiver, he and his sureties
3 shall be liable on his official bond for the faithful discharge of his duties as
4 receiver.

2 **Sec. 3384.** The judge or referee acting under the provisions of this chap-
3 ter, shall have power to continue his proceedings from time to time, until
4 they shall be completed.

2 **Sec. 3385.** The judge may, in his discretion, order a reference to a refe-
3 ree appointed by him to report the evidence or the facts.

2 **Sec. 3386.** Should the judgment debtor fail to appear after being per-
3 sonally served with notice to that effect, or should he fail to make full
4 answers to all proper interrogatories thus propounded to him, he will be
5 guilty of contempt, and may be arrested and imprisoned until he complies
6 with the requirements of the law in this respect. And if any person, party
7 or witness, disobey an order of the court or judge, or referee, duly served,
such persons, party or witness may be punished as for a contempt.

2 **Sec. 3387.** The order mentioned herein shall be in writing and signed
3 by the court or judge or referee, making the same, and shall be served as an
4 original notice in other cases.

2 **Sec. 3388.** Sheriff's, referees, receivers, and witnesses, shall receive such
3 compensation as is allowed for like services in other cases, to be taxed as
4 costs in the case, and the collection thereof from such party, or parties as
ought to pay the same shall be enforced by an order.

2 **Sec. 3389.** Upon proof to the satisfaction of the court, or officer, author-
3 ized to grant the order aforesaid, that there is danger that the defendant will
4 leave the state, or that he will conceal himself, the said court or officer, in-
5 stead of the order aforesaid, may issue a warrant for the arrest of the debtor,
6 and for bringing him forthwith before the court or officer authorized to take
7 his examination as hereinbefore provided. After being thus brought before
8 the said court or officer, he may be examined in the same manner and
with the like effect as is above provided.

2 **Sec. 3390.** Upon being brought before the court or officer, he may enter
3 into an undertaking in such sum as the court or officer shall prescribe, with
4 one or more sureties, that he will attend from time to time, for examination,
before the court or officer, as shall be directed, and will not, in the meantime,

5 dispose of his property, or any part thereof, in default whereof he shall con-
 6 tinue under arrest, and may be committed to jail on the warrant of such
 7 court or officer, from time to time, for safe keeping, until the examination
 8 shall be concluded.

CHAPTER 127. *Equitable Actions Supplemental to Execution.*

SEC. 3391. After an execution directed to the sheriff of the county in
 2 which the judgment was rendered, or to the sheriff of the county of the
 3 defendant's residence, is returned by the proper officer, either as to the
 4 whole or part thereof, in substance, no property found to satisfy the same,
 5 the owner of the judgment may, in his discretion, institute an action by
 6 equitable proceedings in the court from which the execution issued, or in any
 7 court having jurisdiction of the cause, for the discovery of any money, chose
 8 in action, equitable or legal interest, or any other property to which the
 9 defendant is entitled, and for subjecting the same to the satisfaction of the
 10 judgment; and in such actions, persons indebted to the defendant in the
 11 execution, or holding the money or property in which he has an interest, or
 12 holding the evidences or securities for the same, may be also made defend-
 13 ants.

SEC. 3392. The answers of all defendants shall be verified by their own
 2 oath, and not by that of an agent or attorney, and the court shall enforce full
 3 and explicit discoveries in such answers by process of contempt.

SEC. 3393. In the action mentioned in the preceding sections, the plain-
 2 tiff may have an attachment against the property of the defendant in the
 3 execution, similar to the *general* attachments provided for in chapter 124, on
 4 attachment, without either the affidavit or bond therein required.

SEC. 3394. A lien shall in this case be created on the property of the
 2 defendant, by the levy of the attachment and the service of the notice, and
 3 copy of petition on the person holding or controlling such property.

SEC. 3395. The court shall enforce the surrender of the money, or secu-
 2 rities therefor, or of any other property of the defendant in the execution,
 3 which may be discovered in the action, and for this purpose may commit to
 4 jail any defendant or garnishee failing or refusing to make such surrender,
 5 until it shall be done, or the court is satisfied that it is out of his power to
 6 do so.

SEC. 3396. The use of the appliances of this equitable action is no waiver
 2 of the remedy of the chapter next preceeding. Nor is the use of the appli-
 3 ances of that chapter a waiver of the right to also use the appliances of this,
 4 but any party entitled to one may use either or both as he may deem it
 5 desirable.

CHAPTER 128. *Judgment by Confession.*

SECTION 3397. A judgment by confession, without action, may be entered by the clerk of the district court, or by a justice of the peace, if within his jurisdiction, in the manner hereinafter prescribed.

SEC. 3398. Such confession can be only for money due, or to become due, or to secure a person against contingent liabilities on behalf of the defendant, and must be for a specified sum.

SEC. 3399. A statement in writing must be made and signed by the defendant, and verified by his oath to the following effect, and filed with the clerk or justice of the peace.

1. If for money due, or to become due, it must state concisely the facts out of which the indebtedness arose, and that the sum confessed therefor is justly due, or to become due, as the case may be.
2. If for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting such liability, and must show that the sum confessed therefor does not exceed the same.

SEC. 3400. If in the district court, the clerk shall thereupon make an entry of judgment in his court record for the amount thus confessed, and costs, and shall issue execution thereon, as in other cases.

SEC. 3401. If in a justice's court, the justice shall thereupon enter a judgment on his docket, with costs, and issue execution as above directed. If a transcript of such judgment be filed with the clerk of the district court, a copy of the statement must be filed with it.

SEC. 3402. Upon an authority given before this statute takes effect, and which was valid when given, judgment may be rendered up, as herein mentioned, or as nearly so as the circumstances of the case will permit

CHAPTER 129. *Offer to Confess,*

SEC. 3403. Before an action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have jurisdiction of the action, on or before the clerk of either of such courts in his office, and offer to confess judgment in favor of such person for a specified sum on such cause of action as provided for in the foregoing chapter. Whereupon, if such person, having had the same timely notice as if he were defendant in an action, that the offer would be made, of its amount and of the time and place of making it, does not attend to accept the confession, or attending, refuses to accept it, and should afterwards commence an action upon such cause, and not recover more than the amount so offered to be confessed, he shall pay all the costs of the action; and on the trial thereof, the offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, nor be given in evidence.

2 SEC. 3404. After an action for the recovery of money is brought the de-
 3 fendant may offer in court to confess judgment, for part of the amount
 4 claimed or part of the causes involved in the action. Whereupon, if the
 5 plaintiff being present, refuses to accept such confession of judgment in full
 6 of his demands against the defendant in the action, or having had three
 7 days notice that the offer would be made, of its amount, and of the time of
 8 making it, fails to attend or on the trial does not recover more than was so
 9 offered to be confessed, such plaintiff shall pay the costs of the defendant, in-
 10 curred after the offer. The offer shall not be deemed to be an admission of
 11 the cause of action, or amount to which the plaintiff was entitled, nor be
 given in evidence upon trial.

CHAPTER 130. *Offer to Compromise.*

2 SECTION 3405. The defendant in an action for the recovery of money
 3 only, may at any time after service of notice, and before the trial, serve upon
 4 the plaintiff or his attorney, an offer in writing, to allow judgment to be
 5 taken against him for the sum of money, or to the effect therein specified
 6 with costs. If the plaintiff accept the offer and give notice thereof to the
 7 defendant or his attorney, within five days after the offer is made, the offer
 8 and an affidavit that the notice of acceptance was delivered in the time limited,
 9 may be filed by the plaintiff, or the defendant may file the acceptance
 10 with a copy of the offer verified by affidavit; and in either case, the offer
 11 and acceptance shall be entered upon record, and judgment shall be rendered
 12 by the court accordingly. If the notice of acceptance is not given in the
 13 period limited, the offer shall be withdrawn, and shall not be given in evi-
 14 dence nor mentioned on the trial. If the plaintiff fails to obtain judgment
 15 for more than was offered by the defendant, he can not recover costs, but
 shall pay the defendant's costs from the time of the offer.

2 SEC. 3406. In an action for the recovery of money only, the defendant
 3 having answered, may serve upon the plaintiff or his attorney, an offer in
 4 writing, that if he fails in his defense, the amount of recovery shall be as-
 5 sessed as a specified sum. If the plaintiff accepts the offer and gives notice
 6 thereof to the defendant or his attorney, within five days after it was served
 7 or within three days if served in term time, and the defendant fails in his
 8 defense, the judgment shall be for the amount so agreed upon. If the
 9 plaintiff does not so accept the offer he shall prove the amount to be recover-
 10 ed, as if the offer had not been made, the offer shall not be given in evidence
 11 or mentioned on the trial. And if the amount recovered by the plaintiff does
 12 not exceed the sum mentioned in the offer, the defendant shall recover his
 13 costs incurred in the defense, in respect to the question of amount to be taxed
 under the direction of the court.

2 SEC. 3407. The making of any offer pursuant to the provisions of this
 3 chapter, shall not be a cause for a continuance of an action or a postponement
 of a trial.

CHAPTER 131. *Submitting Controversies without Action, or in Action.*

2 SEC. 3408. Parties to a question in difference which might be the subject
3 of a civil action, may, without action, present an agreed statement of the
3 facts thereof to any court having jurisdiction of the subject matter.

2 SEC. 3409. It must be shown by affidavit that the controversy is real, and
3 that the proceeding is in good faith to determine the rights of the parties
3 thereto.

2 SEC. 3410. The court shall thereupon hear and determine the case, and
2 render judgment thereon as if an action were pending.

2 SEC. 3411. The case, the submission, and the judgment, shall consti-
2 tute the record.

2 SEC. 3412. The judgment shall be with costs, and it may be enforced,
2 and shall be subject to review in the same manner as if it had been rendered
3 in an action, unless otherwise provided for in the submission.

2 SEC. 3413. The same may be also done at any time before trial in any
3 action then pending, subject to the same requirements and attended by the
3 same results as in a case without action, and such submission of a stated case
4 shall be an abandonment by both parties of all pleadings filed in such cause,
5 and the cause shall stand on the agreed case alone, which must provide also
6 for any lien had by any attachment, and for any property in the custody of
7 the law, else such lien and such legal custody will be held waived.

2 SEC. 3414. The parties may, if they think fit, enter into an agreement in
3 writing, that upon the judgment of the court being given in the affirmative
3 or negative of the question or the questions of law, raised by each special
4 case, particular property therein described, or a sum of money fixed by the
5 parties, or to be ascertained by the court, or in such manner as the court may
6 direct it, shall be delivered to and vested in one of the parties by the other,
7 or in case of money shall be paid by one of such parties to the other of
8 them, either with or without costs of the action, and the judgment of the
9 court may be entered for the transfer and delivery of such property, or for
10 such sum as shall be so agreed, or ascertained with or without costs, as the
11 case may be.

2 SEC. 3415. In case no agreement shall be entered into as to the costs
3 of such action, the same shall follow the event, and be recovered by the suc-
3 cessful party.

CHAPTER 132. *Deposits.*

2 SEC. 3416. When it is admitted by the pleading or examination of a
3 party, that he has in his possession, or under his control, any money or
3 property capable of delivery, which is in any degree the subject of litiga-
4 tion, and which is held by him as trustee for another party, the court, or
5 judge thereof, may order the same to be deposited in the office of the clerk,

6 or delivered to such party; with or without security, subject to the farther di-
7 rection of the court.

2 SEC. 3417. Whenever, in the exercise of its authority, a court or judge
3 has ordered the deposit or delivery of money or other property, and the or-
4 der is disobeyed, the court, besides punishing the disobedience, may make
5 an order requiring the sheriff to take the money or property and deposit or
6 deliver it in conformity with the directions of the court or judge.

2 SEC. 3418. The sheriff has the same power in such cases, as when acting
3 by authority of a writ of replevin.

CHAPTER 133. *Receivers.*

2 SEC. 3419. On the petition of either party to a civil action or proceed-
3 ing, therein he shows that he has a probable right to any of the property
4 which is the subject of the controversy, and that such property, or its rents
5 and profits are in danger of being lost or materially injured or impaired,
6 the court, or in vacation, the judge thereof, if satisfied that the interests of
7 one or both the parties will be thereby promoted, and the substantial rights
8 of neither unduly infringed upon, may appoint a receiver to take charge of
9 and control such property under its discretion, during the pendency of the
0 action, and may order and coerce the delivery of it to him.

2 SEC. 3420. Before entering upon the discharge of his duties, he must be
3 sworn faithfully to discharge his trust to the best of his ability, and must
4 also file with the clerk a bond with sureties, to be by him approved, in a
5 penalty to be fixed by the court or judge, and conditioned for the faithful
6 discharge of his duties, and that he will obey the orders of the court in re-
7 spect thereto.

2 SEC. 3421. Subject to the control of the court, a receiver has power to
3 bring and defend actions, to take and keep possession of property, to collect,
4 debts, to receive the rents and profits of real property, and generally, to do
5 such acts in respect to the property committed to him, as the court may
6 authorize.

CHAPTER 134, *Summary Proceedings.*

SEC. 3422. Judgments or final orders may be obtained, on motion, by
sureties against their principals, by sureties against their co securities, for
the recovery of money due them, on account of payments made by them as
such; by clients against attorneys; plaintiffs in execution against sheriffs,
constables and other officers, for the receiving of money or property col-
lected for them, and damages, and in all other cases specially authorized by
statute.

2 SEC. 3423. Notice of such motion shall be served on the party against
3 whom the judgment or order is sought, at least ten days before the motion
is made.

2 SEC. 3424. The notice shall state in plain and ordinary language, the
3 nature and grounds of the motion, and the day on which it will be made.

2 SEC. 3425. Unless the motion is made and filed with the case, on or
3 before the day named in the notice, it shall be considered as abandoned.

2 SEC. 3426. The motion shall be heard and determined without written
3 pleadings, and judgment given according to law and the rules of equity.

CHAPTER 135. *Motions and Orders.*

2 SEC. 3427. Every direction of a court or judge, made or entered in writ-
3 ing, and not included in a judgment, is an order.

2 SEC. 3428. A motion is a written application for an order addressed to
3 the court, or to a judge, in vacation, by any party to a suit or proceeding, or
3 by any one interested therein.

2 SEC. 3429. When a party is in court he shall, without service of notice,
3 take notice of any motion made during the term on the filing of the same,
3 and notice thereof being entered on the notice-book. The same shall be true
4 of a party constructively in court, who has not in fact appeared as to any
5 motion made, either in term or during vacation; but where a party has in
6 fact appeared, notice of any motion made in vacation, and a copy of motion,
7 shall be served on him or his attorney.

2 SEC. 3430. When notice of a motion is required to be served, it must be
3 in writing, and shall state the names of the party to the action or proceed-
3 ing in which it is to be made, the place where, and the day on which it will
4 be heard, and if affidavits are to be used on the hearing, the notice shall state
5 that fact, and it shall be served ten days before the hearing, unless the court
6 or judge direct shorter notice.

2 SEC. 3431. Notices and copies of motions mentioned in this chapter may
3 be served by any one who would be authorized to serve an original notice,
3 and may also be served by the attorney of the party making the motion.

2 SEC. 3432. The service shall be on each of the parties adverse to the
3 motion, if more than one, or on an attorney of record, of such party.

2 SEC. 3433. The service may be personal on such party or attorney, or
3 may be left at the usual place of residence of the party, in the same manner
3 as is provided for the service of the original notice in civil actions; or it
4 may be served on the attorney, by being left at his office with any person
5 having the charge thereof.

2 SEC. 3434. In cases unprovided for specially, the notice and copy may,
3 in order to affect the party adverse, be served on the same persons as those
3 on whom might be served the original notice in the case.

2 SEC. 3435. It shall be the duty of any officer authorized to serve any
3 notice and copy, and when such notice and copy shall be delivered to him,
3 for service within his county, to serve at once the same, and make prompt
4 return to the party who delivered the same to him, and a failure to do so
5 shall be punished as a disobedience of the process of the court.

2 SEC. 3436. The return of proof of service must state the manner in which
3 it was made.

2 SEC. 3437. When the party has no known place of abode in this state,
3 and no attorney in the county where the action is pending, or where the
4 parties, plaintiffs or defendants, are numerous, the court or judge may direct
5 the mode of serving notices and copies, and to what persons they shall be
6 given.

2 SEC. 3438. Several objects may be included in the same motion, if they
3 all grow out of, or are connected with the action or proceeding in which it is
4 made.

2 SEC. 3439. Orders made out of court shall forthwith be filed with and
3 entered by the clerk in the journal of the court, in the same manner as or-
4 ders made in the term.

2 SEC. 3440. Testimony to sustain or resist a motion may be presented in
3 the form of affidavits, if the same does not appear otherwise. But on the
4 hearing of any motion, it shall be lawful for the court or judge, at his dis-
5 cretion, and upon such terms as he may think reasonable, from time to
6 time, to order such document as he may think fit, to be produced, and such
7 witnesses as he may think necessary, to appear, and be examined, *viva voce*,
8 either before such court or judge.

2 SEC. 3441. The motions of chapter 122 shall not be affected by the pro-
3 visions of this chapter, and all motions made in term to dissolve an attach-
4 ment in whole or part, or in any way regarding security for costs, or to
5 dismiss a cause for any irregularity, or to change venue, or to continue a
6 cause, or to open a default, shall be served by mere notice, on the notice
7 book, and may be heard on the morning of that on which notice thereof is
8 served, and sooner, if sooner reached, and necessary to be passed upon before
9 trial, any motion made in term affecting an action or proceeding then pend-
10 ing in such court, may be made on such notice as the court shall direct, or
11 without notice, if the court so direct.

CHAPTER 136. *Security for Costs.*

2 SECTION 3442. If a defendant shall at any time before answering, make
3 and file an affidavit, stating that he has a good defense in whole or in part,
4 the plaintiff, if he be a non-resident of this state, or a corporation, before any
5 other proceeding in the cause, shall file in the clerk's office a bond, with a
6 sufficient security, who must be a resident of the county where suit is
7 brought to be approved by the clerk, for the payment of all costs which
8 may accrue in the action in the court in which it is brought, or in any other
9 court to which it may be carried, either to the defendant or to the officers of the
10 court.

2 SEC. 3443. An action for which a bond for costs is required by the last
3 section, and has not been given, shall be dismissed on the motion of the de-
4 fendant at any time before trial, unless in a reasonable time, to be allowed
5 by the court, after the motion is made therefor, such bond is filed securing all
6 past and future costs; and the action shall not be dismissed if a bond for
7 costs is given in such time as the court may allow.

2 SEC. 3444. If the plaintiff in an action, after its institution, becomes a
3 non-resident of this state, he may be required to give security for costs in the
4 manner and under the restrictions provided in the preceding sections of this
5 chapter.

2 SEC. 3445. In an action in which a bond for costs has been given, the
3 defendant may at any time before trial, make a motion for additional security
4 on the part of the plaintiff; and if on such motion the court is satisfied that
5 the surety in the plaintiff's bond has removed from the state, or is not suffic-
6 ient for the amount thereof, it may dismiss the action unless in a reasonable
7 time to be fixed by the court, sufficient security is given by the plaintiff.

2 SEC. 3446. No attorney or other officer of the court shall be received as
3 security in any proceeding in court.

2 SEC. 3447. After final judgment has been rendered in an action in which
3 security for costs has been given as required by this chapter, the court on
4 motion of the defendant, or any other person having the right to such costs
5 or any part thereof, may render judgment summarily, according to the
6 chapter on summary proceedings, in the name of the defendant or his legal
7 representatives, against the sureties for costs, for the amount of costs adjudg-
ed against the plaintiff, or so much thereof as may remain unpaid.

2 SEC. 3448. In no other than the cases herein stated, except costs of the
3 clerk, shall a plaintiff be required to give security for any costs, the applica-
4 tion for such security shall be by motion, filed with the case, and the facts
5 supporting it must be shown by affidavits, annexed thereto, which may be
6 responded to by counter affidavits, on or before the hearing of the motion,
7 and each party shall file all his affidavits at once and none thereafter.

CHAPTER 137. *Costs.*

2 SEC. 3449. Costs shall be recovered by the successful against the losing
3 party. But where the party is successful as to a part of his demand, and
4 fails as to part, unless the case is otherwise provided for, the court may
5 make, on rendering judgment, an equitable apportionment of costs.

2 SEC. 3450. On all motions the court may give or refuse costs, at its dis-
3 cretion, to the extent of ten dollars, unless where it is otherwise provided
4 by law which costs may be absolute or directed to abide the event of the
5 action.

2 SEC. 3451. In actions where there are several plaintiffs, or several de-
3 fendants, the costs shall be apportioned according to the several judgments
4 rendered; and where there are several causes of action embraced in the
5 same petition, or several issues, the plaintiff shall recover costs upon the is-
6 sues determined in his favor, and the defendant shall recover costs upon the
7 issues determined in his favor.

2 SEC. 3452. All costs accrued at the instance of the successful party
3 which can not be collected out of the other party, may be recovered, on
4 motion, by the person entitled to them, against the successful party.

2 SEC. 3453. The necessary fees paid by the successful party, in procuring
3 copies of deeds, bonds, wills, or other records filed as a part of the testimony,
4 shall be taxed in the bill of costs.

2 SEC. 3454. Postage paid by the officers of the court, or by the parties in
3 sending process, depositions and other papers, being part of the record, by
4 mail, shall be taxed in the bill of costs.

2 SEC. 3455. When a pleading contains a defense stating matter which
3 arose after the commencement of the action, whether such matter of de-
4 fense be alone or with other matter of defense which arose before the action,
5 the party affected by such matter may confess the same, and thereupon shall
6 be entitled to the costs of the cause, as to the party pleading such matter up
to the time of such pleading.

2 SEC. 3456. When a plaintiff dismisses his action, or any part thereof, or
3 suffers it to abate by the death of the defendant, or other cause, or where
4 the suit abates by the death of the plaintiff, and his representatives fail to
5 revive the same, according to law, judgment for costs may be rendered
6 against such plaintiff or representative, and if against a representative, shall
be paid as other claims against the estate.

2 SEC. 3457. The co-parties against whom judgment has been recovered,
3 are entitled as between themselves to a taxation of the costs of witnesses
4 whose testimony was obtained at the instance of one of the co-parties, and
inured exclusively to his benefit.

2 SEC. 3458. Where an action is dismissed from any court for want of juris-
3 diction, or because it has not been regularly transferred from an inferior to a
4 superior court, the costs shall be adjudged against the party attempting to in-
5 stitute or bring up the cause.

2 SEC. 3459. The clerk shall tax, in favor of the party recovering costs
3 the allowance of his witnesses, the fees of officers, the compensation of re-
4 ferees, the necessary expenses of taking depositions by commission or
5 otherwise, and any further sum for any other matter which the court may
6 have awarded as costs, in the progress of the cause, or may deem just to be
taxed.

2 SEC. 3460. In actions in which the cause of action shall, by assignment,
3 after the commencement of the action or in any other manner, become the
4 property of a person not a party to the action, such party shall be liable for
the costs in the same manner as if he were a party.

2 SEC. 3461. Any person aggrieved by the taxation of a bill of costs, may
3 upon application, have the same re-taxed by the court, or by a referee, ap-
4 pointed by the court, in which the application or proceeding was had, and in
5 such re-taxation all errors shall be corrected; and if the party aggrieved shall
6 have paid any unlawful charge, by reason of the first taxation, the clerk shall
7 pay the costs of re taxation, and also to the party aggrieved the amount which
he may have paid by reason of the allowing of such unlawful charges.

2 SEC. 3462. In cases of appeals from the district or circuit court, the clerk
3 shall make a complete bill of costs, showing the items which shall accom-
4 pany the record, and a copy of the same shall be placed upon the execution
docket of the court below.

2 SEC. 3463. When the costs accrued in the supreme court and the court
3 below are paid to the clerk of the supreme court, he shall pay so much of
4 them as accrued in the court below to the clerk of said court, and take his
receipt for the same.

2 SEC. 3464. On receiving such costs the clerk of the court below shall
3 charge himself with the money upon his execution docket, and pay it to the
persons entitled to the same.

SEC. 3465. The law of costs shall be construed remedially, and not as

2 the penal law. And if any case shall occur not directly or by fair implica-
3 tion embraced in the express provisions of the law, the court may make such
4 disposition of the costs as in its sound discretion may seem right.

2 SEC. 3466. When the judgment is for the recovery of money, interest
3 from the time of the verdict or report until judgment be finally entered,
3 shall be computed by the clerk and added to the costs of the party entitled
4 thereto.

CHAPTER 138.

2 SEC. 3467. (Chapt. 174, 9th G. A.) Actions, either *ex-contractu* or *ex-*
3 *delicto*, do not abate by the death, marriage, or other disability of either
3 party, nor by the transfer of any interest therein, if from the legal nature
4 of the case the cause of action can survive or continue. In such cases, the
5 court may, on motion, allow the action to be continued by or against his
6 legal representative, or successor in interest; but in case of the death of a
7 defendant, a notice shall be served upon his representative, under the direc-
8 tion of the court.

2 SEC. 4110. The right of civil remedy is not merged in a public offense,
2 but may in all cases be enforced independently of and in addition to the
2 punishment of the latter.

2 SEC. 4111. When a wrongful act produces death the perpetrator is civ-
2 ily liable for the jury. The parties to the action shall be the same as though
3 brought from a claim founded on contract against the wrong doer and in fa-
4 vor of the estate of the deceased. And the sum recovered shall be dis-
5 posed of in the same manner, except that when the deceased left a wife,
6 child or parent surviving him, it shall not be liable for the payment of
7 debts.

CHAPTER 140. *Certiorari*.

2 SEC. 3487. The writ of certiorari may be granted whenever specially
2 authorized by law, and especially in all cases where an inferior tribunal,
3 board, or officer, exercising judicial functions, is alleged to have exceeded his
4 proper jurisdiction, or is otherwise acting illegally, when in the judgment of
5 the court was applied to for the writ there is no other plain, speedy and ade-
6 quate remedy.

2 SEC. 3488. The writ may be granted by the district or circuit court of
2 the proper county, but if to be directed to a district or circuit court or the
3 judge thereof, then by the supreme court—and shall command the defendant
4 therein to certify fully to the court from which the same issues, at a speci-
5 fied time and place, a transcript of the records and proceedings, as well as
6 the facts in the case, (describing and referring to them, or any of them with
7 convenient certainty,) and also to have then and there the writ.

2 SEC. 3489. If a stay of proceedings is sought, the court may require a
3 bond, and he may fix the penalty and conditions thereof.

2 SEC. 3490. The petition for this writ must state facts constituting a case,
3 wherein the writ may issue, and must be sworn to, and the court may require
4 a notice of the application to be given to the adverse party, or may make
5 an order to show cause why the writ should not issue, or may, in its discre-
tion, grant the writ with ut notice.

2 SEC. 3491. The writ must be served and the proof of such service made
3 in the same manner as is prescribed for the original notice in a civil action,
4 except that the original shall be left with the defendant and the return or
5 proof of service made upon a copy thereof.

2 SEC. 3492. If the return of the writ be defective, the court may order a
3 farther return to be made, and may compel obedience to the writ, and to such
4 farther order, by attachment, if necessary.

2 SEC. 3493. When a full return has been made, the court must proceed to
3 hear the parties, or such of them as may attend for that purpose, and may
4 thereupon give judgment affirming or annulling the proceedings below, or in
5 its discretion, correcting those proceedings, and prescribing the manner in
which the defendant shall proceed farther in the matter.

2 SEC. 3494. From the decision of the district or circuit court, an appeal
3 lies to the supreme court, as in other cases.

CHAPTER 141. *Proceedings to Reverse, Vacate, or Modify Judgments.*

2 SEC. 3495. A judgment rendered or order made in the district or circuit
3 court, or by a judge thereof, may be reversed, vacated, or modified, either
4 by the supreme court or by the district or circuit court in which the judg-
ment was rendered or order made.

2 SEC. 3496. A judgment or order may be reversed or modified by the
3 supreme court for errors appearing on the record.

2 SEC. 3497. The proceedings to obtain such reversal or modification shall
3 be by appeal as prescribed by law.

2 SEC. 3498. A mistake of the clerk shall not be ground for an appeal
3 until the same has been presented and acted upon by the district court.

2 SEC. 3499. The district or circuit court in which a judgment has been
3 rendered, or by which, or by the judge of which a final order has been
4 made, shall have power after the term at which such judgment or order was
5 made to vacate or modify such judgment or order.

- 6 1. By granting a new trial for the cause, within the time, and in manner
7 prescribed by sections on new trials.
- 8 2. By a new trial granted on proceedings against defendants served by
9 publication only, as prescribed in section —.
- 10 3. For mistake, neglect, or omission of the clerk, or irregularity in ob-
11 taining a judgment or order.
- 12 4. For fraud practiced by the successful party in obtaining the judgment
13 or order.
- 14 5. For erroneous proceedings against an infant or person of unsound
15 mind, when the condition of such defendant does not appear in the
record, nor the errors in the proceedings.

- 16 6. For the death of one of the parties before the judgment in the
 17 action.
 18 7. For unavoidable casualty or misfortune preventing the party from
 19 prosecuting or defending.
 20 8. For error in a judgment shown by an infant within twelve months
 21 after arriving at full age.

SEC. 3500. The proceedings to correct mistakes, or omission of the clerk or, irregularity in obtaining a judgment or order shall be, by motion served on the adverse party, or on his attorney in the action, and within one year, and when made to vacate a judgment because of irregularity in obtaining it, must be made on the second day of the succeeding term.

SEC. 3501. The proceedings to obtain the benefit of sub-divisions 4, 5, 6, 7, and 8, of section 3499, shall be by petition, verified by affidavit setting forth the judgment or order, the facts or errors constituting a cause to vacate or modify it, and the facts constituting a defense to the action if the party applying was a defendant, and such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto be an infant or person of unsound mind, and then within one year from the removal of such disability.

SEC. 3502. In such proceedings the party shall be brought into court, in the same way, on the same notice as to time, mode of service, and mode of return, and the pleadings shall be governed by the principles, and issues be made up by the same form, and all the proceedings conducted in the same way as near as can be as in original action by ordinary proceedings according to this code, except that defendant shall introduce no new cause, and the cause of the petition shall alone be tried.

SEC. 3503. The judgment shall not be vacated on motion or petition, until it is adjudged that there is a valid defense to the action in which the judgment is rendered, or if the plaintiff seeks its vacation, that there is a valid cause of action, and when a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

SEC. 3504. The court may first try and decide upon the grounds to vacate or modify a judgment or order before trying or deciding upon the validity of the defense or cause of action.

SEC. 3505. The party seeking to vacate or modify a judgment or order, may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or the judge thereof, upon its being rendered probable, by affidavit or petition sworn to, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified,

SEC. 3506. In all cases of affirmance of the judgment or order, when the proceedings have been suspended, judgment shall be rendered against the plaintiff in error for the amount of the former judgment, interest and costs, together with damages at the discretion of the court, not exceeding ten per cent on the amount of the judgment.

Appeals.

SEC. 3507. Appeals from the district and circuit courts may be taken to the supreme court at any time within six months from the rendition of the judgment or order, and not afterward.

SEC. 1. (chapter 49—11th G. A.) That it shall not be necessary, in order to authorize the supreme court of this state, to review and reverse, on appeal a judgment of the district or circuit court, on the ground of errors of law, committed by the judge of the court below, on the trial, that a motion for a new trial, on these grounds, shall have been made in such court below.

SEC. 2. In any cause tried in the district or circuit court, where the parties thereto waive a jury, and try the same to the court, it shall not be necessary, in order to secure to either party, feeling aggrieved, the right to appeal that the court shall find the facts and conclusions of law, and make the same a part of the record in such case; nor shall it be necessary for such party to file a motion for a new trial; but in all such cases the supreme court shall, on appeal, hear and determine the same in all respects as if such finding of facts, and conclusions of law, appeared of record, or a motion for a new trial had been made, whenever it shall appear from the certificate of the judge trying the same, or the agreement of the parties thereto, or their attorneys of record, or, in case the evidence is all taken by deposition, from the certificate of the clerk of such court, that the transcript contains all the evidence introduced by the parties on the trial of the cause in the court below.

SEC. 3. (chapter 14—13th G. A.) All appeals from the circuit and district courts shall be to the supreme court, and shall be taken in the same manner, under the same rules, and with the same effects as appeals were taken from the district to the supreme court before the passage of chapter 86, laws of the twelfth general assembly: *provided*, that appeals from the circuit court and from the district court shall be taken within six months from the rendition and entry of the judgment or order appealed from, and not after, and the provisions of sections 2631 and 2632, of the revision of 1860, and all other provisions of the laws of this state, now in force, in anywise affecting or regulating appeals from the district court, shall apply in like manner and with like effect to appeals from the circuit to the supreme court, subject to the provisions of this act: *provided further*, and when the time for appeal from the district or circuit courts to the general term, as provided by chapter 86 of the acts of the twelfth general assembly, has expired, before the taking effect of this act, and no appeal has been perfected, that the right of appeal is not revived by this act, and no appeal shall lie.

SEC. 4. All appeals pending or taken to the general term at and before the passage of this act, and which remain undisposed of, shall be deemed pending in the supreme court without further notice, and the clerk of the district court having charge of such records shall immediately certify the same to the supreme court, and the clerk of the supreme court shall docket the same as though the appeal had been taken directly to the supreme court; and in all cases wherein the judges of either court have reserved their decisions, under section 22 of chapter 86, acts of the twelfth general assembly, and said general term court has not yet acted thereon, the said causes shall be returned to the court in which said causes have originated; but in such cases where appeals have been taken to the supreme court after the general term court had rendered a decision thereon, then the supreme court shall hear and determine the same with the same force and effect as provided in chapter 86 aforesaid.

SEC. 3508. The cause shall be docketed as it was in the court below, and the party taking the appeal shall be called the appellant, and the other party the appellee.

2 SEC. 3509. An appeal is taken by the service of a notice, in writing, on
3 the adverse party, his agent, or any attorney who appeared for him in the
4 case in the court below, and also upon the clerk of the court wherein the
5 proceedings were had, stating the appeal from the same, or from some specific
part thereof, defining such part.

2 SEC. 3510. An appeal from part of an order, or from one of the judg-
3 ments of a final adjudication, or from part of a judgment, shall not disturb
4 or delay the rights of any party to any judgment or part of a judgment, or
5 order not appealed from, but the same shall proceed as if no such appeal
had been taken.

2 SEC. 3511. An appeal shall not be perfected until the notice thereof has
3 been served upon both the party and the clerk, and the clerk paid or secured
4 (unless already secured), his fees for a transcript; whereupon the clerk shall
5 forthwith transmit by mail, express, or a safe and less expensive messenger,
6 not a party, nor the attorney of a party, a transcript of the record in the
7 cause, or so much thereof as the appellant in writing in the notice has direc-
8 ted, to which shall be appended copies of the notices of appeal, and of the
supersedeas bond, if any.

2 SEC. 3512. In an action by ordinary proceedings, and in an action by
3 equitable proceedings, tried by the second method of trying equitable ac-
4 tions, all proper entries made by the clerk, and all papers pertaining to the
5 cause, and filed therein, (except subpoenas, depositions, and other papers
6 which are used as mere evidence,) are to be deemed part of the record. But
7 in an action by equitable proceedings, tried by the first method of trying
8 equitable actions, the depositions and all papers which were used as evi-
9 dence, are to be certified up to the supreme court, and shall be so certified,
10 not by transcript, but in the original form. But a transcript of a motion,
11 affidavit, or other paper, when it relates to a collateral matter, shall not be
12 certified, unless by direction of the appellant. If so certified, when not
13 material to the determination of the appeal, the court may direct the person
blameable therefor to pay the costs thereof.

2 SEC. 3513. The notices of appeal must be served fifteen days before the
3 first day of the next term of the supreme court, or the same shall not then
4 be tried, unless the appellee shall give the appellant, ten days before the
5 term, notice indicating that he will insist on a hearing at such term, in which
6 event the cause shall be heard at such term, unless the appellant shall, on a
7 sufficient showing, obtain a continuance.

2 SEC. 3514. If the appellant having taken an appeal fifteen days before
3 the term, fails to file a transcript in the supreme court, on the morning of
4 the first day of that part of the term devoted to causes from the district
5 whence comes the appeal, or if not taken as many as fifteen days before the
6 term, he fail to have the case so filed at the next succeeding term on the
7 morning aforesaid, in either event, unless the appellant file at the time, when
8 such transcript should be filed, the certificate of the clerk stating when he
9 was served with notice, and that he has not had sufficient time to prepare a
10 transcript, the appellee may file a transcript of the judgment, and of the
11 notice served on the clerk, and may, on motion, have the appeal dismissed,
or the judgment affirmed.

2 SEC. 3515. If the transcript has been sent up, but the appellant does not
3 file the same, when the same should be filed as herein provided, the appellee
4 may file the same, and may, on motion, have the appeal dismissed, or the
5 judgment affirmed, as the court from the circumstances of the case shall de-
termine.

2 SEC. 3516. If, the transcript being filed, errors are not assigned by the
 3 morning of the first of those days devoted to causes from the district whence
 4 comes the appeal, the appellee may, on motion, have the appeal dismissed,
 5 or the judgment or order affirmed, unless a good cause for the failure is
 shown by affidavit.

2 SEC. 3517. A part of several co-parties may appeal, but in such case
 3 they must serve notice of the appeal, upon all the other co-parties, and file
 the proof thereof with the clerk of the supreme court.

2 SEC. 3518. If the other co-parties refuse to join, they can not nor can
 3 any of them take an appeal afterwards: nor shall they derive any benefit
 from the appeal, unless from the necessity of the case.

2 SEC. 3519. Unless they appear and decline to join, they shall be deemed
 3 to have joined, and shall be liable for their due proportion of costs.

2 SEC. 3520. The death of one or all of the parties shall not cause the pro-
 3 ceedings to abate, but the names of the proper persons shall be substituted,
 4 as is provided in such cases in the district and circuit court, and the cause
 5 may proceed. The court may also, in such case, grant a continuance, when
 such a course will be calculated to promote the ends of justice.

2 SEC. 3521. Where appellant has no right, or no further right to prose-
 3 cute the appeal, the appellee may move to dismiss the appeal, and if the
 4 grounds of the motion do not appear in the record, or by a writing, purport-
 5 ing to have been signed by the appellant, and filed, they must be verified
 by affidavit.

2 SEC. 3522. The appellee may by answer filed and verified by himself,
 3 agent or attorney, plead any facts which render the taking of the appeal im-
 4 proper, or destroy the appellant's right of further prosecuting the same, to
 5 which answer the appellant may file a reply, likewise verified by himself,
 6 his agent or attorney, and the questions of law or fact therein shall be de-
 termined by the court.

2 SEC. 3523. The service of all notices of appeal, or in any way growing
 3 out of such rights, or connected therewith, and all notices in the supreme
 4 court, shall be in the way provided for the service of like notices in the cir-
 5 cuit or district court, and they may be served by the same person and re-
 6 turned in the same manner, and the original notice of the appeal must be
 7 returned, immediately after service, to the office of the clerk of the district
 or circuit court where the suit is pending.

2 SEC. 3524. It shall be the duty of the appellant to file a perfect transcript,
 3 and to that end the clerk of the court below must at any time on his sug-
 4 gestion of the diminution of the record, and on the payment of fees, certify
 5 up any omitted part of the record, according to the truth, as the same ap-
 6 pears in his office of record; and such applicant shall not be entitled any
 7 continuance, in order to correct the record, unless it shall clearly appear to
 8 the court that he is not in fault. Subject to which requirement, either party
 9 may, on motion before trial day, obtain an order on the clerk below, com-
 10 manding him to transmit at once to the supreme court, a true copy of such
 11 imperfect or omitted part of the record, as shall be in general terms described
 12 in the affidavit or order. Such motion must be supported by affidavit,
 13 unless the diminution be apparent or admitted by the adverse party, and
 14 must not be granted unless the court is satisfied that it is not made for
 delay.

2 SEC. 3525. Where a view of an original paper in the action may be
 3 important to a correct decision of the appeal, the court may order the clerk
 of the court below to transmit the same, which he shall do in some safe

4 mode, to the clerk of the supreme court, who shall hold the same subject to
5 the control of the court.

2 SEC. 3526. The appellant may be required to give security for costs,
3 under the same circumstances as those in which plaintiffs in civil actions in
4 the inferior court, may be so required.

2 SEC. 3527. An appeal shall not stay proceedings on the judgment or
3 order, or any part thereof, unless a supersedeas is issued, and no appeal
4 or supersedeas shall vacate or affect the lien of the judgment appealed
5 from.

2 SEC. 3528. A supersedeas shall not be issued until the appellant shall
3 cause to be executed before the clerk of the court which rendered the judg-
4 ment or order, by one or more sufficient sureties, to be approved by such
5 clerk, a bond to the effect that the appellant shall pay to the appellee all
6 costs and damages that shall be adjudged against the appellant on the ap-
7 peal; also that he will satisfy and perform the judgment or order appealed
8 from, in case it shall be affirmed, and any judgment or order which the
9 supreme court may render, or order to be rendered, by the inferior court,
10 not exceeding in amount or value the original judgment or order, and all
11 rents, or hire, or damages to property during the pendency of the appeal,
12 out of the possession of which the appellee is kept by reason of the appeal.
13 If the bond is intended to stay proceedings on only a part of the judg-
14 ment or order, it shall be varied so as to secure the part superseded alone.
15 When such bond has been approved by the clerk, and filed, he shall issue a
16 written order commanding the appellee and all others to stay proceedings on
17 such judgment or order, or on such part as is superseded, as the case
18 may be.

2 SEC. 3529. If the appellee believe the supersedeas bond defective, or the
3 sureties insufficient, he may move the supreme court, if in session, or in its
4 vacation, on ten days' written notice to the appellant, may move any judge
5 of said court, or the judge of the court below, where the appeal was taken,
6 to discharge the supersedeas, and if the court, or such judge, shall consider
7 the sureties insufficient, or the bond substantially defective in securing the
8 rights of the appellee, the court or such judge shall issue an order discharg-
9 ing such supersedeas, unless a good bond, with sufficient sureties, be execu-
10 ted by a day by him fixed. The order, if made by a judge, shall be in
11 writing, and signed by him, and upon his filing, or the filing of a certified
12 copy of the order when made in court, in the office of the clerk of the inferior
13 court, execution and other proceedings for enforcing the judgment or order
14 may be taken, if a new and good bond is not filed and approved by the day
15 fixed as aforesaid.

2 SEC. 3530. But another supersedeas may be issued by the clerk, upon the
3 execution before him, of a new and lawful bond with sufficient sureties, as
4 hereinbefore provided.

2 SEC. 3531. If the judgment or order is for the payment of money, the
3 penalty shall be in at least twice the amount of the judgment and costs. If
4 not for the payment of money, the penalty shall be sufficient to save the ap-
5 pellee harmless from the consequences of taking the appeal. But it shall in
6 no case be less than one hundred dollars.

2 SEC. 3532. The taking of the appeal from a part of a judgment or order,
3 and the filing of a bond as above directed, does not cause a stay of execution
4 as to any part of the judgment or order not appealed from.

2 SEC. 3533. If execution has issued prior to giving the bond above con-
3 templated, the clerk shall countermand the same.

2 SEC. 3534. Property levied upon and not sold at the time such counter-
3 mand is received by the sheriff, shall forthwith be delivered up to the judg-
ment debtor.

Trial and Decision.

2 SEC. 3535. The clerk shall arrange the appeals upon the docket, setting
3 a proper number for each day of the term, and placing together those from
the same judicial district.

2 SEC. 3536. The supreme court may reverse or affirm the judgment or
3 order below, or the part of either appealed from, or may render such judg-
4 ment or order as the inferior court or judge should have done, according as
it may think proper.

2 SEC. 3537. The supreme court, where it affirms the judgment, shall also,
3 if the appellee moves therefor, render judgment against the appellant and
4 his sureties on the bond above mentioned, for the amount of the judgment,
5 damages, and costs referred to therein, in case such damages can be accu-
rately known to the court without an issue and trial.

2 SEC. 3538. Upon the affirmance of any judgment or order for the pay-
3 ment of money, the collection of which, in whole or part, has been super-
4 seded by bond, as above contemplated, the court shall award to the appellee
5 damages upon the amount superseded; and if satisfied by the record, that
6 the appeal was taken for delay only, must award such sum as damages, not
7 exceeding fifteen per cent thereon, as shall effectually tend to prevent the
taking of appeals for delay only.

2 SEC. 3539. If the supreme court affirm the judgment or order, it may
3 send the cause to the court below to have the same carried into effect, or it
4 may itself issue the necessary process for this purpose, and direct such pro-
5 cess to the sheriff of the proper county, according as the party thereto may
6 require.

2 SEC. 3540. If by the decision of the supreme court, the appellant be-
3 comes entitled to a restoration of any part of the money or property that
4 was taken from him by means of such judgment or order, either the
5 supreme or court below may direct execution or writ of restitution to
6 issue for the purpose of restoring to such appellant his property or value
thereof.

2 SEC. 3541. Property acquired by a bona fide purchaser, under a judgment
3 subsequently reversed, shall not be affected by such reversal.

2 SEC. 3542. The supreme court shall have power to enforce its mandates
3 upon inferior courts and officers, by fine and imprisonment, which imprison-
4 ment may be continued until obeyed.

2 SEC. 3543. If a petition for re-hearing be filed, the same shall suspend
3 the decision or precedendo, if the court, on its presentation, or one of the
4 judges, if in vacation, shall so order, in either of which case such decision
and precedendo shall be suspended until the next term.

2 SEC. 3544. The petition for re-hearing shall be the argument of the appli-
3 cant therefor, and if the court think that such argument requires a reply, it
4 shall so indicate to the other party, and he may make reply within such time
5 as said court shall allow, and with a view to a re-hearing, the court may
extend the suspension of proceeding yet farther, if need be.

SEC. 3545. A judgment or order shall not be reversed for an error which
 2 can be corrected, on motion, in the inferior court, until such motion has been
 3 made there and overruled.

SEC. 3546. An assignment of error need follow no stated form, but must,
 2 in a way, as specific as the case will allow, point out the very error objected
 3 to. Among several points in a demurrer, or in a motion, or instructions, or
 4 rulings in an exception, it must designate which is relied on as an error, and
 5 the court will only regard errors which are assigned with the required exact-
 6 ness ; but the court must decide on each error assigned.

SEC. 3547. All motions must be entered in the motion book, and shall stand
 2 over till the next morning after that morning on which entered, and till after
 3 having been publicly called by the court, unless the parties otherwise agree,
 4 and the adverse party shall be deemed to have notice of such motion.

SEC. 3548. The court shall hear all the causes docketed, when not con-
 2 tinued by consent, or for causes shown by the party, and the party may be
 3 heard orally or otherwise, in his discretion.

SEC. 3549. When the court takes a cause under advisement, it shall file
 2 its opinion at the next term which is held thereafter at the capital.

SEC. 3550. No cause is decided until the opinion in writing is filed with
 2 the clerk.

SEC. 3551. If remanded to the inferior court to be carried into effect,
 2 such decision, and the order of the court thereon, being certified thereto and
 3 entered on the records of that court, shall have the same force and effect as
 4 if made and entered during the session of the court in that district.

SEC. 3552. Executions issued from the supreme court shall be the same
 2 as those from the district or circuit court, and attended with the same conse-
 3 quences, and shall be returnable in the same time.

CHAPTER 142. *Replevin.*

SEC. 3553. The petition in replevin must be sworn to, and it must
 2 state :

- 3 1. A particular description of the property claimed.
- 4 2. Its actual value, and where there are several articles, the actual value
5 of each.
- 6 3. The facts constituting the plaintiff's right to the present possession
7 thereof, and must define the extent of his interest in the property,
8 whether it be full or qualified ownership.
- 9 4. That it was neither taken on the order or judgment of a court against
10 him, nor under an execution or attachment against him, or against
11 the property. But if it was taken by either of these modes, then it
12 must state the facts constituting an exemption from seizure by such
13 process.
- 14 5. The facts constituting the alleged cause of detention thereof, accord-
15 ing to his best belief.
- 16 6. The amount of damages which the affiant believes the plaintiff ought
17 to recover for the detention thereof.
- 18 7 (Chapter 14, 10th G. A.) And if the petition states in addition to the

19 facts above required that the plaintiff will lose the property un-
 20 less process issue on Sunday the writ may issue and be served on
 21 that day.

SEC. 3554. He shall also execute a bond to the defendant, with sureties,
 2 to be approved by the clerk, in a penalty at least equal to twice the value of
 3 the property sought, conditioned that he will appear at the next term of the
 4 court, and prosecute his suit to judgment, and return the property, if a return
 5 be awarded, and also pay all costs and damages that may be adjudged against
 6 him. This bond shall be filed with the clerk of the court, and is for the use
 7 of any person injured by the proceeding, and a judgment for money rendered
 8 against the plaintiff shall go against the sureties on the bond.

SEC. 3555. The clerk shall thereupon issue a writ of replevin directed to
 2 the sheriff, to take the property therein described and deliver the same to
 3 the plaintiff. The ordinary original notice must also be served on the de-
 4 fendant in the usual manner.

SEC. 3556. When any of the property is removed to another county af-
 2 ter the commencement of the action, counterparts of the writ of replevin
 3 may issue on the demand of the plaintiff, to such other county, and may be
 4 executed upon such goods found in such county, and farther writs of replev-
 5 in and the necessary counterparts thereof may issue as often as may be nec-
 6 essary.

SEC. 3557. The sheriff must forthwith execute the writ by taking posses-
 2 sion of the property therein mentioned, if it is found in the possession of
 3 the defendant, or of his agent, or of any other person who obtained posses-
 4 sion thereof from the defendant, directly or indirectly, after the writ was
 5 placed in the sheriff's hands, for which purpose he may break open any
 6 dwelling house or other inclosure, having first demanded entrance and ex-
 7 hibited his authority, if required.

SEC. 3558. When it appears by affidavit that the property claimed has
 2 been disposed of or concealed so that the writ cannot be executed, the court
 3 may compel the attendance of the defendant, and examine him on oath as to
 4 the situation of the property, and punish a willful obstruction or hindrance
 5 of the writ, and a disobedience of the order of the court in this respect, as
 6 in case of contempt.

SEC. 3559. The sheriff must return the writ on or before the first day of
 2 the trial term, and shall state fully what he has done thereunder. If he
 3 taken any property he shall describe particularly the same.

SEC. 3560. The officer having taken the property or any part thereof,
 2 shall forthwith deliver the same to the plaintiff.

SEC. 3561. If a third person claim the property or any part thereof, the
 2 plaintiff may amend and bring him in as a co-defendant, or the defendant
 3 may obtain his substitution by the proper mode, or the claimant may him-
 4 self intervene by the process of intervenor.

SEC. 3562. The judgment shall determine which party is entitled to the
 2 possession of the property, and shall designate his right therein, and if such
 3 party have not the possession thereof, shall also determine the value of the
 4 right of such party, which right shall be absolute as to an adverse par-
 5 ty having no right in such property, and shall also award such damages to
 6 either party as he may be entitled to, for illegal detention of such prop-
 7 erty.

SEC. 3563. The party entitled thereto, may have execution for the money
 2 found due him, or may, in his discretion, have execution for the delivery of
 3 the property, and if the property, or any article thereof, can not be obtained
 4 on execution, he may have execution for the value of such article.

2 SEC. 3564. When it appears by the return of the officer, or by the affida-
 3 vit of the plaintiff, that any specific property which has been adjudged to
 4 belong to one party, has been concealed or removed by the other, the court,
 5 or a judge, may require him to attend and be examined on oath, respecting
 6 such matter, and may enforce its order in this respect as in case of con-
 tempt.

2 SEC. 4175. The action shall be by ordinary proceedings, but there shall
 3 be no rejoinder of any but another cause of replevin, nor shall there be
 allowed any set-off, counter-claim, or cross-demand.

2 SEC. 4176. A money judgment obtained in replevin for property, which
 3 property was in whole or part exempt from execution, shall also be to the
 4 same extent exempt from execution to the party obtaining it, and from all
 5 set-off or diminution, either by the party against whom the same is, or by
 6 any other person, and where the facts are so and the party desires it, the
 7 record shall state the facts of such total or partial exemption; and all the
 8 provisions of this and the preceding section shall also obtain as to the action
 of the detinue.

CHAPTER 143. *Detinue.*

2 SEC. 3565. An action may be had in which the plaintiff may claim the
 3 delivery of personal property to be made after judgment, or the value there-
 of, in his discretion, if the specific property can not then be obtained.

2 SEC. 3566. The petition must be sworn to, and must conform to the re-
 3 quirements of sub divisions one, two, three, four, five, and six, of section
 3553 of the chapter on replevin.

2 SEC. 3567. The judgment shall define and declare the plaintiff's title, if
 3 he establishes the same, and shall also declare the value of such right, as in
 replevin.

2 SEC. 3568. The plaintiff having obtained such alternative judgment,
 3 shall stand in the position of a party in replevin, having such judgment,
 4 and shall enjoy the same right of choice and the same appliances to
 5 enforce the same and all his rights therein, which such party in replevin
 enjoys.

CHAPTER 144. *Actions for the Recovery of Real Property.*

2 SEC. 3569. Any person having a valid subsisting interest in real prop-
 3 erty and a right to the immediate possession thereof, may recover the same
 4 by action, which may be brought against any person acting as owner, land-
 lord, or tenant of the property claimed.

2 SEC. 3570. The petition need but state generally, without stating the
3 facts constituting the right, that the plaintiff is entitled to the possession of
4 the premises, describing them, also the quantity of his estate and the extent
5 of his interest therein, and that the defendant unlawfully keeps him out of
6 possession, and the damages, if any, which he claims for withholding the
7 property ; but if he claims other damages than rents and profits, he shall
state the facts constituting the cause thereof.

2 SEC. 3571. Whenever it appears that the defendant is only a tenant, the
3 landlord may be substituted, notice thereof being given him, as in an origi-
nal action.

2 SEC. 3572. When the defendant is a non-resident, having an agent of
3 record for the property in the state, service may be made upon such agent
4 in the same manner and with the like effect as though made on the
principal.

2 SEC. 3573. The answer of the defendant and of each, if more than one,
3 must set forth what part of the land he claims, and what interest he claims
4 therein, generally and without the facts constituting the right, and if as
5 mere tenant, the name and residence of his landlord, and need state nothing
more than this.

2 SEC. 3574. The court may grant continuances in cases of this nature, for
3 reasons of less importance than those required to be set forth in ordinary
civil actions.

2 SEC. 3575. Where the defendant makes defense, it is not necessary to
3 prove him in possession of the premises.

2 SEC. 3576. The plaintiff can not recover for the use and occupation of
3 the premises for more than six years prior to the commencement of the
action.

2 SEC. 3577. When the plaintiff shows himself entitled to the immediate
3 possession of the premises, judgment shall be entered and a writ of posses-
sion entered accordingly.

2 SEC. 3578. An action for the recovery of real property against a person
3 in possession can not be prejudiced by any alienation made by such person
either before or after the commencement of the action.

2 SEC. 3579. If the interest of the plaintiff expire before the time in
3 which he could be put in possession, he can obtain a judgment for damages
only.

2 SEC. 3580. Where there is no proof against some of the defendants, the
3 court may order a discontinuance as to them before the testimony in the
case is closed.

2 SEC. 3581. Where there are two or more plaintiffs or defendants, any
3 one or more plaintiffs may recover against one or more of the defendants,
4 the premises or any part thereof or any interest therein, or damages accord-
5 ing to the rights of the parties ; but the recovery shall not be for a greater
interest than that claimed.

2 SEC. 3582. Judgments in proceedings of this nature are as conclusive as
3 those in actions relating to personal property, except as herein otherwise
provided.

2 SEC. 3583. The preceding section is intended to apply only to interests
3 existing at the time of the trial, and is not intended to prevent a new
4 action to test the validity of rights acquired subsequently to the former
trial.

SEC. 3584. [Chap. 167—13 G. A.] The court, in its discretion, may

2 grant a new trial on the application of a party, or those claiming under him,
3 made at any time within one year after the determination of the former
4 trial.

2 SEC. 3585. If the application for a new trial is made after the close of
3 the term at which the judgment was rendered, the party obtaining a new
4 trial shall give the opposite party ten days' notice thereof before the term at
5 which the action stands for trial.

2 SEC. 3586. The result of such new trial, if granted after the close of the
3 term at which the first trial took place, shall in no case affect the rights of
4 third persons, acquired in good faith for a valuable consideration, since the
5 former trial.

2 SEC. 3587. But the party who, on such new trial, shows himself entitled
3 to lands which have thus passed to a bona fide purchaser, may recover the
4 proper amount of damages against the other party either in the same or a
5 subsequent action.

2 SEC. 3588. The party who has been successful in such new trial shall,
3 (if the case require it), have his writ of restitution to restore him his prop-
4 erty.

2 SEC. 3589. In an action against a tenant the judgment shall be
3 conclusive against the landlord who has received notice as hereinbefore pro-
4 vided.

2 SEC. 3590. If not notified, he shall be regarded as a defendant
3 who has not been served with the original notice, and shall be treated ac-
4 cordingly.

2 SEC. 3591. The plaintiff must recover on the strength of his own
3 title.

2 SEC. 3592. The court, on motion, and after notice to the opposite party
3 may, for cause shown, grant an order allowing the party applying therefor
4 to enter upon the land in controversy and make survey and admeasurement
5 thereof, for the purposes of the action.

2 SEC. 3593. The order must describe the property, and a copy thereof
3 must be served upon the owner or person having the occupancy and control
4 of the land.

2 SEC. 3594. The verdict may specify the extent and quantity of the plain-
3 tiff's estate, and the premises to which he is entitled with reasonable cer-
4 tainty by metes and bounds, and other sufficient description, according to
5 the facts as proved.

2 SEC. 3595. A general verdict in favor of the plaintiff without such spe-
3 cifications, entitles the plaintiff to the quantity of interest or estate, in the
4 premises as set forth and described in the petition.

2 SEC. 3596. When the plaintiff in an action of this nature is entitled to
3 damages, for withholding or using, or injuring his property, the defendant
4 may set off the value of any permanent improvements made thereon, to the
5 extent of the damages, unless he prefers to avail himself of the law for the
6 benefit of occupying claimants.

2 SEC. 3597. In cases of wanton aggression on the part of the defendant
3 the jury may award exemplary damages.

2 SEC. 3598. A tenant in possession of good faith, under a lease or license
3 from another, is not liable beyond the rent in arrear at the time of suit
4 brought for the recovery of land and that which may afterwards accrue dur-
5 ing the continuance of his possession.

2 SEC. 3599. If the defendant aver that he has a crop sowed, planted or
3 growing on the premises, the jury finding for the plaintiff, and also finding

3 that fact shall further find the value of the premises from the date of the
 4 trial until the first day of January next succeeding, and no execution for
 5 possession shall be issued until that time, if the defendant executes with
 6 surety to be approved by the clerk, a bond in double such sum to the plain-
 7 tiff, conditioned to pay at said date, the sum so assessed. This bond shall be
 8 part of the record, and shall have the force and effect of a judgment, and if
 9 not paid at maturity, the clerk on the application of the plaintiff shall issue
 10 execution thereon against all the obligors.

2 SEC. 3600. The plaintiff may have judgment for rent which accrues after
 3 judgment, and before delivery of possession, by motion in the court in which
 4 the judgment was rendered, ten days' notice thereof in writing being given,
 5 unless judgment is stayed by appeal, and bond given to suspend the judg-
 6 ment, in which case the motion may be made after the affirmance
 7 thereof.

2 SEC. 3601. An action in the nature of that authorized in this chapter, may
 3 also be brought by one having a revisionary interest, or by one either in or
 4 out of possession, against another who claims title to real property, although
 5 the defendant may not be in the possession thereof, for the purpose of de-
 6 termining and quieting the question of title.

2 SEC. 3602. When a person is in possession of real property, or in case
 3 where no one is in possession, an action may be brought, by any one claim-
 4 ing title, to quiet such title. Such claimant must file his petition under
 5 oath, setting forth the nature and extent of his estate, and describing the
 6 premises as accurately as may be, and averring that he is credibly informed
 7 and believes that the defendant makes some claim adverse to the estate of
 8 the petitioner, and praying for the establishment of the plaintiff's estate
 9 against such adverse claims, and that the defendant be barred and forever
 10 stopped from having or claiming any right or title to the premises, adverse
 11 to the plaintiff. The notice in such action shall accurately describe the prop-
 12 erty and in general terms the nature and extent of plaintiff's claim, and
 13 shall be personally served on the defendant if he is a resident of the State;
 14 otherwise such notice may be served by publication as in ordinary actions.
 15 If defendant make default the court shall render judgment in accordance
 16 with the prayer of the petition. But defendant may plead to such action as
 17 to try and determine the same and render judgment accordingly.

2 SEC. 3603. If the defendant shall appear and disclaim all right and title
 3 adverse to the plaintiff, he shall recover his costs.

2 SEC. 3604. In other particulars, the rules above prescribed shall, in the
 3 cases in the last three sections contemplated, be observed as far as they are
 4 applicable.

2 SEC. 3605. In an action for the recovery of dower before admeasure-
 3 ment, or by a tenant in common, or joint tenant of real property against his
 4 co-tenant, the plaintiff must show, in addition to his evidence of right, that
 5 the defendant either denied the plaintiff's right, or did some act amounting
 6 to such denial.

2 SEC. 4177. All actions for the recovery of real property shall be by or-
 3 dinary proceedings. There shall be no joinder except as therein contempla-
 4 ted, and of a like action. There shall be no set-off, counter-claim or cross-
 5 demand, by ordinary proceedings, except as provided therein.

CHAPTER 145. *Partition.*

SEC. 3606. When the object of the action is to effect a partition of real property among several joint owners, the petition must describe the property, and the respective interests of the several owners thereof, if known.

SEC. 3607. If the number of shares or interests is known but the owners thereof are unknown or if there are, or supposed to be, any interests which are unknown, contingent, or doubtful, these facts must be set forth in the petition with reasonable certainty.

SEC. 3608. Creditors having a specific or general lien upon all or any portion of the property may or may not be made parties, at the option of the plaintiff.

SEC. 3609. If the lien is upon one or more undivided interests of any of the parties, it shall, after partition or sale, remain a charge upon those particular interests or the proceeds thereof. But the due proportion of costs is a charge upon those interests paramount to all other liens.

SEC. 3610. The answers of the defendants must state among other things the amount and nature of their respective interests. They may deny the interest of any of the plaintiffs, and by supplemental pleading, if necessary, may deny the interest of any of the other defendants.

SEC. 3611. Where there are two or more plaintiffs, they must reply jointly, or either of them may reply to any or all the answers of the defendants.

SEC. 3612. Issues may thereupon be joined and tried between any of the contesting parties, the question of cost on such issues being regulated between the contestants agreeably to the principles applicable to other cases.

SEC. 3613. Each of the parties appearing, whether as plaintiff or defendant, must exhibit his documentary proof of title, (if he has any,) and must file the same, or copies thereof, with the clerk.

SEC. 3614. If the statement in the petition and answers are not contradicted in the manner aforesaid, or by the documentary proof exhibited as above required, they shall be taken as true.

SEC. 3615. After all the shares and interests of the parties have been settled in any of the methods aforesaid, judgment shall be rendered confirming those shares and interests, and directing partition to be made accordingly.

SEC. 3616. Upon entering such judgment the court shall appoint referees to make partition into the requisite number of shares.

SEC. 3617. For good and sufficient reasons appearing to the court, the referees may be directed to allot particular portions of the land to particular individuals. In other cases the shares must be made as nearly as possible of equal value.

SEC. 3618. If it appears to the referees that a partition can not be made without great prejudice to the owners, they shall so report to the court.

2 **SEC. 3619.** If satisfied with such report, the court shall cause an order
3 to be entered directing the referees to sell the premises so situated, and shall
3 also fix the terms of sale.

2 **SEC. 3620.** Before proceeding to sell, the referees shall each give securi-
3 ty, to be approved by the court or judge thereof, conditioned for the faithful
3 discharge of his duties. At any time thereafter, the court may require far-
4 ther and better security.

2 **SEC. 3621.** The same notice of sale shall be given as when lands are
2 sold on execution by the sheriff and the sales shall be conducted in like man-
3 ner.

2 **SEC. 3622.** After completing said sale the referees must report their
2 proceedings to the court, with a description of the different parcels of land
3 sold to each purchaser, and the price bid therefor, which report shall be filed
4 with the clerk.

2 **SEC. 3623.** After making the order of sale as aforesaid, the court shall
2 direct the clerk to report whether there be any general incumbrance by
3 mortgage, judgment, or otherwise, upon any portion of the property.

2 **SEC. 3624.** If deemed advisable, the court may appoint a referee to in-
2 quire into the nature and amount of incumbrance, and to report accordingly.
3 From that report an appeal lies to the court.

2 **SEC. 3625.** The referees shall give the parties interested at least five
2 days' notice of the time and place when he will receive proof of the amounts
3 of such incumbrances.

2 **SEC. 3626.** In taking such proof he may receive, with other evidence,
2 the affidavit of the parties interested.

2 **SEC. 3627.** If any incumbrance be ascertained to exist, the proceeds of
2 the sale of that portion (after the payment of costs,) or so much thereof as
3 is necessary, shall, if the owner consent, be paid over to the incum-
4 brancer.

2 **SEC. 3628.** If the owner object to the payment of such incumbrance, the
2 money shall be retained or invested by order of the court to await final ac-
3 tion in relation to its disposition, and notice thereof shall be forthwith given
4 to the incumbrancer, unless he has already been made a party.

2 **SEC. 3629.** The court may direct an issue to be made up between the
2 incumbrancer and the owner, which shall be decisive of their respective
3 rights.

2 **SEC. 3630.** If an estate for life or years be found to exist as an incum-
2 brance upon any part of said property, and if the parties can not agree upon
3 the sum in gross which they will consider an equivalent for such estate, the
4 court shall direct the avails of the incumbered property to be invested,
5 and the proceeds to be paid to the incumbrancer during the lifetime of the
6 incumbrance.

2 **SEC. 3631.** The proceedings in relation to incumbrances shall not delay
2 the distribution of the proceeds of other shares in respect to which no such
3 difficulties exist.

2 **SEC. 3632.** The court, in its discretion, may require all or any of the
2 parties, before they receive the moneys arising from any sale authorized in
3 this chapter, to give satisfactory security to refund such moneys, with inter-
4 est, in case it afterward appears that such parties were not entitled
5 thereto.

2 **SEC. 3633.** If the sales aforesaid be approved and confirmed by the court,
2 an order shall be entered directing the referees, or any two of them, to exe-

3 cute conveyance pursuant to such sales. But no conveyances can be made
4 until all the money is paid, without receiving from the purchaser a mortgage
5 of the land so sold, or other equivalent security.

2 SEC. 3634. Such conveyances so executed, being recorded in the county
3 where the premises are so situate, shall be valid against all subsequent pur-
4 chasers, and also against all persons interested at the time, who were made
5 parties to the proceedings in the mode pointed out by law.

2 SEC. 3635. If the owner of any share thus sold has a husband or wife
3 living, and if such husband and wife do not agree as to the disposition that
4 shall be made of the proceeds of such sale, the court must direct it to be in-
5 vested in real estate, under the supervision of such person as it may appoint,
6 taking the title in the name of the owner of the share sold as aforesaid.

2 SEC. 3636. If the sales are disapproved, the money paid and the
3 securities given must be returned to the persons respectively entitled
4 thereto.

2 SEC. 3637. When a partition is deemed proper the referees must mark
3 out the shares by visible monuments, and may employ a competent surveyor
4 and the necessary assistants to aid them therein.

2 SEC. 3638. The report of the referees must be in writing, signed by at
3 least two of them. It must describe the respective shares with reasonable
4 particularity, and be accompanied by a plat of the premises.

2 SEC. 3639. Unless the shares are allotted to their respective owners by
3 the referees, as hereinbefore contemplated, the clerk shall number the shares
4 and then draw the names of the future owners by lot.

2 SEC. 3640. When partition can be conveniently made of part of the
3 premises, but not of all, one portion may be partitioned and the other sold
4 as hereinbefore provided.

2 SEC. 3641. On good cause shown, the report may be set aside, and the
3 matter again referred to the same or other referees.

2 SEC. 3642. Upon the report of the referees being confirmed, judgment
3 thereon shall be rendered that the partition be firm and effectual for-
4 ever.

2 SEC. 3643. When all the parties in interest have been duly notified to
3 appear and answer, either by the service of the petition and notice, or by
4 the publication prescribed by law, any of the proceedings above authorized
5 shall be binding and conclusive upon them all. If only a portion of such
6 parties be served, they only shall be bound by such proceedings.

2 SEC. 3644. This judgment of partition shall be presumptive evidence of
3 title in all cases, and as between the parties themselves it is conclusive evi-
4 dence thereof, subject, however, to be defeated by proof a title paramount
5 to, or independent of, that under which the parties held as joint tenants or
6 tenants in common.

2 SEC. 3645. All the costs of the proceedings in partition shall be paid in
3 the first instance by the plaintiffs, but eventually by all the parties in pro-
4 portion to their interests, except those costs which are created by contests
5 above provided for.

2 SEC. 3646. Any person claiming to hold an incumbrance upon any por-
3 tion of the property involved in the suit, may, in default of the owner, ap-
4 pear and act as his representative in any of the proceedings under this
5 act.

2 SEC. 3647. Persons having contingent interests in such property may be
3 made parties to the proceedings, and the proceeds of the property so situated,
4 (or the property itself in case of partition,) shall be subject to the order of
5 the court until the right becomes fully vested.

2 SEC. 3648. The ascertained share of any absent owner shall be retained,
2 or the proceeds invested for his benefit.

2 SEC. 4178. The action of partition shall be prosecuted by ordinary pro-
2 ceeding. No joinder of any other cause shall be allowed therein.

CHAPTER 146. *Foreclosure of Mortgages.*

2 SECTION 3649. Any mortgage of personal property to secure the payment
3 of money only, and where the time of payment is therein fixed, may be fore-
4 closed by notice and sale, as hereinafter provided, unless a stipulation to the
4 contrary has been agreed upon by the parties

2 SEC. 3650. The notice must contain a full description of the property
2 mortgaged, together with the time, place, and terms of sale.

2 SEC. 3651. Such notice must be served on the mortgagor, and upon all
2 persons having recorded liens upon the same property, which are junior to
3 the mortgage, or they will not be bound by the proceedings.

2 SEC. 3652. The service and return must be made in the same manner as
3 in case of original notice by which civil actions are commenced, except that
3 no publication in the newspapers is necessary for its purpose, the general
4 publication directed in the next section being a sufficient service upon all the
5 parties in cases where service is to be made by publication.

2 SEC. 3653. After notice has been served upon the parties, it must be
2 published in the same manner and for the same length of time as is required
3 in the cases of the sale of like property on execution, and the sale shall be
4 conducted in the same manner.

2 SEC. 3654. The purchaser shall take all the title and interest on which
2 the mortgage operated as a lien.

2 SEC. 3655. The sheriff conducting the sale, shall execute to the purchaser
2 a bill of sale of the personal property, which shall be effectual to carry the
3 whole title and interest purchased.

2 SEC. 3656. Evidence of the service and publication of the notice afore-
3 said, and of the sale made in accordance therewith, together with any post-
3 ponement or other material matter, may be perpetuated by proper affidavits
4 thereof.

2 SEC. 3657. Such affidavits shall be attached to the bill of sale, and shall
2 then be receivable in evidence, to prove the facts they state.

2 SEC. 3658. Sales made in accordance with the above requirements, are
2 valid in the hands of a *bona fide* purchaser, whatever may be the equities be-
3 tween the mortgagor and mortgagee.

2 SEC. 3659. The right of the mortgagee to foreclose as well as the amount
2 claimed to be due, may be contested by any one interested in so doing, and
3 the proceeding may be transferred to the district court, for which purpose an
4 injunction may issue if necessary.

2 SEC. 3660. The holder of any mortgage of real estate must proceed by
2 civil action, in the district or circuit court, when he wishes to foreclose the
3 same.

SEC. 3661. If anything be found due the plaintiff the court shall render judgment therefor and must direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the amount due with interest and costs. A special execution shall issue accordingly.

SEC. 3662. If the mortgaged property does not sell for sufficient to satisfy the execution, a general execution may be issued against the mortgagor unless the parties have stipulated otherwise.

SEC. 3663. If separate suits are brought on the bond or note and on the mortgage given to secure it, the plaintiff must elect which to prosecute. The other will be discontinued at his costs.

SEC. 3664. When a judgment is obtained in an action on the bond, the property mortgaged may be sold on the execution issued thereon, and the judgment shall be a lien thereon from the date of the recording of the mortgage. The mortgagor or any other person having a lien on the mortgaged premises, or any part thereof, may redeem the same after sale within the same time and on the same terms as are provided in chapter —, in cases of real estate, sold on ordinary or general execution.

SEC. 3665. At any time prior to the sale made in accordance with either of the above modes of foreclosure, a person having a lien on the property which is junior to the mortgage, will be entitled to an assignment of all the interest of the holder of the mortgage by paying him the amount secured with interest and costs, together with the amount of any other liens of the same holder which are paramount to his. He may then proceed with the foreclosure or discontinue it at his option.

SEC. 3666. If there is an overplus remaining after satisfying the mortgage and costs, and if there is no other liens upon the property, such overplus shall be paid to the mortgagor.

SEC. 3667. If there are any other liens on the property sold, or other payments secured by the same mortgage, they shall be paid off in their order. And if the money secured by any such lien is not yet due, a suitable rebate of interest must be made by the holder thereof, or his lien on such property will be postponed to those of a junior date, and if there are none such the balance will be paid to the mortgagor.

SEC. 3668. As far as practicable, the property sold must be only sufficient to satisfy the mortgage foreclosed in either of the methods aforesaid.

SEC. 3669. The same costs and fees shall be allowed for services rendered and acts performed under the provisions of this chapter, as for like acts and services in other cases, which will be paid out of the proceeds of the sales made.

SEC. 3670. Whenever the amount due on any mortgage is paid off, the mortgagee or those legally acting for him must acknowledge satisfaction thereof in the margin of the record of the mortgage. If he fails to do so within six months after being requested, he shall forfeit to the mortgagor the sum of twenty-five dollars.

SEC. 3671. The vendors of real estate, when part or all the purchase money remains unpaid after the day fixed for payment, whether time is or is not the essence of the contract, may file his petition asking the court to require the purchaser to perform his contract or to foreclose and sell his interest in the property.

SEC. 3672. The vendee shall in such cases, for the purpose of the foreclosure, be treated as a mortgagor of the property purchased and his rights may be foreclosed in a similar manner.

SEC. 3673. Deeds of trust of real or personal property may be executed

2 as securities for the performance of contracts, and sales made in accordance
 3 with their terms are valid. Or they may be treated like mortgages and
 4 foreclosed by action in court.

5 No deed of trust, or mortgage, with power of sale or real estate made af-
 6 ter the first day of April, A. D., 1861, for the security of the payment of
 7 money, shall be foreclosed in any other manner than by proceeding in the
 8 district, state, or federal courts.

9 "Except deeds of trust or mortgages, with power of sale on real estate
 10 that may have been or shall hereafter be given for the purpose of securing
 11 the state, or any county, or person injured, against losses growing out of the
 12 defalcation, fraud, or malfeasance of any officer, deputy, secretary, or person
 13 claiming to act for such officer." (Chapt. 116, 11th G. A.)

SEC. 3674. Nothing herein contained is intended to prevent parties
 2 from fixing their own terms to any contract and prescribing the manner in
 3 which those contracts shall be enforced; nor to change the rule, or affect the
 4 right of the vendor of real estate, in those cases where time is the essence
 5 of the contract.

CHAPTER 147. *Arbitrations.*

SECTION 3675. All controversies which might be the subject of civil ac-
 2 tions, may be submitted to the decision of one or more arbitrators, as here-
 3 after provided.

SEC. 3676. The parties themselves, or those persons who might lawfully
 2 have controlled a civil action in their behalf for the same subject matter,
 3 must sign a written agreement specifying particularly what demands are to
 4 be submitted, the names of the arbitrators, and court by which the judgment
 5 on their award is to be rendered.

SEC. 3677. [Chap. 174, 9th G. A.] They shall then appear before some
 2 officer of the county authorized to take the acknowledgment of deeds, and
 3 acknowledge the instrument by them signed to be their voluntary act and
 4 deed.

SEC. 3678. The submission may be of some particular matters or de-
 2 mands, or of all demands which the one party has against the other, or of
 3 all mutual demands on both sides.

SEC. 3679. A submission to arbitration of the subject matter of a suit
 2 may also be made by an order of court upon agreement of parties after suit
 3 is commenced.

SEC. 3680. All the rules prescribed by law in cases of referees are appli-
 2 cable to arbitrators except as herein otherwise expressed, or except as other-
 3 wise agreed upon by the parties.

SEC. 3681. Neither party shall have the power to revoke the submission
 2 without the consent of the other.

SEC. 3682. If either party neglect to appear before the arbitrators after
 2 due notice, they may nevertheless proceed to hear and determine the cause
 3 upon the evidence which is produced before them.

2 Sec. 3683. If the time within which the award is to be made is fixed in
3 the submission, no award made after that time shall have any legal effect un-
4 less made upon a recommitment of the matter by the court to which it is re-
ported.

2 Sec. 3684. If the time of filing the award is not fixed in the submission
3 it must be filed within one year from the time such submission is signed
and acknowledged, unless by mutual consent the time is prolonged.

2 SEC. 3685. The award must be in writing, and shall be delivered by one
3 of the arbitrators to the court designated in the agreement, or it may be en-
closed and sealed by them and transmitted to the court and not opened until
4 the court so orders.

2 SEC. 3686. The cause shall be entered on the docket of the court at the
3 term to which the award is returned, and shall be called up and acted upon
in its order. But the court may require actual notice to be given to either
4 party when it appears necessary and proper before proceeding to act on the
5 award.

2 SEC. 3687. The award may be rejected by the court for any legal and
3 sufficient reasons, or it may be recommitting for a rehearing to the same ar-
bitrators, or any others agreed upon by the parties.

2 SEC. 3688. When the award has been adopted it shall be filed and
3 entered on the records, and shall have the same force and effect
as the verdict of a jury. Judgment may be entered and execution issued
4 accordingly.

2 SEC. 3689. When an appeal is brought on such judgment, copies of the
3 submission and award, together with all affidavits, shall be returned to the
supreme court.

2 SEC. 3690. If there is no provision in the submission respecting costs,
3 the arbitrators may award them at their discretion.

2 SEC. 3691. The compensation of the arbitrators shall be two dollars per
3 day for the time actually and necessarily spent, unless the court fix
4 a less amount, and the fees of the justice of the peace shall be twenty-
5 five cents for making out the agreement of submission, (in case he does
6 so), and the like amount for taking and certifying the acknowledgment
thereto,

2 SEC. 3692. Nothing herein contained shall be construed to affect in any
3 manner the control of the district court over the parties, the arbitrators, or
4 their award; nor to impair or affect any action upon an award or upon any
bond or other engagement to abide an award.

CHAPTER 148. *Actions Against Boats or Rafts.*

SEC. 3693. Any boat found in the waters of this state is liable :

- 2 1. For all debts contracted by the master, owner, agent, clerk, or con-
3 signee thereof on account of supplies furnished for the use of such
4 boat; on account of work done or services rendered for such boat;
5 or on account of work done or materials furnished in building, re-
6 pairing, fitting out, furnishing, or equipping such boat.

7 2. For all demands and damages accruing from the non-performance
8 or mal-performance of any contract of affreightment, or any con-
9 tract relative to the transportation of persons or property enter-
10 ed into by the master, owner, agent, clerk, or consignee thereof.

11 3. For all injuries to person or property by such boat, or by the officers
12 or crew, done in connection with the business of said boat.

SEC. 3694. Claims growing out of any of the above causes are liens
2 upon the boat, its apparel, tackle, furniture, and appendages, including
3 barges and lighters, if owned by the owners of the boat, and used therewith
4 at the time the suit commenced.

SEC. 3695. Such liens take preference of any claims against the boat it-
2 self or any or all of its owners, growing out of any other causes than those
3 above enumerated, and as between themselves they are to be preferred in the
4 following order :

5 1. Those resulting from wages for services rendered on board of such
6 boat within the year then passed, provided suit be commenced
7 within twenty days after the cessation of such labor.

8 2. Those resulting from contracts made within this state.

9 3. All other causes.

SEC. 3696. Actions against boats under the provisions of this chapter
2 can not be brought after the lapse of one year from the time the cause of
3 action accrued.

SEC. 3697. The lien attaches from the commencement of the suit, subject
2 only to such other liens as are of a preferred class.

SEC. 3698. Any raft found in the waters of this state shall be liable for
2 all debts contracted by the owner, agent, clerk or pilot thereof, on account of
3 work done or services rendered for such raft.

SEC. 3699. Claims growing out of either of the above causes shall
2 be liens upon the raft, its tackle and appendages, for the term of twenty days
3 from the time the right of action therefor accrued.

SEC. 3700. The same rules shall govern and the same process shall
2 be had, to enforce the lien, that is prescribed for similar liens against
3 boats.

SEC. 3701. The original petition must be in writing, sworn to and filed
2 with the clerk or justice of the peace, who shall thereupon issue a warrant
3 to the proper officer, commanding him to seize the boat, its apparel, tackle,
4 furniture and appendages, and detain the same until released by due course
5 of law.

SEC. 3702. And the warrant may be issued on Sunday, if the plaintiff,
2 his agent or attorney, shall state in his petition and swear thereto, that it
3 would be unsafe to delay proceedings till Monday.

SEC. 3703. The usual notice shall also be issued, directed to the boat by
2 name, and served upon the master, owner, agent, clerk, or consignee thereof,
3 and if none of them can be found it may be served by posting up a copy in
4 some conspicuous part of the boat. The warrant shall be served according
5 to the direction it contains.

SEC. 3704. Any constable or marshal of any corporate town may serve
2 and execute the warrant provided for his said section, whether the same
3 issue from the office of the clerk of the district or circuit court, or of a
4 justice.

SEC. 3705. Any person interested in the boat may appear for the defend-
2 ant by himself, his agent, or attorney and conduct the defense of the suit,
3 and no continuance shall be granted to the plaintiff while the boat is held in
4 custody.

2 Sec. 3706. The boat may be discharged at any time before final judg-
 3 ment by the giving of a bond with sureties, to be approved by the officer
 4 serving the warrant, or by the clerk or justice who issued it, in a penalty
 5 double the plaintiff's demand, conditioned that the obligors therein will
 6 pay the amount which may be found due to the plaintiff, together with the
 costs.

2 Sec. 3707. If judgment be rendered for the plaintiff before the boat is
 3 thus discharged, a special execution shall be issued against it. If it have
 4 been previously discharged, the execution shall issue against the principal
 and sureties in the bond without farther proceedings.

2 Sec. 3708. The officer may sell any of the furniture or appendages of the
 3 boat, if by so doing he can satisfy the demand. If he sell the boat itself, he
 4 must sell it to the bidder who will advance the amount required to satisfy
 5 the execution, for the lowest fractional share of the boat, unless the person
 6 appearing for the boat desire a different and equally convenient mode of
 sale.

2 Sec. 3709. If a fractional share of the boat be thus sold, the purchaser
 3 shall hold such share or interest jointly with the other owners.

2 Sec. 3710. If an appeal be taken by the defendant before the boat is dis-
 3 charged as above provided, the appeal bond, if one be filed, will have the same
 4 effect in discharging the boat as the bond above contemplated, and execu-
 5 tion shall issue against the obligors therein after judgment in the same man-
 ner.

2 Sec. 3711. Nothing herein contained is intended to affect the rights of
 3 a plaintiff to sue in the same manner as though the provisions of this chapter
 had not been enacted.

2 Sec. 3712. In actions commenced in accordance with the provisions of
 3 this chapter, it is sufficient to allege the contract to have been made with
 the boat itself.

2 Sec. 4130. In an action against a boat or raft, the execution by or for
 3 the defendant of a bond whereby the attachment is discharged or the posses-
 4 sion of the boat or raft is obtained or retained by him, shall be an appear-
 ance of such owner as a defendant in the action.

CHAPTER 149. *Nuisance, Waste, and Trespass.*

2 Sec. 3713. Whatever is injurious to health, or indecent, or offensive to
 3 the senses, or an obstruction to the free use of property, so as essentially to
 4 interfere with the comfortable enjoyment of life or property, is a nuisance,
 and the subject of an action.

2 Sec. 3714. Such action may be brought by any person whose property
 3 is injuriously affected, or whose personal enjoyment is lessened by the
 nuisance.

2 Sec. 3715. Where a proper case is made the nuisance may be enjoined
 or abated, and damages recovered therefor.

2 Sec. 3716. If a guardian, tenant for life or years, joint tenant or tenant
3 in common of real property commit waste thereon, he is liable to pay three
4 times the damages which have resulted from such waste to the person who
is entitled to sue therefor.

2 Sec. 3717. Judgment of forfeiture and eviction may be rendered against
3 the defendant whenever the amount of damages so recovered is more than
4 two-thirds the value of the interest such defendant has in the property was-
ted, and when the action is brought by the person entitled to the reversion.

2 Sec. 3718. Any person whose duty it is to prevent waste, and who has
3 not used reasonable care and diligence to prevent it, is deemed to have
committed it.

2 Sec. 3719. For willful trespasses in injuring any timber, tree or shrub,
3 on the land of another, or in the street or highway in front of another's cul-
4 tivated ground, yard, or town lot, or on the public grounds of any town, or
5 any land held by this state for any purpose whatever, the perpetrator shall
6 pay treble damages at the suit of any person entitled to protect or enjoy the
property aforesaid.

2 Sec. 3720. Nothing herein contained authorizes the recovery of more
3 than the just value of timber taken from uncultivated wood-land for the
4 repair of a public highway or bridge upon the land in its immediate neigh-
borhood.

2 Sec. 3721. The owner of an estate in remainder or reversion may main-
3 tain either of the aforesaid actions for injuries done to the inheritance, not-
withstanding any intervening estate for life or years.

2 Sec. 3722. An heir, whether a minor or of full age, may maintain these
3 actions for injuries done in the time of his ancestor, as well as in his own
time, unless barred by the statute of limitations.

2 Sec. 3723. Whenever lands or tenements are sold by virtue of an exe-
3 cution, the purchaser at such sale may maintain his action against any person
4 for either of the causes above mentioned occurring or existing after his pur-
case.

2 Sec. 3724. This provision is not intended to prevent the person who
3 occupies the lands in the meantime from using them in the ordinary course
4 of husbandry or from using timber for the purpose of making suitable repairs
thereon.

2 Sec. 3725. But if for this purpose he employs timber vastly superior to
3 that required for the occasion, he will be deemed to have committed waste,
and will be liable accordingly.

2 Sec. 3726. Any person settled upon and occupying any portion of the
3 public lands held by the state is not liable as a trespasser for improving it
4 or cultivating it in the ordinary course of husbandry, nor for taking and
5 using timber or other materials necessary and proper to enable him to do
6 so, provided the timber and other materials be taken from land properly
7 constituting a part of a "claim" or tract of land so settled upon and occupied
by him.

2 Sec. 3726. A. (Chap. 154, 9th G. A.) The owner of a treasurer's
3 certificate of purchase of lands now or hereafter sold for taxes, may recover
4 damages by suit in his own name, of any person committing waste or tres-
pass thereon, as provided in sections 3716 and 3719.

2 Sec. 3726. B. (Chap. 154, 9th G. A.) All moneys collected under
3 the provisions of this act shall be paid, by the officer collecting the same, to
the clerk of the board of supervisors of the county in which the waste or

4 trespass was committed, which moneys shall be held by said clerk, and an
 5 entry thereof made in a book to be kept by him for that purpose, until the
 6 lands upon which such waste or trespass was committed, shall have been
 7 redeemed or a treasurer's deed therefor shall have been executed and deliv-
 8 ered to the holder of said certificate, when if redemption be made, the money
 9 shall be paid to the owner of the land, and if not redeemed, to the tax
 10 sale purchaser or his assignee.

CHAPTER 150. *Actions of Official Securities, and for Fines and Forfeitures.*

SEC. 3727. The official bond of a public officer is to be construed as a
 2 security to the body-politic or civil corporation of which he is an officer,
 3 and also to all the members thereof severally who are intended to be there
 4 by secured.

SEC. 3728. A judgment in favor of a party for one delinquency does not
 2 preclude the same or another party from an action on the same security for
 3 another delinquency, except that sureties can be made liable in the aggre-
 4 gate only to the extent of their undertaking.

SEC. 3729. Fines and forfeitures not otherwise disposed of go into the
 2 treasury of the county where the same are collected, for the benefit of the
 3 school fund.

SEC. 3730. Actions for the recovery thereof may be prosecuted by the
 2 officers or persons to whom they are by law given in whole or in part, or by
 3 the public officer into whose hands they are to be paid when collected.

SEC. 3731. A judgment for a penalty or forfeiture rendered by collusion,
 2 does not prevent another prosecution, for the same subject-matter.

CHAPTER 151. *Informations.*

SECTION 3732. An information may be filed against any person unlaw-
 2 fully holding or exercising any public office or franchise within this state, or
 3 any officer in any corporation created by the laws of this state, and when any
 4 public officer has done or suffered any act which works a forfeiture of his of-
 5 fice; or when any persons act as a corporation within this state without be-
 6 ing authorized by law, or if being incorporated they do or omit acts which
 7 amount to a surrender or forfeiture of their rights and privileges as a corpo-
 8 ration, or when they exercise powers not conferred by law.

2 SEC. 3733. Such information may be filed by the district attorney of the
2 proper county whenever he deems it his duty so to do.

2 SEC. 3734. He must file such information when directed to do so by the
2 governor, the general assembly, the district court.

2 SEC. 3735. If the district attorney, on demand, neglect, or refuse to file
2 an information, any citizen of the state claiming any public office which is
3 usurped or unlawfully exercised by another, may do so, and he may pros-
4 ecute the same in his own name, to final judgment in all other respects as
5 provided herein.

2 SEC. 3736. Such information shall consist of a plain statement of the
2 facts which constitute the grounds of the proceeding addressed to the court,
3 which shall stand for an original petition.

2 SEC. 3737. Such statement shall be filed in the clerk's office and notice
2 issued and served in the same manner as hereinbefore provided for the com-
3 mencement of actions in the district or circuit court.

2 SEC. 3738. The defendants shall appear and answer such information
2 in the usual way, and issue being joined it shall be tried in the ordinary
3 manner.

2 SEC. 3739. When the defendant is holding an office to which another is
2 claiming the right, the information should set forth the name of such claim-
2 ant, and the trial must if practicable determine the rights of the contesting
4 parties.

2 SEC. 3740. If judgment be rendered in favor of such claimant he shall
2 proceed to exercise the functions of the office after he has qualified as re-
3 quired by law.

2 SEC. 3741. The court, after such judgment, shall order the defendant to
2 deliver over all books and papers in his custody or under his control belong-
3 ing to said office.

2 SEC. 3742. When the judgment has been rendered in favor of the claim-
2 ant, he may at any time within one year thereafter bring suit against the
3 defendant and recover the damages he has sustained by reason of the act of
4 the defendant.

2 SEC. 3743. When several persons claim to be entitled to the same office
2 franchise, an information may be filed against all or any portion thereof in
3 order to try their respective rights thereto.

2 SEC. 3744. If the defendant be found guilty of unlawfully holding or ex-
2 ercising any office franchise or privilege, or if a corporation be found to have
3 violated the law by which it holds its existence or in any other manner to
4 have done acts which amount to a surrender or forfeiture of its privileges,
5 judgment shall be rendered that such defendant be ousted and altogether ex-
6 cluded from such office franchise or privilege, and also that he pay the costs
7 of the proceeding.

2 SEC. 3745. If the defendant be found to have exercised merely certain
2 individual powers and privileges to which he was not entitled, the judgment
3 shall be the same as above directed, but only in relation to those particulars
4 in which he is thus exceeding the lawful exercise of his rights and
5 privileges.

2 SEC. 3746. When an information is upon the relation of a private indi-
2 vidual it shall be so stated in the petition and proceedings, and such individ-
3 ual shall be responsible for costs in case they are not adjudged against the
4 defendant. In other cases the title of the cause shall be the same as in a
5 criminal prosecution, and the payment of costs shall be regulated by the
6 same rule.

2 SEC. 3747. In case judgment is rendered against a pretended, but not
3 real, corporation the costs may be collected from any person who has been
3 acting as an officer or proprietor of such pretended corporation.

2 SEC. 3748. If a corporation is ousted and dissolved by the proceedings
2 herein authorized the court shall appoint three disinterested persons as trust-
3 tees of the creditors and stockholders.

2 SEC. 3749. Said trustees shall enter into bond in such a penalty and
2 with such security as the court approves, conditioned for the faithful dis-
3 charge of their trust.

2 SEC. 3750. Suit may be brought on such bond by any person injured by
2 the negligence or wrongful act of the trustees in the discharge of their
3 duties.

2 SEC. 3751. The trustees shall proceed immediately to collect the debts
2 and pay the liabilities of the corporation, and to divide the surplus among
3 those thereto entitled.

2 SEC. 3752. The court shall, upon an application for that purpose, order
2 any officer of such corporation or any other person having possession of any
3 of the effects, books, or papers of the corporation in any wise necessary for
4 the settlement of its affairs, to deliver up the same to the trustees.

2 SEC. 3753. As soon as practicable after their appointment the trustees
2 shall make and file in the office of the clerk of the court an inventory of all
3 the effects, rights, and credits which come to their possession or knowledge,
4 the truth of which inventory shall be sworn to.

2 SEC. 3754. They shall sue for and recover the debts and property of the
2 corporation and shall be responsible to the creditors and stockholders re-
3 spectively to the extent of the effects which come to their hands, in the same
4 manner as though they were the executors of a deceased person.

2 SEC. 3755. When judgment of ouster is rendered against a corporation
2 on account of the misconduct of the directors or officers thereof, such offi-
3 cers shall be jointly and severally liable to an action by any one injured
4 thereby.

2 SEC. 3756. Any person, who without good reason refuses to obey any
2 order of the court as herein provided, shall be deemed guilty of con-
2 tempt of court and shall be fined in any sum not exceeding five thous-
4 and dollars and imprisoned in the county jail until he comply with said or-
5 der, and shall be farther liable for the damages resulting to any person on
6 account of his refusal to pay such order.

2 SEC. 3757. A proceeding of this kind may be instituted in the manner
2 above contemplated for the purpose of annulling or vacating any letters pat-
3 ent granted by the proper authorities of this state when there is reason to
4 believe that the same were obtained by fraud, or through mistake or ig-
5 norance of a material fact, or when the patentee or those claiming under
6 him have done or omitted an act in violation of the terms and conditions on
7 which the letters were granted, or have by any other means forfeited the in-
8 terest acquired under the same.

2 SEC. 4180. To an information there shall be no joinder of any other
2 cause of action, nor any set-off, counter-claim, or cross-demand.

CHAPTER 152. *Scire Facias.*

2 SEC. 3758. Where a *scire facias* is allowed by law, it shall be com-
3 menced by petition and notice filed and served as in other actions.

2 SEC. 3759. The petition must be sworn to by the plaintiff in the pro-
3 ceeding, his agent or attorney, and must state that the judgment has not
4 been satisfied, to his knowledge, information or belief, and must specify the
5 amount due thereon.

2 SEC. 3760. The answer of the defendant must also be under oath, and
3 the issue joined, if any, shall be tried in the usual manner.

CHAPTER 153. *Action on Mandamus.*

2 SEC. 3761. The writ of mandamus is an order of a court of competent
3 jurisdiction, and issues from the district or circuit court commanding an
4 inferior tribunal, corporation, board or person to do or not to do, an act, the
5 performance or omission of which the law specially enjoins as a duty, result-
6 ing from an office, trust, or station, and it is granted on the petition of any
7 private party aggrieved, without the concurrence of the prosecutor for the
8 state, or on the petition of the state by the district attorney, when the pub-
9 lic interest is concerned, and is in the name of such private party, or of the
0 state, as the case may be in fact brought.

2 SEC. 3762. The plaintiff in such action shall state his claim, and shall
3 also state facts sufficient to constitute a cause for such claim, and shall also
4 set forth that the plaintiff, if a private individual, is personally interested
5 therein, and that he sustains and may sustain damage by the non-perform-
6 ance of such duty, and that performance thereof has been demanded by
7 him, and refused or neglected, and shall pray a writ of mandamus command-
8 ing the defendant to fulfill such duty.

2 SEC. 3763. Where a discretion is left to an inferior tribunal, the writ of
3 mandamus can only compel it to act. It can not control the discretion of
4 the inferior tribunal.

2 SEC. 3764. The writ may also be issued by the supreme court to any
3 district or circuit court, if necessary, and also in any other case where it is
4 found necessary to enable it to exercise its legitimate power.

2 SEC. 3765. It shall not be issued in any case where there is a plain,
3 speedy, and adequate remedy, in the ordinary course of the law, except as
4 herein provided.

SEC. 3766. The pleadings and other proceedings in any action in which
 2 a mandamus is claimed shall be the same in all respects as nearly as may
 3 be, and costs shall be recoverable by either party, as in an ordinary action
 4 for the recovery of damages.

SEC. 3767. The plaintiff, in any action except those of chapters 142, 143,
 2 and 144 hereof, may also in aid of such cause of action, pray, and have a
 3 writ of mandamus to compel the performance of a duty established in such
 4 action. But if such duty, the performance of which is sought to be com-
 5 pelled, is not one resulting from an office, trust, or station, it must be one
 6 for the breach of which a legal right to damages is already complete at the
 7 commencement of the action, and must also be a duty of which a court of
 8 equity would enforce the performance.*

SEC. 3768. In case judgment be given to the plaintiff that a mandamus
 2 do issue, it shall be lawful for the court in which such judgment is giv-
 3 en, if it shall see fit, besides issuing execution in the ordinary way for the
 4 damages and costs, also to issue a peremptory writ of mandamus to the de-
 5 fendant commanding him forthwith to perform the duty to be enforced.

SEC. 3769. The writ shall simply command the performance of the duty,
 2 shall be directed to the party and not to the sheriff, and may be issued in
 3 term or vacation and returnable forthwith, and no return except that of
 4 compliance shall be allowed, but time to return it may, upon sufficient
 5 grounds, be allowed by the court or judge, either with or without terms.

SEC. 3770. The court may, upon application of the plaintiff, besides, or
 2 instead of proceeding against the defendant by attachment, direct that the
 3 act required to be done, may be done by the plaintiff, or some other per-
 4 son appointed by the court, at the expense of the defendant, and upon the
 5 act being done, the amount of such expense may be ascertained by the
 6 court, or by a reference appointed by the court, as the court or judge may
 7 order, and the court may render judgment for the amount of such expenses
 8 and costs, and enforce payment thereof by execution.

SEC. 3771. During the pendency of the action, the court or judge in va-
 2 cation may make temporary orders for preventing damage or injury to the
 3 plaintiff until the cause is decided.

SEC. 3772. When the state is a party, the attorney may appeal without
 2 security.

SEC. 4181. When the action is before a private person there may be
 2 joined therewith the injunction of chapter 155 and such joinder as is pro-
 3 vided in this chapter, and no other; but there shall be no set off, counter,
 4 or cross demand, by ordinary proceedings, and the action shall be by such
 5 proceedings.

CHAPTER 154. *Injunction.*

SEC. 3773. An injunction may be granted as an independent means of
 2 relief or as auxiliary to other proceedings, in accordance with the rules
 3 heretofore observed, except as herein modified.

SEC. 3774. When it is a mere auxiliary measure resorted to during
 2 the trial of the principal cause, the terms on which it is allowed, as well

3 as the kind of notice to be given to the opposite party, shall be such as the
4 court prescribes.

2 SEC. 3775. When applied for as an independent means of relief, the pe-
3 tition must be sworn to and presented to the district court, if in session in
4 the county, for an allowance of the injunction. If not in session, application
5 for that purpose may be made to any judge of the supreme or district court,
6 or to the judge of the county court of the proper county.

2 SEC. 3776. If the order of allowance is made by the court in session,
3 the clerk shall make an entry thereof in the court record and issue the writ
4 accordingly. If made in vacation the judge must indorse the said order
5 upon the petition.

2 SEC. 3777. In both the cases contemplated in the last section, the order
3 of allowance must direct the writ of issue only after the filing of a bond in
4 the office of the clerk of the court, in a penalty to be therein fixed,
5 with sureties to be approved by said clerk, (unless the court or judge grant-
6 ing the said order has previously approved said sureties), and conditioned
7 for the payment of all the damages which may be adjudged against the peti-
8 tioner by reason of such injunction.

2 SEC. 3778. When proceedings in a civil action are sought to be en-
3 joined, the suit must be brought in the county wherein such proceedings
4 are pending. The bond must also in that case be farther conditioned to
5 pay any judgment that may be ultimately recovered against the party who
6 seeks the injunction, for the cause of action on which the suit sought to be
7 enjoined is founded.

2 SEC. 3779. The penalty of the bond must be fixed by the court or judge
3 who makes the order, and must be doubly sufficient to cover any probable
4 amount of liability to be thereby incurred.

2 SEC. 3780. Upon the filing of the bond as required, the clerk must issue
3 the writ of injunction as directed by the order of allowance.

2 SEC. 3781. The court or judge before granting the writ may, if deemed
3 advisable, allow the defendant an opportunity to show cause why such order
4 should not be granted.

2 SEC. 3782. If the writ is granted without allowing the defendant to show
3 cause, he may at any time before the next term of the court apply to the
4 judge who made the order to vacate or modify the same.

2 SEC. 3783. Such application must be with notice to the plaintiff, and may
3 rest upon the ground that the order was improperly granted, or it may be found-
4 ed upon affidavits on the part of the defendant. In the latter case the plain-
5 tiff may fortify his application by counter-affidavits and have reasonable
6 time therefor.

2 SEC. 3784. The judge may thereupon decide the matter at once, unless
3 some good cause for delay be shown. But the vacation of the order shall
4 not prevent the cause from proceeding if anything be left to proceed
5 upon.

2 SEC. 3785. Any judge of the supreme, district, or circuit court being fur-
3 nished with an authenticated copy of the writ of injunction, and also with
4 satisfactory proof that such injunction has been violated, shall issue his pre-
5 cept to the sheriff of the county where the violation of the injunction occur-
6 red, or to any other sheriff, (naming him,) more convenient to all parties con-
7 cerned, directing him to attach said defendant and bring him forthwith
8 before the same or some other judge, at a place to be stated in said
9 precept.

2 Sec. 3786. If, when thus produced, he files his affidavit denying or suffi-
3 ciently excusing the contempt charged, he shall be released, and the affida-
4 vit shall be filed with the clerk of the court for preservation.

2 Sec. 3787. But if he failed to do so, the judge may require him to give
3 bond, with surety, for his appearance at the next term of the court, and also
4 for his future obedience to the injunction, which bond shall be filed with the
5 clerk.

2 Sec. 3788. If he fail to give such security he may be committed to the
3 jail of the county where the proceedings are pending, until the next term of
4 the court.

2 Sec. 3789. If the security be given, the court at the next term shall act
3 upon the case, and punish the contempt in the usual mode.

2 Sec. 3790. The defendant may move to dissolve the injunction either be-
3 fore or after the filing of the answer.

2 Sec. 3791. Issue may be joined on the defendant's answer, and a trial
3 had as in other cases.

2 Sec. 3792. When practicable, the whole matter connected with the in-
3 junction shall be disposed of on such trial, and complete justice administer-
4 ed to all parties.

2 Sec. 3793. Only one motion to dissolve or modify an injunction upon the
3 whole case shall be allowed

2 Sec. 3794. Upon the dissolution, in whole or in part, of an injunction to
3 stay proceedings upon a judgment or final order, the damages shall be asses-
4 sed by the court, which may hear the evidence and decide in a summary
5 way, or may, on the request of either party, cause a jury to be empaneled
6 to find the damages. Where money is enjoined, the damages may be any
7 rate per cent on the amount released by the dissolution, which, in the dis-
8 cretion of the court, may be proper, not exceeding ten per cent. And where
9 the delivery of property has been delayed by the injunction, the value of the
10 use, hire, or rent thereof, shall be assessed. Judgment shall be rendered
11 against the party who obtained the injunction, for the damages assessed, and
12 against the surety of such party.

2 Sec. 3795. For good cause shown, a judge's order may issue in vacation,
3 directing any of the officers of the court in relation to the discharge of
4 their duties.

2 Sec. 3796. Such order shall be in force only during the vacation in which
3 it is granted, and for the first two days of the ensuing term.

2 Sec. 3797. The judge granting it may require the filing of a bond, as in
3 case of an injunction, unless from the nature of the case, such requirement
4 would be clearly unnecessary and improper.

2 Sec. 3797. A. (Chap. 66, 9th G. A.) The fees of any officer required to
3 serve the precept, as provided in section 3785, shall be paid in the first instance
4 out of the county treasury where the precept is made returnable.

CHAPTER 155. *Prohibition in an action by ordinary proceedings.*

2 SEC. 3798. In all cases of breach of contract or other injury, where the
3 party injured is entitled to maintain, and has brought an action by ordinary
4 proceedings, he may, in the same cause, pray and have a writ of injunction
5 against the repetition or continuance of such breach of contract or other
6 injury, or the committal of any breach of contract or injury of a like kind,
7 arising out of the same contract, or relating to the same property or right,
8 and he may also, in the same action, include a claim for damages or other
9 redress.

2 SEC. 3799. In such action, judgment may be given for other relief, and
3 also that the writ of injunction do or do not issue, as justice may require ;
4 and in case of disobedience, such writ of injunction may be enforced by
5 attachment by the court, or when such court shall not be sitting, by a judge
6 thereof.

2 SEC. 3800. It shall be lawful for the plaintiff, at any time after the com-
3 mencement of the action, and whether before or after judgment, to apply to
4 the court or a judge for a writ of injunction to restrain the defendant in
5 such action from a repetition or continuance of the wrongful act, or breach
6 of contract complained of, or the committal of any breach of contract or
7 injury of a like kind, arising out of the same contract, or relating to the
8 same property or right; and such writ may be granted or denied by the
9 court or judge, upon such terms as to the duration of the writ, keeping an
10 account, giving security, or otherwise, as to such court or judge shall seem
11 reasonable and just, and in case of disobedience, such writ may be enforced by
12 attachment by the court, or, when such court shall not be sitting, by the
13 judge thereof; *provided always*, that any order for a writ of injunction,
14 made by a judge, or any writ issued by virtue thereof, may be discharged or
15 varied, or set aside by the court, on application thereto by any party dis-
satisfied with such order.

CHAPTER 156. *Habeas Corpus.*

2 SEC. 3801. The petition for the writ of habeas corpus must be sworn to,
3 and must state.

- 4 1. That the person in whose behalf it is sought is restrained of his lib-
5 erty, and the person by whom and the place where he is so restrained,
6 mentioning the names of the parties if known, and if unknown, de-
scribing them with as much particularity as practicable;

- 7 2. The cause or pretense of such restraint according to the best informa-
8 tion of the applicant; and if it be by virtue of any legal process, a
9 copy thereof must be annexed or a satisfactory reason given for its
10 absence;
- 11 3. It must state that the restraint is illegal and wherein;
- 12 4. That the legality of the imprisonment has not already been adjudged
13 upon a prior proceeding of the same character, to the best knowledge
14 and belief of the applicant.
- 15 5. It must also state whether application for the writ has been before
16 made to, and refused by any court or judge, and if such application
17 has been made, a copy of the petition in that case with the reasons
18 for the refusal thereto appended must be produced or satisfactory
19 reasons given for the failure to do so.

2 SEC. 3802. This petition must be sworn to by the person confined or by
3 some one in his behalf, and presented to some court or officer authorized to
4 allow the writ.

2 SEC. 3803. The writ of habeas corpus may be allowed by the supreme,
3 district, or circuit courts, or by any judge of either of those courts. In
4 such cases it may be served in any part of the state.

2 SEC. 3805. Application for this writ when made to the supreme, dis-
3 trict, or circuit courts, or judges thereof, must be made to the court or judge
4 most convenient in point of distance to the applicant, and the more remote
5 court or judge, if applied to for the writ, may refuse the same unless a suf-
6 ficient reason be stated in the petition for not making the application to the
7 more convenient supreme or district court, or a judge thereof.

2 SEC. 3806. If, from the showing of the petitioner, the plaintiff would
3 not be entitled to any relief, the court, or judge, may refuse to allow the
4 writ.

2 SEC. 3807. But if the petition show a sufficient ground for relief, and is
3 in accordance with the foregoing requirements, the writ shall be allowed and
4 may be substantially as follows:

4 THE STATE OF IOWA,

5 To the sheriff of, &c., [or to A. B., as the case may be.]

6 You are hereby commanded to have the body of C. D., by you unlaw-
7 fully detained as alleged, before the court [or before me, or before E. F.,
8 judge, &c., as the case may be,] at ———, on ———, [or immediately after
9 you then and there this writ with a return thereon of your doings in the
10 premises.
11

2 SEC. 3808. When the writ is allowed by a court it is to be issued by the
3 clerk, but when allowed by a judge he must issue the writ himself, subscrib-
4 ing his name thereto without any seal.

2 SEC. 3809. If the writ is disallowed, the court or judge shall cause the rea-
3 sons of said disallowance to be appended to the petition and returned to
4 the person applying for the writ.

2 SEC. 3810. Any judge, whether acting individually or as a member of a
3 court, who wrongfully and willfully refuses such allowance of the writ when
4 properly applied for, shall forfeit to the party aggrieved the sum of one thou-
5 sand dollars.

2 SEC. 3811. Whenever any court or judge authorized to grant this writ
3 has evidence, from a judicial proceeding before them, that any person

3 within the jurisdiction of such court or officer is illegally imprisoned or re-
 4 strained of his liberty, it is the duty of such court or judge to issue or cause
 5 to be issued the writ as aforesaid, though no application be made therefor.

2 **SEC. 3812.** The writ may be served by the sheriff or by any other per-
 3 son appointed for that purpose by the court or judge by whom it is issued or
 4 allowed. If served by any other than the sheriff, he possesses the same
 5 power and is liable to the same penalty for a non-performance of his duty
 as though he were the sheriff.

2 **SEC. 3813.** The proper mode of service is by leaving the original writ
 3 with the defendant and preserving a copy thereof on which to make the re-
 turn of service.

2 **SEC. 3814.** If the defendant can not be found, or if he have not the
 3 plaintiff in custody, the service may be made upon any person having the
 4 plaintiff in his custody, in the same manner and with the same effect as
 though he had been made defendant therein.

2 **SEC. 3815.** If the defendant conceal himself or refuse admittance to the
 3 person attempting to serve the writ, or if he attempt wrongfully to carry the
 4 plaintiff out of the county or the state after the service of the writ as afore-
 5 said, the sheriff or the person who is attempting to serve or who has served
 6 the writ as above contemplated, is authorized to arrest the defendant and
 7 bring him together with the plaintiff forthwith before the officer or court
 before whom the writ is made returnable.

2 **SEC. 3816.** In order to make such arrest, the sheriff or other person hav-
 3 ing the writ, possesses the same power as is given to a sheriff for the arrest
 of a person charged with felony.

2 **SEC. 3817.** If the plaintiff can be found, and if no one appear to have
 3 the charge or custody of him, the person having the writ may take him into
 4 custody and make return accordingly. And to get possession of the plain-
 5 tiff's person in such cases, he possesses the same power as is given by the
 last section for the arrest of the defendant.

2 **SEC. 3818.** The court or judge to whom the application for the writ is
 3 made, if satisfied that the plaintiff would suffer any irreparable injury before
 4 he could be relieved by the proceedings as above authorized, may issue a
 5 precept to the sheriff or any other person selected instead, commanding him
 to bring the plaintiff forthwith before such court or judge.

2 **SEC. 3819.** When the evidence aforesaid is farther sufficient to justify
 3 the arrest of the defendant for a criminal offense committed in connection
 4 with the illegal detention of the plaintiff, the precept must also contain an
 order for the arrest of the defendant.

2 **SEC. 3820.** The officer or person to whom the precept is directed must
 3 execute the same by bringing the defendant, and also the plaintiff if required,
 4 before the court or judge issuing it, and thereupon the defendant must make
 5 return to the writ of habeas corpus in the same manner as if the ordinary
 course had been pursued.

2 **SEC. 3821.** The defendant may also be examined and committed, or
 3 bailed, or discharged, according to the nature of the case.

2 **SEC. 3822.** The writ of habeas corpus must not be disobeyed for any
 3 defects of form or misdescription of the plaintiff or defendant, provided
 enough is stated to show the meaning and intent of the writ.

2 **SEC. 3823.** Any person served with the writ is to be presumed to be the
 3 person to whom it is directed, although it may be directed to him by a
 wrong name or description or to another person.

2 SEC. 3824. Service being made in any of the modes hereinbefore pro-
3 vided, the defendant must appear at the proper time and answer the said
3 petition.

2 SEC. 3825. He must also bring up the body of the plaintiff, or show
2 good cause for not doing so.

2 SEC. 3826. A wilful failure to comply with the above requisitions ren-
2 ders the defendant liable to be attached for a contempt and to be imprison-
3 ed till a compliance is obtained, and also subjects him to the forfeiture
4 of one thousand dollars to the party thereby aggrieved.

2 SEC. 3827. Such attachment may be served by the sheriff or any other
2 person thereto authorized by the judge, who shall also be empowered to
3 bring up the body of the plaintiff forthwith, and has for this purpose the
4 same powers as are above conferred in similar cases.

2 SEC. 3828. The court or officer allowing the writ must cause the prose-
2 cuting attorney of the proper county to be informed of the issuing of the
3 writ and of the time and place when and where it is made returnable.

2 SEC. 3829. The defendant in his answer must state plainly and unequiv-
2 ocaly whether he then has, or at any time has had, the plaintiff under his
3 control and restraint, and if so the cause thereof.

2 SEC. 3830. If he has transferred him to another person he must state
2 that fact, and to whom, and the time thereof as well as the reason or author-
3 ity therefor.

2 SEC. 3831. If he holds him by virtue of a legal process or written au-
2 thority, a copy thereof must be annexed.

2 SEC. 3832. The plaintiff may demur or reply to the defendant's answer,
2 and all issues joined thereon shall be tried by the judge or court.

2 SEC. 3833. Such replication may deny the sufficiency of the testimony to
2 justify the action of the committing magistrate, on the trial of which issue
3 all written testimony before such magistrate may be given in evidence be-
4 fore the court or judge in connection with any other testimony which may
5 then be produced.

2 SEC. 3834. But it is not permissible to question the correctness of the
2 action of a grand jury in finding a bill of indictment or of the petit jury in
3 trial of a cause, nor of a court or judge when acting within their legitimate
4 province and in a lawful manner.

2 SEC. 3835. If no sufficient legal cause of detention is shown the plain-
2 tiff must be discharged.

2 SEC. 3836. Although the commitment of the plaintiff may have been
2 irregular, still if the court or judge is satisfied from the evidence before them
3 that he ought to be held to bail or committed either for the offense charged
4 or any other, the order may be made accordingly.

2 SEC. 3837. The plaintiff may also in any case be committed, let to bail,
2 or his bail be mitigated or increased, as justice may require.

2 SEC. 3838. Until the sufficiency of the cause of restraint is determined
2 the defendant may retain the plaintiff in his custody and may use all neces-
3 sary and proper means for that purpose.

2 SEC. 3839. The plaintiff in writing, or his attorney, may waive his right
2 be present at the trial, in which case the proceedings may be had in his ab-
3 sence. The writ will in such cases be modified accordingly.

2 SEC. 3840. Disobedience to any order of discharge subjects the defendant
2 to attachment for contempt, and also to the forfeiture of one thousand dol-
3 lars to the parties aggrieved, besides all damages sustained by him in conse-
4 quence of such disobedience.

2 Sec. 3841. If the defendant attempt to elude the service of the writ of
3 habeas corpus, or to avoid the effect thereof by transferring the plaintiff to an-
4 other, or by concealing him, he shall on conviction be imprisoned in the
5 penitentiary or county jail not more than one year and fined not exceeding
6 one thousand dollars. And any person knowingly aiding or abetting in any
such act shall be subject to the like punishment.

2 Sec. 3842. An officer refusing to deliver a copy of any legal process, by
3 which he detains the plaintiff in custody, to any person who demands such
4 copy and tenders the fees thereof, shall forfeit two hundred dollars to the
5 person so detained.

2 Sec. 3843. When the proceedings are before the judge (except when
3 the writ is refused) all the papers in the case, including his final order, shall
4 be filed with the clerk of the court of the county wherein the final proceed-
5 ings were had, and a brief memorandum thereof shall be entered by the clerk
6 upon his judgment docket.

 Sec. 4182. No verification shall be required to the answer or reply.

CHAPTER 157. *Changing Names.*

2 Sec. 3844. The district court has power to change the names
3 of persons in the following manner :

2 Sec. 3845. The applicant for such change must file his petition verified
3 by his oath, stating that he is a resident of the county, and has for one year
4 then last past been a bona fide resident of the state. It must also in a
5 general way give a description of his person, stating his age, height,
6 the color of his hair and eyes, the place of his birth, and who were his
parents.

2 Sec. 3846. An order of the court shall thereupon be made and entered
3 of record, giving a description of the applicant as set forth in the petition,
4 the new name given, the time at which the change shall take effect (which
5 shall not be less than thirty days thereafter), and directing in what news-
6 paper of general circulation in the county, notice of such change shall be
published.

2 Sec. 3847. Previous to the time thus prescribed for the taking effect of
3 such change, the applicant shall cause notice thereof to be published for
4 four successive weeks in the newspaper directed by the court.

2 Sec. 3848. The ordinary proof of such publication being filed in the
3 office of the clerk of the court shall be by him filed for preservation, and on
the day fixed by the court as aforesaid the change shall be complete.

CHAPTER 158. *Of Justices of the Peace and Their Courts.*

SECTION 3849. The jurisdiction of justices of the peace when not specially restricted, is geographically co-extensive with their respective counties.

SEC. 3850. Within the prescribed limit, it extends to all civil cases (except cases by equitable proceedings, and cases where the questions of title to any real estate may arise,) where the amount in controversy does not exceed one hundred dollars; and by consent of parties, it may be extended to any amount not exceeding three hundred dollars.

SEC. 3851. (Chap. 149, 12th G. A.) "Suits may in all cases be brought in the township where the plaintiff or defendant or one of several defendants resides."

SEC. 3852. They may also be brought into any other township of the same county, if actual service on one or more of the defendants is made in such township.

SEC. 3853. Actions of replevin and suits commenced by attachment may be commenced in any county and township wherein any portion of the property is found, and justices shall have jurisdiction therein, within the county.

SEC. 3854. If none of the defendants reside in the state, suit may be commenced in any county and township wherein either of the defendants may be found.

SEC. 3855. On written contracts, stipulating for payment at a particular place, suit may be brought in the township where the payment was agreed to be made.

SEC. 3856. If there is no justice in the proper township qualified or able to try the suit, it may be commenced in any adjoining township in the same county.

The Justice's Docket.

SEC. 3857. Every justice of the peace shall keep a docket, in which shall be entered, in continuous order, with the proper date to each act done:

1. The title to each cause.
2. A brief statement of the nature and amount of the plaintiff's demand and defendant's set-off (if any.) giving date to each where dates exist.
3. The issuing of the process, and the return thereof.
4. The appearance of the respective parties.
5. Every adjournment, stating at whose instance and for what time.
6. The trial, and whether by the justice or by a jury.
7. The verdict and judgment.
8. The execution, to whom delivered, the renewals, if any, and the amount of debt, damages, and costs endorsed thereon.

- 14 9. The taking and allowance of an appeal, if any.
15 10. The giving a transcript for filing in the clerk's office or for set-off, if
16 one is given.
17 11. A note of all motions made, and whether refused or granted.

Suits, how brought.

2 SEC. 3858. The parties to the action may be the same as in the circuit
3 court, and all the proceedings prescribed for that court so far as the same
4 are applicable and not herein changed shall be pursued in justice's courts.
The powers of the court are only as herein enumerated.

2 SEC. 3859. Ordinary actions in justices' courts are commenced by volun-
3 tary appearance or by notice.

2 SEC. 3860. When by notice, no petition need be filed, as is required in the
3 circuit court, except where the petition must be sworn to, but the notice must
4 state the cause of action in general terms sufficient to apprise the defendant
of the nature of the claim against him.

2 SEC. 3861. It must be addressed to the defendant by name, but if his
3 name is unknown, a description of him will be sufficient. It must be sub-
scribed by the plaintiff, or the justice before whom it is returnable.

2 SEC. 3862. It must state the amount for which the plaintiff will take
3 judgment if the defendant fail to appear and answer at the time and place
therein fixed.

2 SEC. 3863. The time thus fixed in the notice must not be more than
3 fifteen days from the date, and the notice must be served not less than five
days previous to the trial.

2 SEC. 3864. The service and return thereto must be made in the same
3 manner as in the district court, except that no service shall be made by pub-
4 lication other than is herein provided, nor shall any return made by another
than the sheriff or a constable of the county be valid unless sworn to.

2 SEC. 3865. The defendant may at any time pay to the officer having the
3 process, or to the justice of the peace, the amount of the claim together with
4 the costs which have then accrued, and thereupon the proceedings shall
cease.

The Appearance of Parties.

2 SEC. 3866. An agent appearing for another may be required by the
3 justice to show his authority if written, or prove it by his own oath or other-
wise if verbal.

2 SEC. 3867. The parties in all cases are entitled to one hour in which to
3 appear after the time fixed for appearance and neither party is bound to
wait longer for the other.

2 SEC. 3868. Upon the return day, if the justice be actually engaged in
3 other official business he may postpone proceedings in the case until such
business is finished.

2 SEC. 3869. If from any cause the justice is unable to attend to the trial
3 at the time fixed, or if a jury be demanded, he may adjourn the cause for a
4 period not exceeding three days, nor shall he make more than two such
adjournments.

2 SEC. 3870. In case of the absence of witnesses, either party at his own
3 cost, may obtain an adjournment not exceeding sixty days, by filing an
4 affidavit like that required to obtain a continuance in the district court for
the like cause.

2 SEC. 3871. Either party applying for an adjournment must, if required
3 by the adverse party, consent that the testimony of any witness of the ad-
4 verse party who is in attendance be then taken to be used on the trial of
the cause.

2 SEC. 3872. The pleadings must be substantially the same as in the
3 circuit court. They may be written or oral. If oral, they must in substance
4 be written down by the justice in his docket, and sworn to when such
verification is necessary.

2 SEC. 3873. Cross-demands or set-offs must be made, if at all, at the time
3 the answer is put in.

2 SEC. 3874. The original or a copy of all written instruments upon which
3 a cause of action or set-off is founded, must be filed with the claim founded
thereon, or a sufficient reason given for not doing so.

2 SEC. 3875. Either party, before the trial is commenced, may have a
3 change of venue upon filing an affidavit that the justice is prejudiced
4 against him, or is of near relation to the other party, is a material witness
for the affiant, or that the affiant cannot obtain justice before him.

2 SEC. 3876. When said change of venue is allowed, said justice shall
3 transmit all the original papers in said case, and a transcript of his proceed-
4 ings, to the next nearest justice in the township, if there be any, if not, to
5 the next nearest justice in his county, and said justice shall proceed to try
6 said case, and if he cannot try the same immediately, he shall then fix a
time therefor, of which all parties shall take notice.

2 SEC. 3877. It in a suit for trespass on real property the defendant justifies
3 by pleading title, it must be in writing. The justice shall thereupon make
4 an entry thereof in his docket, and return the original papers and a trans-
5 cript of all the entries in his docket to the district court in the same manner
6 and within the same time as is required in cases of appeals.

2 SEC. 3878. When, from the plaintiff's own showing on the trial, it ap-
3 pears that the determination of the action will necessarily involve the de-
4 cision of a question of title to real property, the justice must dismiss the
action, stating in his docket the reason therefor.

2 SEC. 3879. But when a case is thus transferred or dismissed on account
3 of the title to the lands being involved, if there are other causes of action
4 not necessarily connected they may be severed and the latter tried before the
justice.

The Trial.

2 SECTION 3880. Unless one of the parties demand a trial by jury at or
3 before the time for joining issue, the trial shall be by the justice.

2 Sec. 3881. If the plaintiff fails to appear by himself, his agent or attor-
3 ney, on the return day or at any other time fixed for the trial, the justice
4 shall render a judgment of nonsuit against him with costs, except in the case
provided in the next section.

2 Sec. 3882. When the suit is founded on an instrument of writing pur-
3 porting to have been executed by the defendant, in which the demand of the

3 plaintiff is liquidated, if the signature of the defendant is not denied under
4 oath, and if the instrument has been filed with the justice previous to
5 the day for appearance, he may proceed with the cause whether the plaintiff
6 appear or not.

2 SEC. 3883. In the case provided for in the last section, if the defendant
3 does not appear, judgment shall be rendered against him for the amount of
4 the plaintiff's claim.

2 SEC. 3884. But if, where the plaintiff's claim is not founded on such
3 written instrument, the defendant does not appear, the justice shall proceed
4 to hear the allegations and proofs of the plaintiff, and shall render judg-
5 ment thereon for the amount to which he shows himself entitled, not exceed-
6 ing the amount stated in the notice hereinbefore required.

2 SEC. 3885. In the cases contemplated in the last two sections, if the de-
3 fendant has previously filed a set-off, founded on a written instrument pur-
4 porting to have been signed by the plaintiff, calling for a sum certain, the
5 justice shall allow such set-off in the same manner as though the defendant
6 had appeared, and shall render judgment accordingly.

2 SEC. 3886. Judgment of nonsuit or by default may be set aside by the
3 justice, at any time within six days after being rendered, if the party apply-
4 ing therefor can show a satisfactory excuse for his default.

2 SEC. 3887. In such case a new day shall be fixed for trial, and notice
3 thereof given to the other party or his agent.

2 SEC. 3888. Such orders shall be made in relation to the additional costs
3 thereby created as the justice shall think equitable.

2 SEC. 3889. Any execution which may in the meantime have been issued
3 shall be recalled in the same manner as in cases of appeals.

2 SEC. 3890. [Chap. 174, 9th G. A.] If a jury trial be demanded, as pro-
3 vided in section 3880, the justice shall issue his precept to some constable
4 of the township, directing him to summon the requisite number of jurors
5 possessing the same qualifications as are required in the circuit court.

2 SEC. 3891. The jury shall consist of six jurors unless a smaller number
3 be agreed upon between the parties. Each party is entitled to three per-
4 emptory challenges. Any deficiency in their number, arising from any
5 cause may be supplied by summoning others in the manner above di-
6 rected.

2 SEC. 3892. The justice may discharge the jury when satisfied that they
3 cannot agree, and shall immediately issue a new precept for summoning an-
4 other to appear at a time therein fixed, not more than three days distant, un-
5 less the parties otherwise agree.

2 SEC. 3893. No motion in arrest of judgment or to set aside a verdict can
3 be entertained by a justice of the peace.

2 SEC. 3894. The verdict of the jury must be general. But where there
3 are several plaintiffs or defendants the verdict may be for or against one or
4 more of them.

Judgment, and Proceedings incident thereto.

2 SEC. 3895. In cases of non-suit, confession, or on the verdict of a jury,
3 the judgment shall be rendered and entered upon the docket forthwith. In
4 all other cases the same shall be done within three days after the cause is
5 submitted to the justice for final action.

2 SEC. 3896. If the sum found for either party, exceed the jurisdiction of
3 the justice, such party may remit the excess and take judgment for the resi-
due, but he can never afterward sue for the amount so remitted.

2 SEC. 3897. Instead of so remitting the excess the party obtaining such
3 verdict may elect to have judgment of non-suit entered against the plaintiff,
in which case the plaintiff shall pay the costs.

2 SEC. 3898. Mutual judgments between the same parties, rendered by the
3 same or different justices, may be set off against each other.

2 SEC. 3899. When rendered by the same court, the same course shall be
3 pursued as is prescribed in the circuit court.

2 SEC. 3900. If the judgment proposed to be set off was rendered by an-
3 other justice, the party offering it must obtain a transcript thereof with a
4 certificate of the justice who rendered it, indorsed thereon, stating that no
5 appeal has been taken, and that the transcript was obtained for the purpose
of being used as a set-off in that case.

2 SEC. 3901. Such transcript shall not be given until the time for taking
3 an appeal has elapsed.

2 SEC. 3902. The justice so giving a transcript shall make an entry of the
3 fact in his docket, and all other proceedings in his court shall thenceforth be
3 stayed.

2 SEC. 3903. Such transcript being presented to the justice who has ren-
3 dered a judgment between the same parties as aforesaid, if execution has not
4 been issued on the judgment rendered by him, he shall strike a balance be-
4 tween the judgments and issue execution for such balance.

2 SEC. 3904. If execution has already issued, the justice shall also issue
3 execution on the transcript filed with him and deliver it to the same officer
3 who has the other execution.

2 SEC. 3905. Such officer shall treat the lesser execution as so much cash
3 collected on the larger, and proceed to collect the balance accordingly.

2 SEC. 3906. The above rules as to set-off are subject to the same prohibi-
3 tion as to setting off costs, when the effect will be to leave an insufficient
4 amount of money actually collected to satisfy the costs of both judgments,
4 as is contained in the rules of proceeding in the district court.

2 SEC. 3907. When the judgment of another justice is thus allowed to be
3 set off, the transcript thereof shall be filed among the papers of the case in
3 which it is so used and the proper entry made in the justice's docket.

2 SEC. 3908. If the justice refuses the judgment as a set-off he shall so cer-
3 tify on the transcript and return it to the party who offered it. When filed
3 in the office of the justice who gave it, proceedings may be held by him
4 in the same manner as though no transcript had been certified by him.

Filing Transcripts in the Clerk's Office.

2 SEC. 3909. The party obtaining a judgment in a justice's court for more
3 than ten dollars may cause a transcript thereof to be certified to the office of
3 the clerk of the circuit court in the county.

2 SEC. 3910. The clerk shall forthwith file such transcript and enter a
3 memorandum thereof in his judgment docket, noting the time of filing the
3 same, and from the time of such filing it shall be treated in all respects as to
4 its effect and mode of enforcement, as a judgment rendered in the circuit
5 court as of that date.

Executions and Proceedings Thereon.

2 SEC. 3911. Executions for the enforcement of judgments in a justice's
3 court, except when docketed in the office of the clerk of the circuit court,
4 may be issued by the justice before whom the judgment was rendered, on the
5 application of the party entitled thereto, at any time within five years from
the entry of the judgment but not afterwards.

2 SEC. 3912. Such execution shall be against the goods and chattles of the
defendant therein and shall be directed to any constable of the county.

2 SEC. 3913. It must be dated as on the day on which it is issued, and
3 made returnable within thirty days thereafter.

2 SEC. 3914. If not satisfied when returned it may be renewed from time
3 to time by an indorsement thereon to that effect signed by the justice and
4 dated of the date of such renewal.

2 SEC. 3915. Such indorsement must state the amount paid on such execution
3 (if any) and shall continue the execution in full force for thirty days from the
4 date of renewal.

2 SEC. 3916. Property levied on before such renewal may be retained by
3 the officer and sold after renewal.

Appeals.

2 SEC. 3917. Any person aggrieved by the final judgment of a justice, may
3 appeal therefrom to the circuit court in the county.

2 SEC. 3918. The appeal must be taken and perfected within twenty days
3 after the rendition of the judgment.

2 SEC. 3919. If within twenty days the appellant is prepared to take his
3 appeal and is prevented only by the absence or death of the justice, or his
4 inability to act, he may apply to the clerk of the circuit court of the county
5 for the allowance of his appeal.

2 SEC. 3920. Such application shall be founded on an affidavit stating the
3 amount and nature of the judgment, and the time of the rendition thereof,
4 as nearly as practicable, and the reason why he thus applies.

2 SEC. 3921. The clerk has thereupon the same power to act in the prem-
3 ises as the justice would have had. He may require the books and papers
4 of the justice to be delivered to him, for which purpose he may issue a pre-
5 cept to the sheriff to that effect, if necessary, and may make out and file
6 the transcript. After this he shall return to the office of the justice of the
peace all the papers proper to be kept by the justice.

2 SEC. 3922. The appeal shall in no case be allowed until a recognizance
3 of the following form or its equivalent is taken and filed in the office of the
4 justice, the sureties being approved by him, or by the clerk acting for him
5 as above authorized, and the sum therein inserted being sufficient to secure
6 the judgment as well as the costs of the appeal :

6 We, the undersigned, acknowledge ourselves indebted to —— in the

7 sum of ——— dollars, upon the following condition : Whereas ——— has
 8 appealed from the judgment of ———, a justice of the peace, in an action
 9 between ——— as plaintiff and ——— defendant ;

10 Now, if the said appellant pays whatever amount is legally adjudged
 11 against him in the farther progress of this cause, then this recognizance is
 12 to be void, and otherwise in force.

13
 14
 15 Approved, E. F., justice. A. B., principal.
C. D., surety.

SEC. 3923. Upon the appeal being taken in accordance with the fore-
 2 going provisions, all farther proceedings in the cause by him shall be sus-
 3 pended.

SEC. 3924. If, in the meantime, an execution has been issued, the justice
 2 shall give the appellant a certificate that the appeal has been allowed. Upon
 3 that certificate being presented to the constable, he shall cease farther action
 4 and release any property that may have been taken in execution.

SEC. 3925. Upon the taking of any appeal, the justice shall file in the
 2 office of the clerk of the circuit court, all the original papers relating to the
 3 suit, with a transcript of all the entries in his docket.

SEC. 3926. Upon the return of the justice being filed in the office of the
 2 clerk, the cause will be deemed in the circuit court.

SEC. 3927. The circuit court may by rule compel the justice to allow an
 2 appeal, or to make or amend his return according to law.

SEC. 3928. Where an omission or mistake has been made by the justice in his
 2 docket entries, and that fact is made unquestionable, the circuit court may
 3 correct the mistake or supply the omission, or direct the justice to do so.

SEC. 3929. If an appeal is allowed ten days before the next term of the
 2 circuit court, the justice's return must be made at least five days before that
 3 term. All such cases must be tried when reached, unless continued for
 4 cause.

SEC. 3930. If an appeal is not allowed on the day on which judgment is
 2 rendered, written notice thereof must be served upon the appellee or his
 3 agent at least ten days before the term of the court to which the cause is
 4 returnable, (provided there be ten days intervening,) or the suit on motion
 5 of the appellee, shall be continued at the cost of the appellant.

SEC. 3931. Such notice may be served like the original notice, and if the
 2 appellee or his agent have no place of residence in the county, it may be
 3 served by being left with the justice.

SEC. 3932. An appeal brings up a cause for trial on the merits, and for no
 2 other purpose. All errors, irregularities, and illegalities are therefore to be dis-
 3 regarded under such circumstances, if the cause might have been prosecuted
 4 in the district court.

SEC. 3933. No new demand or set-off can be introduced into a case
 2 after it comes into the circuit court, unless by mutual consent.

SEC. 3934. The appellant must pay the costs of the appeal unless he
 2 obtains a more favorable judgment than that from which he appealed.

SEC. 3935. If the judgment below is against the appellant, he may proffer
 2 to pay a certain amount with costs, and if the final amount recovered be
 3 less favorable to the appellee than such proffer, he shall pay the costs of
 4 appeal.

SEC. 3936. Any judgment in the circuit court against the appellant shall
 2 be entered up against him and his sureties jointly.

2 SEC. 3937. If an appeal is taken for delay, the circuit court shall award
3 such damages, not exceeding ten per cent on the amount of the judgment
4 below, as may seem right.

Writs of Error.

2 SEC. 3938. Any person aggrieved by an erroneous decision in a matter
3 of law, or other illegality in the proceedings of a justice of the peace, may
4 remove the same or so much thereof as is necessary into the circuit court
5 for correction by writ of error.

2 SEC. 3939. The basis of the proceedings is an affidavit filed in the office
3 of the clerk, setting forth the errors complained of. Writ of error must be
4 taken in the same time, and the notice must be the same as in case of
5 appeal.

2 SEC. 3940. The clerk shall thereupon issue the writ commanding the
3 justice to certify the record and proceedings so far as they relate to the facts
4 stated in the affidavit.

2 SEC. 3941. A copy of the affidavit shall accompany the writ and be
3 served upon the justice, who shall, with the least practicable delay, make
4 the return required.

2 SEC. 3942. All proceedings in the justices court, subsequent to judg-
3 ment, may be stayed by a recognizance, entered into like that required in
4 cases of appeals, and on which recognizance judgment shall be entered
5 against the principal and surety in like manner and under like circum-
stances.

2 SEC. 3943. The circuit court may compel an amended return when the
3 first is not full and complete.

2 SEC. 3944. The circuit court may render final judgment, or it may re-
3 mand the cause to the justice for a new trial or such farther proceedings as
4 shall be deemed proper, and may prescribe the notice necessary to bring the
5 parties again before the justice.

2 SEC. 3945. If the circuit court render a final judgment reversing the
3 judgment of the justice of the peace, after such judgment has been collected
4 in whole or in part, it may award restitution with interest, and issue execu-
5 tion accordingly, or it may remand the cause to the justice for this purpose.

Replevin.

2 SEC. 3946. The proceedings to gain possession of personal property
3 wrongfully withheld will be the same as are prescribed in such cases, in the
4 district court, except as modified in this chapter.

Attachment.

SEC. 3947. Attachments are not allowable in justices' courts if the sum claimed is less than five dollars. And if more is claimed and less recovered, the plaintiff shall pay all the costs of the proceedings so far as they relate to the attachment.

SEC. 3948. The constable has the same power to administer an oath to the garnishee and to take his answer as is given to the sheriff in cases of attachment in the circuit court.

SEC. 3949. Garnishees may be required to appear and answer at the time fixed for the appearance of the parties to the action.

SEC. 3950. When a writ of attachment, or of replevin, has been issued by any justice of the peace, in any action, and it shall be found that the defendant is absent, so that personal notice of service of process can not be had, it shall be the duty of the justice, upon the return day, unless the defendant appear, to make an order fixing the day for the trial, not less than sixty days thereafter, and requiring notice to be given by any constable, as provided in the next section.

SEC. 3951. Upon such order being made, at least sixty days' notice of the pendency of such action, shall be given by posting up written or printed notices in three public places in the township where the action was commenced, and such notices shall have the effect of a service, by publication in the district court, and the justice shall proceed to hear the cause upon the day specified for that purpose, but no bond shall be required of the plaintiff after judgment, as may be in the circuit court.

Summary Remedy for Forcible Entry or Detention of Real Property.

SEC. 3952. This proceeding is allowable :

1. Where the defendant has by force or intimidation or fraud or stealth entered upon the prior actual possession of another in regard to real property and detains the same;
2. Where a lessee holds over after the termination, or contrary to the terms of his lease;
3. (Chap. 174—9 G. A.) Where the defendant continues in possession after a sale by foreclosure of a mortgage, or on execution, unless he claims by a title paramount to the lien by virtue of which the sale was made, or by title derived from the purchaser at the sale; in either of which cases, such title shall be clearly and concisely set forth in the defendant's pleading, and shall be sworn to.

SEC. 3953. The mere non-payment of rent by the time stipulated in the lease does not enable a plaintiff to resort to this action unless expressly so stipulated in the lease.

SEC. 3954. The legal representative of a person who might have been plaintiff if alive, may bring this suit after his death.

SEC. 3955. Before suit can be brought in any except the first of the

2 above classes, three days' notice to quit must be given to the defendant in
3 writing.

SEC. 3956. The petition must be in writing and sworn to.

2 SEC. 3957. The proceedings may be had before a justice of the peace of
3 the township where the premises are situated, or if there is no justice there-
3 in able or qualified to act, they may be brought before some justice in any
4 adjoining township. They shall be governed by the same rules as other
5 cases before justices of the peace except as herein modified.

2 SEC. 3958. The time of appearance and pleading must not be less than
2 two nor more than six days from the time the notice is served on the
3 defendant.

2 SEC. 3959. No adjournment shall be made for more than ten days, nor
2 to any other place except by consent of parties.

2 SEC. 3960. If the defendant is found guilty, judgment shall be entered
2 that he be removed from the premises, and that the plaintiff be put in pos-
3 session thereof, and a warrant of removal shall issue accordingly, to which
4 shall be added a clause commanding the officer to levy the costs as in ordi-
5 nary cases.

2 SEC. 3961. The question of title cannot be investigated in this action
2 And nothing herein contained prevents a party from suing for a trespass, or
3 from testing the right of property in any other manner.

2 SEC. 3962. Thirty days' peaceable and uninterrupted possession with the
2 knowledge of the plaintiff after the cause of action accrued, is a bar to this
3 proceeding.

2 SEC. 3963. An action of this kind cannot be brought in connection with
2 any other, nor can it be made the subject of set-off.

2 SEC. 3964. The warrant for removal can be executed only in the day-
2 time.

2 SEC. 3965. An appeal or *writ of error*, taken in the usual way, if the proper
2 security is given, suspends the execution for costs, and may, with the con-
3 sent of the plaintiff, prevent the warrant of removal from being executed,
4 but not otherwise.

2 SEC. 3966. The circuit court on the trial of the appeal may issue a war-
2 rant of removal or restitution, as the case may require.

General Provisions.

2 SEC. 3967. Every justice of the peace upon the expiration of his term
2 of office, must deposit with his successor his official dockets as well as those
3 of his predecessors which may be in his custody, there to be kept as public
4 records. All his official papers shall also be turned over to his successor.

2 SEC. 3968. If his office become vacant by death, removal from the
2 township or otherwise, before his successor is elected, the said docket and
3 papers shall be placed in the hands of the clerk of the district court to be
4 by him turned over to the successor of the justice when elected and qual-
5 ified.

2 SEC. 3969. [Chapter 188, 13th G. A.] The justice with whom the docket
2 of his predecessor is thus deposited, may issue execution on, or give a trans-
3 cript of any judgment there entered, in the same manner, and with like ef-
4 fect as the justice who rendered the judgment might have done; and in

5 case of the death, absence, or inability to act, of any justice, or in case of
6 the vacation of the office of any justice, from any cause, then in such case exe-
7 cution may be issued from the docket of said justice, or transcript given
8 therefrom, by any other justice in said township with like effect as might
9 have been done by the justice who rendered the judgment.

2 **Sec. 3970.** When two or more justices are equally entitled to be deemed
3 the successor in office of any justice as aforesaid, the judge of the county
4 court shall determine by lot which is the successor, and shall certify accord-
5 4 ingly.

2 **Sec. 3971.** Such certificate shall be in duplicate, one copy of which shall
3 be filed in the county office, and the other given to the said successor.

2 **Sec. 3972.** In case of the sickness, other disability, or necessary absence
3 of a justice at the time fixed for a trial of a cause or other proceeding, any
4 other justice of the township may at his request attend and transact the busi-
5 ness for him without any transfer of the business to another office. The
6 entries shall be made in the docket of the justice at whose office the business
7 is transacted, and the same effect shall be given to the proceedings as though
8 no such interchanging of official services had taken place.

2 **Sec. 3973.** (Chap. 174, 9th J. A.) Any justice of the peace may in
3 writing, specially depute any discreet person of suitable age, to perform for
4 any particular duty properly devolving upon a constable for that particular
5 purpose, be subject to the same obligations and receive the same
6 fees.

2 If such person be appointed to serve a writ of attachment, execution or re-
3 plevin, he shall, before levying upon property, execute a bond to the State
4 of Iowa in a penal sum of not less than two hundred dollars, to be fixed by
5 the justice, with one or more freeholders as sureties, to be approved by and
6 filed with the justice making the appointment; and the usual official oath
7 shall be indorsed thereon and signed.

2 For any breach of such bond, any person injured thereby may bring suit
3 thereon in his own name, and recover the same damages as upon a con-
4 stable's bond in like case.

2 **Sec. 3974.** No process can issue from a justice's court into another
3 county, except when specially authorized.

2 **Sec. 3975.** The constable is the proper executive officer of a justice's court,
3 but the sheriff may perform any of the duties required of him. The
4 powers and duties of the sheriff in relation to the business of the district
5 court, so far as the same are applicable and not modified by statute, devolve
6 upon the constable in relation to the justice's court.

2 **Sec. 3976.** The justice may be regarded as his own clerk, and perform
3 the duty of both judge and clerk.

2 **Sec. 3977.** When the term of office of a justice of the peace for any
3 cause expires, his successor may issue execution, or renew an execution in
4 the same manner and under the same circumstances as the former justice
5 might have done, if his term of office had not expired.

2 **Sec. 3977. A** (Chap. 53, 11th G. A.) It shall be the duty of the board of
3 supervisors of each county to furnish to each justice of the peace of such county
4 a well bound blank-record book of not less than four quires with index
5 suitable for a docket upon the certificate of such justice that the same is
6 necessary for the business of his office.

CHAPTER 159. *Evidence.*

2 SEC. 3978. Every human being of sufficient capacity to understand the
 3 obligation of an oath, is a competent witness in all cases, both civil and
 4 criminal, except as herein otherwise declared.

2 SEC. 3979. Facts which have heretofore caused the exclusion of testimo-
 3 ny may still be shown for the purpose of lessening its credibility.

2 SEC. 3980. On the trial of any issue joined, or of any matter, or of any
 3 inquiry arising in any action or other proceeding in any court of justice, or
 4 before any person, having by law or by consent of parties, authority to hear,
 5 receive and examine evidence, no person shall be disqualified, by reason of
 6 his interest in the same, or in the event of the same whether such interest
 7 be as a party thereto or otherwise. But the party or parties thereto,
 8 and the person in whose behalf such action or other proceeding may be
 9 brought or defended shall, except as hereinafter excepted, be competent and
 10 compellable to give evidence, either viva voce or by deposition, according to
 11 the practice of the court, on behalf of himself or either or any of the par-
 ties to the issue, action or proceeding.

2 SEC. 3981. But nothing herein contained shall render any person who,
 3 in any criminal proceeding is charged with the commission of any public
 4 offense competent or compellable to give evidence therein, for or against
 5 himself.

2 SEC. 3982. No person shall be allowed to testify under the provision of
 3 section 3980, where the adverse party is the executor of a deceased person,
 4 when the facts to be proved transpired before the death of such deceased
 5 person, and nothing in such section contained shall in any manner affect the
 6 laws now existing in relation to the settlement of estates of deceased per-
 7 sons, infants, or persons of unsound mind; or the attestation of any instru-
 8 ment required to be attested.

2 SEC. 3983. The husband nor wife shall in no case be a witness for or
 3 against the other, except in a criminal proceeding for a crime committed by
 4 one against the other, or in a civil action or proceeding one against the
 5 other, but they may in all criminal prosecutions be witnesses for each other.

2 SEC. 3984. Neither husband nor wife can be examined in any case as to
 3 any communication made by the one to the other while married, nor shall
 4 they after the marriage relation ceases, be permitted to reveal in testimony
 5 any such communication made while the marriage subsisted.

2 SEC. 3985. No practicing attorney, counselor, physician, surgeon, min-
 3 ister of the gospel, or priest of any denomination, shall be allowed in giv-
 4 ing testimony to disclose any confidential communication properly intrusted
 5 to him in his professional capacity and necessary and proper to enable him to
 6 discharge the functions of his office according to the usual course of prac-
 tice or discipline.

2 SEC. 3986. The prohibitions in the preceding sections' do not apply to
3 cases where the party in whose favor the respective provisions are enacted,
3 waives the rights thereby conferred.

2 SEC. 3987. A public officer cannot be examined as to communications
2 made to him in official confidence, when the public interests would suffer by
3 the disclosure.

2 SEC. 3988. No witness is excused from answering a question upon the
2 the mere ground that he would be thereby subjected to a civil liability.

2 SEC. 3989. But when the matter sought to be elicited would tend to
2 render him criminally liable or to expose him to public ignominy, he is not
3 compelled to answer except as provided in the next section.

2 SEC. 3990. A witness may be interrogated as to his previous conviction
2 for a felony. But no other proof of such conviction is competent except
3 the record thereof.

2 SEC. 3991. The general moral character of a witness may be proved for
2 the purpose of testing his credibility.

2 SEC. 3992. When part of an act, declaration, conversation, or writing is
2 given in evidence by one party, the whole on the same subject may be in-
3 quired into by the other; thus when a letter is read, all other letters on the
4 same subject between the same parties may be given. And when a detached
5 act, declaration, conversation, or writing, is given in evidence, any other act,
6 declaration or writing which is necessary to make it fully understood or to
7 explain the same may also be given in evidence.

2 SEC. 3993. When an instrument consists partly of written and partly of
2 printed form, the former controls the latter when the two are inconsistent.

2 SEC. 3994. When the terms of an agreement have been intended in a
2 different sense by the parties to it that sense is to prevail against either party
3 in which he had reason to suppose the other understood it.

2 SEC. 3995. Historical works, books of science or art, and published maps
2 or charts, when made by persons indifferent between the parties, are pre-
3 sumptive evidence of facts of general notoriety or interest.

2 SEC. 3996. When a subscribing witness denies or does not recollect the
2 execution of the instrument to which his name is subscribed as such witness
3 its execution may be proved by other evidence.

2 SEC. 3997. Evidence respecting hand-writing may be given by compari-
2 son made by experts or by the jury with writings of the same person which
3 are proved to be genuine.

2 SEC. 3998. The entries and other writings of a person deceased made at
2 or near the time of the transaction and in a position to know the facts there-
3 in stated, are presumptive evidence of such facts when the entry was made
4 against the interest of the person so making it, or when made in a profes-
5 sional capacity or in the ordinary course of professional conduct, or when
6 made in the performance of a duty specially enjoined by law.

2 SEC. 3999. Books of account containing charges by one party against
2 the other made in the ordinary course of business, are receivable in evidence,
3 only under the following circumstances, subject to all just exceptions as to
4 their credibility:

- 5 1. The books must show a continuous dealing with persons generally, or
6 several items of charge at different times against the other party in
7 the same book or set of books.
- 8 2. It must be shown by the party's oath or otherwise that they are his
9 books of original entries.

10 3. It must be shown in like manner that the charges were made at or
 11 near the time of the transactions therein entered, unless satisfacto-
 12 rily reasons appear for not making such proof.

13 4. The charges must also be verified by the party or the clerk who made
 14 the entries, to the effect that they believe them just and true, or a
 15 sufficient reason must be given why such verification is not made.

SEC. 4000. Every private writing, except a last will and testament, after
 2 being acknowledged or proved and certified in the manner prescribed for
 3 the proof or acknowledgment of conveyances of real property, may be read
 4 in evidence without farther proof.

SEC. 4001. Every instrument in writing affecting real estate, which is ac-
 2 knowledged or proved and certified as hereinbefore directed, may be read in
 3 evidence without farther proof.

SEC. 4002. The record of such instrument or a duly authenticated copy
 2 thereof, is competent evidence whenever by the party's own oath or other-
 3 wise the original is shown to be lost, or not belonging to the party wishing
 4 to use the same, nor within his control. And in such case it is no objection
 5 to the record that no official seal is appended to the recorded acknowledg-
 6 ment thereof, if, when the acknowledgment purports to have been taken by
 7 an officer having an official seal, there be a statement in the certificate of
 8 acknowledgment that the same is made under his hand and seal of office,
 9 and the record show by a scroll or otherwise that there was such a seal,
 10 which will be presumptive evidence that the official seal was attached to the
 11 original certificate.

SEC. 4003. The provisions of the preceding section are intended to ap-
 2 ply to all instruments heretofore recorded, as well as those hereafter to be
 3 recorded.

SEC. 4004. Neither the certificate, nor the record, nor the transcript
 2 thereof, is conclusive evidence of the facts therein stated.

SEC. 4005. The judge of the court is a competent witness for either par-
 2 ty, and may be sworn upon the trial. But in such a case it is in his discre-
 3 tion to order the trial to be postponed or suspended and to take place be-
 4 fore another judge.

SEC. 4006. Except when otherwise specially provided, no evidence of
 2 any of the contracts enumerated in the next succeeding section is competent
 3 unless it be in writing and signed by the party charged, or by his lawfully
 4 authorized agent.

SEC. 4007. Such contracts embrace:

- 2 1. Those in relation to the sale of personal property when no part of the
- 3 property is delivered and no part of the price is paid.
- 4 2. Those made in consideration of marriage, but not including promises
- 5 to marriage.
- 6 3. Those wherein one person promises to answer for the debt, default, or
- 7 miscarriage of another, including promises by executors to pay the
- 8 debt of their principal from their own estate.
- 9 4. Those for the creation or transfer of any interest in lands except leases
- 10 for a term not exceeding one year.
- 11 5. Those that are not to be performed within one year from the making
- 12 thereof.

SEC. 4008. The provision of the first sub-division of the preceding sec-
 2 tion does not apply when the article of personal property sold is not at the
 3 time of the contract owned by the vendor and ready for delivery, but labor,
 4 skill, or money are necessarily to be expended in producing or procuring the

5 same; nor do those of the fourth sub-division of said section apply where
 6 the purchase money or any portion thereof has been received by the vendor,
 7 or when the vendee with the actual or implied consent of the vendor has
 8 taken and held possession thereof, under and by virtue of the contract, or
 9 when there is any other circumstance which by the law heretofore in force,
 10 would have taken a case out of the statute of frauds.

SEC. 4009. The above regulations, relating merely to the proof of con-
 2 tracts, do not prevent the enforcement of those which are not denied in the
 3 pleadings, unless in cases where the contract is sought to be enforced or
 4 damages to be recovered for the breach thereof against some person other
 5 than him who made it.

SEC. 4010. Nothing in the above provisions shall prevent the party him-
 2 self against whom the unwritten contract is sought to be enforced, from
 3 being called as a witness by the opposite party nor his oral testimony from
 4 being evidence.

SEC. 4011. The usual protest of a notary public without proof of his signa-
 2 ture, or notarial seal, is prima facie evidence of what it recites concerning
 3 the dishonor and notice of a bill of exchange or promissory note.

How testimony is to be procured.

SEC. 4012. The clerks of the several courts shall, on application of any
 2 person having a cause, or any matter pending in court, issue a subpoena for
 3 witnesses under the seal of the court, inserting all the names required by the
 4 applicant in one subpoena, which may be served by the sheriff, coroner, or
 5 any constable of the county, or by the party or any other person. When a
 6 subpoena is not served by the sheriff, coroner, or constable, proof of service
 7 shall be shown by affidavit; but no costs of serving the same shall be
 8 allowed.

SEC. 4013. The subpoena shall be directed to the person therein named,
 2 requiring him to attend at a particular time or place, to testify as a witness,
 3 and it may contain a clause directing the witness to bring with him any
 4 book, writing, or other thing under his control, which he is bound by law to
 5 produce as evidence.

SEC. 4014. Witnesses in civil cases can not be compelled to attend the
 2 district or circuit court out of the state where they are served, nor at a dis-
 3 tance of more than seventy miles from the place of their residence, or from
 4 that where they are served with a subpoena, unless within the same county.
 5 No other subpoena but that from the district or circuit court can compel his
 6 attendance at a greater distance than thirty miles from his place of residence,
 7 or of service if not in the same county.

SEC. 4015. Witnesses are entitled to receive (in advance if demanded)
 2 their traveling fees to and from the court, together with their fees for one
 3 day's attendance. At the commencement of each day after the first they are
 4 further entitled on demand to receive the legal fees for that day in advance.
 5 If not thus paid they are not compelled to attend or remain as wit-
 6 nesses.

SEC. 4016. For a failure to obey a valid subpoena without a sufficient
 2 cause or excuse, or for a refusal to testify after appearance, the delinquent
 3 is guilty of contempt of court. He is also liable to the party by whom he

4 was subpoenaed for all consequences of such delinquency, together with fifty
5 dollars additional damages.

SEC. 4017. Before a witness is thus liable for a contempt for not appearing, he must be served personally with the process by reading it to him, and by leaving a copy thereof with him if demanded, and it must be shown that the fees and traveling expenses allowed by law were tendered to him if required; or it must appear that a copy of the subpoena, if left at his usual place of residence, came into his hands together with the said fees and traveling expenses above mentioned.

SEC. 4018. If a witness conceal himself or in any other manner attempt to avoid being personally served with a subpoena, any sheriff or constable having the subpoena may use all necessary and proper means to serve the same, and for that purpose may break into any building or other place where the witness is to be found, having first made known his business and demanded admittance.

SEC. 4019. A person confined in any prison in this state, may, by order of any court of record, be required to be produced for oral examination in the county where he is imprisoned, and in a criminal case in any county in the state; but in all other cases his examination must be by a deposition.

SEC. 4020. While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the depositions.

SEC. 4021. When by the laws of any other state or country, testimony may be taken in this state to be used in the courts of such state or country, and also in all cases herein provided for taking depositions, the persons authorized to take such depositions have power to issue subpoenas and compel obedience thereto, to administer oaths, and do any other act of a court which is necessary for the accomplishment of the purpose for which they are acting.

SEC. 4022. Subpoenas issued by them are valid to the same geographical extent as those emanating from a justice's court, and may be served and returned in the same manner.

SEC. 4023. Any sheriff or constable, when called upon for that purpose, shall serve such subpoenas and make return thereto.

SEC. 4024. In addition to the above remedies, if a party to a suit in his own right, on being duly subpoenaed, fail to appear and give testimony, the other party may, at his option, have a continuance of the cause as in cases of other witnesses, and at the cost of the delinquent.

SEC. 4025. Or the party so calling his opponent may, in such a case, himself become a witness, or, if he shows by his own testimony or otherwise that he could not have a full personal knowledge of the transaction, the court may order his pleading to be taken as true; such order however is subject to be reconsidered during the term of the court, upon satisfactory reasons being shown for such delinquency.

SEC. 4026. The district or circuit court may by rule require the production of any papers or books which are material to the just determination of any cause pending before it, for the purpose of being inspected and copied by or for the party thus calling for them.

SEC. 4027. The petition for that purpose must state the facts expected to be proved by such books or papers, and that, as the petitioner believes, such books and papers are under the control of the party against whom the rule

4 is sought, and must show wherein they are material. The rule shall there-
 5 upon be granted, to produce the books and papers or show cause to the con-
 6 trary, if the court deems such rule expedient and proper.

Sec. 4028. On failure to obey the rule, or show sufficient cause for
 2 such failure, the same consequences shall ensue as if the party had failed to
 3 appear and testify when subpoenaed by the party now calling for the books
 4 and papers.

Sec. 4029. Though a writing called for by one party is by the other pro-
 2 duced, the party thus calling for it is not obliged to use it as evidence in the
 3 case.

Documentary Evidence.

Sec. 4030. An affidavit is a written declaration under oath, made with-
 2 out notice to the adverse party.

Sec. 4035. An affidavit may be made within or without this state, before
 2 any person authorized to administer oaths.

Sec. 4036. Affidavits taken out of the state before any judge or clerk of
 2 a court of record, or before a notary public or a commissioner appointed by
 3 the governor of this state to take acknowledgement of deeds in the state
 4 where such affidavit is taken, are of the same credibility as if taken within the
 5 state.

Sec. 4037. The signature and seal of such of the officers herein author-
 2 ized to take depositions or affidavits as have a seal, and the simple signature
 3 of such as have no seal, are presumptive of the genuineness of such signa-
 4 ture as well as of the official capacity of the officer, except as herein other-
 5 wise declared.

Sec. 4038. Where a person is desirous of obtaining the affidavit of another
 2 who is unwilling to make the same fully, he may apply to any officer com-
 3 petent to take depositions as herein declared, by petition, stating the object
 4 for which he desires the affidavit.

Sec. 4039. If such officer is satisfied that the object is legal and proper,
 2 he shall issue his subpoena to bring the witness before him, and if he fails
 3 then to make a full affidavit of the facts within his knowledge to the extent
 4 required of him by the officer, the latter may proceed to take his deposition
 5 by question and answer in writing in the usual way, which deposition may
 6 afterwards be used instead of an ordinary affidavit.

Sec. 4040. The officer thus applied to, may in his discretion require
 2 notice of the taking of such affidavit or deposition to be given to any other
 3 person interested in the subject-matter and allow him to be present and
 4 cross-examine such witness.

Sec. 4041. The court or officer to whom any affidavit is presented as a
 2 basis for some action, in relation to which any discretion is lodged with such
 3 court or officer, may, if deemed proper, require the witness to be brought
 4 before some proper officer, and subjected to cross interrogatories by the op-
 5 posite party.

Sec. 4042. Publications required by law to be made in a newspaper
 2 may be proved by the affidavit of any person having knowledge of the fact,
 3 specifying the times when, and the paper in which the publication was
 4 made. But such affidavit must, for the purposes now contemplated, be made
 5 within six months after the last day of publication.

2 **SEC. 4043.** The posting up or service of any notice or other paper requir-
3 ed by law, may be proved by the affidavit of any competent witness, at-
4 tached to a copy of said notice or paper, and made within six months of the
5 time of such posting up.

2 **SEC. 4044.** Any other fact which is required to be shown by affidavit, and
3 which may be required for future use in any action or other proceeding,
4 may be proved by pursuing the course above indicated as nearly as the cir-
5 cumstances of the case will admit.

2 **SEC. 4045.** Such proof so made may be perpetuated and preserved for
3 future use by filing the papers above mentioned in the office of the clerk of
4 the circuit court. And the original affidavit appended to the notice or paper
5 if there be one, and if not, the affidavit by itself, is presumptive evidence of
6 the facts stated therein, but does not preclude other modes of proof now held
7 sufficient.

2 **SEC. 4046.** A copy of the field notes of any surveyor, or a plat made by
3 him and certified under oath as correct, may be received as evidence to show
4 the shape or dimensions of a tract of land, or any other fact whose ascer-
5 tainment requires only the exercise of scientific skill or calculation.

2 **SEC. 4047.** Duly certified copies of all records and entries or papers be-
3 longing to any public office or by authority of law filed to be kept therein,
4 shall be evidence in all cases of equal credibility with the original record or
5 paper so filed.

2 **SEC. 4048.** It shall be the duty of the recorder in each of the several
3 counties in this state, to cause to be procured a book, entitled, "copies of
4 original entries," to be kept as a record, in his office, in which shall be cop-
5 ied a list of the original entries of lands within his county, with name of the
6 person or persons entering the same, and the date of such entry, for which
7 he shall receive a reasonable compensation, to be audited and allowed by the
8 board of supervisors of his county.

2 **SEC. 4049.** Said book, containing a copy of such entries, when com-
3 pared with the originals, and certified to as true copies by the register of
4 the land office at which such original entries were made, shall be deemed
5 a matter of record, and certified copies thereof, under the hand of said re-
6 corder, may be received and read in evidence in all the courts in this state,
7 with like effect as other certified copies of original papers recorded in his
8 office.

2 **SEC. 4050.** Said recorder shall from time to time, as he may deem it
3 necessary, procure in same manner, copies of any additional entries under
4 the same restrictions, and with like effect, until all the lands in his
5 county shall have been entered, and certified copies of the entries thereof
6 procured.

2 **SEC. 4051.** Every officer having the custody of a public record or writing
3 is bound to give any person, on demand, a certified copy thereof on payment
4 of the legal fees therefor.

2 **SEC. 4052.** Copies of all maps, official letters, and other documents in
3 the office of the surveyor general of this state, when certified to by that offi-
4 cer according to law, shall be received by the courts of this state as presump-
5 tive evidence of the existence of the originals; and that said copies are
6 copies of the original, notwithstanding such maps, official letters, etc., may
7 themselves be copied.

2 **SEC. 4053.** The certificate of a public officer that he has made diligent
3 and ineffectual search for a paper in his office, is of the same efficacy
4 in all cases as if such officer had personally appeared and sworn to such
5 facts.

2 SEC. 4054. The usual duplicate receipt of the receiver of any land office,
 3 or if that be lost or destroyed, or beyond the reach of the party, the certifi-
 4 cate of such receiver that the books of his office show the sale of a tract of
 5 land to a certain individual, is proof of title equivalent to a patent, against
 all but the holder of an actual patent.

2 SEC. 4055. The certificate of the register or receiver of any land office
 3 of the United States, as to the entry of land within his district, shall be
 4 presumptive evidence of the person entering, to the real estate therein
 named.

2 SEC. 4056. In the cases contemplated in the last seven sections, the sig-
 3 nature of the officer shall be presumed to be genuine, until the contrary is
 shown.

2 SEC. 4057. A judicial record of this state or of any of the federal courts
 3 of the United States may be proved by the production of the original, or by
 4 a copy thereof certified by the clerk or the person having the legal custody
 thereof, authenticated by his seal of office, if he have one.

2 SEC. 4058. That of a sister state may be proved by the attestation of the
 3 clerk and the seal of the court annexed, if there be a seal, together with a
 4 certificate of a judge, chief justice, or presiding magistrate that the attesta-
 tion is in due form of law.

2 SEC. 4059. The official certificate of a justice of the peace of any of the
 3 United States, to any judgment, and the preliminary proceedings before
 4 him, supported by the official certificate of the clerk of any court of record
 5 within the county in which such justice resides, stating that he is
 6 an acting justice of the peace of that county, and that the signature to
 7 his certificate is genuine, is sufficient evidence of such proceedings and
 judgment.

2 SEC. 4060. Copies of records and proceedings in the courts of a for-
 3 eign country may be admitted in evidence, upon being authenticated, as
 follows:

- 4 1. By the official attestation of the clerk or officer in whose custody such
- 5 records are legally kept, and
- 6 2. By the certificate of one of the judges or magistrates of such court, that
- 7 the person so attesting is the clerk or officer legally entrusted with
- 8 the custody of such records, and that the signature to his attestation
- 9 is genuine, and
- 10 3. By the official certificate of the officer who has the custody of the
- 11 principal seal of the government under whose authority the court is
- 12 held, attested by said seal, stating that such court is duly constituted,
- 13 specifying the general nature of its jurisdiction, and verifying the seal
- 14 of the court.

2 SEC. 4061. Acts of the executive of the United States, or of this or any
 3 other state of the Union, or of a foreign government, are proved by the rec-
 4 ords of the state department of the respective governments, or by public
 5 documents purporting to have been printed by order of the legislatures of
 those governments respectively, or by either branch thereof.

2 SEC. 4062. The proceedings of the legislature of this or any other state
 3 of the Union, or the United States, or of any foreign government, are proved
 4 by the journals of those bodies respectively, or of either branch thereof,
 5 and either by copies officially certified by the clerk of the house in which
 6 proceeding was had, or by a copy purporting to have been printed by their
 order.

SEC. 4063. Printed copies of the statute laws of this or any other of the

2 United States, of congress, or of any foreign government, purporting
 3 or proved to have been published under the authority thereof, or proved
 4 to be commonly admitted as evidence of the existing laws in the courts
 5 of such state or government, shall be admitted in the courts of this state as
 6 presumptive evidence of such laws.

2 SEC. 4064. The public seal of the state or county affixed to a copy of a
 3 written law or other public writing, is also admissable as evidence of such
 4 law or writing respectively. The unwritten laws of any other state or gov-
 5 ernment may be proved as facts by parol evidence, and also by the books of
 6 reports of cases adjudged in their courts.

Depositions.

2 SEC. 4065. After the commencement of a civil action, or other civil pro-
 3 ceeding, if a witness resides within this state, but in a different county
 4 from the place of trial, or is about to go beyond the reach of a subpoena, or is
 5 for any other cause expected to be unable to attend court at the time of trial,
 6 the party wishing his testimony, may, whenever he judges it expedient, take
 7 his deposition in writing before any person having authority to administer
 8 oaths; and if the action is by equitable proceedings, and no consent has been
 9 entered into to try the same by the second method of trying equitable ac-
 10 tions, then without any other reason therefor, either party may so take the
 11 deposition of any witness.

2 SEC. 4066. (Chapter 167, 13th G. A.) Reasonable notice of the name
 3 of a witness, and the time and place when and where the same will be taken,
 4 must be given to the opposite party; but if notices are given in the same case
 5 by the same party, and of the taking of deposition at different places upon the
 6 same day, they shall be invalid; and no party shall be required to take
 7 depositions on the day of general election, or on the fourth day of July.

2 SEC. 4067. If the case is in the district court, the deposition of a witness,
 3 residing out of the county, whether within or without the state, may be
 4 taken before one or more commissioners or written interrogatories.

2 SEC. 4068. The party wishing to take such deposition, may select any
 3 of the officers mentioned in the next section, as such commissioner, or the
 4 parties may agree upon, or the court appoint in the commission, any other
 5 individual for that purpose.

2 SEC. 4069. The clerk or any judge of any court of record, or any com-
 3 missioner appointed by the governor of this state to take acknowledgment
 4 of deeds in another state, or any notary public, or any consul of the United
 5 States may be selected and appointed by the party such commissioner, either
 6 by the name of office of such officer, or by his individual name and official
 7 style, and the name of the court of which such constituted commissioner is
 8 clerk or judge, and the name of the state and county, or if without the
 9 United States and Canada, the name of the state and town, or city in which
 10 such commissioner of deeds, notaries, or consul resides, must be stated in
 11 the notice and in the commission issued.

2 SEC. 4070. None of the above named officers is permitted to take the
 3 depositions aforesaid, by virtue of a commission directed to him merely as
 4 such officer, unless within the geographical limits to which his official juris-
 5 diction extends.

7 Sec. 4071. Reasonable notice must be given to the opposite party of the
2 time when a commission will be sued out of the office of the clerk of the
3 district court for taking the deposition of the witness, (naming him,) which
4 notice must be accompanied with a copy of the interrogatories to be asked
5 him.

2 Sec. 4072. At or before the time thus fixed, the opposite party may file
3 cross-interrogatories—if cross-interrogatories are not filed—the clerk shall
4 file the following:

- 4 1. Are you directly or indirectly interested in this action? and if inter-
5 ested, explain the interest you have.
- 6 2. Are all your statements in the foregoing answers made from your
7 personal knowledge? and if not, do your answers show what are
8 made from your personal knowledge, and what from information,
9 and the source of that information? if not, now show what is from
10 information, and give its source.
- 11 3. State everything you know concerning the subject of this action,
12 favorable to either party.

2 Sec. 4073. The reasonable notice hereinbefore mentioned, is at least
3 when served on the attorney, ten days, and when served on the party, with-
4 in the county, five days; if served on the party anywhere else, the reason-
5 able notice shall be that required under other similar circumstances, in the
6 service of an original notice; and when depositions are to be taken in pur-
7 suance of the first of the above methods, one day in addition must be allow-
8 ed for every thirty miles travel from the place where the notice is served,
9 to that where the depositions are to be taken. No party shall be required to
10 take depositions when the court is in actual session.

2 Sec. 4074. The notice or notice and copy of interrogatories may be served
3 by the same persons, on the same persons, in the same manner, and may be
4 returned, and the return shall be authenticated in the same way as should
5 be an original notice in the same cause, when served other than by publica-
6 tion.

2 Sec. 4075. It may also be served personally on any attorney of the adverse
3 party of record in the cause.

2 Sec. 4076. Whenever the adverse party has been notified by publication
3 only, and has not appeared, he shall be deemed served with the notice, or
4 the notice and interrogatories, by the filing of the same with the clerk in the
5 cause.

2 Sec. 4077. Subject to the regulations herein contained, the court may
3 establish farther rules for taking depositions and all other acts connected
4 therewith.

2 Sec. 4078. The commission issues in the name of the court, and under
3 its seal. It must be signed by the clerk, and need contain nothing but the
4 authority conferred upon the commissioner, and instructions to guide him, a
5 statement of the cause in which the testimony is to be used, and a copy of
6 the interrogatories on each side appended.

2 Sec. 4079. The person before whom any of the depositions above con-
3 templated are taken, must cause the interrogatories propounded (whether
4 written or oral) to be written out and the answers thereto to be inserted im-
5 mediately underneath the respective questions. The answers must be in the
6 language, as nearly as practicable, of the witness, if either party requires it.
7 The whole being read over by or to the witness, must be by him subscribed
8 and sworn to in the usual manner.

 Sec. 4080. All exhibits produced before the person taking the deposition

2 or proved or referred to by any witness, or correct copies thereof, must be
3 appended to the depositions, and returned with them, unless sufficient reasons
4 be shown for not so doing.

2 SEC. 4081. The person taking the deposition shall attach his certificate
3 thereto, stating that it was subscribed and sworn to by the deponent at the
4 time and place therein mentioned. The whole, including the commission
5 and interrogatories, (when any such were issued,) must then be sealed up
6 and returned to the clerk of the proper county by mail unless some other
mode be agreed upon between the parties.

2 SEC. 4082. Where a deposition is taken upon interrogatories, neither
3 party, nor his agent or attorney, shall be present at the examination of a
4 witness, unless both parties are present or represented by an agent or attor-
5 ney, and the certificate shall state such fact, if party or agent is present.

2 SEC. 4083. The depositions when thus returned must be opened by the
3 clerk and placed on file in his office, after which he shall at any time furnish
4 any person with an attested copy of the same upon payment of the custom-
5 ary fees, but must not allow them to be taken from his office previous to the
6 next term of the court unless by the mutual written consent of the par-
ties.

2 SEC. 4084. The depositions when returned by mail must be directed to
3 the clerk of the court. They should state on the outside of the envelope the
4 title of the cause in which they are to be used.

2 SEC. 4085. Unimportant deviations from any of the above directions
3 shall not cause the depositions to be excluded where no substantial prejudice
4 could be wrought to the opposite party by such deviation.

2 SEC. 4086. Where depositions are directed to be taken before a judge
3 or justice of the peace merely by his name of office the return must contain
4 an authentication by the clerk of the proper court under his seal of office
5 verifying the fact that the person who took the deposition is really such
officer.

2 SEC. 4087. The deposition in each of the above cases must show that
3 the witness is a non-resident of the county, or such other fact as renders the
4 taking of the deposition legal, and no such deposition shall be read on the
5 trial if at the time the witness himself is produced in court.

2 SEC. 4088. Exceptions to depositions shall be in writing, specifying the
3 grounds of objection, and filed with the papers in the cause.

2 SEC. 4089. No exception other than for incompetency or irrelevancy
3 shall be regarded, unless made and filed before the commencement of the
4 trial.

2 SEC. 4090. The court shall, on motion of either party, hear and decide
3 the questions arising on exceptions to depositions, before the commencement
4 of the trial.

2 SEC. 4091. Errors of the court in its decision upon exception to deposi-
3 tions, are waived, unless excepted to.

2 SEC. 4092. In cases in a justice's court, when the deposition of a witness
3 is to be taken out of the state, the commission shall issue from the clerk of
4 the circuit court under his seal of office. The appointment of the commis-
5 sioner shall be in point of form made as from the circuit court but the com-
mission shall state in what court it is to be used.

2 SEC. 4093. Depositions taken to be used in a justice's court shall be
3 transferred to the circuit court if the case be appealed and may be used on
4 the trial there in the same manner as if taken regularly after the case was
in the circuit court.

Perpetuating Testimony.

2 SEC. 4094. The testimony of a witness may be perpetuated in the fol-
3 lowing manner :

2 SEC. 4095. The applicant shall file in the office of the clerk of the dis-
3 trict or circuit court a petition to be verified, in which shall be set forth, spe-
4 cially, the subject matter, relative to which testimony is to be taken, and the
5 names of the persons interested, if known to the applicant; and if not
6 known, such general description, as he can give of such persons, as heirs,
7 devises, alienees, or otherwise. The petition shall also state the names of
8 the witnesses to be examined, and the interrogatories to be propounded to
9 each; that the applicant expects to be a party to an action in a court of this
10 state, in which such testimony will, as he believes, be material, and the ob-
11 stacles preventing the immediate commencement of the action, where the
11 applicaut expects to be the plaintiff.

2 SEC. 4096. The court or the judge thereof, may forthwith make an order
3 allowing the examination of such witnesses. The order shall prescribe the
4 time and place of the examination; how long the parties interested shall be
5 notified thereof, and the manner in which they shall be notified.

2 SEC. 4097. When it appears satisfactorily to the court or judge, that the
3 parties interested can not be personally notified, such court or judge shall
4 appoint a competent attorney to examine the petition and prepare and file
5 cross interrogatories to those contained therein. The witnesses shall be exam-
6 ined upon the interrogatories of the applicant, and upon cross interrogato-
7 ries, where they are required to be prepared, and no others shall be pro-
8 pounded to them; nor shall any statement be received, which is not respon-
9 sive to some of them. The attorney filing the cross interrogatories, shall be
9 allowed a reasonable fee therefor, to be taxed in the bill of costs.

2 SEC. 4098. Such depositions shall be taken before some one authorized
3 by law to take depositions, or before some one specially authorized by the
4 court or judge, and shall be returned to the clerk's office of the court, in which
5 the petition was filed.

2 SEC. 4099. The court or judge, if satisfied that the depositions have been
3 properly taken, and as herein required, shall approve the same and order
4 them to be filed; and if a trial be had between the parties named in the pe-
5 tition, or their privies or successors in interest, such depositions, or certified
6 copies thereof, may be given in evidence by either party, where the wit-
7 nesses are dead or insane, or where their attendance for oral examination
8 can not be obtained, as required; but such depositions shall be subject to the
9 same objections for irrelevancy and incompetency, as may be made to depo-
9 sitions taken, pending an action.

Other Provisions.

2 SEC. 4100. In all cases of taking depositions as hereinbefore provided
3 the costs thereof must be paid in the first place by the party at whose in-
4 stance they are taken, subject like other costs to be taxed against the failing
4 party in the suit.

2 SEC. 4101. Proof of actual penetration into the body is sufficient to sus-
tain an indictment for rape.

2 SEC. 4102. A conviction can not be had upon the testimony of an ac-
3 complice unless he be corroborated by such other evidence as shall tend to
4 connect the defendant with the commission of the offense; and the corrob-
5 ration is not sufficient if it merely show the commission of the offense or the
6 circumstances thereof.

2 SEC. 4103. Upon a trial for enticing or taking away an unmarried female
3 of previously chaste character for the purpose of prostitution, or aiding or
4 assisting therein, or for seducing and debauching any unmarried woman of
5 previously chaste character, the defendant can not be convicted upon the tes-
6 mony of the person injured unless she be corroborated by other evidence
tending to connect the defendant with the commission of the offense.

2 SEC. 4104. The ordinary rules of evidence not incompatible with those
herein prescribed are not intended to be hereby changed.

2 SEC. 4120. The future proceedings of all officers and of all courts of
3 limited and inferior jurisdiction within this state shall, like those of general
4 and superior jurisdiction, be presumed regular except in regard to matters
5 required to be entered of record, and except where otherwise expressly de-
clared.

2 SEC. 4120. "A." (Chapt. 86, 12, G. A.) The records and papers prop-
3 erly filed in a cause in either the district or circuit court of a county, are
4 equally evidence in the other court. Depositions taken for either court
5 may be used in the other with the same effect, subject to like objection, as if
taken in such court.

CHAPTER 160. *Judgment Lien.*

2 SEC. 4105. Judgments in the supreme or circuit court of this state, or
3 in the district or circuit court of the United States, if rendered within this
4 state, are liens upon the real estate owned by the defendant at the time of
5 such rendition, and also upon all he may subsequently acquire before the
expiration of the lien as hereinafter provided.

2 SEC. 4106. When the lands lie in the county wherein the judgment was
rendered, the lien shall attach from the date of such rendition.

2 SEC. 4107. If the lands lie in any other county the lien does not attach
3 until an attested copy of the judgment is filed in the office of the clerk of
the district court of the county in which the land lies.

2 SEC. 4108. Such clerk shall, on the filing of a transcript of the judgment
3 in his office, immediately proceed to docket and index the same in the same
4 manner as though rendered in the court of his own county.

2 SEC. 4109. The liens above authorized continue in force for the term of
ten years only from the date of judgment.

CHAPTER 161. *General Provisions.*

2 SEC. 4110. The right of civil remedy is not merged in a public offense,
3 but may in all cases be enforced independently of and in addition to the
4 punishment of the latter.

2 SEC. 4111. When a wrongful act produces death the perpetrator is
3 civilly liable for the injury. The parties to the action shall be the same as
4 though brought for a claim founded on contract against the wrong doer,
5 and in favor of the estate of the deceased. and the sum recovered shall be
6 disposed of in the same manner, except that when the deceased left a wife,
7 child, or parent surviving him, it shall not be liable for the payment of
8 debts.

2 SEC. 4112. A person whose religious faith and practice are to keep
3 the seventh day of the week as a day set apart by divine command, and
4 dedicated to rest and religious uses, cannot be compelled to attend as a
5 juror on that day, and shall in other respects be protected in the enjoy-
6 ment of his opinions to the same extent as those who keep the first day of
7 the week.

2 SEC. 4113. When security is required by law to be given, and no par-
3 ticular mode is prescribed, it shall be by bond.

2 SEC. 4114. Such security, when not otherwise directed, may, if for
3 the benefit of individuals, be given to the party intended to be thereby se-
4 cured. If in relation to the public matters concerning the inhabitants of
5 one county or part of a county, it may be made payable to the county; if
6 concerning the inhabitants of more than one county, it may be made payable
7 to the state. But a mere mistake in these respects, will not vitiate the
8 security.

2 SEC. 4115. Where investments of money are directed to be made, and
3 no mode of investment is pointed out by statute, they must be made in the
4 stocks or bonds of this state or of those of the United States, or upon bond
5 and mortgage of real property of the clear unincumbered value of at least
6 twice the investment.

2 SEC. 4116. When such investment is made by order of any court, the
3 security taken shall in no case be discharged, impaired, or transferred
4 without an order of the court to that effect entered on the minutes thereof

2 SEC. 4117. The clerk or other person appointed in such cases to make
3 the investment, must receive all moneys as they become due thereon and ap-
4 ply and reinvest the same under the direction of the court, unless the court
5 appoint some other person to do such acts.

2 SEC. 4118. Once in each year, and oftener, if required by the court, the
3 person so appointed must render to the court an account in writing and on
4 oath of all moneys so received by him and of the application thereof

2 SEC. 4119. No defective bond or other security, or affidavit in any case
3 shall prejudice the party giving or making it, provided it be so rectified
4 within a reasonable time after the defect is discovered as not to cause essen-
5 sial injury to the other party.

2 SEC. 4120. The future proceedings of all officers and of all courts of lim-
3 ited and inferior jurisdiction within this state shall, like those of general and
4 superior jurisdiction, be presumed regular except in regard to matters re-
5 quired to be entered of record, and except where otherwise expressly de-
6 clared.

2 SEC. 4121. Unless the terms clear days are used, the mode of computing
3 time is by excluding the first day and including the last, and should the last
4 day fall on Sunday, the length of the time prescribed shall be extended
5 one day, so as to include the whole of the following Monday, unless other-
6 wise expressed.

2 SEC. 4122. An action for the recovery of money in the meaning of this
3 code, includes an action for the recovery of damages, as well as of money
4 due by contract.

2 SEC. 4123. The word "clerk" means the clerk of the court in which the
3 action is brought or is pending, or in which the proceeding is had; and the
4 words "clerk's office," mean his office.

2 SEC. 4124. Degrees of affinity and consanguinity in this act, shall be
3 computed by the civil law.

2 SEC. 4125. The ministerial officer whose duty it is to take a surety in any
3 bond provided for this code, shall have the right to require the person offered
4 as surety to make affidavit of his qualification, which affidavit may be made
5 before such officer. The taking of such an affidavit shall not exempt the
6 officer from any liability to which he might otherwise be subject, for taking
7 insufficient security.

2 SEC. 4126. The surety in every bond provided for by this code, must be
3 a resident of this state, and worth double the sum to be secured, beyond the
4 amount of his debts, and have property liable to execution in this state
5 equal to the sum to be secured. Where there are two or more sureties in
6 the same bond, they must, in the aggregate, have the qualification pre-
7 scribed in this section.

2 SEC. 4127. No action to obtain a discovery shall be brought, except that
3 where any person or corporation is liable, either jointly or severally with
4 others, by the same contract, an action may be brought against any of the
5 parties who are liable to obtain discovery of the names and residences of the
6 others who are liable. In such action, the plaintiff shall state in his petition, in
7 effect, that he has used due diligence, without success, to obtain the informa-
8 tion asked to be discovered, and that he does not believe the parties to the con-
9 tract, who are known to him, have property sufficient to satisfy his claim.
10 The petition shall be verified as other petitions, and the cost of such action
shall be paid by the plaintiff, unless the discovery be resisted.

2 SEC. 4128. Successive actions may be maintained upon the same con-
3 tract or transaction, whenever, after the former action, a new cause of action
4 has arisen therefrom.

2 SEC. 4128. In an action where an attachment has been granted, the exe-
3 cution by or for the defendant, of a bond whereby the attachment is dis-
4 charged, or the possession of the attached property is obtained or retained
5 by him, shall be an appearance of such defendant in the action.

2 SEC. 4130. In an action against a boat or raft, the execution by or for
3 the defendant of a bond whereby the attachment is discharged or the pos-
4 session of the boat or raft is obtained or retained by him, shall be an appear-
5 ance of such owner as a defendant in the action.

CHAPTER 162. *Compensation of Officers.*

OF STATE OFFICERS.

- SECTION 1. (Chap. 112, 13th G. A.) The salary of the governor shall be three thousand dollars per annum.
- 2
3 2. [Chap. 112, 13th G. A.] The salary of the private secretary of the
4 governor shall be twelve hundred dollars per annum.
- 5 3. [Chap. 112, 13th G. A.] The salary of the secretary of state shall
6 be twenty-two hundred dollars per annum.
- 7 4. [Chap. 112, 13th G. A.] The salary of the deputy secretary of state
8 shall be twelve hundred dollars per annum.
- 9 5. The secretary of state shall charge and receive the following fees in
10 addition to his salary:
11 (Revision, 4133, and joint resolution No. 21, 12th G. A.) For each
12 commission to commissioners in other states, three dollars.
13 For each commission to notaries public, one dollar and twenty-five
14 cents.
15 For certificate, with seal attached, one dollar.
16 For a copy of any law or record, upon the request of any private
17 person or company, for every one hundred words, ten cents.
18 For recording articles of incorporation, other than those of a public
19 character, for every one hundred words, ten cents.
- 20 6. [Chap. 112, 13th G. A.] The salary of the auditor of state shall be
21 twenty-two hundred dollars per annum.
- 22 7. [Chap. 112, 13th G. A.] The salary of the deputy auditor of state
23 shall be twelve hundred dollars per annum.
- 24 8. The auditor of state shall charge and receive fees in addition to his
25 salary as provided in chapters on insurance.
- 26 9. [Chap. 112, 13th G. A.] The salary of the treasurer of state shall be
27 twenty-two hundred dollars per annum.
- 28 10. [Chap. 112, 13th G. A.] The salary of the deputy treasurer of state
29 shall be twelve hundred dollars per annum.
- 30 11. [Chap. 112, 13th G. A.] The salary of the register of the state land
31 office shall be twenty-two hundred dollars per annum.
- 32 12. [Chap. 112, 13th G. A.] The salary of the deputy register of the
33 state land office shall be twelve hundred dollars per annum.
- 34 14. (Chap. 112, 13th G. G. A.) The salary of the Superintendent of
35 Public Instruction shall be twenty-two hundred dollars per annum.
- 36 15. (Chap. 112, 13th G. A.) The salary of the deputy superintendent of
37 public instruction shall be twelve hundred dollars per annum.

- 38 16. (Same and section 5, chapter 27, 12th G. A.) The salary of
39 each judge of the supreme court shall be three thousand
40 dollars per annum and fifteen cents for each mile traveled to the
41 terms at Davenport and Dubuque to be computed by the nearest
42 practicable route.
- 43 17. (Chap. 57, 11 G. A.) The salary of the attorney-general shall be
44 fifteen hundred dollars per annum.
- 45 18. (Chap. 53, 12, G. A.) Whenever the attorney-general is required by the
46 duties of his office or by direction of the governor or general assembly
47 to attend any of the courts of this State or any of the federal courts
48 of this or any other state, other than the supreme court when held
49 at the capital, he shall receive five dollars for each day he actually at
50 tends the sessions of such courts in addition to his salary.
- 51 19. The attorney-general shall in addition to his salary be entitled to
52 charge and receive such fees as are allowed him by provisions of
53 chapters—(on insurance.)
- 54 20. [Revision 2645—and sec 5 chap. 27, 12 G. A.] The clerk of the
55 supreme court shall receive five dollars for every day of the ses-
56 sion of such court at Davenport and Dubuque.
- 57 21. [Revision, 4134.] The clerk of the supreme court may take and
58 receive fees as follows:
59 Upon filing each appeal, three dollars.
60 Upon entering each judgment where the cause has been decided
61 on its merits, two dollars.
62 Upon each continuance, one dollar.
63 Upon issuing each execution, one dollar and twenty-five cents.
64 Upon entering satisfaction of each judgment, fifty cents.
65 Upon issuing each writ, will, or order to be served upon any
66 person not in court, twenty five cents.
67 For copying an opinion to be transmitted to an inferior court upon
68 the reversal of a judgment or order to be paid by the party against
69 whom the costs are adjudged, or for a copy of such opinion or any
70 record made at the request of any person, for each hundred words,
71 ten cents.
72 For recording the opinions of the court, eight cents per hundred
73 words.
- 74 22. [Revision 4135]—Such clerk shall charge no fees in criminal cases
75 against the county or state except where a judgment is reversed
76 he shall be entitled to fees for a copy of the decision and opin-
77 ion of the court to be paid by the county as against the accused
78 he is entitled to the same fees as are allowed in civil cases.
- 79 23. [Revision 4134]—If any of the foregoing fees of the clerk are not
80 paid in advance, execution may issue therefor except where the fees
81 are payable by a county or the state.
- 82 24. [Section 5, chapter 22, 10 G. A., and chapter 52, 12 G. A.]—The su-
83 preme court reporter shall receive five dollars for each day he act-
84 ually attends the sessions of such court at Davenport and DuBuque-
85 to be paid by the Treasurer of State.
- 86 25. (Ch. 112, 13th G. A.) The salary of each judge of the district
87 court shall be twenty-two hundred dollars per annum.
- 88 27. Ch. 112, 13th G. A. The salary of each judge of the circuit court
89 shall be eighteen hundred dollars per annum.

- 90 28. (Ch. 112, 13th G. A.) During the term for which any judge may
 91 have been elected or appointed their salaries shall not be increased
 92 by the operation of this chapter, except that any judge elected to fill
 93 a vacancy shall receive a salary as herein provided.
- 94 29. (Ch. 38, 10th, G. A.) The salary of the district attorneys shall
 95 be six hundred dollars per annum.
- 96 30. Ch. 30, 10th G. A. The district attorneys shall recover fees in
 97 addition to the salary as follows:
 98 For each conviction on a plea of guilty five dollars.
 99 For each payment in cases of misdemeanor five dollars.
 100 For each jury trial in cases of felony, ten dollars.
 101 For each judgment for costs only, five dollars.
 102 For all fines and forfeitures actually collected by him ten per
 103 cent upon all sums of two hundred dollars and less, and one per
 104 cent upon all sums in excess of two hundred dollars.
 105 The aforesaid fees shall be audited and paid like other claims against
 106 the county.
- 107 31. (Ch. 17, 10th G. A.) The salary of the adjutant-general shall be
 108 two thousand dollars per annum.
- 109 32. (Ch. 112, 13th G. A.) The salaries of all the officers mentioned
 110 in the preceding sections shall be paid in monthly installments at
 111 end of each month, and shall be in full compensation for all services
 112 except as otherwise provided in this chapter.
- 113 33. (Ch. 112, 13th G. A.) The Secretary of State, Auditor of State,
 114 Register of the State Land Office shall keep an accurate and partic-
 115 ular account of all fees received by them, which account shall be
 116 verified and rendered monthly to the Treasurer of State, and shall
 117 pay the amounts thus received to such Treasurer at the close of
 118 each month.

OF COUNTY OFFICERS.

- 119 34. (Revision 430, and Chap. 1, 8th G. A.—extra.) The clerk of the
 120 circuit court shall be entitled to charge and receive the following
 121 fees:
 122 For issuing marriage licenses, one dollar.
 123 For filing any petition, appeal, and docketing the appeal on the
 124 appearance docket, one dollar and fifty cents.
 125 For every writ of attachment, fifty cents.
 126 Where a case is tried by jury, a trial fee of one dollar and fifty cents.
 127 When tried by the court, seventy-five cents.
 128 Trial fee in equity causes when contested, one dollar and fifty cents.
 129 When not contested, seventy-five cents.
 130 For writs of injunction, one dollar.
 131 For all continuances on the application of a party by affidavit, fifty
 132 cents.
 133 When contested by consent or otherwise, fifteen cents.
 134 For entering any final judgment or decree, seventy-five cents.
 135 Taxing costs, fifty cents.
 136 For issuing execution or other process after judgment and decree,
 137 fifty cents.

- 188 For certificate and seal, fifty cents.
- 139 For filing and docketing transcript of judgment from another county
140 or of a justice of the peace, fifty cents.
- 141 Entering any rule or order, twenty-five cents.
- 142 Issuing writ of order, fifty cents.
- 143 Issuing commission to take depositions, fifty cents.
- 144 Entering sheriff's sale of real estate, fifty cents.
- 145 Entering judgment by confession, one dollar.
- 146 Entering satisfaction of any judgment, twenty-five cents.
- 147 For all copies of records or papers filed in his office, transcripts, and
148 making complete record, ten cents for each hundred words.
- 149 For taking and approving a bond and sureties thereon, fifty cents.
- 150 For declaration of intentions by an alien to become a citizen, twenty-
151 five cents.
- 152 For all services on naturalization of aliens, including oaths and certi-
153 ficate, fifty cents.
- 154 In criminal cases and in all causes in which the state or county is
155 a party plaintiff, the same fees for same services as in suits be-
156 tween private parties. When judgment is rendered against the
157 defendant the fees shall be collected from such defendant. Where
158 the state fails the clerks fees shall be paid by the county.
- 159 For making out transcripts in criminal cases appealed to the supreme
160 court when the defendant is unable to pay for each one hundred
161 words ten cents to be paid by the county.
- 162 35. (10th G. A. ch. 88.) The clerks of the district court shall certify
163 under the seal of such court to all applications and other papers re-
164 quiring the certificate and seal of a court of record to procure
165 pensions, bounties and back pay for soldiers or other persons en-
166 titled thereto, whenever requested by the applicant, his agent, or
167 attorney, and such clerk shall be entitled to the sum of ten cents
168 only for such services.
- 169 36. (Sec. 1, ch. 134, 12th G. A.) There shall be such compensation
170 paid such clerk for his services in probate matters out of the fees
171 collected by him for probate business as the board of supervisors
172 may allow.
- 173 37. (Revision, Sec. 432, and ch. 68, 10th G. A.) The total amount
174 of compensation of such clerk for all official services shall not
175 exceed the sum of two thousand dollars in any one year, except that
176 in each county having two county seats such compensation, includ-
177 ing the amount paid to deputies, shall not exceed three thousand
178 dollars in any one year, and if the fees received by said clerk
179 shall amount in the aggregate to more than the sum above stated
180 for any one year the excess shall be paid into the county treasury.
181 In case the amount of fees so received by such clerk is deemed an
182 inadequate compensation, such board of supervisors may allow
183 such additional compensation as they deem best and proper.
- 184 38. (Revision, Sec. 433.) The necessary office room, books, stationery,
185 fuel and lights for the use of such clerk, shall be furnished at the
186 expense of the county.
- 187 39. (Revision, 431.) Such clerk shall report to the board of supervisors
188 of his county at each regular session a full and complete state-
189 ment of the amount of fees received by him, which shall be sworn
190 to by such clerk.

- 191 40. (Revision, 353.) The clerks of the district and circuit courts shall
 192 pay into the county treasury all money received for witness fees
 193 and remaining unclaimed in his office for six months after the
 194 receipt of the same.
- 195 41. (Revision, 354.) The clerk shall at the time of making such payment
 196 deliver to the treasurer a statement of the case, and the names of
 197 the witnesses, and the amount each one is entitled to receive.
- 198 42. [Revision, 355.] The money paid into the county treasury by virtue
 199 of this act, shall be paid by the treasurer to the person entitled
 200 to receive the same upon the certificate of the clerk of the district
 201 court.
- 202 43. [Revision, 356.] The treasurer of said county shall keep the money
 203 thus received by him separate from the general fund of the county,
 204 and shall deliver the same to the person or persons to whom
 205 the same may be paid.
- 206 44. [Chap. 137, 9th G. A., and Secs. 1 and 2, Chap. 71, 9th G. A.]
 207 There shall be paid to such clerk fees in probate matters as follows:
 208 Granting letters of administration, or appointing a guardian, fifty
 209 cents.
 210 When the same is contested, one dollar.
 211 Granting probate of will, one dollar.
 212 When the same is contested, two dollars.
 213 For executor's bond, and approving same, seventy-five cents.
 214 Commission to executors or guardians, fifty cents.
 215 Disallowance of application for letters of administration for letters of
 216 administration or probate of will, to be paid by losing party, one
 217 dollar.
 218 Commission to appraisers of personal and real property, fifty cents.
 219 Approving report of appraisers, or examining and allowing inventory,
 220 for first page, twenty-five cents.
 221 Each succeeding page, ten cents.
 222 Order for sale of real or personal property, fifty cents.
 223 Allowing claim against estate, ten cents.
 224 For same when contested, each day, two dollars.
 225 Examining and allowing executor's report, for first page, fifty cents.
 226 Each succeeding page, ten cents.
 227 Apportioning an insolvent estate among creditors, one dollar.
 228 Decree for settlement or an estate, fifty cents.
 229 Order of distribution, fifty cents.
 230 Approving executor's or guardian's deed, fifty cents.
 231 For taking affidavit, twenty-five cents.
 232 Any writ or process under seal, twenty-five cents.
 233 Commission to referees to assign dower, one dollar.
 234 Assignment of dower, one dollar and fifty cents.
 235 For every continuance, twenty-five cents.
 236 For certificate and seal, thirty-five cents.
 237 Filing each paper, five cents.
 238 For making complete record, and recording all papers required by
 239 law to be recorded, for every one hundred words, ten cents.
 240 For making the following entries in a probate record book, in each
 241 case, fifty cents:
 242 1. The name of each person deceased in the county who, at his
 243 death, owned any real estate.

- 244 2. The names of the widow and heirs at law of such deceased, and
 245 their ages and place of residence.
 246 3. Any real estate sold by order of the court, of such deceased, it
 247 shall be noted in such book with a reference to the book, where a
 248 complete record thereof can be found.
 249 A citation, or summons, for the first person named therein, twenty-
 250 five cents.
 251 Each additional person, ten cents.
 252 When a translation of any will or other instrument is required, for
 253 each one hundred words, fifteen cents.
 254 Issuing subpoenas in any case, ten cents.
 255 45. [Sec. 15, ch. 86, 12th G. A.] All fees for probate business shall be
 256 paid into the county treasury.
 257 46. (Revision 4143.) The recorder shall be entitled to charge and recover
 258 the following fees:
 259 For recording each deed, mortgage, or other written instrument con-
 260 taining not more than four hundred words, fifty cents.
 271 For every additional one hundred words or fraction thereof, ten
 262 cents.
 263 47. (Sec. 6, ch. 129, 10th G. A., ch. 75, 11th G. A., and ch. 166, 13th G.
 264 A.) Each county treasurer shall receive for his services the following
 265 compensation: First two per cent. of all sums collected by him as
 266 taxes due any incorporated town, or city, to be paid out of such
 267 moneys. Second. Three per cent. of all taxes collected by him
 268 for all other tax funds to be paid out of the county treasury.
 269 Third. All fees allowed exclusive of his salary. Fourth. Such
 270 additional compensation as the board of supervisors shall deem
 271 proper. When the aggregate amount of the compensation au-
 272 thorized by this section exceeds fifteen hundred dollars, the excess
 273 shall be paid into the county treasury for the use of the county, ex-
 274 cept that in counties having two county seats, such aggregate com-
 275 pensation shall not exceed two thousand dollars. But the com-
 276 pensation for the clerks necessary for the proper transaction of
 277 business shall be paid by the county.
 278 48. (Sec. 3 and 6, ch. 160, 12th G. A., sec. 4, ch. 18, G. A. extra, sec. 3,
 279 ch. 25, 9th G. A.) The county auditor shall be entitled to charge
 280 and receive the following fees:
 281 For transfers of real property made on the transfer books for each
 282 deed, twenty-five cents.
 283 For recording each bond of officers required by him to be recorded
 284 fifty cents.
 285 For issuing certificate of redemption of lands sold for taxes, twenty-
 286 five cents.
 287 The amount of fees received by the auditor shall be reported by him
 288 to the board of supervisors at each regular session, and shall be
 289 sworn to by him.
 290 49. The board of supervisors shall allow the auditor such additional com-
 291 pensation as they deem just and proper.
 292 50. (Revision, 4145.) The sheriff is entitled to charge and receive the fol-
 293 lowing fees:
 294 For serving any writ or notice (not including subpoenas) and making
 295 return thereof, for the first person served, fifty cents.
 296 For each additional person, twenty-five cents.

297	For each copy of such writ or notice when required for each hundred words, ten cents.
298	
299	For serving writ and calling to his aid, when necessary to serve such writ the power of the county, one dollar and fifty cents.
300	
301	Each commitment to prison, twenty-five cents.
302	Discharge from same, twenty-five cents.
303	Attending with a person before a court or judge when required, not at a regular term in his county, for each day, besides mileage, one dollar.
304	
305	
306	Copy of a paper required by law, for each hundred words, ten cents.
307	
308	For serving and returning subpoena for each person, twenty cents.
309	Calling a jury in each case, ten cents.
310	Summoning a grand or petit jury, for each panel including mileage (to be paid out of the county treasury) eight dollars.
311	
312	Traveling fees in other cases required by law, going and returning per mile, five cents.
313	
314	Selling land or other property on execution, for each day, one dollar.
315	
316	Making and executing a deed for land sold on execution, one dollar.
317	Serving one person with an order of court, besides mileage, fifty cents.
318	
319	For each additional person in the same order, twenty-five cents.
320	Summoning a jury in cases of forcible entry and detainer, besides mileage, one dollar and fifty cents.
321	
322	Serving an execution or order for the partition of real estate or assignment of dower, besides mileage, two dollars.
323	
324	For taking each bond required by law, twenty-five cents.
325	For summoning a jury to assess the damages to the owner of lands taken for any work of internal improvement, and attending upon them, five dollars.
326	
327	
328	If such case occupies more than one day, for each additional day or fraction thereof, one dollar and fifty cents.
329	
330	For serving each writ of attachment, one dollar.
331	For the time necessarily employed in making an inventory of property attached or levied upon per day, one dollar.
332	
333	For collecting and paying over money on the first two hundred dollars, or part thereof, three per cent.
334	
335	On the next three hundred dollars, or part thereof, two per cent.
336	And on all excess over five hundred dollars, one per cent.
337	But where property is purchased by the plaintiff in execution, one half of the above rates.
338	
339	For returning a writ not served, five cents.
340	For receiving a prisoner on surrender by bail, twenty-five cents.
341	For taking new bail or bond, twenty-five cents.
342	For dieting a prisoner for each day, fifty cents.
343	[Ch. 52, 9 G. A.] For conveying a convict to the penitentiary, and as full compensation therefor, sixteen cents for each mile travelled, to be computed from the county seat where the conviction took place by the most direct route of travel.
344	
345	
346	
347	For each additional convict in case there be more than one, five cents for each mile computed in the same manner.
348	
349	The last two items to be paid out of the county treasury.

- 350 (Chap. 152, 13th G. A.) The sheriff is also entitled for delivering
 351 notices, including mileage, and for other services for which no com-
 352 pensation is allowed by law, such annual salary not less than fifty
 353 nor more than one hundred and twenty dollars, as may be allow-
 354 ed by the board of supervisors.
- 355 51. (Revision 4146.) In all criminal cases where the prosecution fails,
 356 or where the money cannot be made from the person liable to pay
 357 the same, the facts being certified to by the clerk as far as his
 358 knowledge extends and sworn to by the sheriff the fees allowed
 359 by law shall be paid out of the county treasury.
- 360 52. The coroner shall be entitled to the following fees:
 361 (Revision 4148.) For a view of each body and for taking and re-
 362 turning the inquest, five dollars.
 363 For a view of each body and for examination without inquest, three
 364 dollars.
 365 For issuing subpoena, warrant, or order for a jury, twenty-five cents.
 366 For each mile traveled to and returning from an examination or in-
 367 quest, ten cents.
 368 Which shall be paid out of the county treasury where they can not
 369 be obtained from the estate of the deceased.
 370 For all other services, the same fees as are allowed to sheriffs in sim-
 371 ilar cases.
- 372 53. (Revision 4155, and ch. 109, 11th G. A.) The county surveyor
 373 shall be entitled to charge fee as follows:
 374 For each days' service actually performed in traveling to and from
 375 the place where the survey is to be made, making survey and re-
 376 turn, four dollars.
 377 For certified copy of the plat or field notes, twenty-five cents.
- 378 54. (Revision 4151.) Notaries Public shall be entitled to charge as fol-
 379 lows:
 380 For every protest of a bill or note, seventy-five cents.
 381 Noting a bill of exchange for non-acceptance or non-payment, twen-
 382 ty-five cents.
 383 Notarial affidavit to an account under seal, twenty-five cents.
 384 Registering protest of a bill of exchange or promissory note for non-
 385 acceptance or non-payment, fifty cents.
 386 Certifying power of attorney, twenty-five cents.
 387 Administering any oath, five cents.
 388 Being present at demand, tender, or deposit, and noting the same,
 389 thirty-five cents.
 390 Other services, the same fees as are allowed to other officers for like
 391 services.
- 392 55. (Revision 4152.) Justices of the Peace shall be entitled to the fol-
 393 lowing fees:
 394 At the commencement of each suit, fifty cents.
 395 In case of an attachment or forcible entry and detainer, one dollar.
 396 On taking judgment by confession after suit is commenced, fifty
 397 cents.
 398 If not on suit previously brought, one dollar.
 399 On submitting controversies without action, the same fees as on suit
 400 brought.
 401 The following additional fees are allowed in the cases to which they
 402 apply:
 403 On entering judgment when not contested, fifty cents.

- 404 If contested, one dollar.
 405 If jury is called, additional, one dollar.
 406 On issuing execution (for issuing as well as for return and entering
 407 satisfaction,) fifty cents.
 408 When any cause consumes more than one entire day of six hours the
 409 justice is entitled to one dollar for each day or fraction of a day
 410 thereafter, in addition.
 411 On all money coming into the justice's hands without suit, and by
 412 him actually paid over, two per cent. shall be allowed.
 413 For every continuance of a cause at the request of either party, fifty
 414 cents.
 415 Making and certifying transcript, fifty cents.
 416 On setting aside a judgment by default, fifty cents.
 417 And in criminal cases: For process of any kind except subpoenas,
 418 fifty cents.
 419 Entering judgment, fifty cents.
 420 Taking bond, twenty-five cents.
 421 Order of discharge to jailor, twenty-five cents.
 422 [Section 5, Ch. 1, 8 G. A. In any pendency examination] or
 423 trial of a criminal prosecution for each day of six hours actually
 424 employed, one dollar.
 425 56. [Ch. 5, 8 G. A. In all cases where the prosecution fails or where
 426 the fees cannot be made on same execution against the defendant,
 427 the same shall be paid by the county except in cases where the
 428 costs are taxed to the private prosecutor, and are paid by or can
 429 be made on execution, against him.
 430 57. [Revision 351—Any witness fees which may be received by justices of
 431 the peace for witnesses appearing before them, which shall not have
 432 been called within one year after the date of collection, shall be paid
 433 into the county treasury for the use of the county, accompanied
 434 with a statement of the amount due each witness, but the witness
 435 entitled to such fees, shall receive the same from the county
 436 treasury, upon a certificate from the justice of the peace before
 437 whom he may have appeared as such witness, or his successor in
 438 office, that he is entitled to such fees, and the amount of the same,
 439 and any person or officer paying any sum of money in the county
 440 treasury under the provisions of this act shall take duplicate re-
 441 cepts from the treasurer therefor, one of which he shall file with
 442 the county auditor, who shall charge the amount thereof to the
 443 treasurer as so much county revenue.
 444 58. [Revision 352—Any failure to pay over to the county treasurer wit-
 445 ness fees, as contemplated by this chapter, shall subject the offen-
 446 der to all the pains and penalties of an act entitled an act defining
 447 the crime and punishing the offense of making false entries of
 448 fines and fees of docket of courts or otherwise, and of failing or
 449 neglecting to pay over such fines or fees according to law.
 450 Constables are entitled to charge fees as follows:
 451 59. [Revision 4149.] For serving notice or process, on each person
 452 named therein, twenty-five cents.
 453 Copy thereof, when required, ten cents.
 454 For serving an attachment or writ of replevin, fifty cents.
 455 Travelling fees, going or returning, per mile, five cents.
 456 Summoning a jury (including mileage), fifty cents.

- 457 Attending same on trial, twenty-five cents.
 458 Serving execution [besides mileage], twenty five cents.
 459 Advertising and selling property [besides mileage], fifty cents.
 460 Advertising without selling, twenty-five cents.
 461 Notifying plaintiff of the time of such sale [besides mileage,] unless
 462 he waives such notice, twenty cents.
 463 Return of execution when no levy is made, five cents.
 464 On taking bond in any case, twenty five cents.
 465 On all sums collected on execution and paid over, four per cent.
 466 Serving Subpœna [besides mileage], fifteen cents.
 467 Posting up each notice required by law [besides mileage], fifteen
 468 cents.
 469 Commitment to prison [besides mileage], twenty-five cents.
 470 60. [Revision 4150—The fees of a constable for services in criminal cases
 471 where the prosecution fails, or when the money can not be made
 472 from the person liable to pay the same, the facts being certified by
 473 the justice and sworn to by the constable, shall be allowed and
 474 paid out of the county treasury.

Of Jurors and Witnesses.

- 475 61. [Chapter 92, 10 G. A.]—Grand and petit jurors in the district or
 476 circuit court shall be entitled to the fees as follows:
 477 For each day's service or attendance as a juror, two dollars.
 478 If not a talesman, ten cents for each mile travelled from his place of
 479 residence to the county seat.
 480 [Ch. 15, 9 G. A.]—A talesman serving as a petit juror for each
 481 jury trial, fifty cents.
 482 [Revision 4154.]—If such trial occupies more than one day he shall
 483 be entitled to the same per diem as regular jurors.
 484 Persons before justices of the peace for each day's attendance
 485 62. (Ch. 15, 9th G. A.) For every case tried in a court of record by
 486 jury there shall be taxed as a part of the costs as a jury fee, the
 487 sum of six dollars, which shall be collected as other costs and paid
 488 into the county treasury by the clerk, who shall report the same
 489 to the board of supervisors at each regular session thereof, who
 490 shall cause the same to be charged to the treasurer.
 491 63. (Revision, Sec. 4153.) Each witness for attending the district or cir-
 492 cuit court each day is entitled to one dollar.
 493 Before a justice of the peace, fifty cents.
 494 Mileage for actual travel per mile each way, five cents.
 495 An attorney, juror, or officer, who is in habitual attendance on the
 496 court for the term at which he is examined as a witness shall be
 497 entitled to but one day's attendance.
 498 The court may disallow any witness not sworn or whose testimony
 499 was not important or necessary.
 500 For attending before a grand or petit jury in criminal cases, the
 501 fees above provided for attending the district court, and when they
 502 are called in behalf of the prosecution of the same, shall be paid

- 503 by the county upon the certificate of the clerk showing the
 504 amount of the services to which they are entitled.
 505 64. (Ch. 165, 9th G. A.) When the county or any party has paid the
 506 fees of any witness, and the same is afterward collected from the
 507 adverse party, the person or county so paying the same, shall,
 508 upon the production of the receipt of such witness, or other sat-
 509 isfactory evidence, be entitled to such fee whether in the hands
 510 of the justice or clerk, or has been paid into the county treasury.

Township Officers.

- 511 65. (Revision, Sec. 4156, and Chap. 90, 9th G. A.) The township
 512 trustees and clerk shall be allowed at the rate of one dollar for
 513 every six hours necessarily engaged in official services to be paid
 514 out of the county treasury. But when serving as fence viewers,
 515 they must be paid by the parties interested.
 516 66. (Sec. 3, ch. 173, 9th G. A.) Each assessor shall be entitled to one
 517 dollar and fifty cents for each day he shall be faithfully employed
 518 in discharging the duties of his office, to be paid out of the
 519 county treasury.

Miscellaneous.

- 520 67. (Revision, Sec. 4131.) No officer shall be allowed fees or other
 521 compensation for any services farther than is expressly permitted
 522 by law.
 523 68. (Revision, Sec. 4132.) Any officer legally called upon to perform
 524 any of the following services in cases where no fees have been
 525 fixed for such services in this chapter, shall be entitled to com-
 526 pensation as follows:
 527 For drawing and certifying an affidavit, or giving a certificate not
 528 attached to any other paper or document, twenty-five cents.
 529 For affixing his official seal to any paper, whether the certificate
 530 be under seal or not, thirty five cents.
 531 For making out a copy or transcript of any public papers or
 532 records under his control for the use of a private individual or
 533 company, or recording articles of incorporation, for every one
 534 hundred words, ten cents.
 535 69. (Revision, 2645.) The sheriff, for attendance on the supreme court,
 536 shall receive, for each day, two dollars, to be paid out of the con-
 537 tingent fund of the court.

In Matter of Estrays.

- 538 70. (Secs. 10, 14, 15, ch. 102, 9th G. A.) The public printer shall receive
 539 for each notice published such sum as may be fixed in a contract

540 with the secretary of state, not, however, exceeding thirty cents
 541 for each insertion ; and when the appraised value of the estray
 542 exceeds ten dollars, the finder shall pay the justice a sum suffi-
 543 cient to pay the clerk's fee, postage, and the cost of publishing
 544 such notice. If more than one animal is taken up at the same
 545 time, they shall be included in one entry and advertisement, and
 546 no additional fees shall be required or allowed in such case. The
 547 person taking up the stray shall be allowed—
 548 (Secs. 22 and 23, ch. 102, 9th G. A.) For every horse or mule, fifty
 549 cents.
 550 For every head of neat cattle, twenty-five cents.
 551 For all other kinds of animals, fifteen cents.
 552 For appointing the appraisers, making the necessary entry, certificate
 553 and return, the justice shall receive fifty cents.
 554 The appraisers, each, twenty-five cents.
 555 For recording stray notice, and forwarding copy to printer, the
 556 clerk shall receive twenty-five cents.
 557 The printer of the county paper, for publishing the notice, shall re-
 558 ceive the price of his published or ordinary advertising rates.

559 *In Road Matters.*

- 560 71. (Revision 839, 872 and 877.) The following fees shall be paid per-
 561 sons engaged in laying out and changing roads:
 562 Commissioners for each day, two dollars.
 563 Surveyor for each day, three dollars.
 564 Chain carriers, markers and other assistants, for each day, one dol-
 565 lar and fifty cents.
 566 If the road extends into more than one county, such expenses when
 567 so adjudged shall be paid by the several counties in proportion to
 568 the length of time occupied on the road in each county.
 569 72. (Chapt 175, 13th G. A.) Where an arrest is made in a criminal pro-
 570 ceeding by virtue of a warrant issued by any court or magistrate,
 571 or where it is required that a prisoner shall be taken to a place out
 572 of the county where the arrest is made, or from a place in such
 573 county distant from the jail, the officer making the arrest or hav-
 574 ing such prisoner in charge, in addition to the other fees allowed
 575 by law, shall be allowed two dollars and fifty cents for carriage
 576 hire for each day of over not six hours for such carriages as are
 577 necessary and actually used, which shall be paid in the same man-
 578 ner as other fees of such officers in criminal cases.
 579 73. (Sec. 1, chap. 66, 9th G. A.) Officers who may serve any warrant
 580 or other process charging the commission of a public offense, shall
 581 be paid in the first instance out of the county treasury, where
 582 such warrant or process is returnable.
 583 74. (Sec. 2, chap. 66, 9th G. A.) Where costs are paid by a county
 584 other than the one where the offense was committed, the amount
 585 of such costs shall be deemed a charge in favor of such county,
 586 and against the one in which the offense was committed, and may
 587 be recovered by action in any court having jurisdiction.

- 588 75. (Chap. 141, 12th G. A.) In all criminal cases, where the prosecution fails, or where the defendant being convicted is insolvent, the
589 fees of such witnesses for the defense as the court after trying the
590 case shall determine to be material, and the fees of the jury before
591 a justice or other magistrate shall be paid by the county.
592
- 593 76. (Revision, 4168) An attorney appointed by a court to defend a
594 person indicted for any offense is entitled to receive from the
595 county treasury one of the following fees :
596 For a case of murder, twenty-five dollars.
597 For felony, ten dollars.
598 For misdemeanor, five dollars.
599
- 600 77. (Revision, 4169) An attorney can not in such case be compelled to
601 follow a case to another county or into the supreme court, and if
602 he does so may recover an enlarged compensation to be graduated
603 on a scale corresponding to the prices above allowed.
604
- 605 78. (Revision, 4170) Only one attorney in any one case shall receive
606 the compensation above contemplated, nor is he entitled to this
607 compensation until he files his affidavit that he has not directly or
608 indirectly received any compensation for such services from any
609 source.
610
- 611 79. (Revision, 4158.) Every appraiser of property is entitled to fifty
612 cents for each day or fraction thereof during which he is employed
613 as such, except when a different compensation is provided.
614
- 615 80. (Revision, 4159) Any person authorized to marry is entitled to charge
616 two dollars for officiating in each case, and making return there-
617 of.
618
- 619 81. (Revision, 4160.) Any officer or person taking depositions is author-
620 ized to charge therefor at the rate of ten cents per hundred words,
621 exclusive of the certificate.
622
- 623 82. (Revision, 4157.) Every person charging fees shall, if required by
624 the person paying them, give him a receipt therefor, setting forth
625 the items, and the date of each.
626
- 627 83. [Revision 4161]. Where fees are charged against the county as
628 hereinbefore provided in certain cases, their correctness and the
629 actual rendition of the services for which they are charged must
630 be sworn to.
631
- 632 84. [Revision 4164]. Where no other provision is made on the subject,
633 the party requiring any service shall pay the fees therefor upon
634 the same being rendered, and a bill of particulars being presented
635 if required.
636
- 637 85. [Revision 4165]. In all cases where an officer in the discharge of
638 his duty is required to set up an advertisement, he shall, when not
639 otherwise provided, be allowed twenty-five cents, and if an adver-
640 tisement is required to be published in a newspaper, the money
641 therefor shall be paid by the party, and may be taxed in the bill
642 of costs.
- 635 86. [Revision 4166]. Every officer entitled to fees shall keep posted up
636 in his office a fair table thereof on pain of forfeiture of two dollars
637 per day, for the benefit of the county, for each day he fails to keep
638 such table of fees thus posted up.
639
- 640 87. [Revision 4167]. Any officer who willfully takes higher or other
641 fees than are allowed by law, is guilty of a misdemeanor, and
642 may be fined therefor a sum not less than ten nor more than fifty
dollars.

CHAPTER 163. *Applications, Restrictions and Qualifications of part of this Act—Time when it takes Effect, and what it Repeals.*

2 SEC. 4172. Actions and special proceedings already commenced, shall be
3 continued in accordance with the law heretofore in force, except as in the
4 provisions of chapter 159.

2 SEC. 4173. The rules of proceeding prescribed for civil actions by ordi-
3 nary proceedings in the district court, shall be followed in all proceedings of
4 a special character, whether before the district court or any other tribunal,
5 so far as applicable, and not otherwise regulated.

2 SEC. 4174. The rules of proceeding prescribed in this act, for the com-
3 mencement and conduct of civil actions, by ordinary proceedings in the dis-
4 trict court, shall be followed in every particular, in all actions and in all pro-
5 ceedings of a special character, unless it is declared that the same shall be
6 prosecuted by equitable proceedings, or unless in the provisions concerning
7 such action or special proceeding it is expressly otherwise provided, and
8 when it is provided that any action or special proceeding shall be prosecuted
9 by equitable proceedings, the same shall not differ in the mode of procedure
10 from an action by ordinary proceedings, except as such distinction may in
11 this act be made, or may be in such action or proceeding itself provided,
12 and the general principles of procedure herein enacted are applied and re-
stricted as follows:

2 SEC. 4175. In replevin there shall be no joinder of any but another cause
3 of replevin; nor shall there be allowed any set-off, counter-claim, or cross-
4 demand.

2 SEC. 4176. A money judgment obtained in replevin for property, which
3 property was in whole or part exempt from execution, shall also be to the
4 same extent exempt from execution to the party obtaining it, and from all
5 set-off or diminution, either by the party against whom the same is, or by
6 any other person, and where the facts are so and the party desires it, the
7 the record shall state the facts of such total or partial exemption; and all the
8 provisions of this and the preceding section shall also obtain as to the action
9 of detinue.

2 SEC. 4177. All actions for the recovery of real property shall be by ordi-
3 nary proceedings. There shall be no joinder, except as therein contempla-
4 ted, and of a like action. There shall be no set-off, counter-claim or cross-
5 demand, by ordinary proceedings, except as provided therein.

2 SEC. 4178. The action of partition shall be prosecuted by ordinary pro-
3 ceedings. No joinder of any other cause shall be allowed therein.

2 SEC. 4179. The action on a note, together with a mortgage or deed of
3 trust, for foreclosure of the same, shall be by equitable proceedings, and
4 tried by the second method of trying equitable actions. An action on the

4 bond or note alone, without regard therein to the mortgage or deed of trust,
5 shall be by ordinary proceedings.

2 SEC. 4180. To an information there shall be no joinder of any other cause
of action, nor any set-off, counter-claim, or cross-demand.

2 SEC. 4181. When the action of *mandamus* is by a private person,
3 there may be joined therewith the injunction of chapter 155, and such
joinder as is provided for in the action of *mandamus*, and no other; but
4 there shall be no set-off, counter-claim, or cross-demand, by ordinary pro-
5 ceedings, and the action shall be by ordinary proceedings.

2 SEC. 4182. No verification shall be required in the answer or reply in
habeas corpus.

2 SEC. 4183. The action for mechanics' lien shall be prosecuted by ordi-
nary proceedings, and therewith shall be no other cause of action joined.

2 SEC. 4184. An action for divorce shall be prosecuted by equitable pro-
ceedings of the second method of trial of equitable actions, and no cause of
3 action, save for alimony, shall be joined therewith.

2 SEC. 4185. Actions by sureties, and by occupying claimants, and on a
lost note or bond, shall be by ordinary proceedings.

THE CODE OF IOWA

AS REPORTED TO THE

FOURTEENTH GENERAL ASSEMBLY

BY THE COMMISSIONERS

FOR

THE REVISION OF THE STATUTES.

PART IV.

OF CRIMES AND PUNISHMENTS, OF PROCEEDINGS IN
CRIMINAL CASES, AND OF PRISONS, THEIR
DISCIPLINE AND GOVERNMENT.

DES MOINES:
G. W. EDWARDS, STATE PRINTER.
1872.

PART IV.

TITLE I.—OF CRIMES AND PUNISHMENTS.

CHAPTER 164.—*Offenses against the Sovereignty of the State.*

SECTION 4188. Whoever is guilty of treason, by levying war against the
2 the state, or adhering to its enemies, giving them aid and comfort, shall be
3 punished with death.

SEC. 4189. If any person have knowledge of the commission of the crime
2 of treason against the state, and conceal the same, and not as soon as may be
3 disclose such offense to the governor or some judge within the state, he is
4 guilty of misprision of treason, and shall be fined not exceeding one thousand
5 dollars or be imprisoned in the penitentiary not exceeding three years nor less
6 than one year.

SEC. 4190. No person can be convicted of the crime of treason unless on
2 the evidence of two witnesses to the same overt act, or on confession in open
3 court.

CHAPTER 165.—*Offenses Against the Lives and Persons of Individuals.*

SECTION 4191. Whoever kills any human being with malice aforethought,
2 either express or implied, is guilty of murder.

SEC. 4192. All murder which is perpetrated by means of poison or lying
2 in wait, or any other kind of willful, deliberate, and premeditated killing, or
3 which is committed in the perpetration or attempt to perpetrate any arson,
4 rape, robbery, mayhem, or burglary, is murder of the first degree, and shall
5 be punished with death.

SEC. 4193. Whoever commits murder otherwise than is set forth in the preceding section, is guilty of murder of the second degree, and shall be punished by imprisonment in the penitentiary for life, or for a term of not less than ten years.

SEC. 4194. Upon the trial of an indictment for murder the jury, if they find the defendant guilty, must inquire, and by their verdict ascertain, whether he be guilty of murder of the first or second degree; but if such defendant be convicted upon his own confession in open court, the court must proceed by the examination of witnesses to determine the degree of murder, and award sentence accordingly.

SEC. 4195. Whoever fights a duel with deadly weapons and inflicts a mortal wound on his antagonist, whereof death ensues, is guilty of murder of the first degree, and shall be punished accordingly.

SEC. 4196. Any person who fights a duel with deadly weapons, or is present at the fighting of such duel as aid, second, or surgeon, or advises, encourages, or promotes such duel, although no homicide ensue, and any person who challenges another to fight a duel, or sends or delivers any verbal or written message purporting or intended to be such challenge, although no duel ensue, shall be fined in a sum not exceeding one thousand dollars nor less than four hundred dollars, and imprisoned in the penitentiary not more than three years nor less than one year.

SEC. 4197. Any person who accepts such challenge, or who consents to act as a second, aid or surgeon on such acceptance, or who advises, encourages, or promotes the same, although no duel ensue, shall be punished as prescribed in the preceding section.

SEC. 4198. If any person post another, or in writing or print use any reproachful or contemptuous language to or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be fined not exceeding three hundred dollars nor less than one hundred dollars, and shall be imprisoned in the county jail not more than six months nor less than two months.

SEC. 4199. Any person guilty of the crime of manslaughter shall be punished by imprisonment in the penitentiary not more than eight years nor less than one year, and by fine not exceeding one thousand dollars nor less than one hundred dollars.

SEC. 4200. If any person, with intent to maim or disfigure, cut or maim the tongue; cut out or destroy an eye; cut, slit, or tear off an ear; cut, slit, bite, or mutilate the nose or lip; or cut off or disable a limb or any member of another person, he shall be punished by imprisonment in the penitentiary not more than five years, and by fine not exceeding one thousand dollars nor less than one hundred dollars.

SEC. 4201. If any person, with force or violence, or by putting in fear, steal and take from the person of another any property that is the subject of larceny, he is guilty of robbery, and shall be punished according to the aggravation of the offense, as is provided in the following two sections.

SEC. 4202. If such offender at the time of such robbery is armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed; or if being so armed he wound or strike the person robbed; or if he have any confederates aiding or abetting him in such robbery, present and so armed, he shall be punished by imprisonment in the penitentiary for a term not exceeding twenty years nor less than ten years.

2 SEC. 4203. If such offender commit such robbery otherwise than is men-
 3 tioned in the preceding section he shall be punished by imprisonment in the
 4 penitentiary not exceeding ten years nor less than two years.

2 SEC. 4204. If any person ravish and carnally know any female of the
 3 age of ten years or more by force and against her will, or carnally know and
 4 abuse any female child under the age of ten years, he shall be punished by
 5 imprisonment in the penitentiary for life or any term of years.

2 SEC. 4205. If any person take any woman unlawfully and against her
 3 will, and by force, menace, or duress, compel her to marry him or any other
 4 person or to be defiled, he shall be fined not exceeding one thousand dollars
 5 and imprisoned in the penitentiary not exceeding ten years.

2 SEC. 4206. If any person unlawfully have carnal knowledge of any female
 3 by administering to her any substance or by any other means producing such
 4 stupor or such imbecility of mind or weakness of body as to prevent effectual
 5 resistance, he shall upon conviction be punished as provided in the section
 6 relating to ravishment.

2 SEC. 4207. If any person take or entice away any unmarried female under
 3 the age of fifteen years from her father, mother, guardian, or other person
 4 having the legal charge of her person, without their consent, for the purpose
 5 of prostitution, he shall upon conviction be punished by imprisonment in the
 6 penitentiary for not more than three years, or by fine of not more than one
 7 thousand dollars and imprisonment in the county jail not more than one
 8 year.

2 SEC. 4208. If any person maliciously, forcibly, or fraudulently lead, take,
 3 decoy, or entice away any child under the age of twelve years, with the intent
 4 to detain or conceal such child from its parent, guardian, or any other person
 5 having the lawful charge of such child, he shall be punished by imprison-
 6 ment in the penitentiary not more than ten years, or by fine not exceeding
 7 one thousand dollars, or by both such fine and imprisonment.

2 SEC. 4209. If any person seduce and debauch any unmarried woman of
 3 previously chaste character, he shall be punished by imprisonment in the
 4 penitentiary not more than five years, or by fine not exceeding one thousand
 5 dollars and imprisonment in the county jail not exceeding one year.

2 SEC. 4210. If before judgment upon an indictment the defendant marry
 3 the woman thus seduced it is a bar to any farther prosecution for the offense.

2 SEC. 4211. If any person willfully and without lawful authority forcibly
 3 or secretly confine or imprison any other person within this state against his
 4 will; or forcibly carry or send such person out of the state; or forcibly seize
 5 and confine or inveigle or kidnap any other person with the intent either to
 6 cause such person to be secretly confined or imprisoned in this state against
 7 his will or to cause such person to be sent out of the state against his will, he
 8 shall be punished by imprisonment in the penitentiary not more than five
 9 years or by fine and imprisonment at the discretion of the court.

2 SEC. 4212. If the father and mother of any child under the age of six
 3 years, or any person to whom such child has been entrusted or confided
 4 exposesuch child in any highway, street, field, house, or outhouse, or in any
 5 other placewith intent wholly to abandon it, he or she, upon conviction thereof
 6 shall be punished by imprisonment in the penitentiary not exceeding five
 7 years.

2 SEC. 4213. If any person either verbally or by any written or printed
 3 communication maliciously threaten to accuse another of a crime or offense

3 or to do any injury to the person or property of another, with intent thereby
 4 to extort any money or pecuniary advantage whatever or to compel the person
 5 so threatened to do any act against his will, he shall be punished by imprison-
 6 ment in the penitentiary not more than two years or by fine not exceeding five
 7 hundred dollars.

SEC. 4214. If any person assault another with intent to commit murder
 2 he shall be punished by imprisonment in the penitentiary not exceeding ten
 3 years.

SEC. 4215. If any person assault a female with intent to commit a rape
 2 he shall be punished by imprisonment in the penitentiary not exceeding
 3 twenty years.

SEC. 4216. If any person assault another with intent to maim, rob, steal, or
 2 commit arson or burglary, he shall be punished by imprisonment in the peni-
 3 tentiary not exceeding five years or by fine not exceeding one thousand dollars,
 4 or by both fine and imprisonment at the discretion of the court.

SEC. 4217. If any person assault another with intent to inflict a great
 2 bodily injury he shall be punished by imprisonment in the county jail not
 3 exceeding one year or by fine not exceeding five hundred dollars.

SEC. 4218. If any person assault another with intent to commit any felony
 2 or crime punishable by imprisonment in the penitentiary, where the punish-
 3 ment is not otherwise prescribed, he shall be punished by imprisonment in
 4 the penitentiary not more than five years or by fine not exceeding five hun-
 5 dred dollars and imprisonment in the county jail not more than one year.

SEC. 4219. If any person mingle any poison with any food, drink, or med-
 2 icine, with intent to kill or injure any human being; or willfully poison any
 3 spring, well, cistern, or reservoir of water, he shall be punished by imprison-
 4 ment in the penitentiary not exceeding ten years and by fine not exceeding
 5 one thousand dollars.

SEC. 4220. Whoever is convicted of an assault or an assault and battery,
 2 where no other punishment is prescribed, shall be punished by imprisonment
 3 in the county jail not exceeding thirty days or by fine not exceeding one
 4 hundred dollars, or both such fine and imprisonment at the discretion of the
 5 court.

SEC. 4221. If any person, with intent to produce the miscarriage of
 2 any pregnant woman, wilfully administer to her, any drug, or substance
 3 whatever, or, with such intent, use any instrument or other means whatever,
 4 unless such miscarriage shall be necessary to save her life, he shall be
 5 imprisoned in the county jail for a term not exceeding one year, and be fined
 6 in a sum not exceeding one thousand dollars.

CHAPTER 166—*Offenses Against Property.*

SECTION 4222. If any person willfully or maliciously burn in the night-
 2 time the inhabited building, boat, or vessel of another; or willfully and
 3 maliciously set fire to any other building, boat, or vessel owned by himself or
 4 another by the burning whereof such inhabited building, boat, or vessel is
 5 burnt in the night-time, he shall be punished by imprisonment in the peniten-
 6 tiary for life or any term of years.

SEC. 4223. If any person willfully and maliciously burn in the day-time the inhabited building, boat, or vessel of another, or any building, boat, or vessel adjoining thereto; or willfully and maliciously set fire to any building, boat or vessel, owned by himself or another by the burning whereof such inhabited building, boat, or vessel is burnt in the day-time; or in the day-time willfully and maliciously set fire to any building, boat, or vessel owned by himself or another, by the burning of which any such inhabited building, boat, or vessel is burnt in the night-time, he shall be punished by imprisonment in the penitentiary for a term not exceeding thirty years.

SEC. 4224. If any person willfully and maliciously burn in the night-time any uninhabited dwelling-house, boat, or vessel belonging to another, or any court-house, jail, college, church, or any building erected for public use; or any other building, boat, or vessel, by the burning whereof any building, boat, or vessel mentioned in this section is burnt in the night-time, he shall be punished by imprisonment in the penitentiary not exceeding twenty years.

SEC. 4225. If any person willfully and maliciously burn in the day-time any building, boat, or vessel mentioned in the preceding section he shall be punished by imprisonment in the penitentiary not exceeding fifteen years.

SEC. 4226. If any person willfully and maliciously burn either in the night or day-time, any warehouse, store, manufactory, mill, railroad depot, barn, stable, shop, office, out-house, or any building whatsoever of another other than is mentioned in the preceding section of this chapter, or any bridge, lock, dam or flume, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

SEC. 4227. If any person set fire to any building, boat, or vessel mentioned in the preceding sections of this chapter, or to any material with intent to cause any such building, boat, or vessel to be burnt, he shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not more than one year.

SEC. 4228. If any person wilfully and maliciously burn or otherwise destroy or injure any pile or parcel of wood, boards, timber, or other lumber, or any fence, bars, or gate, or any stack of grain, hay, or other vegetable product severed from the soil and not stacked, or any standing trees, grain, grass, or other standing product of the soil of another, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 4229. The preceding sections of this chapter severally extend to a married woman who commits either of the offenses therein described, though the property burnt or set fire to may belong partly or wholly to her husband.

SEC. 4230. If any person wilfully burn any building, goods, wares, merchandize, or other chattels which are insured against loss or damage by fire, or wilfully cause or procure the same to be burned, with intent to injure the insurer, whether such person be the owner of such property or not, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

SEC. 4231. If any person wilfully or without using proper caution set fire to and burn or cause to be burnt any prairie or timbered land by which the property of another is injured or destroyed, he shall be fined not exceeding five hundred dollars or imprisoned in the county jail not more than one year, or by both fine and imprisonment at the discretion of the court.

SEC. 4231. A. (Chap. 53, 9th G. A.) If any person set fire to

2 and burn, or cause to be burned, any prairie or timber land, and allow such
 3 fire to escape from his control, between the first day of September in any
 4 year, and the first day of May following, he shall be deemed guilty of a mis-
 5 demeanor, and upon conviction thereof shall be punished by imprisonment in
 6 the county jail not more than thirty days, or by fine not exceeding one hun-
 7 dred dollars.

SEC. 4232. If any person break or enter any dwelling-house in the night-
 2 time with intent to commit the crime of murder, rape, robbery, larceny, or
 3 any other felony ; or after having entered with such intent break any such
 4 dwelling-house in the night-time, any person being then lawfully therein,
 5 such offender shall be punished according to the aggravation of the offense as
 6 is provided in the following two sections.

SEC. 4233. If such offender at the time of committing such burglary is
 2 armed with a dangerous weapon, or so arm himself after having entered such
 3 dwelling-house, or actually assault any person being lawfully therein, or have
 4 any confederate present aiding and abetting in such burglary, he shall be
 5 punished by imprisonment in the penitentiary for life or any term of years.

SEC. 4234. If such offender commit such burglary otherwise than is men-
 2 tioned in the preceding section he shall be punished by imprisonment in the
 3 penitentiary not exceeding twenty years.

SEC. 4235. (Chapt. 185 laws 1870.) If any person with intent to commit
 2 a felony, in the day-time, break and enter, or in the night time enter without
 3 breaking, any dwelling house; or at any time break and enter any office, shop,
 4 store, warehouse, railroad-car, boat, or vessel, or any building in which any
 5 goods, merchandise, or valuable things are kept for use, sale, or deposit, he
 6 shall be punished by imprisonment in the penitentiary not more than ten
 7 years, or by fine not exceeding five hundred dollars, and imprisonment in the
 8 county jail not more than one year.

SEC. 4236. If any mortgagor of personal property during the time such
 2 mortgage remains in force and virtue, willfully destroy, conceal, sell, or other-
 3 wise dispose of the property mortgaged, without the consent express or im-
 4 plied of the mortgagee or assignee of the mortgagee, he shall be deemed
 5 guilty of a misdemeanor, and on conviction shall be punished by fine not less
 6 twenty-five dollars nor more than one hundred dollars, or by impisonment in
 7 the county jail not less than five' nor more than thirty days, or by both such
 8 fine and imprisonment at the discretion of the court.

SEC. 4236. A. [9th G. A. chap. 34, and 12th G. A. chap. 108.] If any
 2 person engaged in driving stock of any kind through any part of this state,
 3 drive off or knowingly suffer or permit to be driven off, any stock not belong-
 4 ing to him to a distance of five miles from the residence of the owner of such
 5 stock, or the range in which such stock is in the habit of running, he shall be
 6 punished by fine not exceeding one hundred dollars or by imprisonment in
 7 the county jail not exceeding thirty days ; of which offense any justice of the
 8 peace in any county through which the stock thus driven off shall pass, or in
 9 which it may be found, shall have jurisdiction ; and in a civil action of which
 10 any justice of the peace in any county where service can be had shall have
 11 jurisdiction, the owner may recover against the person who shall have so
 12 driven off such stock treble damages therefor.

SEC. 4236. B. (9th G. A., ch. 120. 12th G. A., ch. 74.) If any per-
 2 son maliciously or mischievously enter the inclosure of another, with intent
 3 to knock off, pick, destroy, or carry away ; or, having lawfully entered, do
 4 afterwards wrongfully knock off, pick, destroy, or carry away any apples

5 peaches, pears, plums, grapes, or any other fruit or flower of any tree, shrub,
6 bush, or vine, he shall be punished, for the first offense, by a fine not less than
7 five dollars nor exceeding one hundred dollars, with the costs of conviction,
8 or by imprisonment in the county jail not exceeding thirty days ; and should
9 any person be found guilty of a second violation hereof, he shall be fined not
10 less than ten dollars and costs of conviction, or imprisonment as above pro-
11 vided.

SEC. 4236. C. (9th G. A., ch. 120, and 12th G. A., ch. 74.) If any
2 person maliciously or mischievously enter the inclosure of another in the
3 night-time, and knock off, pick, destroy, or carry away any apples, peaches,
4 pears, plums, grapes, or other fruit or flower of any tree, shrub, bush, or vine;
5 or, if any person having entered the inclosure of another in the night-time,
6 with the intent to knock off, pick, destroy, or carry away any fruit or flower
7 as aforesaid, be actually found therein, he shall, on conviction thereof, be pun-
8 ished by a fine not less than twenty-five nor to exceed one hundred dollars
9 and costs of conviction, or by imprisonment in the county jail not exceeding
10 thirty days.

SEC. 4336. D. (9th G. A., ch. 120, and 12th G. A. ch. 74.) If any per-
2 son maliciously or mischievously bruise, break, pull up, cut down, carry away,
3 destroy, or in anywise injure any fruit or ornamental tree, shrub, or vine,
4 growing, or standing on the land of another, he shall be punished by a
5 fine not less than ten nor exceeding one hundred dollars, and costs of con-
6 viction, or by imprisonment in the county jail not exceeding thirty days.

CHAPTER 167—*Larceny and Receiving Stolen Goods.*

SEC. 4237. If any person steal, take, and carry away, of the property of
2 another, any money, goods, or chattels; any writ, process, or public record;
3 any bond, bank note, promissory note, bill of exchange, or other bill, order,
4 or certificate; or any book of accounts respecting money, goods, or other
5 things; or any deed or writing containing a conveyance of real estate; or any
6 contract in force; or any receipt, release, or defeasance; or any instrument
7 or writing whereby any demand, right, or obligation is created, increased,
8 extinguished or diminished; he is guilty of larceny and shall be punished,
9 when the value of the property stolen exceeds the sum of twenty dollars, by
10 imprisonment in the penitentiary not more than five years; and when the
11 value of the property stolen does not exceed the sum of twenty dollars, by
12 fine not exceeding one hundred dollars or imprisonment in the county jail not
13 exceeding thirty days.

SEC. 4238. If any person in the night time commit larceny in any dwelling
2 house, store, or any public or private building, or in any boat, vessel, or water
3 craft, when the value of the property stolen exceeds the sum of twenty
4 dollars, he shall be imprisoned in the penitentiary not exceeding ten years;
5 and when the value of the property stolen is less than twenty dollars, by fine
6 not exceeding three hundred dollars and imprisonment in the county jail not
7 exceeding one year.

SEC 4239. If any person in the day time commit larceny as specified in the preceding section, and the value of the property stolen exceeds twenty dollars, he shall be punished by imprisonment in the penitentiary not more than five years; and when the value of the property stolen is less than twenty dollars, by fine not exceeding two hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 4240. If any person commit the crime of larceny by stealing from any building that is on fire, or by stealing any property removed in consequence of an alarm caused by fire, or by stealing from the person of another, he shall be punished by imprisonment in the penitentiary not exceeding fifteen years nor less than one year.

SEC. 4241. If any person falsely personate or represent another and in such assumed character receive any money or property intended to be delivered to the party so personated, with intent to convert the same to his own use, he is guilty of larceny and shall be punished accordingly.

SEC. 4242. If any person come, by finding, to the possession of any personal property of which he knows the owner and unlawfully appropriate the same or any part thereof to his use, he is guilty of larceny and shall be punished accordingly.

SEC. 4243. If any officer within this state charged with the collection, safe keeping, transfer, or disbursement of public money unlawfully convert to his own use in any way whatever, or use by way of investment in any kind of property, or loan without the authority of law any portion of the public money intrusted to him for collection, safe keeping, transfer, or disbursement, every such act is an embezzlement of so much of said money as is thus taken, converted, invested, used, loaned, or unaccounted for, and upon conviction thereof he shall be imprisoned in the penitentiary not exceeding five years and fined in a sum equal to the amount of money embezzled, and moreover he is forever afterward disqualified from holding any office under the laws or constitution of this state.

SEC. 4244. If any officer, agent, clerk, or servant of any incorporated company; or if any clerk, agent or servant of copartnership; or of any person over the age of sixteen years embezzle and fraudulently convert to his own use, or take and secrete with intent to convert to his own use, without the consent of his employer or master, any money or property of another which has come to his possession or is under his care by virtue of such employment, he is guilty of larceny and shall be punished accordingly.

SEC. 4245. If any carrier or other person to whom any money, goods, or other property which may be the subject of larceny has been delivered to be carried for hire, or if any other person intrusted with such property, embezzle or fraudulently convert to his own use any such money, goods, or other property either in the mass as the same were delivered or otherwise and before the same were delivered at the place or to the person where and to whom they were to be delivered, he is guilty of larceny and shall be punished accordingly.

SEC. 4246. [9th G. A., Chapt. 121.] If any person buy, receive, or aid in concealing any money, goods, or any property, the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to be so obtained, he shall be punished, when the value of the property so obtained exceeds the sum of twenty dollars, by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year; and when

8 the value of the property so obtained does not exceed the sum of twenty dol-
 9 lars, by fine not exceeding one hundred dollars, or by imprisonment in the
 10 county jail not exceeding thirty days.

2 SEC. 4247. If any person, having been before convicted of larceny, after-
 3 ward commit another larceny and be thereof convicted; or if any person at
 4 the same term of court is convicted as principal or accessory after the fact in
 5 three distinct larcenies, he is deemed a common and notorious thief and shall
 be punished by imprisonment in the penitentiary for not less than five years.

2 SEC. 4248. If any person after having been convicted of the offense of
 3 buying, receiving or aiding in the concealment of stolen money, goods, or any
 4 property the stealing of which is larceny, or property obtained by robbery or
 5 burglary, be again convicted of the like offense; or if any person at the same
 6 term of court is convicted of three distinct acts of buying, receiving, or aiding
 7 in the concealment of stolen property or property obtained by robbery or burg-
 8 lary, knowing the same was so obtained, he shall be punished as provided in
 the preceding section.

2 SEC. 4349. In any prosecution for the offense of buying, receiving, or aid-
 3 ing in the concealment of stolen property or property obtained by robbery or
 4 burglary knowing the same was so obtained, it shall not be necessary to aver
 5 nor to prove on the trial thereof that the person who stole, robbed, or took the
 property, has been convicted.

2 SEC. 4250. If the property stolen consist of any bank note, bond, bill
 3 covenant, bill of exchange, draft, order, or receipt; or any evidence of debt
 4 whatever; or any public security; or any instrument whereby any demand,
 5 right, or obligation may be assigned, transferred, created, increased, released,
 6 extinguished or diminished, the money due thereon or secured thereby and
 7 remaining unsatisfied or which in any event or contingency might be collected
 8 thereon, or the value of the property transferred or affected, as the case may
 be, shall be adjudged the value of the thing stolen.

2 SEC. 4251. If any person knowingly, and without authority of law take,
 3 carry away, secrete, or destroy any goods or chattels while the same are law-
 4 fully in the custody of any sheriff, coroner, marshall, constable or other officer,
 5 and rightfully held by such officer by virtue of execution, writ of attachment
 6 or other legal process issued under the laws of Iowa, he shall be deemed guilty of
 7 larceny, and shall be punished when the value of the property so taken, carried
 8 away, secreted or destroyed exceeds the sum of twenty dollars, by imprison-
 9 ment in the penitentiary not more than one year, and when the value of the
 10 same does not exceed twenty dollars, by fine not exceeding one hundred dollars,
 or imprisonment in the county jail not more than thirty days.

2 SEC. 4252. The possession or custody of goods and chattels by any person
 3 with whom the same have been left or deposited for safe keeping, to be re-
 4 turned for the purpose of being disposed of on legal process, shall be deemed
 5 to be the possession and custody of the officer having or depositing the same,
 6 and entitled to the custody thereof, and in a prosecution under the preceding
 7 section, the property taken, carried away, secreted or destroyed, as therein
 8 mentioned, may be laid in the officer entitled to the custody thereof at the time
 of the commission of the offense.

CHAPTER 168.—*Forgery and Counterfeiting.*

2 SEC. 4253. If any person, with intent to defraud, falsely make, alter, forge,
 3 or counterfeit any public record, or any process issued or purporting to be
 4 issued by any competent court, magistrate or officer; or any pleading or pro-
 5 ceeding filed or entered in any court of law or equity; or any attestation or
 6 certificate of any public officer, or other person in relation to any matter
 7 where'n such attestation or certificate is required by law or may be received
 8 or be taken as legal proof; any charter, deed, will, testmant, bond, writing
 9 obligatory, power of attorney, letter of credit, policy of insurance, bill of lad-
 10 ing, bill of exchange, promissory note; or any order, acquittance, discharge,
 11 or accountable receipt for money or other valuable thing; or any acceptance
 12 of any bill of exchange or order; or any indorsement or assignment of any
 13 bill of exchange, promissory note or order, or of any debt or contract; or any
 14 instrument in writing, being or purporting to be the act of another, by which
 15 any pecuniary demand or obligation or any right or interest in or to any
 16 property whatever is or purports to be created, increased, transferred, conveyed,
 17 discharged, or diminished, he shall be punished by imprisonment in the peni-
 tentiary not more than ten years.

2 SEC. 4254. If any person utter and publish as true, any record, process,
 3 certificate, deed, will, or any other instrument of writing mentioned in the
 4 preceding section, knowing the same to be false, altered, forged, or counter-
 5 feited, with intent to defraud, he shall be punished by imprisonment in the
 6 penitentiary not more than fifteen years and fined not exceeding one thousand
 7 dollars.

2 SEC. 4255. If any person, with intent to defraud, falsely make, utter,
 3 forge, or counterfeit any note, certificate, state bond, warrant, or other instru-
 4 ment, being public security for money or other property, issued or purporting
 5 to be issued by authority of this state or any other of the United States; or
 6 any indorsement or other writing purporting to transfer the right or interest
 7 of any holder of such public security, he shall be punished by imprisonment
 in the penitentiary not more than twenty years nor less than five years.

2 SEC. 4256. If any person make, alter, forge, or counterfeit any bank bill,
 3 promissory note, draft, or other evidence of debt issued or purporting to be
 4 issued by any corporation or company duly authorized for that purpose by
 5 any state of the United States or any other government or country, with
 6 intent to injure or defraud, he shall be punished by imprisonment in the
 7 penitentiary not more than ten years, or by fine not exceeding three hundred
 dollars and imprisonment in the county jail not exceeding one year.

2 SEC. 4257. If any person has in his possession any forged, counterfeited,
 3 or altered bank bill, promissory note, draft, or other evidence of debt issued
 4 or purporting to be issued as is mentioned in the preceding section, with
 5 intent to defraud, knowing them to be so forged, counterfeited, or altered, he
 6 shall be punished by imprisonment in the penitentiary not more than five
 7 years, or by fine not exceeding two hundred dollars and imprisonment in the
 county jail not exceeding one year.

2 SEC. 4258. If any person utter or pass or tender in payment as true any
 3 false, altered, forged, or counterfeited note, certificate, state bond, warrant, or
 4 other instrument of public security; or any bank bill, promissory note, draft,
 5 or other evidence of debt issued or purporting to be issued by any corporation
 6 or company duly authorized as heretofore mentioned, knowing the same to be
 7 false, altered, forged, or counterfeited, with the intent to injure or defraud, he
 8 shall be punished by imprisonment in the penitentiary not more than ten years,
 9 or by fine not exceeding five hundred dollars and imprisonment in the county
 jail not exceeding one year.

3 SEC. 4259. If any person, having been convicted of the offenses described
 4 in the preceding section, afterward be convicted of a like offense; or if any
 5 person at the same term of the court is convicted of three such distinct
 6 offenses, he shall be punished by imprisonment in the penitentiary, not less
 7 than two years, nor more than ten years.

2 SEC. 4260. If any person engrave, make, or mend, or begin to engrave,
 3 make or mend any plate, block, press, or other tool, instrument, or implement;
 4 or make or provide any paper or other materials adapted and designed for the
 5 forging or making any false and counterfeit note, certificate, state bond, war-
 6 rant, or other instrument of public security for money or other property, of
 7 this state or any other of the United States, or any bank bill, promissory note,
 8 draft, or other evidence of debt issued or purporting to be issued by any cor-
 9 poration or company; and every person who has in his possession any such
 10 plate or block engraved in any part, or any press or other tool, instrument,
 11 or implement, paper or other material adapted and designed as aforesaid, with
 12 intent to use the same, or to cause or permit the same to be used in forging
 13 or making any such false and forged certificates, notes, bonds, warrants, pub-
 14 lic securities or evidences of debt, shall be punished by imprisonment in the pen-
 itentiary for not more than five years nor less than two years.

2 SEC. 4261. If any person forge or counterfeit any gold or silver coin cur-
 3 rent by law or usage within this state, and if any person have in his posses-
 4 sion at the same time five or more pieces of false money or coin counterfeited
 5 in the similitude of any gold or silver coin current as aforesaid, knowing the
 6 same to be false and counterfeit, and with intent to utter or pass the same as
 7 true, he shall be punished by imprisonment in the penitentiary not more than
 ten years nor less than one year.

2 SEC. 4262. Any person who has in his possession any number of pieces
 3 less than five of the counterfeit coin mentioned in the preceding section,
 4 knowing the same to be false or counterfeit, with intent to utter or pass the
 5 same as true; and any person who utters, passes, or tenders in payment any
 6 false and counterfeit coin, knowing the same to be false and counterfeit, shall
 7 be punished by imprisonment in the penitentiary not exceeding eight years,
 8 or fined not more than five hundred dollars and imprisoned in the county jail
 not exceeding one year.

2 SEC. 4263. If any person fraudulently connect together different parts of
 3 several genuine bank bills, notes, or other instruments in writing, so as to
 4 produce one instrument, or alter any note or instrument in writing in a matter
 5 that is material, with intent to defraud, the same shall be deemed forgery in
 6 like manner as if such bill or note, or other instrument had been forged
 and counterfeited, and the offender shall be punished accordingly.

2 SEC. 4264. If any fictitious or pretended signature of an officer or agent
 3 of any corporation be fraudulently affixed to any instrument of writing pur-
 porting to be a note, draft, or other evidence of debt issued by such corpora-

4 tion, with intent to utter or pass the same as true, it is forgery, though no such
 5 person may ever have been an officer or agent of such corporation, nor such
 6 corporation have ever existed. Every person guilty of this offense shall be
 6 punished by imprisonment in the penitentiary not more than five years, or by
 7 fine not exceeding three hundred dollars, and imprisonment in the county jail
 8 not more than one year.

SEC. 4265. The total or partial erasure or obliteration of any record,
 2 process, certificate, deed, will, or any other instrument in writing mentioned
 3 in this chapter, with the intent to defraud, shall be deemed forgery, and the
 4 offender shall be punished by imprisonment in the penitentiary not exceeding
 5 five years, or fined not exceeding five hundred dollars and imprisoned in
 6 the county jail not exceeding one year.

SEC. 4266. If any person, having been convicted of either of the offenses
 2 mentioned in the preceding section, be afterwards convicted of a like offense;
 3 or if any person at the same term of court be convicted of three such distinct
 4 offenses, he shall be punished by imprisonment in the penitentiary not more
 5 than ten years nor less than three years.

SEC. 4267. If any person cast, stamp, engrave, make or mend, or have in
 2 his possession any mould, die, press, or other instrument or tool adapted and
 3 designed for the forging or counterfeiting of any coin before mentioned, with
 4 intent to use the same or permit the same to be used for that purpose, he
 5 shall be punished by imprisonment in the penitentiary not more than five
 6 years, or by fine not exceeding one thousand dollars and imprisonment in the
 7 county jail not more than one year.

SEC. 4268. If any person forge or counterfeit any gold or silver coin of
 2 any foreign government or country, with intent to export the same to injure or
 3 defraud any such government or the citizens thereof, he shall be punished by
 4 imprisonment in the penitentiary not exceeding ten years.

SEC. 4269. Every person who is convicted of having forged, counterfeited,
 2 or falsely altered the great seal of this state ; or the seal of any public office
 3 authorized by law ; or the seal of any court, corporation, city or county ; or
 4 who falsely makes, forges, or counterfeits any impression purporting to be
 5 the impression of any such seal, with intent to defraud, shall be punished by
 6 imprisonment in the penitentiary not exceeding ten years.

SEC. 4270. On the trial of any person for forging or counterfeiting any
 2 bill, note, or any other evidence of debt purporting to be issued by any incor-
 3 porated company ; or for uttering, passing or attempting to pass, or having in
 4 possession the same with intent to utter or pass such bill, note, or evidence of
 5 debt, it is not necessary to prove the incorporation by the charter or act there-
 6 of, but the same may be proved by general reputation, and persons of skill
 7 are competent witnesses to prove that such bill, note, or evidence of debt is
 8 forged or counterfeit.

SEC. 4270. A. (Sec. 1911, Rev.) If any person, with intent to defraud,
 2 falsely make, forge, or counterfeit, any stamp or brand authorized by law to
 3 be affixed to any substance or thing whatever, or knowing such stamp or
 4 brand to be counterfeit use the same as genuine with intent to defraud, he
 5 shall be punished by imprisonment in the penitentiary not exceeding ten
 6 years.

CHAPTER 169.—*Offenses Against Public Justice.*

2 SEC. 4271. If any person on oath or affirmation lawfully administered
3 willfully and corruptly swear or affirm falsely to any material matter in any
4 proceeding in any court of justice or before any officer thereof, or before any
5 tribunal or officer created by law, or in any proceeding, or in regard to any
6 matter or thing in or respecting which an oath or affirmation is or may be
7 required or authorized by law, he is guilty of perjury and shall be punished,
8 if the perjury was committed on the trial of a capital crime, by imprisonment
9 in the penitentiary for life or any term not less than ten years; and if com-
10 mitted in any other case, by imprisonment in the penitentiary not more than
11 ten years nor less than two years.

2 SEC. 4272. If any person procure another to commit perjury he is guilty
3 of subornation of perjury and shall be punished as provided in the preceding
4 section.

2 SEC. 4273. If any person endeavor to incite or procure another to commit
3 perjury, though no perjury be committed, he shall be punished by imprison-
4 ment in the penitentiary not more than five years, or by fine not exceeding
5 five hundred dollars and imprisoned in the county jail not more than one year.

2 SEC. 4274. If any person give, offer, or promise to any executive or judi-
3 cial officer or member of the General Assembly after his election or appoint-
4 ment, and either before or after he has been qualified or has taken his seat,
5 any valuable consideration, gratuity, service, or benefit whatever, with intent
6 to influence his act, vote, opinion, or judgment in any matter, question, cause,
7 or proceeding which may be pending or which may legally come or be
8 brought before him in his official capacity, he shall be punished by imprison-
9 ment in the penitentiary not more than five years, or by fine not more than
10 one thousand dollars, and imprisonment in the county jail not more than one
11 year.

2 SEC. 4275. If any executive or judicial officer or member of the general
3 assembly accept any valuable consideration, gratuity, service or benefit what-
4 ever, or any promise to make the same or to do any act beneficial to such offi-
5 cer or member under the agreement or with the understanding that his vote,
6 opinion, decision, or judgment shall be given in any particular manner or upon
7 any particular side of any question, cause, or other proceeding which is, or
8 may by law be brought before him in his official capacity, or that in such ca-
9 pacity he will make any particular nomination or appointment, he shall be
10 imprisoned in the penitentiary not more than ten years, or be fined not more
11 than two thousand dollars and imprisoned in the county jail not more than
one year.

2 SEC. 4276. Every person who is convicted under either of the two preced-
3 ing sections of this chapter shall forever afterward be disqualified from hold-
4 ing any office under the laws or constitution of this state.

2 SEC. 4277. If any person directly or indirectly give, offer, or promise any
3 valuable consideration or gratuity to any other person not being such officer
4 as is mentioned in the preceding section, with intent to induce such other per-
5 son to procure for him by his interest, influence, or any other means whatever

5 any place of trust within this state, he shall be punished by fine not exceed-
6 ing three hundred dollars and imprisoned in the county jail not exceeding one
7 year.

SEC. 4278. If any person, not being such officer as is referred to in the
2 preceding sections of this chapter, accept and receive of another any valuable
3 consideration or gratuity whatever as a reward for procuring or attempting to
4 procure any office or place of trust within this state for any person, he shall
5 be punished by fine not exceeding three hundred dollars and imprisonment in
6 the county jail not exceeding one year.

SEC. 4279. If any person give, offer, or promise any valuable considera-
2 tion or gratuity whatever to any one summoned, appointed, or sworn as a
3 juror; or appointed or chosen arbitrator, or umpire, or referee; or to any
4 master in chancery; or appraiser of real or personal estate; or auditor, with
5 intent to influence the opinion or decision of any such person in any matter,
6 inquest, or cause, which may be pending or can legally come before him, or
7 which he may be called on to decide in either of said capacities, he shall be
8 punished by imprisonment in the penitentiary not more than five years, or by
9 fine not exceeding one thousand dollars and imprisonment in the county jail
10 not more than one year.

SEC. 4280. If any person summoned, appointed, or sworn as a juror; or
2 appointed arbitrator, umpire, or referee; or master in chancery; or auditor; or
3 appraiser as aforesaid, take or receive any valuable consideration or gratuity
4 whatever to give his verdict, award, or report in favor of any particular party
5 in a matter for the hearing or decision of which such person has been sum-
6 moned, appointed, or chosen as aforesaid, he shall be punished by imprison-
7 ment in the penitentiary not more than ten years, or by fine not exceeding
8 one thousand dollars and imprisonment in the county jail not exceeding one
9 year.

SEC. 4281. If any person attempt to improperly influence any juror in
2 any civil or criminal cause, or any one drawn or summoned or appointed or
3 sworn as such juror, or any arbitrator or referee, in relation to any cause or
4 matter pending in or to be brought before the court for which such juror has
5 been drawn, summoned, appointed, or sworn, or for the hearing and decision
6 of which such arbitrator or referee has been chosen or appointed, he shall be
7 punished by fine not exceeding five hundred dollars and by imprisonment in
8 the county jail not more than six months.

SEC. 4282. If any person drawn, summoned, or sworn as juror, make any
2 promise or agreement to give a verdict for or against any person in any civil
3 or criminal case, or corruptly receive any paper, evidence, or information from
4 any one in relation to any matter or cause for the trial of which he is sworn,
5 without the authority of the court or officer before whom such cause or matter
6 is then pending, he shall be punished by a fine not exceeding two hundred
7 dollars or imprisonment in the county jail not exceeding three months.

SEC. 4283. If any sheriff, deputy sheriff, constable, or coroner receive
2 from a defendant or any other person any money or other valuable thing as a
3 consideration or inducement for omitting or delaying to arrest any defendant,
4 or to carry him before a magistrate or to prison; or for postponing, delaying,
5 or neglecting the sale of property on execution; or for omitting or delaying
6 to perform any other duty pertaining to his office, he shall be punished by fine
7 not exceeding five hundred dollars or imprisoned in the county jail not ex-
8 ceeding six months, or by both fine and imprisonment at the discretion of the
9 court.

2 SEC. 4284. If any officer authorized to serve process willfully refuse to
 3 execute any lawful process to him directed requiring him to apprehend or con-
 4 fine any person charged with, or convicted of, any public offense ; or willfully
 5 delay or omit to execute such process, whereby such person escape, he shall
 6 be punished by imprisonment in the county jail not more than one year or by
 7 fine not exceeding one thousand dollars or by both fine and imprisonment at
 the discretion of the court.

2 SEC. 4285. If any person corruptly and willfully demand and receive of
 3 another, for performing any service or official duty for which the fee or com-
 4 pensation is established by law, any greater fee or compensation than is all
 5 owed or provided for the same ; or if any witness falsely and corruptly cer-
 6 tify that as such he has traveled more miles or attended more days than
 7 he has actually traveled or attended, he shall be punished by fine not exceed-
 8 ing one hundred dollars for each offense, or imprisoned in the county jail not
 exceeding six months.

2 SEC. 4286 If any person having knowledge of the commission of any
 3 offense punishable with death or imprisonment in the penitentiary for life,
 4 take any money or valuable consideration or gratuity, or any promise therefor,
 5 upon an agreement or understanding express or implied, to compound or conce-
 6 al such offense, or not to prosecute the same, or not to give evidence thereof,
 7 he shall be punished by imprisonment in the penitentiary not more than six
 years or by fine not exceeding one thousand dollars.

2 SEC. 4287. If any person having knowledge of the commission of any
 3 offense punishable by imprisonment in the penitentiary for a limited term of
 4 years is guilty of the offense described in the preceding section he shall be
 5 punished by imprisonment in the county jail not more than one year and by
 fine not exceeding four hundred dollars.

2 SEC. 4288. If any jailor or other officer voluntarily suffer any prissner in
 3 his custody upon charge or conviction of a capital felony to escape, he shall
 4 be punished by imprisonment in the penitentiary not more than ten years nor
 less than one year.

2 SEC. 4289. If any jailor or other officer voluntarily suffer any prisoner in
 3 his custody upon charge or conviction of a felony other than capital to escape,
 4 he shall be punished by imprisonment in the penitentiary not more than
 eight years or by fine not more than one thousand dollars.

2 SEC. 4290. If any jailer or other officer voluntarily suffer any prisoner in
 3 his custody upon charge or conviction of any public offense to escape, he shall
 4 be fined not more than five hundred dollars or imprisoned in the county jail
 not exceeding one year, or both fined and imprisoned.

2 SEC. 4291. If any person by any means whatever aid or assist any prison-
 3 er lawfully detained in the penitentiary or in any jail or place of confine-
 4 ment for any felony, in an attempt to escape, whether such escape be effected
 5 or not, or forcibly rescue any person held in legal custody upon any criminal
 6 charge, he shall be punished by imprisonment in the penitentiary not exceed
 7 ing ten years, or by fine not exceeding five hundred dollars and imprisonment
 in the county jail not exceeding one year.

2 SEC. 4292. Every person who by any means whatever aids or assists any
 3 prisoner lawfully committed to any jail or place of confinement, charged with
 4 or convicted of any criminal offense other than a felony, whether such escape
 5 be effected or not; or who conveys into such jail or place of confinement any
 disguise, instrument, arms, or other things proper or useful to faciliate the

6 escape of any prisoner so committed, whether such escape be effected or at-
7 tempted or not, shall be punished by imprisonment in the county jail not ex-
8 ceeding one year or by fine not exceeding five hundred dollars, or by both
9 such fine and imprisonment at the discretion of the court.

2 SEC. 4293. Every person who aids or assists any prisoner in escaping or
3 attempting to escape from the custody of any sheriff, deputy sheriff, marshal,
4 constable, or other officer or person who has the lawful charge of such prisoner
5 upon any criminal charge, shall be punished by fine not exceeding three hundred
6 dollars or imprisoned in the county jail not exceeding one year, or by both fine

2 SEC. 4294. If any person confined in the penitentiary for any less period
3 than for life break such prison and escape from thence, he shall be punished
4 by imprisonment in such prison for a term not exceeding five years, to com-
5 mence from and after the expiration of the original term of his imprisonment.

2 SEC. 4295. If any person confined in a county jail upon any conviction
3 for a criminal offense break such jail and escape therefrom, he shall be impris-
4 oned in such prison not exceeding one year, to commence from and after the
5 expiration of the former sentence, and fined not exceeding three hundred
6 dollars.

2 SEC. 4296. If any person knowingly and willfully resist or oppose any
3 officer of this state or any person authorized by law, in serving or attempting
4 to execute any legal writ, rule, order, or process whatsoever, ("Or shall know-
5 ingly and willfully resist any such officer in the discharge of his duties with-
6 out such writ, rule, order, or process,"—12th G. A., ch. 150,) he shall be pun-
7 ished by imprisonment in the county jail not exceeding one year, or by fine
8 not exceeding one thousand dollars nor less than fifty dollars, or by both fine

2 SEC. 4297. If any person, being lawfully required by any sheriff, deputy
3 sheriff, coroner, constable, or other officer, willfully neglect or refuse to assist
4 him in the execution of his office in any criminal case or in any case of escape
5 or rescue, he shall be punished by imprisonment in the county jail not more
6 than six months, or by fine not more than one hundred dollars.

2 SEC. 4298. If any person falsely assume to be a judge, justice of the
3 peace, magistrate, sheriff, deputy sheriff, coroner, or constable, and take upon
4 himself to act as such or require any one to aid or assist him in any matter
5 pertaining to the duty of any such officer, he shall be punished by imprison-
6 ment in the county jail not more than one year or by fine not exceeding three
7 hundred dollars.

2 SEC. 4299. If any person take upon himself to exercise or officiate in any office
3 or place of authority in this state without being legally authorized, or if any
4 person by color of his office willfully and corruptly oppress any person under
5 pretense of acting in his official capacity, he shall be punished by fine not
6 exceeding one thousand dollars or imprisonment in the county jail not more
7 than one year, or by both fine and imprisonment.

2 SEC. 4300. If any judge, justice of the peace, clerk of any court, sheriff,
3 coroner, constable, attorney or counselor at law, encourage, excite, or stir up
4 any suit, quarrel, or controversy between two or more persons with intent to
5 injure such person or persons, he shall be punished by fine not exceeding five
6 hundred dollars, and shall be answerable to the party injured in treble
7 damages.

2 SEC. 4301. When any duty is or shall be enjoined by law upon any pub-
3 lic officer, or upon any person holding any public trust or employment, every

3 willful neglect to perform such duty, where no special provision has been
4 made for the punishment of such delinquency, is a misdemeanor.

SEC. 4302. When the performance of any act is prohibited by any statute
2 and no penalty for the violation of such statute is imposed, the doing of such
3 act is a misdemeanor.

SEC. 4303. Every person who is convicted of a misdemeanor, the punish-
2 ment of which is not otherwise prescribed by any statute of this state, shall
3 be punished by imprisonment in the county jail not more than one year, or
4 by fine not exceeding five hundred dollars, or by both such fine and impris-
5 onment.

SEC. 4304. If any public officer fraudulently make or give false entries or
2 false returns or false certificates of receipts in cases where entries, returns,
3 certificates, or receipts are authorized by law, he shall be fined not exceed-
4 ing five hundred dollars, or imprisoned in the county jail not exceeding
5 one year, or both at the discretion of the court.

SEC. 4305. If any judge or other officer, by color of his office, willfully
2 and maliciously oppress any person, under pretense of acting in his official
3 capacity, he shall be punished by fine not exceeding three hundred dollars
4 and imprisonment in the county jail not less than five nor more than thirty
5 days, and be liable to the injured party for any damage sustained by him in
6 consequence thereof.

SEC. 4306. Is embodied in section 4305.

SEC. 4307. Is omitted as unnecessary.

SEC. 4308. If any justice of the peace, clerk of the district or other court,
2 county recorder, or any other officer who by law is authorized to receive and
3 required to pay over fees of office, or who is or may be authorized to impose
4 or collect fines, shall fail, neglect or refuse to pay over as prescribed, or as
5 may hereafter be prescribed by law, all such fees and fines, he shall be
6 deemed guilty of a misdemeanor, besides being liable in a civil action for the
7 amount of such fines and fees as he may have thus illegally withheld or
8 appropriated.

SEC. 4309. If any justice of the peace, clerk of the district or other court
2 which is now or may hereafter be established, county recorder or other officer,
3 who by law is authorized or required to keep a court docket, or who is or
4 may be required to keep an account of fees or fines, and to pay over, or in
5 any way account for the same, shall in any manner falsify such docket or
6 account, or shall fail, neglect or refuse to make an entry upon such docket, or
7 account of such fees and fines, as are required to be paid ever according to
8 law, such justice of the peace, clerk of the district court, or clerk of any other
9 court, county recorder and other officer shall be guilty of a misdemeanor, and
10 shall be subject and liable to be prosecuted therefor in any court having
11 jurisdiction of the offense.

SEC. 4310. Any justice of the peace, district court clerk, or clerk of any
2 other court which is or may be established, county recorder, or other officer
3 who may be found guilty of the offense of appropriating to his own use fees
4 of office or fines collected for violation of law, or of neglecting to pay over the
5 same as prescribed by law, shall be removed from office by the court before
6 or by whom the offense may be tried and judgment or conviction had, and
7 each and every person so found guilty shall be punished by a fine not exceed-
8 ing 300 dollars nor less than 10 dollars, or imprisoned in the county jail for

9 a period not exceeding one year, or by both such fine and imprisonment, in
10 the discretion of the court.

SEC. 4311. Is omitted as unnecessary.

SEC. 4312. Is omitted as unnecessary.

SEC. 4313. Is omitted as unnecessary.

SEC. 4314. All officers required by the provisions of this code to collect
2 and pay over fines and fees shall, on the first Monday in January in each
3 year, make report thereof under oath to the Board of Supervisors of the
4 proper county, showing the amount of fines assessed and the amount of fines
5 and fees collected, together with the vouchers for the payment of all sums by
6 him collected to the proper officer required to keep the same.

SEC. 4315. Transferred to Section 4623, Chapter 196.

SEC. 4316. Omitted as unnecessary.

SEC. 4317. Omitted as unnecessary.

SEC. 4317. A. (9th G. A., ch. 29.) It shall be the duty of the clerks of
2 the several courts of this State, (except of the Supreme Court) and all Justices
3 of the Peace, on the first Monday of January of each year, to make a report
4 in writing, to the Board of Supervisors of their respective counties, of all
5 forfeited recognizances in their several offices; of all fines, penalties, and
6 forfeitures imposed in their respective courts, in what cause or proceedings,
7 when, for what purpose, against whom, and for what amount rendered;
8 whether said fines, penalties, forfeitures, and recognizances have been paid,
9 remitted, canceled, or otherwise satisfied; if so, when, how, and in what
10 manner; if not paid, remitted, canceled, or otherwise satisfied, what steps
11 have been taken to enforce the collection thereof, and the prospect of such
12 collection. Such report must be verified under oath, to the effect that the
13 same is full, true, and complete, of the matters therein contained, and of
14 all things required by this section to be reported; and any officer failing so
15 to do shall be deemed guilty of a misdemeanor, and upon conviction thereof,
16 may be fined in any sum not less than one hundred dollars.

CHAPTER 170.—*Malicious Mischief and Trespass on Property.*

SEC. 4318. If any person maliciously kill, maim, or disfigure, any horse,
2 cattle, or other domestic beast of another; or maliciously administer poison
3 to any such animals; or expose any poisonous substance with intent that the
4 same should be taken by them, he shall be punished by imprisonment in the
5 county jail not exceeding one year or by fine not exceeding three hundred
6 dollars.

SEC. 4319. If any person maliciously injure or destroy any dam, lock,
2 canal, trench, or reservoir, or any of the appurtenances thereof, or any of the
3 gear or machinery of any mill or manufactory; or maliciously draw off the

4 water from any mill pond, reservoir, canal, or trench; or destroy, injure, or
 5 render useless any engine or the apparatus thereto belonging, prepared or
 6 kept for the extinguishing of fires, shall be punished by imprisonment in the
 7 county jail not exceeding one year and by fine not exceeding five hundred
 8 dollars.

SEC. 4320. If any person maliciously injure, remove, or destroy any
 2 bridge, rail, or plank road; or place, or cause to be placed any obstruction on
 3 such bridge, or road; or willfully obstruct or injure any public road or high-
 4 way; or maliciously cut, burn, or in any way break down, injure, or destroy,
 5 any telegraph post, or in any way cut, break, or injure the wires or any
 6 apparatus thereto belonging, he shall be punished by imprisonment in the
 7 penitentiary not more than five years, or by fine not exceeding five hundred
 8 dollars and imprisonment in the county jail not exceeding one year.

SEC. 4321. If any person maliciously cut away, let loose, injure or destroy,
 2 any boom or raft of wood, logs, or other lumber, or any boat or vessel fastened
 3 to any place, of which he is not the owner or legal possessor, he shall be pun-
 4 ished by fine not exceeding five hundred dollars and imprisonment in the
 5 county jail not more than one year, and shall also forfeit to the use of the per-
 6 son so injured double the amount of damages by him thereby sustained to be
 7 recovered in an action at law.

SEC. 4322. If any person maliciously cut down, injure or destroy, any
 2 fruit or ornamental trees or other tree, vine, or shrub of another, standing or
 3 growing for ornament or use; or maliciously break down, mar, deface, or
 4 injure, any fence, hedge, or ditch inclosing lands belonging to another; or throw,
 5 down, or open any gate, or bars not his own or under his charge and leave
 6 them open, whereby an injury is done to another; or maliciously injure de-
 7 stroy, or sever from the land of another any produce thereof or anything at-
 8 tached thereto, he shall be punished by imprisonment in the county jail not
 9 more than one year or by fine not exceeding one hundred dollars, or by both
 10 imprisonment and fine at the discretion of the court.

SEC. 4323. If any person maliciously take down, injure, or remove any
 2 monument erected or any tree marked as a boundary of any tract of land, city,
 3 town, or lot; or destroy, deface, or alter the marks of any such monument or
 4 tree made for the purpose of designating such boundary, or injure or deface
 5 any mile stone, post, or guide board, erected on any public way; or remove,
 6 deface, or injure any sign board, or break or remove any lamp or lamp post,
 7 or extinguish any lamp on any bridge, way, street, or passage, he shall be pun-
 8 ished by fine not exceeding one hundred dollars or by imprisonment in the
 9 county jail not exceeding one year, or by both fine and imprisonment at the
 10 discretion of the court.

SEC. 4324. If any person willfully commit any trespass by cutting down
 2 or destroying any timber or wood standing or growing on the land of another;
 3 or by carrying away timber or wood being on such land; or by digging or
 4 carrying away any earth, stone, marble, slate, coal, copper, lead, iron ore, or
 5 any other ore or metal; or by taking and carrying from such land, any grass,
 6 hay, corn, grain, fruit or other vegetables; or carrying away from any wharf,
 7 street, or landing place, any goods whatever in which he has no interest, he
 8 shall be punished by fine not exceeding five hundred dollars or imprisonment
 9 in the county jail not more than one year or by both fine and imprisonment
 10 at the discretion of the court. If in any case, the value of the property so
 11 cut down, carried away, or otherwise taken, shall not exceed the sum of fifty

12 dollars, then the person so offending shall be fined, not exceeding one hundred
 13 dollars, or imprisoned in the county jail not exceeding thirty days. [11 G. A.,
 14 chapt. 28.]

SEC. 4325. If any person willfully commit any trespass by entering upon
 2 the garden, orchard, or improved land of another with intent to take, carry
 3 away, destroy, or injure the trees, shrubs, grain, grass, hay, fruit, or vegetables
 4 there being, he shall be punished by fine not exceeding one hundred dollars,
 5 or by imprisonment in the county jail not more than thirty days.

SEC. 4326. If any person maliciously injure, deface, or destroy any build-
 2 ing or fixture attached thereto, or willfully and maliciously destroy, injure or
 3 secrete any goods, chattels, or valuable papers of another, he shall be pun-
 4 ished by imprisonment in the county jail not more than one year, or by fine
 5 not exceeding five hundred dollars, and is liable to the party injured in a sum
 6 equal to three times the value of the property so destroyed or injured, in a civil
 7 action.

SEC. 4327. If any person willfully write, make marks, or draw characters
 2 on the walls or any other part of any church, college, academy, school-house,
 3 court-house, or other public building; or willfully injure or deface the same,
 4 or any wall or fence inclosing the same, he shall be punished by fine not
 5 exceeding one hundred dollars, or by imprisonment in the county jail not
 6 more than thirty days. * * * * *

SEC. 4328. If any person intentionally deface, obliterate, tear down, or
 2 destroy, in whole or in part, any transcript, or extract from or of any law of
 3 the United States or of this state, or any proclamation, advertisement, or noti-
 4 fication set up at any place within this state by authority of law or by order
 5 of any court, during the time for which the same is to remain set up, he shall
 6 be fined in a sum not exceeding one hundred dollars, or imprisoned in the
 7 county jail not exceeding thirty days.

SEC. 4329. If any owner, master, clerk, or any other person having charge
 2 of or belonging to any boat, vessel, or raft, take any cord wood or any other
 3 species of property from the owner or his agent, without the knowledge of
 4 such owner or agent, or without paying the customary price for the same, he
 5 shall be punished by fine not exceeding two hundred dollars, or by imprison-
 6 ment in the county jail not exceeding six months.

SEC. 4330. If any person willfully dig up, pull down, break, or destroy,
 2 or in any other manner injure or remove any of the cast iron pillars or other
 3 evidences planted and fixed, or which may hereafter be planted or fixed, in
 4 and along any part of the boundaries of this state, he may be indicted there-
 5 for, and upon conviction before any court having competent jurisdiction, shall
 6 be punished by fine not less than fifty dollars nor more than two hundred dol-
 7 lars, or by imprisonment in the penitentiary for a term not less than six
 8 months, or by both such fine and imprisonment at the discretion of the court.

SEC. 4331. If any person or persons shall willfully and maliciously place
 2 any obstruction on the track of any railroad in this state, or remove any rail
 3 therefrom, or in any other way injure such railroad, or do any other thing
 4 thereto, whereby the life of any person is or may be endangered, he or they
 5 shall be punished by confinement in the state penitentiary for life, or for any
 6 term not less than two years.

SEC. 4332. If any person maliciously injure, break, or cause to be broken,
 2 any levee erected to prevent the overflow of land within this state, such per-
 3 son so offending shall upon conviction be punished by imprisonment in the
 4 penitentiary not more than five years, or by fine not exceeing one thousand
 5 dollars and imprisonment in the county jail not exceeding one year.

2 SEC. 4332. A. (9th G. A., ch. 135.) If any person place any obstrac-
 3 tion in any of the public ditches or drains, made for the purpose of draining
 4 any of the swamp lands in this state, he shall upon conviction be compelled
 5 to remove said obstructions, and be fined not less than five dollars nor more
 6 than one hundred dollars, or be imprisoned in the county jail not more than
 thirty days, at the discretion of the court.

CHAPTER 171. *Offenses against the Right of Suffrage.*

2 SEC. 4333. If any person offer or give a bribe to any elector for the pur-
 3 pose of influencing his vote at any election authorized by law; and if any
 4 elector entitled to vote at such election receives such bribe, he shall be punish-
 5 ed by fine not exceeding five hundred dollars or imprisoned in the county
 6 jail not exceeding one year, or by both fine and imprisonment at the discretion
 of the court.

2 SEC. 4334. If any elector unlawfully vote more than once at any election
 3 which may be held by virtue of any law of this state, he shall be punished
 4 by fine not exceeding two hundred dollars or by imprisonment in the county
 5 jail not exceeding one year.

2 SEC. 4335. If any person knowing himself not to be qualified, vote at any
 3 election authorized by law, he shall be punished by fine not exceeding two
 4 hundred dollars or by imprisonment in the county jail not exceeding six
 months.

2 SEC. 4336. If any person go or come into any county of this state and
 3 vote in such county, not being a resident thereof, he shall be punished by fine
 4 not exceeding two hundred dollars or by imprisonment in the county jail not
 exceeding one year.

2 SEC. 4337. If any person willfully vote who has not been a resident of
 3 this state for six months next preceding the election, or who at the time of the
 4 election is not twenty-one years of age, or who is not a citizen of the United
 5 States, or who is not duly qualified from other disability to vote at the place
 6 where and time when the vote is to be given; he shall be fined in a sum not
 7 exceeding three hundred dollars or imprisoned in the county jail not exceeding
 one year.

2 SEC. 4338. If any person, procure, aid, or assist, counsel, or advice anoth-
 3 er to give his vote, knowing that such person is disqualified he shall be pun-
 4 ished by fine not exceeding five hundred dollars nor less than fifty dollars and
 by imprisonment in the county jail not exceeding one year.

2 SEC. 4339. If any person furnish an elector with a ticket or ballot inform-
 3 ing him that it contains a name or names different from those which are
 4 written or printed therein, with an intent to induce him to vote contrary to
 5 his inclination, or fraudulently or deceitfully change a ballot of any elector by
 6 which such elector is deprived of voting for such candidate or person as he
 7 intended, he shall be punished by imprisonment in the county jail not exceed-
 8 ing two years, and by fine not exceeding one thousand dollars nor less than
 one hundred dollars.

2 SEC. 4340. If any person unlawfully and by force, or threats of force,
3 prevent or endeavor to prevent an elector from giving his vote at any public
4 election in this state, shall be punished by imprisonment in the county
5 jail not exceeding six months and a fine not more than two hundred dollars.

2 SEC. 4341. If any person give or offer a bribe to any judge, clerk, or can-
3 vasser of any election authorized by law, or any executive officer attending
4 the same, as a consideration for some act done or omitted to be done contrary
5 to his official duty in relation to such election, he shall be punished by fine
6 not exceeding seven hundred dollars and imprisonment in the county jail not
7 exceeding one year.

2 SEC. 4342. If any person procure or endeavor to procure the vote of any
3 elector or the influence of any person over other electors at any election, for
4 himself or for or against any candidate, by means of violence, threats of
5 violence, or threats of withdrawing custom or dealing in business or trade, or
6 enforcing the payment of debts, or bringing a suit or criminal prosecution, or
7 any other threat of injury to be inflicted by him or by his means, he shall be
8 punished by fine not exceeding five hundred dollars or imprisonment in the
9 county jail not more than one year.

2 SEC. 4343. If any judge or clerk of any election authorized by law know-
3 ingly make or consent to any false entry on the list of voters or poll books;
4 or put into the ballot box or permit to be so put in any ballot not given by a
5 voter; or take out of such box or permit to be so taken out any ballot
6 deposited therein, except in the manner prescribed by law; or by any other
7 act or omission designedly destroy or change the ballots given by the electors,
8 he shall be punished by fine not exceeding one thousand dollars and imprison-
9 ment in the county jail not exceeding one year.

2 SEC. 4344. When any one who offers to vote at any election is objected
3 to by an elector as a person not possessing the requisite qualifications, if any
4 judge of such election unlawfully permit him to vote without producing proof
5 of such qualification in the manner directed by law, or if any such judge will-
6 fully refuse the vote of any person who complies with the requisites pre-
7 scribed by law to prove his qualifications, he shall be punished by fine not
8 exceeding two hundred dollars nor less than twenty dollars or by imprison-
9 ment in the county jail not exceeding six months.

2 SEC. 4345. If any judge, clerk, or executive officer, designedly omit to do
3 any official act required by law, or designedly do any illegal act in relation to
4 any public election by which act or omission the votes taken at any such
5 election in any city, town, precinct, township or district be lost or the electors
6 thereof be deprived of their suffrage at such election, or designedly do any
7 act which renders such election void, he shall be fined not less than one hun-
8 dred dollars nor more than one thousand dollars or imprisoned in the county
9 jail not more than one year, or by both fine and imprisonment at the discre-
0 tion of the court.

2 SEC. 4346. If any judge, clerk, or messenger, after having been deputed
3 by the judges of the election to carry the poll-books of such election to the
4 place where by law they are to be canvassed, willfully or negligently fail to
5 deliver such poll-books within the time prescribed by law safe with the seal
6 unbroken, he shall for every such offense be punished by fine not exceeding
7 five hundred dollars nor less than fifty dollars.

CHAPTER 172. *Offenses against Chastity, Morality, and Decency.*

2 SEC. 4347. Every person who commits the crime of adultery, shall be
 3 punished by imprisonment in the penitentiary not more than three years, or
 4 by fine not exceeding three hundred dollars and imprisonment in the county
 5 jail not exceeding one year ; and when the crime is committed between par-
 6 ties only one of whom is married both are guilty of adultery and shall be
 7 punished accordingly. No prosecution for adultery can be commenced but
 on the complaint of the husband or wife.

2 SEC. 4348. If any person who has a former husband or wife living marry
 3 another person, or continue to cohabit with such second husband or wife in
 4 this state, he or she, except in the cases mentioned in the following section, is
 5 guilty of bigamy and shall be punished by imprisonment in the penitentiary
 6 not more than five years or by fine not exceeding five hundred dollars and
 7 imprisonment in the county jail not more than one year.

2 SEC. 4349. The provisions of the preceding section do not extend to any
 3 person whose husband or wife has continually remained beyond seas or who
 4 has voluntarily withdrawn from the other and remained absent for the space
 5 of three years together, the party marrying again not knowing the other to be
 6 living within that time ; nor to any person who has good reason to believe
 7 such husband or wife to be dead ; nor to any person who has been legally
 divorced from the bonds of matrimony.

2 SEC. 4350. Every unmarried person who knowingly marries the husband
 3 or wife of another when such husband or wife is guilty of bigamy thereby,
 4 shall be punished by imprisonment in the penitentiary not exceeding three
 5 years, or by fine not more than three hundred dollars and imprisonment in
 6 the county jail not exceeding one year.

2 SEC. 4351. If any man and woman not being married to each other lewdly
 3 and viciously associate and cohabit together, or if any man or woman, mar-
 4 ried or unmarried, is guilty of open and gross lewdness and designedly make
 5 any open and indecent or obscene exposure of his or her person, or of the
 6 person of another, every such person shall be punished by imprisonment in
 7 the county jail not exceeding six months, or by fine not exceeding two hun-
 dred dollars.

2 SEC. 4352. If any person keep a house of ill-fame resorted to for the pur-
 3 pose of prostitution or lewdness, he shall be punished by imprisonment in the
 4 county jail not more than one year, or by fine not exceeding five hundred
 5 dollars ; and any person who, after having been once convicted of such
 6 offense, is again convicted of the like offense shall be punished by imprison-
 7 ment in the penitentiary not less than one year nor more than three years.

2 SEC. 4353. When the lessee of a dwelling house is convicted of keeping
 3 the same as a house of ill-fame, the lease or contract for letting such house is,
 at the option of the lessor, void, and such lessor may thereupon have the like

4 remedy to recover possession as against a tenant holding over after the expi-
5 ration of his term.

SEC. 4354. If any person let any house knowing that the lessee intends
2 to use it as a place or resort for the purpose of prostitution and lewdness, or
3 knowingly permit such lessee to use the same for such purpose, he shall be
4 punished by fine not exceeding three hundred dollars, or imprisoned in the
5 county jail not exceeding six months.

SEC. 4355. If any person inveigle or entice any female, before reputed vir-
2 tuous, to a house of ill-fame, or knowingly conceal or aid or abet in conceal-
3 ing such female so deluded or enticed, for the purpose of prostitution or
4 lewdness, he shall be punished by imprisonment in the penitentiary not more
5 than ten years nor less than three years.

SEC. 4356. If any person without lawful authority willfully dig up, disin-
2 ter, remove, or carry away any human body or the remains thereof from
3 its place of interment, or aid or assist in so doing; or willfully receive,
4 conceal, or dispose of any such human body or remains thereof; or if
5 any person willfully and unnecessarily, and in an improper manner indecent-
6 ly expose, throw away, or abandon any human body or the remains thereof
7 in any public place or in any river, stream, pond, or other place, every such
8 offender shall be punished by imprisonment in the county jail not exceeding
9 one year, or by fine not exceeding one thousand dollars, or by both fine and
10 imprisonment.

SEC. 4357. If any person willfully destroy or injure any tomb, grave-stone,
2 monument, or other thing placed or designated as a memorial of the dead; or
3 any fence, railing or other thing placed about the same; or any place inclosed
4 for the burial of the dead; or willfully destroy, injure or remove any tree,
5 shrub, or plant within such inclosure, he shall be punished by imprisonment
6 in the county jail not more than one year or by fine not exceeding five hun-
7 dred dollars, or by both fine and imprisonment

SEC. 4358. Superseded by section 4367, A., of this chapter.

SEC. 4359. If any person, import, print, publish, sell, or distribute any
2 book, pamphlet, ballad, or any printed paper containing obscene language or
3 obscene prints, pictures, or descriptions manifestly tending to corrupt the mor-
4 als of youth; or introduce into any family, school, or place of education; or
5 buy, procure, receive, or have in his possession any such book, pamphlet, bal-
6 lad, printed paper, picture or description, either for the purpose of loan, sale,
7 exhibition, or circulation; or with intent to introduce the same into any family,
8 school, or place of education; he shall be punished by imprisonment in the
9 county jail not more than thirty days, or by fine not exceeding one hundred
10 dollars.

SEC. 4360. If any person willfully, disturb or disquiet any assembly of
2 persons met for religious worship, by profane discourse or rude and indecent
3 behavior, or by making a noise either within the place of worship or so near
4 as to disturb the order and solemnity of the assembly, he shall be punished
5 by imprisonment in the county jail not more than thirty days or by fine not
6 exceeding one hundred dollars. [If any person or persons unlawfully or will-
7 fully disturb or interrupt any school, school meeting, teachers' institute, lyce-
8 um, literary society, or any other lawful assembly of persons being in the
9 peace of the state, such person or persons shall be deemed guilty of a misde-
10 meanor, and on conviction thereof shall be punished by fine not exceeding one
11 hundred dollars, or by imprisonment in the county jail not exceeding thirty
12 days. 9th G. A., chapt. 146.]

2 Sec. 4361. If any person, within one mile from the place where any
 3 religious society is collected together for religious worship in any field or
 4 woodland, expose to sale or gift any spirituous or other liquors or any articles
 5 of merchandise, or any provisions or other articles of traffic, he shall be
 6 punished by imprisonment in the county jail not more than thirty days, or by
 fine not exceeding one hundred dollars.

2 Sec. 4362. The preceding section does not apply to tavern or grocery
 3 keepers exercising their calling or business in the places mentioned in their
 4 licenses (if they have such); nor to any distillers or manufacturers or others
 5 in the prosecution of their ordinary calling or business, so as to prevent them
 6 from vending or exposing to sale the articles above prohibited at their place
 7 of residence; nor to any person who has a written permit from the person
 8 having the charge of such religious society to sell any of such prohibited
 9 articles on complying with the regulations of such religious assembly and
 with the laws of the State.

2 Sec. 4363. If any person keep a house, shop, or place resorted to for the
 3 purpose of gambling; or permit or suffer any person in any house, shop, or
 4 other place under his control or care, to play at cards, dice, faro, roulette,
 5 equality, or other game for money or other thing, such offender shall be fined
 6 in the sum not less than fifty dollars nor more than three hundred dollars,
 7 or imprisoned in the county jail not exceeding one year, or be both fined and
 8 imprisoned. In a prosecution under this section any person who has the
 9 charge of or attends to any such house, shop, or place, may be deemed the
 keeper thereof.

2 Sec. 4364. If any person make oath before a justice of the peace that he
 3 has probable cause to suspect and does suspect that any house, building,
 4 or place, (naming the house or place and the occupant) is unlawfully used as a
 5 common gaming house or place for the purpose of gaming for money or
 6 other property, and that persons resort to the same for that purpose, whether
 7 they be known to the complainant or not, such justice may issue his warrant
 8 for the purpose of searching such house or building for all such implements
 9 or gambling devices mentioned in the preceding section and for the apprehen-
 10 sion of the occupant or keeper of said house or building; and after such
 11 search, seizure, and arrest, the said implements and keeper shall be carried
 12 before such justice of the peace to be dealt with as provided by law. And
 13 any gambling device brought before the justice may be destroyed by him,
 and an entry thereof shall be made upon his docket.

2 Sec. 4365. If any person play at any game for any sum of money or
 3 other property of any value, or make any bet or wager for money or other
 4 property of value, he shall be punished by fine not exceeding one hundred
 5 dollars or by imprisonment in the county jail not exceeding thirty days.

2 Sec. 4366. All promises, agreements, notes, bills, bonds, or other con-
 3 tracts, mortgages, or other securities, when the whole or any part of the con-
 4 sideration thereof is for money or other valuable thing won or lost, laid,
 5 staked, or bet at or upon any game of any kind or on any wager, are abso-
 lutely void and of no effect.

2 Sec. 4367. If any man marry his father's sister, mother's sister, father's
 3 widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's
 4 daughter, daughter's daughter, son's son's widow, daughter's son's widow,
 5 brother's daughter or sisters's daughter, or if any woman marry her father's
 6 son, daughter's husband, brother, son's son, daughter's son, son's daughter's

7 husband, daughter's daughter's husband, brother's son, or sister's son, or if any
 8 persons being within the degrees of consanguinity or affinity in which mar-
 9 riages are prohibited by this section carnally know each other, they shall be
 10 deemed guilty of incest and shall be punished by imprisonment in the state
 11 penitentiary for a term not exceeding ten years and not less than one year.

Secs. 4368 and 4369. Are included in section 4367. The whole being
 2 transposed and reduced to one section.

SEC. 4370. Is omitted as unnecessary.

Sec. 4367. A. (13th G. A., ch. 176, §§ 1 and 2.) If any person torture,
 2 torment, deprive of necessary sustenance, cruelly beat, mutilate, cruelly kill,
 3 or overdrive, any animal ; or unnecessarily fail to provide the same with
 4 proper food, drink, shelter, or protection from the weather ; or cruelly drive
 5 or work the same when unfit for labor; or cruelly abandon the same; or carry
 6 or cause the same to be carried on any vehicle, or otherwise, in an unnecessa-
 7 rily cruel and inhuman manner, he shall be punished by imprisonment in the
 8 county jail not exceeding thirty days, or by fine not exceeding one hundred
 9 dollars.

NOTE: Sections 1 and 2, chap. 176, laws 1870, are included in this.

Sec. 4367. B. (13th G. A., ch. 176, § 3.) No railroad company in this
 2 state, in the carrying or transportation of cattle, sheep, swine, or other ani-
 3 mals, shall confine the same in cars for a longer period than twenty-eight con-
 4 secutive hours, unless delayed by storm or other accidental cause, without
 5 unloading for rest, water, and feeding, for a period of at least five consecutive
 6 hours. In estimating such confinement, the time the animals have been con-
 7 fined without such rest on connecting roads from which they are received,
 8 shall be computed, it being the intention of this section to prevent their con-
 9 tinuous confinement beyond twenty-eight hours, except upon contingencies
 10 hereinbefore stated ; and animals unloaded for rest, water, and feeding, under
 11 the provisions of this act, shall be properly fed, watered, and sheltered during
 12 such rest, by the owners or persons in custody thereof, or in case of their
 13 default in so doing, then by the railroad company transporting them, at the
 14 expense of said owners or persons in custody thereof, and said company
 15 shall have a lien upon such animals for food, care, and custody furnished, and
 16 shall not be liable for any detention of such animals authorized by this act.
 17 Any railroad company, owner, or custodian of such animals who shall fail to
 18 comply with the provisions of this section, shall for each and every such
 19 offense be liable for, and forfeit and pay a penalty of not less than one hun-
 20 dred and not greater than five hundred dollars. *Provided, however,* That
 21 when such animals shall be carried in cars in which they shall and do have
 22 proper food, water, space, and opportunity for rest, the foregoing provisions,
 23 in regard to their being unloaded shall not apply.

Sec. 4367. C. (13th G. A., ch. 176, § 7.) If any person keep or use, or
 2 in any way be connected with, or be interested in the management of, or
 3 receive money for the admission of any person to, any place kept or used for
 4 the purpose of fighting or baiting any bull, bear, dog, cock, or other creature,
 5 * * or engage in, aid, abet, encourage, or assist in, any bull, bear, dog, or
 6 cock fight ; or a fight between any other creatures, he shall be deemed guilty
 7 of a misdemeanor.

Sec. 4367. D. (13th G. A., ch. 176, § 8.) If any person impound or
 2 confine, or cause to be impounded or confined, in any pound or other place,

3 any creature, and fail to apply the same during such confinement with a suf-
 4 ficient quantity of food and water, he shall be deemed guilty of a misde-
 5 meanor.

(Sections 5 and 6, ch. 176, 13th G. A., are omitted as unnecessary. Sections
 4, 9, and 10, of that chapter will be found in part one, title 2, chapter 3, of this
 code.)

CHAPTER 173. *Offenses against public Health.*

Sec. 4371. If any person knowingly sell any kind of diseased, corrupted,
 2 or unwholesome provisions, whether for meat or drink, without making the
 3 same fully known to the buyer he shall be punished by imprisonment in the
 4 county jail not more than thirty days or by fine not exceeding one hundred
 5 dollars.

Sec. 4372. If any person fraudulently adulterate for the purpose of sale,
 2 any substance intended for food, or any wine, spirituous or malt liquor or
 3 other liquor intended for drinking, he shall be punished by imprisonment in
 4 the county jail not more than one year or by fine not exceeding three hundred
 5 dollars, and the articles so adulterated shall be forfeited and destroyed.

Sec. 4373. If any person fraudulently adulterate for the purpose of sale
 2 any drug or medicine in such manner as to lessen the efficacy or change the
 3 operation of such drugs or medicines, or to make them injurious to health ;
 4 or sell them knowing that they are thus adulterated, he shall be punished by
 5 imprisonment in the county jail not exceeding one year or by fine not exceed-
 6 ing five hundred dollars, and such adulterated drugs and medicines shall be
 7 forfeited and destroyed.

Sec. 4374. If any apothecary, druggist, or other person, sell and deliver
 2 any arsenic, corrosive sublimate, prussic acid, or any poisonous liquid or sub-
 3 stance, without having the word "poison" and the true name thereof written
 4 or printed upon a label attached to the vial, box, or parcel containing the
 5 same, he shall be punished by imprisonment in the county jail not more than
 6 thirty days, or by fine not exceeding one hundred dollars. ["Any person
 7 who may dispose of at retail any poisonous substance or liquid to any one
 8 for any purpose, is hereby required to enter in a book to be kept by such
 9 apothecary, druggist or other person so disposing, the name of the poison,
 10 when bought, by whom, and for what purpose ; and if the person who calls
 11 for such poison is not personally known to the vendor, then such person shall
 12 be notified by some one known to the vendor, whose name shall also be
 13 entered in such book.

Any failure to comply with the requirements of this provision shall subject
 15 the party so failing to imprisonment in the county jail not more than thirty
 16 days or to a fine not exceeding one hundred dollars." 10th G. A. chap. 110.]

Sec. 4375. If any person inoculate himself or any other person, or suffer

2 himself to be inoculated with the small pox within this state, or come within
 3 the state with the intent to cause the prevalence or spread of this infectious
 4 disease, he shall be punished by imprisonment in the penitentiary not more
 5 than three years, or by fine not exceeding one thousand dollars and imprison-
 6 ment in the county jail not exceeding one year.

2 Sec. 4376. If any person willfully sell or keep for sale intoxicating malt
 3 or vinous liquors which have been adulterated or drugged by admixture with
 4 any deleterious or poisonous substance, he shall be deemed guilty of a
 5 felony and upon conviction thereof shall be punished by a fine not exceeding
 6 five hundred dollars or by imprisonment in the penitentiary not exceeding
 7 two years.

2 Sec. 4376. A. (10th G. A., ch. 18) If any person throw or cause to be
 3 thrown, any dead animal into any river, well, spring, cistern, reservoir, stream,
 4 or pond, he shall be punished by imprisonment in the county jail not less
 5 than ten, nor more than thirty days, or by fine not less than five nor more
 6 than one hundred dollars.

2 Sec. 4376. B. (13th G. A., ch. 156.) If any person knowingly sell to
 3 another, or knowingly deliver or bring to be manufactured to any cheese or
 4 butter manufactory in this State, any milk diluted with water, or in any way
 5 adulterated, or milk from which any cream has been taken, or milk commonly
 6 known as "skimmed milk," or shall keep back any part of milk known as
 7 "strippings," with intent to defraud, or shall knowingly sell the milk, the
 8 product of a diseased animal or animals, or shall knowingly use any poisonous
 9 or deleterious material in the manufacture of cheese or butter, he shall, upon
 10 conviction thereof, be fined in any sum not less than twenty-five dollars, nor
 11 more than one hundred dollars, and liable in double the amount of damages
 12 to the person or persons, firm, association, or corporation, upon whom such
 fraud shall be committed.

CHAPTER 174. *Offenses against Public Policy.*

2 SEC. 4377. If any person make or aid in making or establishing any lot-
 3 tery in this state; or advertise or make public any scheme for any such lottery;
 4 or advertise or offer for sale any ticket or part of a ticket in any lottery;
 5 or sell, negotiate, or dispose of, or purchase, or receive the same, or have in
 6 his possession any ticket or paper purporting to be the number of any ticket of
 7 any lottery, with intent to sell or dispose of the same on his own account or
 8 as the agent of another, he shall be punished by imprisonment in the county jail
 9 not more than thirty days or by fine not exceeding one hundred dollars, or by
 10 both fine and imprisonment at the discretion of the court.

2 Sec. 4378. If any person give, sell, or dispose of any spirituous or intoxi-
 3 cating drink to any indian within this state or to any person who is intoxi-
 4 cated, he shall be punished by fine not exceeding two hundred dollars or by
 5 imprisonment in the county jail not exceeding one year, or by both fine and
 imprisonment at the discretion of the court.

2 Sec. 4379. If any person knowingly bring within this state, any pauper or
 3 poor person with the intent of making him a charge on any of the townships
 4 or counties therein, he shall be punished by fine not exceeding five hundred
 5 dollars and stand charged with his support.

2 Sec. 4380. If any person carry on or transact any business or occupation
 3 without license therefor when such license is required by any law of this state ;
 4 he shall be fined in a sum not exceeding one hundred dollars or imprisoned
 5 in the county jail not exceeding thirty days.

2 Sec. 4380. A. (10th G. A., chap. 53.) If any person pay out, or offer
 3 to pay, or in any manner put in circulation or offer to put in circulation, any
 4 bank note, bill or other instrument intended to circulate as money, issued or
 5 purporting to be issued by any bank, individual or corporation elsewhere than
 6 in this state, excepting treasury notes, notes of any bank organized under the
 7 law of the United States, any other description of currency issued by the
 8 authority of congress, or notes of the branches of the state bank of Iowa, he
 9 shall be deemed guilty of a misdemeanor, and shall upon conviction before
 10 any court having jurisdiction, be fined the sum of five dollars for each note,
 11 bill or other instrument as aforesaid, so paid out or offered to be paid out, put
 12 in circulation or offered to be put in circulation.

13 In prosecutions under this section it shall not be necessary to state in the
 14 indictment or information the name of the bank issuing the notes, nor to prove
 15 the existence of the bank or other person purporting to issue the notes ; but
 16 it shall be sufficient to allege in general terms the fact of paying out or at-
 17 tempting to pay out, as the case may be, of bank notes issued out of this
 18 state, and the proof may be made as if the particulars were alleged, and any
 19 number of offenses may be included in the same prosecution, provided that
 20 where the total fines alleged shall not exceed one hundred dollars, the offense
 21 shall be cognizable and may be tried before a justice of the peace, and other
 22 co-ordinate jurisdictions, and when the total fines alleged exceed one hundred
 23 dollars, it shall be within the jurisdiction of the district court.

2 Sec. 4381. If any person elsewhere than on his own premises and for his
 3 own exclusive use; kill, ensnare, or trap, any wild deer, elk, fawn, prairie hen,
 4 or chicken, between the first day of January and the first day of August in
 5 any year; or any wood cock between the first day of January and July in any
 6 year; or any quail, ruffed grouse, or pheasant, between the fifteenth day of
 7 December and the twelfth day of September in any year; or any wild turkey
 8 between the first of February and the first of September in any year; or if
 9 any person elsewhere than on his own premises net, ensnare, or trap any of
 10 said animals or birds at any time of any year except in the month of Decem-
 11 ber thereof; or if any person elsewhere than on his own premises ensnare, net,
 12 or trap any quail at any time prior to the first day of December 1872; or if
 13 any person buy or sell any of the above mentioned animals or birds which
 14 have been trapped, ensnared, or killed between the days above mentioned; he
 15 shall be punished by a fine of fifteen dollars for each deer, fawn or elk snared,
 16 entrapped, killed, bought, sold, or held in possession, and five dollars for any
 17 bird of game above mentioned thus killed, trapped, ensnared, bought, sold or
 18 held in possession.

2 Sec. 4382. If any railroad, express company, or other common carrier in
 3 this state, or any of their agents or servants, have any of the above birds or
 4 animals in their possession, for transportation or other purpose, during the
 5 periods above limited and prohibited, they shall be punished by fine of not
 6 less than \$100 or more than \$300 or by imprisonment in the county jail 30
 7 days, or by both such fine and imprisonment.

Sec. 4383. If any person go upon the premises of any other person or corporation, whether inclosed or not, and be found hunting, trapping, or ensnaring any of the above named birds or animals, in violation of the foregoing provisions, he shall be punished by fine in any sum not less than three dollars nor more than fifty dollars.

Sec. 4384. A prosecution for the violation of sections 4381 and 4382 may be brought either in the county in which the offense was committed, or in any other county where the person complained of has had or has in his possession any animals or birds, killed, ensnared, or trapped, bought, or sold in violation of said sections; and the having in possession any of the animals or birds mentioned in said sections, recently killed by any person or persons between said dates, shall be deemed and taken as presumptive evidence that the same was trapped, ensnared, or killed by the persons having the possession of the same in violation thereof.

Sec. 4385. (9. G. A. ch.4.) If any person take any trout in any of the waters of this state with any net, seine, weir, basket, spear grapple, trap or any other device whatsoever, except a hook and line; or take or destroy any of the fish aforesaid in any of said waters by any means whatever, between the fifteenth day of September and the last day of December in each and every year, he shall be punished by fine of three dollars for each trout so killed or destroyed by him; and the having in possession any of the above named fish recently ensnared or killed within the days above mentioned, shall be deemed and taken as presumptive evidence that the same was caught by the person or persons having the possession of the same in violation of this section.

Sec. 4385. A. [9th G. A. chapt. 4.] If any person go upon the premises of another or of any corporation, whether enclosed or not, and be found seeking to take by any means whatever any of the fish aforesaid, within the said fifteenth day of September and the last day of December aforesaid, he shall be fined in any sum not less than three dollars nor more than fifty dollars to be paid one moiety to the complainant and one moiety to the clerk of the district court of the county for the use and benefit of the schools of said county: Provided that a conviction under the next preceding section shall be a bar to prosecution under this section based on the same facts.

Sec. 4385. B. [9th G. A., chap. 35.] If the owner of sheep, or any person having the same in charge, knowingly import or drive into this state, sheep having any contagious disease, or turn out, or suffer any sheep having any contagious disease, knowing the same to be so diseased, to run at large upon any common, highway, or uninclosed lands, or sell or dispose of any sheep, knowing the same to be so diseased, he shall be deemed guilty of a misdemeanor, and shall be punished by fine in any sum not less than fifty dollars nor more than one hundred dollars.

Sec. 4385. C. [11th G. A., chap. 10.] If any person knowingly import or bring within this state, any horse, mule, or ass, affected by the diseases known as nasal gleet, glanders, or button-farcey, or suffer the same to run at large upon any common, highway, or uninclosed land, or use or tie the same in any public place, or off his own premises, or sell, trade, or offer for sale or trade any such horse, mule or ass knowing the same to be so diseased, he

NOTE. Sections 4381, 4382, 4383, and 4384, are intended to and do embody chapter 113, laws 12th G. A., which supercedes article 2, chapter 174, as published in the Revision of 1860, and therefore this article is omitted. Chapter 115, laws of 1862, is also omitted, it being repealed.

7 shall be deemed guilty of a misdemeanor, and shall, on conviction, be pun-
 8 ished by a fine of not less than fifty dollars, nor more than five hundred dol-
 9 lars, and, in default of payment, shall be imprisoned for any period not to
 10 exceed twelve months, or by both fine and imprisonment, at the discretion of
 11 the court.

2 Sec. 4385. D. [11th G. A., chap. 10.] If any horse, mule, or ass, rea-
 3 sonably supposed to be diseased with nasal gleet, glanders, or button-farcey,
 4 be found running at large, without any known owner, it shall be lawful for
 5 the finder thereof, to take such horse, mule, or ass, so found, before some
 6 justice of the peace, who shall forthwith cause the same to be examined by
 7 some veterinary surgeon, or other person skilled in such diseases, and if, on
 8 examination, it is ascertained to be so diseased, it shall be lawful for such
 9 justice of the peace to order such diseased animal to be immediately destroyed
 10 and buried; and the necessary expense accruing under the provisions of this
 11 section shall be defrayed out of the county treasury.

2 Sec. 4385. E. (12th G. A., ch. 185.) If any person bring into this state
 3 any Texas, Cherokee, or Indian cattle, he shall be fined not exceeding one
 4 thousand dollars, or imprisoned in the county jail not exceeding six months;
 5 or be both so fined and imprisoned at the discretion of the court; provided that
 6 nothing herein contained shall be construed to prevent or make unlawful the
 7 transportation of such cattle through this state on railroads; or to prohibit the
 8 driving through any part of this state such Texas or southern cattle as have
 9 been wintered at least one winter north of the southern boundary of the state
 10 of Missouri or Kansas.

2 Sec. 4385. F. (12th G. A., ch. 185.) If any person now has in his pos-
 3 session in this state any such Texas, Cherokee, or Indian cattle, and shall not
 4 keep them within the bounds of his own premises, or separate from other
 5 cattle, he shall be liable for any damages that may accrue from allowing said
 6 cattle to run at large and thereby spreading disease among other cattle; and
 7 shall be punished as is prescribed in the next preceding section.

2 Sec. 4385. G. [12 G. A., ch. 195.] If any person use, transplant, or
 3 cultivate, or bring into this state for the purpose of using, planting, cultivating
 4 or selling, any hop roots, plants, or cuttings, which may be diseased in any
 5 manner, or infected with lice or vermin of any kind, or which may be brought
 6 from any state or country, in which the cultivation of hops has been retarded
 7 or impaired by the presence of any disease, lice, or vermin of a contagious
 8 character; he shall be fined not less than ten nor more than one hundred dol-
 9 lars, and imprisoned not less than five nor more than twenty days.

2 Sec. 4385. H. (12 G. A. ch. 195.) If complaint is made before a jus-
 3 tice of the peace, by one or more responsible persons that they have good
 4 reason to believe that hop roots have been introduced into, or are being culti-
 5 vated in, the city or township where they reside, in violation of this act, it
 6 shall be the duty of the justice before whom such complaint is made to issue
 7 a warrant authorizing any peace officer to seize such roots, and they shall be
 8 held in charge by such officer until suit has been brought against the person
 9 or persons so offending, and the cause determined; and in case it is found that
 10 the said plants, roots, or cuttings are diseased, or are infected by lice or ver-
 11 min of a contagious character, the officer before whom suit is brought will
 12 order the said roots, plants, or cuttings to be burned, charging the expense of
 13 doing the same, as costs, upon the party owning or cultivating the roots, plants,
 14 or cuttings; and in no case will he allow them to be planted, or delivered to a

14 third party, until the fact is established that they are not infected with any ver-
 15 min or disease of a contagious character.

Sec. 4385. I. (13th G. A., ch. 177.) If any person or corporation, after
 2 having been notified in writing of the presence of Canada thistles on any
 3 lands owned or occupied by such person or corporation ; or if any road super-
 4 visor, after having been notified in writing of the presence of Canada thistles
 5 on the road or highway under his jurisdiction; shall permit such thistles or any
 6 part thereof to blossom or mature, such person, corporation, or road supervisor
 7 shall be deemed guilty of a misdemeanor and be punished accordingly.

Sec. 4385. J. (13th G. A., ch. 74.) If any person kill, trap, ensnare, or
 2 in any manner destroy any of the birds of this state, excepting birds of prey, the
 3 migratory aquatic birds, and those which are useful for food, and the killing of
 4 which at certain seasons of the year is now permitted by law, or in any man-
 5 ner destroy the eggs of such birds as are hereby intended to be protected from
 6 destruction, he shall be deemed guilty of a misdemeanor, and on conviction
 7 thereof shall be fined not less than five nor more than twenty-five dollars.
 8 *Provided*, That persons killing birds for scientific purposes, or for preservation
 9 in museums and cabinets, shall be exempt from the penalties of this section,
 10 upon making satisfactory proof of the purposes for which they have killed
 11 any such bird or birds.

Sec. 4385. K. (11th G. A., ch. 135, and 12th G. A., ch. 45.) If any per-
 2 son run any threshing machine in this state without having the two lengths of
 3 tumbling rods next the machine, together with the knuckles or joints and jacks
 4 of the tumbling rods safely boxed and secured while the machine is running,
 5 he shall be deemed guilty of a misdemeanor, and be punished by fine of not
 6 less than ten nor more than fifty dollars for every day or part of a day
 7 he shall violate this section ; and no action shall be maintained, nor shall
 8 any liability exist for services rendered by or with any threshing machine run
 9 in violation hereof.

CHAPTER 175.—*Offenses against the Public Peace.*

Sec. 4386. If two or more persons voluntarily or by agreement engage
 2 in any fight, or use any blows or violence towards each other in an angry or
 3 quarrelsome manner, in any public place to the disturbance of others, they
 4 are guilty of an affray and shall be punished by imprisonment in the county
 5 jail not exceeding thirty days or by fine not exceeding one hundred dollars.

Sec. 4387. When three or more persons in a violent or tumultuous man-
 2 ner assemble together to do an unlawful act, or when together attempt to do
 3 an act whether lawful or unlawful in an unlawful, violent, or tumultuous
 4 manner, to the disturbance of others, they are guilty of an unlawful assembly
 5 and every such offender shall be punished by imprisonment in the county
 6 jail not more than thirty days or by fine not exceeding one hundred dollars.

Sec. 4388. When three or more persons together and in a violent or
 2 tumultuous manner commit an unlawful act, or together do a lawful act in an

3 unlawful, violent, or tumultuous manner, to the disturbance of others, they
4 are guilty of a riot, and every such offender shall be punished as is provided
5 in the preceding section.

Sec. 4389. Any person guilty of unlawfully assembling, or of a riot, may
2 alone be indicted and convicted thereof, but it must be alleged in the indict-
3 ment and proved on the trial that three or more persons were engaged
4 therein.

Sec. 4390. If any person make or excite any disturbance in any tavern,
2 store, or grocery, or at any election, or public meeting, or in any other place
3 where the citizens are peaceably and lawfully assembled, he shall be punished
4 by fine not exceeding one hundred dollars or by imprisonment in the county
5 jail not exceeding thirty days.

Sec. 4391. If any person or persons unlawfully or riotously assembled
2 pull down, injure, or destroy, or begin to pull down, injure, or destroy, any
3 dwelling house or other building; or destroy or attempt to injure or destroy
4 any boat or vessel; or perpetrate any premeditated injury on the person of
5 another, not being a felony, he shall be punished by imprisonment in the
6 penitentiary not more than five years, or by fine not exceeding five hundred
7 dollars and imprisonment in the county jail not more than one year, and
8 shall also be answerable to any person injured to the full amount of the
9 damages by him sustained, in an action at law.

Sec. 4392. If any person be found on the first day of the week, com-
2 monly called Sabbath, engaged in any riot, fighting, or offering to fight, or
3 hunting, shooting, carrying fire arms, fishing, horse racing, dancing, or in any
4 manner disturbing any worshipping assembly, a private family, or in buying
5 or selling property of any kind, or in any labor, (the work of necessity and
6 charity only excepted), every person so offending, shall on conviction, be
7 fined in a sum not more than five dollars, nor less than one dollar, to be
8 recovered before any justice of the peace in the county where such offense is
9 committed; and shall be committed to the jail of said county until the said
10 fine, together with the costs of prosecution, shall be paid; *Provided*, nothing
11 herein contained shall be construed to extend to those who conscientiously
12 observe the seventh day of the week as the Sabbath, or to prevent persons
13 traveling, or families emigrating from pursuing their journey, or keepers of
14 toll bridges, toll gates, and ferrymen from attending the same.

Sec. 4393. Is embodied in Sec. 4392.

CHAPTER 176.—*Cheating, by False Pretenses, Gross Frauds, and Conspiracy.*

Section 4394. If any person designedly and by false pretense, or by any
2 privy or false token and with intent to defraud, obtain from another any
3 money, goods, or other property; or so obtain the signature of any person to
4 any written instrument the false making of which would be punished as for-
5 gery, he shall be punished by imprisonment in the penitentiary not more than
6 seven years, or by fine not exceeding five hundred dollars and imprisonment
7 in the county jail not exceeding one year.

2 Sec. 4395. Any person who knowingly being a party to any conveyance
3 or as-ignment of any estate or interest in lands, goods, or things in action, or
4 of any rents or profits arising therefrom; or being a party to any charge on
5 such estate, interest, rents, or profits, made or created with intent to defraud
6 prior or subsequent purchasers, or to hinder, delay, or defraud creditors or other
7 persons; and every person who being privy to or knowing of such fraudulent
8 conveyance, assignment, or charge, puts the same in use as having been made
9 in good faith, shall be fined not exceeding one thousand dollars and impris-
oned in the county jail not exceeding one year.

2 Sec. 4396. If any person, having in his possession or under his control
3 any last will and testament of any deceased person, willfully suppress, secrete,
4 deface, or destroy the same, or any codicil thereto belonging, with intent to
5 injure or defraud any devisee, legatee, or other person, he shall be punished
6 by imprisonment in the penitentiary not more than seven years, or by fine not
7 exceeding one thousand dollars and imprisonment in the county jail not more
than one year.

2 Sec. 4397. If any person with intent to defraud use a false balance, weight,
3 or measure, in the weighing or measuring of anything whatever that is pur-
4 chased, sold, bartered, shipped or delivered for sale or barter, or that is
5 pledged or given in payment, he shall be punished by fine not exceeding five
6 hundred dollars nor less than fifty dollars, or by imprisonment in the county
7 jail not more than six months, or by both fine and imprisonment at the discre-
tion of the court

2 Sec. 4398. The magistrate granting the warrant of arrest for this offense
3 must also direct the seizure of the false weights, balances, or measures; and
4 if the party be convicted, or they are found to be false, they shall be forfeited
5 to the county, and after being made of the standard weight or measure, may
6 be sold, and the money arising from such sale must be paid into the county
7 treasury.

2 Sec. 4399. If any person falsely alter any stamp, brand, or mark on any
3 cask, package, box, or bale containing merchandise or produce, made by a
4 public officer appointed for that purpose, in order to denote the quality, weight,
5 or quantity of the contents thereof, with intent to defraud, he shall be fined
6 not more than five hundred dollars and imprisoned in the county jail not
7 exceeding one year.

2 Sec. 4400. If any person counterfeit any mark, stamp, or brand of
3 another, or falsely mark any cask, package, box, or bale, as to quality or
4 quantity, with intent to defraud, he shall be punished by fine not exceeding two
5 hundred dollars, or by imprisonment in the county jail not more than six
6 months, or by both fine and imprisonment.

2 Sec. 4401. If any person with intent to defraud use any cask, package,
3 box, or bale, marked, branded, or stamped by another, for the sale of mer-
4 chandise or produce of an inferior quality or less in quantity or weight than
5 is denoted by such mark, stamp, or brand, he shall be punished by imprison-
6 ment in the county jail not more than one year, or by fine not exceeding two
7 hundred dollars, or by both fine and imprisonment at the discretion of the
court.

2 Sec. 4402. Every person who is convicted of any gross fraud or cheat at
3 common law shall be punished as provided in the preceding section.

2 Sec. 4403. If any person cast away, sink, or otherwise destroy any raft,
3 boat, or vessel within any county of this state with intent to injure or defraud
any owner or insurer thereof, or the owner or insurer of any property laden on

4 board the same or of any part thereof, he shall be punished by imprisonment
5 in the penitentiary not exceeding five years, or fined not exceeding two thousand
6 and dollars and imprisoned in the county jail not exceeding one year.

2 Sec. 4404. If any person lade, equip, or fit out, or assist in lading, equip-
3 ping or fitting out any raft, boat, or vessel with intent that the same be cast
4 away, burnt, sunk, or otherwise destroyed, to injure or defraud any owner or
5 insurer thereof or of any property laden on board the same, he shall be pun-
6 ished by fine not exceeding one thousand dollars and imprisonment in the
7 county jail not exceeding one year.

2 Sec. 4405. If any owner of any boat or vessel or of any property laden or
3 pretended to be laden on board the same, or if any other person concerned in
4 the lading or fitting out such boat or vessel, make out and exhibit or cause to
5 be made out and exhibited any false estimate of any goods or property laden
6 or pretended to be laden on board such boat or vessel, with intent to injure
7 or defraud any insurer of such boat or vessel or property or of any part there-
8 of, he shall be fined not exceeding one thousand dollars or imprisoned in the
9 penitentiary not more than three years.

2 Sec. 4406. If any master or other officer of any boat or vessel make or
3 cause to be made any false affidavit or protest, or if any owner or other person
4 concerned in such boat or vessel or in the goods or property laden on board
5 the same procure any such false affidavit or protest to be made or exhibit the
6 same, with intent to injure, deceive, or defraud any insurer of such boat or
7 vessel or of the goods or property laden on board of the same, he shall be
8 punished by imprisonment in the penitentiary not exceeding five years, or by
9 fine not exceeding three thousand dollars and imprisonment in the county jail
not exceeding one year.

2 Sec. 4407. If two or more persons conspire or confederate together with in-
3 tent falsely and maliciously to cause or procure another person to be indicted
4 or in any way impleaded or prosecuted for an offense of which he is innocent,
5 whether such person be so impleaded, indicted or prosecuted or not, they shall
6 be deemed guilty of a conspiracy and upon conviction thereof shall be pun-
7 ished by imprisonment in the penitentiary not more than five years, or by fine
8 not exceeding one thousand dollars nor less than one hundred dollars and im-
9 prisonment in the county jail not exceeding one year.

2 Sec. 4408. If any two or more persons conspire or confederate together
3 with the fraudulent or malicious intent wrongfully to injure the person, char-
4 acter, business, or property of another; or to do any illegal act injurious to the
5 public trade, health, morals or police; or to the administration of public justice;
6 or to commit any felony, they are guilty of a conspiracy, and every such offen-
7 der, and every person who is convicted of a conspiracy at common law, shall
8 be punished by imprisonment in the penitentiary not more than three years, or

2 Sec. 4408. A. If any person issue any receipt or voucher, stating or pur-
3 porting to state the receipt by him from another, of any property for storage
4 or safe keeping without having in good faith received, and at the time having
5 in his possession or under his control, such property; or issue any second
6 receipt or voucher for any property while his former receipt or voucher for the
7 same or any part thereof shall be outstanding and uncanceled; or sell, en-
8 cumber, ship, transfer, or in any manner remove beyond his immediate con-
trol any property for which a receipt or voucher has been given by him as

NOTE. This section is chapter 84 laws, 9th G. A. amended as to the penalty, so as to leave the minimum of punishment to the discretion of the court. The portion of this chapter omitted is unnecessary, hence its omission.

9 aforesaid, in violation of the terms of such receipt or voucher, without the
 10 written consent of the person holding such receipt or voucher, except to en-
 11 force his lien for storage and warehouse charges as provided by law ; or sell,
 12 transfer, or dispose of any receipt or voucher, given or purporting to have
 13 been given by any person, for property in store, knowing that such person
 14 has not in his possession such property or any part thereof, he shall be pun-
 15 ished by fine not exceeding one thousand dollars and imprisonment in the
 16 penitentiary of this state not exceeding five years.

CHAPTER 177. *Nuisances, and abatement thereof.*

Sec. 4409. The erecting, continuing, or using any building or other place
 2 for the exercise of any trade, employment, or manufacture, which by occa-
 3 sioning noxious exhalations, offensive smells, or other annoyances becomes
 4 injurious and dangerous to the health, comfort, or property of individuals or
 5 the public ; the causing or suffering any offal, filth, or noisome substance to
 6 be collected or to remain in any place to the prejudice of others ; the obstruct-
 7 ing or impeding without legal authority the passage of any navigable river,
 8 harbor, or collection of water ; or the corrupting or rendering unwholesome
 9 or impure the water of any river, stream, or pond ; or unlawfully diverting
 10 the same from its natural course or state to the injury or prejudice of others ;
 11 and the obstructing or encumbering by fences, buildings, or otherwise, the
 12 public highways, private ways, streets, alleys, commons, landing places, or
 13 burying grounds, are nuisances.

Sec. 4410. If any person carry on the business of manufacturing gun-
 2 powder or of mixing or grinding the composition therefor in any building
 3 within eighty rods of any valuable building erected at the time when such
 4 business may be commenced, the building in which such business is thus
 5 carried on is a public nuisance and such person is liable to be prosecuted
 6 accordingly.

Sec. 4411. Houses of ill fame kept for the purpose of prostitution and
 2 lewdness, gambling houses, or houses where drunkenness, quarreling, fight-
 3 ing, or breaches of the peace are carried on or permitted to the disturbance of
 4 others, are nuisances and may be abated and punished as provided in this
 5 chapter.

Sec. 4412. Whoever is convicted of erecting, causing, or continuing a
 2 public or common nuisance as described in this chapter, or at common law
 3 when the same has not been modified or repealed by statute, where no other
 4 punishment therefor is specially provided, shall be punished by a fine not
 5 exceeding one thousand dollars, and the court with or without such fine may
 6 order such nuisance to be abated, and issue a warrant as hereinafter provided.

Sec. 4413. When upon indictment, complaint, or action, any person is
 2 adjudged guilty of a nuisance, the court before whom such conviction is had
 3 may, in addition to the fine imposed, if any, or to the judgment for damages
 4 or costs for which a separate execution may issue, order that such nuisance

5 be abated or removed at the expense of the defendant, and after inquiry into
6 and estimating as nearly as may be the sum necessary to defray the expense
7 of such abatement, the court may issue a warrant therefor.

Sec. 4414. When the conviction is had upon an action before a justice of
2 the peace and no appeal is taken, the justice after estimating as aforesaid the
3 sum necessary to defray the expenses of removing or abating the nuisance,
4 may issue a like warrant.

Sec. 4415. Instead of issuing such warrant the court or justice may order
2 the same to be stayed, upon motion of the defendant and upon his entering
3 into an undertaking in such sum and with such surety as the court or justice
4 may direct, to the state, conditioned either that the defendant will discontinue
5 said nuisance or that within a time limited by the court and not exceeding
6 six months, he will cause the same to be abated and removed as either is
7 directed by the court; and upon his default to perform the condition of his
8 undertaking, the same shall be forfeited and the court in term time or vaca-
9 tion, or justice of the peace, as the case may be, upon being satisfied of such
10 default, may order such warrant forthwith to issue, and a *scire facias* on such
11 undertaking.

Sec. 4416. The expense of abating a nuisance by virtue of a warrant can
2 be collected by the officer in the same manner as damages and costs are
3 collected on execution, except that the materials of any building, fences, or
4 other things, that may be removed as a nuisance, may be first levied upon
5 and sold by the officer, and if any of the proceeds remain after satisfying the
6 expense of the removal, such balance must be paid by the officer to the
7 defendant or to the owner of the property levied upon, and if said proceeds
8 are not sufficient to pay such expenses the officer must collect the residue
9 thereof.

CHAPTER 178.—*Libel.*

Sec. 4417. A libel is the malicious defamation of a person made public
2 by any printing, writing, sign, picture, representation, or effigy, tending to
3 provoke him to wrath or expose him to public hatred, contempt, or ridicule,
4 or to deprive him of the benefits of public confidence and social intercourse ;
5 or any malicious defamation made public as aforesaid, designed to blacken
6 and villify the memory of one who is dead, and tending to scandalize or
7 provoke his surviving relatives or friends.

Sec. 4418. Every person who makes, composes, dictates, or procures the
2 same to be done; or who willfully publishes or circulates such libel; or in any
3 way knowingly or willfully aids or assists in making, publishing, or circulat-
4 ing the same shall be punished by imprisonment in the county jail not more
5 than one year, or by fine not exceeding one thousand dollars.

Sec. 4419. In all prosecutions or indictments for libel the truth thereof
2 may be given in evidence to the jury, and if it appear to them that the matter
3 charged as libelous was true and was published with good motives and for
4 justifiable end, the defendant shall be acquitted.

2 Sec. 4420. No printing, writing, or other thing is a libel unless there has
been a publication thereof.

2 Sec. 4421. The delivering, selling, reading, or otherwise communicating a
libel; or causing the same to be delivered, sold, read, or otherwise communi-
3 cated to one or more persons or to the party libeled, is a publication thereof.

2 Sec. 4422. In all indictments or prosecutions for libel the jury, after hav-
ing received the direction of the court, shall have the right to determine at
3 their discretion the law and the fact.

TITLE II.—OF PROCEEDINGS IN CRIMINAL CASES.

CHAPTER 179.

This chapter is omitted, it being obsolete and unnecessary.

CHAPTER 180. *Public Offenses and the Modes of Preventing and Prosecuting, and some General Provisions.*

2 Sec. 4427. A crime or public offense in the meaning of this code is any
3 act or omission forbidden by law, and to which is annexed upon conviction
4 thereof a punishment.

Sec. 4428. Public offenses are divided into—

2 1. Felonies.

3 2. Misdemeanors.

2 Sec. 4429. A felony is a public offense punishable with death, or which
3 is, or in the discretion of the court may be, punishable by imprisonment in
4 the penitentiary.

Sec. 4430. Every other public offense is a misdemeanor.

2 Sec. 4431. No person can be punished for a public offense, except upon
3 legal conviction in a court having jurisdiction thereof.

2 Sec. 4432. Every public offense must be prosecuted by indictment,
3 except,

4 1. Offenses of public officers, where a different mode of procedure is pre-
5 scribed by law.

6 2. Offenses exclusively within the jurisdiction of justices of the peace or
7 police or city courts.

8 3. Offenses arising in the army or navy, or in the militia when in actual
9 service in time of war or public danger, of which a military court
has exclusive jurisdiction.

Sec. 4433. The commission of public offenses may be prevented,

2 1. By the resistance of the party about to be injured, and others, as pro-
3 vided in chapter 182 of this code.

4 2. By the intervention of the officers of justice, as provided in chapter 183.

2 Sec. 4434. The proceeding by which a party charged with a public
3 offense is accused and brought to trial and punishment, is known as a criminal action.

2 Sec. 4435. A criminal action must be prosecuted and conducted in the
3 name and by the authority of "the state of Iowa," as a party, against the party charged with the offense.

2 Sec. 4436. The party prosecuted in a criminal action is designated in this
3 code as the defendant.

2 Sec. 4437. In a criminal action the defendant has a right,
3 1. To be informed of the accusation against him, and to have a copy of
4 the same when he demands it.
5 2. To have the assistance of counsel in every stage of the proceedings.
6 3. To have a speedy and public trial.
7 4. To have compulsory process for his own witnesses.
8 5. To be tried by an impartial jury, except when the action is prosecuted
9 by impeachment, as provided in chapter 221.
6. To be confronted with the witnesses against him.

2 Sec. 4438. No person shall, after his acquittal once, in a criminal action,
3 be tried again for the same public offense; nor shall he be tried again for the
4 same after he has been once legally prosecuted and convicted, except as provided in the constitution.

CHAPTER 181.—*The Terms Magistrate, and his Powers, Peace Officer and Officers of Justice, as used in this Code, Defined.*

2 Section 4439. Any judge of the supreme, district, or circuit courts, and
3 judge of any city court, any justice of the peace, any mayor of any incorporated city, or town, any police, or other special justice of such city, or town, is
4 authorized to receive complaints and preliminary informations, to issue warrants, order arrests, require security to keep the peace, make commitments and
5 take bail in the manner directed by this code. They are designated under the
6 general term magistrate.
7

2 Sec. 4440. The following persons respectively, are designated in this code
3 under the general term, peace officer.

- 4 1 Sheriffs and their deputies.
- 5 2 Constables.
- 6 3 Marshals and policemen of incorporated cities and towns.

2 Sec. 4441. Magistrates and peace officers are sometimes designated by the
3 term officers of justice.

CHAPTER 182.—*Prevention of Public Offenses by the Resistance of the Party about to be injured, and others.*

2 Sec. 4442. Lawful resistance to the commission of a public offense may
be made by the party about to be injured, or by others.

2 Sec. 4443. Resistance sufficient to prevent the offense may be made by
the party about to be injured:

3 1. To prevent an offense against his person;

4 2. To prevent an illegal attempt by force to take or injure property in his
5 lawful possession.

2 Sec. 4444. Any other person in aid or defense of the person about to be
injured, may make resistance sufficient to prevent the offense.

CHAPTER 183.—*Prevention of Public Offenses by the Intervention of the Officers of Justice.*

2 Sec. 4445. Public offenses may be prevented by the intervention of the
officers of justice,

3 1. By requiring security to keep the peace; and for good behavior.

4 2. By forming a police in villages, and in incorporated towns and cities,
5 and by requiring their attendance in exposed places.

6 3. By suppressing riots.

2 Sec. 4446. Whenever the officers of justice are authorized to intervene
for the prevention of public offenses, other persons, who by their command,
3 act in their aid, are justified in so doing.

CHAPTER 184.—*Security to Keep the Peace.*

2 Sec. 4447. Magistrates are conservators of the peace, and have power
3 to cause all laws made for the preservation of the public peace to be kept,
4 and in the exercise of that jurisdiction, to require persons to give security to
5 keep the peace in the manner provided in this chapter :

- 6 1. Judges of the supreme, district, and circuit courts throughout the state,
7 in any county in which they may be at the time of complaint made.
- 8 2. Judges of city courts, justices of the peace, mayors of incorporated
9 cities and towns, and police and other special justices of such cities
and towns within their respective counties.

2 Sec. 4448. A complaint may be laid before either of the magistrates men-
3 tioned in the preceding section, that a person has threatened to commit a
4 public offense against the person or property of another, which if actually
5 committed where the same is alleged to have been threatened, would have
6 been triable in the county in which such magistrate has jurisdiction, as pre-
7 scribed in the preceding section, it shall be the duty of the magistrate to
8 examine such complainant and any witnesses he may produce, and reduce
9 such examination to writing in the form of affidavits, and cause each affidavit
to be subscribed and sworn to before him by the person making it.

2 Sec. 4449. The affidavit of the complainant shall be called the complaint,
3 and it may state the threat upon the information and belief of the complain-
4 ant generally, or particularly of his own knowledge, as the truth may be; but
5 must state that the complainant fears, that unless the party complained of is
prevented, he will carry his threat into execution.

2 Sec. 4450. The affidavits must set forth the facts stated by the complainant
3 or his witnesses, tending to show that there is just reason to fear the commis-
4 sion of the offense, where such facts are ascertained on such examination, to
5 exist; leaving the conclusion as to whether there is just reason to fear the
commission of the offense, to be drawn by the magistrate.

2 Sec. 4451. If it appears from such affidavits that there is just reason to fear
3 the commission of the offense alleged to have been threatened by the person
4 complained of, the magistrate must issue a warrant, directed generally, to any
5 peace officer in the state, reciting, briefly, the substance of the complaint, and
6 commanding the peace officer forthwith to arrest the person complained of and
7 bring him before the magistrate who issued the warrant; or in case of his ab-
8 sence, or inability to act, before the nearest or most accessible magistrate of the
same county.

2 Sec. 4452. The warrant must specify the name of the person complained
3 of, and if it be unknown to the magistrate, may designate him by any name.
4 It must bear date on the day on which it is issued, and at the county, town,
5 village or township where it is issued, and be signed by the magistrate, with
his name of office.

2 Sec. 4453. It must be executed by a peace officer. When issued by a
3 judge of the supreme or district court, it may be executed in any county of the

3 state; but when issued by any other magistrate it must be certified in the
4 manner hereinafter prescribed, for a warrant of arrest, issued on a preliminary
5 information, before it can be executed in any county other than that in
6 which it was issued. When so certified, it may then be executed in any county
7 in the state.

2 Sec. 4454. When the person complained of is arrested, he must be taken
3 before the magistrate who issued the warrant, or in case of his absence or inability
4 to act, before the nearest or most accessible magistrate of the same
5 county without unnecessary delay.

2 Sec. 4455. When the person arrested is taken before a magistrate other
3 than the one who issued the warrant, the peace officer who executed the same,
4 and who has charge of the person arrested, must, at the same time, deliver to
5 to the magistrate before whom the person arrested is taken, the warrant with
6 his return endorsed and subscribed by him, and the complaint and other affidavits,
7 if any, on which the warrant was issued, must be sent to the magistrate before whom
8 the person arrested is taken, and if they cannot be procured, the complainant and his
9 witnesses, if any, must be subpoenaed, if necessary, by the magistrate before whom
10 the person arrested is taken, to appear before him any make a new complaint and affidavits.

2 Sec. 4456. When the person complained of is brought before the magistrate,
3 if the charge be controverted, the magistrate must take testimony in
4 relation thereto. The evidence must be reduced to writing and subscribed by
5 the witnesses.

2 Sec. 4457. If it appear that there is no just reason to fear the commission
3 of the offense alleged to have been threatened, the person complained of must
4 be discharged, and the complainant may be ordered to pay the costs of the
5 proceeding, if the magistrate regards the complaint as unfounded or frivolous,
6 and unless when the proceeding is before a judge of the supreme, district, or
7 circuit court, may issue execution therefor, and when the proceeding is before
8 a judge of the supreme, district, or circuit court, he shall transmit the complaint,
9 affidavits, warrant, and order, to the clerk of the district court of the
10 county, who shall file the same, make a memorandum thereof in the judgment
11 docket, and issue execution therefor immediately.

2 Sec. 4458. If there be just reason to fear the commission of the offense,
3 the person complained of shall be required to enter into an undertaking in
4 such sum as the magistrate may direct, with one or more sufficient sureties,
5 to abide the order of the district court of the county at the next term thereof,
6 and in the meantime to keep the peace towards the people of this state and
7 particularly towards the person against whom or whose property there is
8 reason to fear the offense may be committed.

2 Sec. 4459. If the undertaking required by the last section be given, the
3 party complained of must be discharged. If he do not give it, the magistrate
4 must commit him to prison specifying in the warrant the requirements
5 to give security, the amount thereof, and the omission to give the same.

2 Sec. 4460. If the person complained of be committed for not giving
3 an undertaking he may be discharged by a magistrate upon giving the same.

2 Sec. 4461. The undertaking, together with the complaint, affidavits, if
3 any, and other papers in the proceeding, must be returned by the magistrate
4 to the district court of the county by the first day of the next term thereof.

2 Sec. 4462. Any person, who, in the presence of a court or magistrate
3 shall assault or threaten to assault another, or to commit an offense against
4 the person or property of another, or contends with another with angry

4 words, may be ordered, without process, to enter into an undertaking to keep
 5 the peace for a period of time not exceeding beyond the next term of the
 6 district court of the county as hereintofore provided, and in case of his
 7 omission to comply with said order, he may be committed accordingly.

Sec. 4463. The district court may, on the conviction of any person for
 2 an offense against the person or property of another when necessary for the
 3 public good, require the defendant to enter into an undertaking to keep the
 4 peace, as hereinbefore provided, and on his omission to do so, may commit
 5 him accordingly.

Sec. 4464. Any person committed for omitting to enter into an undertak-
 2 ing, as provided in this chapter, may be discharged by a magistrate, upon giv-
 3 ing the same.

Sec. 4465. A person who has entered into an undertaking to keep the
 2 peace, when required by a magistrate, as hereinbefore provided, must appear
 3 on the first day of the next term of the district court of the county, and if the
 4 complainant appear and the person bound by the undertaking does not appear,
 5 the court may forfeit his undertaking, and order the same to be prosecuted,
 6 unless his default be excused.

Sec. 4466. If neither of the parties appear, the court may discharge the
 2 undertaking upon the payment of costs by the party bound by the undertak-
 3 ing, unless good cause to the contrary be shown; but if both parties appear,
 4 the court shall hear their allegations and proofs respectively, and may either
 5 discharge the undertaking, or require a new one for a period of time not ex-
 6 ceeding one year.

Sec. 4467. An undertaking to keep the peace is broken by the forfeiture
 2 of the same, by the court, as hereinbefore provided, or upon the conviction
 3 of the party bound by the undertaking, of a breach of the peace.

Sec. 4468. Upon the district attorney producing evidence of such convic-
 2 tion to the district court to which the undertaking is returned, that court must
 3 order the undertaking to be prosecuted, and the district attorney must, there-
 4 upon, commence an action upon it.

Sec. 4469. In the action, the offense stated in the record of conviction,
 2 must be alleged as the breach of the undertaking, and is conclusive evidence
 3 thereof.

CHAPTER 185. *Vagrants [and Insane Persons.]*

Sec. 4470. The following persons are vagrants. All persons who tell
 2 fortunes, or where lost or stolen goods may be found; all common prostitutes
 3 and keepers of bawdy houses or houses for the resort of prostitutes; all
 4 habitual drunkards, gamblers, or other disorderly persons; all persons wan-
 5 dering about and having no visible calling or business to maintain them-
 6 selves; all persons begging in public places or from house to house or pro-
 7 curing children so to do; all persons going about as collectors of alms or
 8 charitable institutions under any false or fraudulent pretenses; all persons

9 playing or betting in any street or public or open place, at, or with any table
10 or instrument of gaming at any game or pretended game of chance.

2 Sec. 4471. Upon complaint made on oath to any magistrate against any
3 person, as being such vagrant within his local jurisdiction, as defined in this
4 code, he shall issue a warrant for the arrest of such person, and his examina-
5 tion, and the complaint, warrant and arrest, shall be governed by the pro-
6 visions of the last chapter, as nearly as practicable, except as hereinafter pro-
7 vided.

2 Sec. 4472. It shall be the duty of all peace officers to arrest any vagrant
3 whom they may find at large and not in the care of some discreet person, and
4 take him before some magistrate of the county, city or town in which the
5 arrest is made.

2 Sec. 4473. If the arrests authorized in the last two sections are made
3 during the night, the officer must keep the person arrested in confinement
4 until the next morning, and if arrests are made within the local jurisdiction of
5 a police, or city court, the persons arrested must be taken before a judge or
6 justice of such court unless he be absent.

2 Sec. 4474. If it appear by the confession of such person or by competent
3 testimony, that such person is a vagrant, the magistrate before whom he is
4 brought, may require of such person, an undertaking, with sufficient surety,
5 for good behavior, for the term of one year, thereafter.

2 Sec. 4475. The magistrate shall make up, sign, and file with the clerk of
3 the district court of the county a record of conviction of such person, as a
4 vagrant, specifying, generally, the nature and circumstances of the charge,
5 and shall in default of such security being given, by warrant, under his hand,
6 commit such vagrant to the county jail of the county, city, or town, as the
7 case may be, until such security be found, or such vagrant discharged, accord-
8 ing to law.

2 Sec. 4476. The committing of any of the acts which constitute such per-
3 son so bound a vagrant, shall be deemed a breach of the condition of such
4 undertaking.

2 Sec. 4477. On a recovery upon any such undertaking the court before
3 which such recovery may be had may, in its discretion, either require new
4 sureties for good behavior, or may commit such vagrant to the common jail
5 of the county for any time not exceeding six months.

2 Sec. 4478. Any person committed to jail for not finding sureties for good
3 behavior may be discharged by any magistrate upon giving such sureties for
4 good behavior as were originally required of such person.

2 Sec. 4479. Any district court to which any return of such persons so con-
3 victed of being vagrants shall inquire into the circumstances of each case
4 and hear any proofs that may be offered, and shall examine the record of con-
5 viction, which shall be deemed presumptive evidence of the facts therein con-
6 tained until disproved.

2 Sec. 4480. The district court may revise such conviction and discharge
3 the vagrant from the undertaking or confinement absolutely, or upon sureties
4 for good behavior, in its discretion. Or such court may in its discretion
5 authorize the circuit court of the county to bind out such vagrants as shall be
6 minors in some lawful calling, as servants or apprentices, or otherwise, until
7 they shall be of full age respectively; or to contract for the service of such
8 vagrants as shall be of full age with any suitable person, as laborers or ser-
9 vants, for any time not exceeding one year, which binding out and contracts
shall be as valid and effectual as the indenture of any apprentice with his own

10 consent and the consent of his parents, and shall subject the person so bound
 11 out or contracted for to the same control of their masters respectively, and of
 12 such courts, as if they were bound apprentices.

Sec. 4481. Such district court may in its discretion order any such vagrant
 2 to be kept in the common jail for any time not exceeding six months at hard
 3 labor.

Sec. 4482. If there be no means in such jail for employing offenders at
 2 hard labor, such court may direct thereof to furnish such employment as it
 3 shall specify, to such vagrant as may be committed thereto either by a justice
 4 or any court, and for that purpose to purchase any necessary raw materials
 5 and implements, not exceeding such amount as the court shall prescribe, and
 6 to compel such persons to perform such work as shall be allotted to them.

Sec. 4483. The expenses incurred in pursuance of such order shall be
 2 audited by the board of supervisors of the county and paid out of the county
 3 treasury.

Sec. 4484. One half of the net proceeds of such labor shall be paid to
 2 the person earning the same, upon his discharge from imprisonment, and the
 3 other half shall be paid into the county treasury for the use of the county.

Sec. 4485. Repealed. Chapter 109, 13th G. A.

CHAPTER 186.—*Police in Cities and Towns, and requiring their Attendance
 in Exposed Places.*

Sec. 4486. The organization of the police in incorporated cities and towns
 2 is as regulated by law.

Sec. 4487. The mayor or other officer, having the direction of the police
 2 in such city or town, must order a force sufficient to preserve the peace, to
 3 attend any public meeting, when he is satisfied that a breach of the peace
 4 is to be apprehended.

Sec. 4488. If there be no police in such city or town, he may order out
 2 such number of able bodied citizens as he may deem necessary for the pur-
 3 pose of keeping the peace, as provided in the last section.

CHAPTER 187.—*Resistance of Process and Suppression of Riot.*

Section 4489. When a sheriff or other officer authorized to execute process, finds, or has reason to apprehend that resistance will be made to the execution thereof, he may command as many male inhabitants of his county as he may think proper, and any military companies in the county, armed and equipped, to assist him in overcoming the resistance, and if necessary, in seizing, arresting, and confining the resisters, and their aiders and abettors, to be punished by law.

Sec. 4490. The officer shall certify to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they may be punished for a contempt.

Sec. 4491. Every person commanded by a public officer to assist him in the execution of process, as provided in the first section of this chapter, who without lawful cause refuses or neglects to obey such command, is guilty of a misdemeanor.

Sec. 4492. If it appear to the governor that the power of any county is not sufficient to enable the sheriff to execute process delivered to him, he may on the application of the sheriff order such posse or military force from any other county or counties as is necessary.

Sec. 4493. When persons to the number of twelve or more armed with dangerous weapons, or persons to the number of thirty or more whether armed or not, are unlawfully or riotously assembled in any city or town, the judges, sheriff and his deputies if they be present, the mayor, aldermen, marshal, constables, and justices of the peace of such city or town, must go among the persons assembled or as near them as may be safe and command them in the name of the state immediately to disperse.

Sec. 4494. If the persons assembled do not immediately disperse, the magistrates and officers must arrest them, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

Sec. 4495. If any person commanded to aid the magistrate or officer, without good cause neglect to do so, he is guilty of a misdemeanor.

Sec. 4496. If a magistrate or officer having notice of an unlawful or riotous assembly as above provided in this chapter, neglect to proceed to the place of the assembly or as near thereto as he can with safety and to exercise the authority with which he is invested for suppressing the same and arresting the persons, he is guilty of a misdemeanor.

Sec. 4497. If the persons so assembled and commanded to disperse, do not immediately disperse, any two of the magistrates or officers before mentioned may command the aid of a sufficient number of persons and may proceed in such manner as in their judgment is necessary to disperse the assembly and arrest the offenders.

Sec. 4498. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly or arresting the offenders, it must obey such orders in relation thereto as have been made by the governor, or by a judge of the supreme, district, or county court, a sheriff, or magistrate, as the case may be.

CHAPTER 188.—*Original Criminal Jurisdiction of the Courts of the State.*

2 Sec. 4499. The jurisdiction of the various courts of this state, for the trial
3 of offenses, is as follows :

- 4 1. The senate has exclusive jurisdiction of impeachments.
- 5 2. The district court has exclusive jurisdiction of indictments, and all
6 prosecutions; except where exclusive or concurrent jurisdiction is
7 given to other courts by law.
- 8 3. Justices of the peace have concurrent jurisdiction with the city police
9 courts, as provided in the next subdivision of this section, and exclu-
10 sive of the district court of criminal actions, prosecuted by informa-
11 tion upon oath, summarily, without the intervention of a grand jury,
12 where the punishment prescribed by law does not exceed a fine of
13 one hundred dollars, or imprisonment for thirty days; saving to the
14 defendant the right of appeal.
- 15 4. Police and city courts in incorporated cities and towns, have exclusive
16 jurisdiction of all prosecutions for infractions of the by-laws or ordi-
17 nances of the city or town in which they are located, as provided by
18 law, and concurrent jurisdiction with justices of the peace, of prosecu-
19 tions for misdemeanors, in the cases provided for in the special stat-
 utes, creating or regulating such courts, or legally conferred on them

CHAPTER 189. *The Local Jurisdiction of the Trial of Public Offense.*

2 Section 4500. Every person, whether an inhabitant of this or any other
3 state, or country, or of a territory, or district of the United States, is liable
4 to punishment by the laws of this state for a public offense committed by
5 him therein, except where it is by law cognizable exclusively in the courts of
6 the United States.

2 Sec. 4501. The jurisdiction of the senate, for the trial of impeachments
3 embraces the whole state.

2 Sec. 4502. The local jurisdiction of the district court, is of offenses com-
3 mitted within the county in which it is held, and of such other cases as are
4 or may be provided by law.

2 Sec. 4503. The local jurisdiction of the justices of the peace, is of offenses
3 committed within their respective counties, and of such other cases as are or
4 may be provided by law.

2 Sec. 4504. The local jurisdiction of the police and city courts is of offen-
 3 ses committed within the limits of the jurisdiction of such courts, as pre-
 4 scribed by the special statutes creating or regulating them, and of such other
 5 cases as are or may be provided by law.

2 Sec. 4505. When the commission of a public offense commenced without
 3 this state is consummated within the boundaries thereof, the defendant is
 4 liable to punishment therefor in this state though he was without the state at
 5 the time of the commission of the offense charged: *provided*, he consum-
 6 mated the offense through the intervention of an innocent or guilty agent
 7 within this state, or any other means proceeding directly from himself; and
 8 in such case the jurisdiction is in the county in which the offense is consum-
 9 mated.

2 Sec. 4506. When an inhabitant or resident of this state by previous ap-
 3 pointment or engagement, fights a duel, or is concerned as second therein
 4 without the jurisdiction of this state, and in such duel a wound is inflicted
 5 upon any person whereof he die within this state, the jurisdiction of
 6 the offense is in the county where the death may happen.

2 Sec. 4507. When a public offense is committed in part in one county and
 3 in part within another, or when the acts or effects constituting, or requisite
 4 to the consummation of the offense, occur in two or more counties, jurisdic-
 5 tion is in either county.

2 Sec. 4508. When a public offense is committed on the boundary of two
 3 or more counties or within five hundred yards thereof, the jurisdiction is in
 4 either county.

2 Sec. 4508. When an offense is committed within the *jurisdiction* of this
 3 state on board a boat or vessel navigating a river, lake, or canal, or lying
 4 therein, in the prosecution of her voyage, the jurisdiction is in any county
 5 through which the boat or vessel is navigated in the course of her voyage,
 6 or in the county where the voyage shall terminate.

2 Sec. 4510. The jurisdiction of an indictment for the crime of forcibly and
 3 without lawful authority seizing and confining another, or kidnapping him
 4 with intent against his will to cause him to be confined or imprisoned within
 5 the state, or to be sent out of the state; or if taking or enticing away a child
 6 under the age of twelve years from the parents, guardian, or other person
 7 having the legal charge of her person, with the intent to detain or conceal
 8 such child; or of taking or enticing away an unmarried female of previously
 9 chaste character under the age of fifteen years, for the purpose of prostitution;
 10 or of taking any woman unlawfully and against her will, or by force, menace,
 11 or duress compelling her to marry against her will; or of seducing and de-
 12 bauching any unmarried woman of previously chaste character, is in any
 13 county in which the offense is committed or into or out of which the person
 14 upon whom the offense was committed may, in the prosecution of the offense,
 15 have been brought, or in which an act is done by the offender in instigating,
 16 procuring, promoting, aiding in, or being an accessory to, the commission of
 the offense, or in abetting the parties concerned therein.

2 Sec. 4511. When the offense of bigamy is committed in one county and
 3 the defendant is apprehended in another, the jurisdiction is in either county.

2 Sec. 4512. When the offense is within the jurisdiction of two or more
 3 counties, a conviction or acquittal thereof in one county is a bar to a prosecu-
 4 tion or indictment thereof in another.

CHAPTER 190. *The Time of Commencing Criminal Actions.*

2 Sec. 4513. A prosecution for murder may be commenced at any time
3 after the death of the person killed.

2 Sec. 4514. An indictment for a public offense must be found within
3 eighteen months after the commission thereof, in the following cases, and not
4 after :

- 4 1. Taking or enticing away an unmarried female, under the age of fifteen
5 years, for the purpose of marriage or prostitution.
- 6 2. Seducing or debauching an unmarried female, of previously chaste
7 character.
- 8 3. For rape and adultery.
- 9 4. For an assault with intent to commit a rape.

2 Sec. 4515. In all other cases an indictment for a public offense must be
3 found within three years after the commission thereof, and not afterward.

2 Sec. 4516. If when the offense is committed the defendant is out of
3 the state, the indictment or prosecution may be found or commenced within
4 the time herein limited after his coming into the state, and no period during
5 which the party charged was not usually and publicly resident within the
6 state is a part of the limitation.

2 Sec. 4517. An indictment is found within the meaning of this chapter
3 when it is duly presented by the grand jury in open court and there received
4 and filed.

CHAPTER 191.—*Fugitives from Justice.*

2 Sec. 4518. The governor of this state may, in any case authorized by the
3 constitution and laws of the United States, appoint agents to demand of the
4 executive authority of any other state or territory, or from the executive author-
5 ity of any foreign government, any fugitive from justice charged with treason
6 or felony, and the accounts of the agents appointed for that purpose must be
7 audited by the auditor of state and paid out of the state treasury.

2 Sec. 4519. No compensation, fee, or reward of any kind, can be paid to,
3 or received by a public officer of this state for a service rendered or expense
4 incurred in procuring from the governor the demand mentioned in the last
5 section, or the surrender of the fugitive, or for conveying him to this state, or
6 detaining him therein, except as provided by law.

Sec. 4520. A violation of the last section is a misdemeanor.

2 Sec. 4521. No executive warrant for the arrest and surrender of any per-
3 son demanded by the executive authority of any other state or territory, as a
4 fugitive from the justice of such state or territory, and no requisition upon the
5 executive authority of any other state or territory, for the surrender of any
6 person as a fugitive from the justice of this state, shall be issued, unless the
7 requisition from the executive authority of such other state or territory, or the
8 application for such requisition upon the executive authority of such other
9 state or territory shall be accompanied by sworn evidence that the party
10 charged is a fugitive from justice, and by a duly attested copy of an indict-
11 ment, or a duly attested copy of a complaint, made before a court or magis-
trate authorized to receive the same.

2 Sec. 4522. Whenever a demand is made upon the governor of this state
3 by the executive of any other state or territory in any case authorized by the
4 constitution and laws of the United States, for the delivery of any person
5 charged in such state or territory with any crime, if such person is not held in
6 custody or under bail to answer for any offense against the laws of the United
7 States or of this state, he shall issue his warrant under the seal of the state
8 authorizing the agent who makes such demand, either forthwith or at such
9 time as may be designated in the warrant, to take and transport such person
10 to the line of this state at the expense of such agent, and may also by such
11 warrant require all peace officers to afford all needful assistance in the execu-
tion thereof.

2 SEC. 4523. If any person be found in this state charged with any crime
3 committed in any other state or territory and liable by the constitution and
4 laws of the United States to be delivered over upon the demand of the gov-
5 ernor thereof, any magistrate may upon complaint on oath setting forth the
6 offense and such other matters as are necessary to bring the case within the
7 provisions of law issue a warrant to arrest such person.

2 SEC. 4524. If upon examination it appear that there is reasonable cause
3 to believe the complaint true and that such person may be lawfully demanded
4 of the governor, he shall, if not charged with murder, be required to enter
5 into an undertaking with sufficient surety in a reasonable sum to appear
6 before such magistrate at a future day, (allowing reasonable time to obtain
7 the warrant from the governor,) and abide the order of such magistrate in
the premises.

2 SEC. 4525. If such person does not give bail, or if he is charged with
3 the crime of murder, he must be committed to prison, and there detained
4 until such day in like manner as if the offense charged had been committed
5 within this state.

2 SEC. 4526. A failure of such person to attend before the magistrate
3 at the time and place mentioned in the undertaking is a forfeiture
4 thereof.

2 SEC. 4527. If such person appear before the magistrate upon the day or
3 order he must be discharged unless he is demanded by some person author-
4 ized by the warrant of the governor to receive him, unless the magistrate
5 see good cause to commit him or to require him to enter into a new under-
6 taking for his appearance at some other day to await a warrant from the
7 governor.

2 SEC. 4528. Whether the person so charged be bound to appear, be com-
mitted or discharged, any person authorized by the warrant of the governor

3 may at any time take him into custody, and the same is a discharge of the
4 undertaking if there be one.

SEC. 4529. The complainant in any such case is answerable for all the
2 costs and charges and for the support in prison of any person so committed,
3 and the magistrate before issuing his warrant or hearing the cause, must re-
4 quire the complainant to give security for the payment of all such costs, or
5 may require them in advance.

SEC. 4529. A. [Chap. 39, 12th G. A.] Upon the appointment of any
2 agent for the arrest of a fugitive from justice, under the provisions of this
3 chapter, the governor is hereby authorized to make it a condition upon such
4 appointment, and the issue of the writ, that the same shall be executed
5 without expense to the state, if in his opinion justice and equity so re-
6 quire.

SEC. 4529. B. [Chap. 39, 12th G. A.] When, in the opinion of the
2 governor, expenses incurred in the arrest of fugitives from justice should be
3 paid by the state, such expenses shall be made out by items in detail, and
4 sworn to, and approved by him and at least two other members of the cen-
5 sus board, and when so approved shall be audited and paid out of the gene-
6 ral revenue of the state, and this act shall be sufficient authority for the pay-
7 ment of the same.

CHAPTER 192.—*Preliminary Information, What and How Taken.*

Sec. 4530. The preliminary information is the allegation made to a mag-
2 istrate that a person is guilty of some designated public offense, triable on
3 indictment, in the county in which such magistrate has local jurisdiction, as
4 defined in section 4447 of this code.

Sec. 4531. When a preliminary information is laid before a magistrate, he
2 must examine the informant or prosecutor, and any witnesses he may produce,
3 and take their affidavits in writing, and cause each affidavit to be subscribed
4 and sworn to before him by the person making it.

Sec. 4532. The affidavits must set forth the facts stated by the informant
2 and his witnesses, tending to establish the commission of the offense and the
3 guilt of the person charged therewith. They must also show who is the
4 informant and who are the witnesses.

Sec. 4533. If the magistrate be satisfied therefrom that the offense has
2 been committed, and that there is reasonable ground to believe that the per-
3 son alleged to be guilty thereof has committed it, he shall issue a warrant of
4 arrest.

CHAPTER 193. *Warrant of Arrest on Preliminary Information.*

2 Sec. 4534. The warrant of arrest on a preliminary information, must be
substantially in the following form :

3 COUNTY OF
4 THE STATE OF IOWA,

5 *To any Peace Officer in the State :*

6 Preliminary informat on upon oath having been this day laid before me that
7 the crime of (designating it,) has been committed, and accusing A. B. thereof :
8 You are, therefore, commanded forthwith to arrest the said A. B. and bring
9 him before me at (naming the place,) or in case of my absence or inability
10 to act before the nearest or most accessible magistrate in this county.

11 Dated at _____ this _____ day of _____ A. D. 18____
12 C. D., *Justice of the Peace.*
13 (or as the case may be.)

14 Subpœna as witnesses E. F. and G. H.

2 Sec. 4535. The warrant must specify the name of the defendant, and if
3 it be unknown to the magistrate, may designate him by any name. It must
4 also state [by name or general de. cription,] an offense which authorizes
5 the magistrate to issue the warrant, the time of issuing it, and the county,
6 city, town, township or village, where it was issued, and must be signed by
the magistrate with his name of office.

Sec. 4536. It must be directed to "any peace officer in the state."

2 Sec. 4537. If the offense stated in the warrant be a misdemeanor, the
3 magistrate issuing it must make an indorsement on the warrant as follows :
4 " Let the defendant, when arrested, be admitted to bail in the sum of
5 _____ dollars, if he desires to give bail," and fix in the indorsement the
6 amount in which bail may be taken.

2 Sec. 4538. (Ch. 137, 13th G. A.) The warrant of arrest may be de-
3 livered to any peace officer for execution, and executed in any county in the
4 state, if issued by a judge of the supreme, district or circuit court. If issued
5 by any other magistrate than a judge of the supreme or district court, it can
6 only be executed in the county in which it is issued, unless it is accompanied
7 by a certificate of the official character of the magistrate issuing it, and that
8 his signature thereto is genuine. If the magistrate issuing it be a justice of
9 the peace, the certificate must be by the clerk of the district court, under the
10 seal of that court. If by a mayor of an incorporated city, or town, or by a
11 police or other special justice of such city or town, by the clerk or recorder
12 of such city or town, under the seal of such city or town. When accom-
13 panied by such certificate, it may then be executed in any county of the
state.

2 SEC. 4539. If the offense stated in the warrant be a felony, the officer
3 making the arrest must take the defendant before the magistrate who issued
4 it, at the place mentioned in the command thereof, or in the event of his
5 absence or inability to act, before the nearest or most accessible magistrate
6 in the county in which it was issued.

7 SEC. 4540. If the offense stated in the warrant be a misdemeanor, and
8 the defendant be arrested in another county, the officer must, upon being
9 required by the defendant, take him before a magistrate or the clerk of the
10 district court of the same county in which he was arrested, for the purpose
11 of giving bail, and the magistrate or clerk before whom he is taken in such
12 county, must take bail from him accordingly, for his appearance at the dis-
13 trict court of the county in which the warrant was issued, on the first day of
14 the next term thereof.

15 SEC. 4541. On taking bail in the case provided for in the last preceding
16 section, the magistrate or clerk taking such bail, must make on the warrant
17 an order, signed by him, with his name of office, for the discharge of the
18 defendant, substantially as follows :

19 COUNTY OF (here name the county.)

20 THE STATE OF IOWA.

21 To (here state the name of the officer who has the defendant in custody,
22 with the addition of his name of office thus, "A. B., sheriff of — county,
23 according to the truth.)

24 The defendant named in the within warrant of arrest, in your custody,
25 under the authority thereof, for the offense therein designated, having given
26 sufficient bail to answer the same, by the undertaking herewith delivered to
27 you, you are commanded forthwith to discharge him from custody, and
28 without unnecessary delay deliver this order, together with the said under-
29 taking of bail, to the clerk of the district court of — county, on or before
30 the first day of the next term thereof.

31 Dated at _____, this _____ day of _____, A. D., (or as the case
32 may be.)

33 _____,
34 *Justice of the Peace.*
(Or as the case may be.)

35 And must deliver the warrant with the order thereon, together with the
36 undertaking of bail, to the officer having the defendant in custody, who shall
37 forthwith discharge the defendant from arrest, and without unnecessary
38 delay, and on or before the first day of the next term of the court at which
39 the defendant is required to appear, deliver or transmit by mail or otherwise
40 the warrant, with the order thereon, together with the undertaking of bail,
41 to the clerk of the court at which the defendant is required to appear, who
42 shall forthwith file the same in his office, and it shall be the duty of the
43 magistrate who issued the warrant, to return to the clerk the affidavits of the
44 informant and his witnesses, upon which the warrant was issued, on or before
45 the first day of the next term of the court, and the clerk shall, when the affi-
46 davits are returned by the magistrate, file the same in his office, with the
47 warrant and undertaking of bail.

2 Sec. 4542. If bail be not forthwith given by the defendant as provided
3 in the two last preceding sections, the magistrate or clerk must re-deliver to
4 the officer the warrant, and the officer must take the defendant before the
5 magistrate who issued it, at the place mentioned in the command thereof, or
6 if he be absent or unable to act, before the nearest or most accessible magis-
trate in the county in which the warrant was issued.

2 Sec. 4543. In all cases when the defendant is arrested, he must be taken
3 before the magistrate or clerk without unnecessary delay, and the officer
4 must at the same time deliver to the magistrate or clerk the warrant with
5 his return thereon indorsed and subscribed by him, with his name of
office.

2 Sec. 4544. If the defendant be taken before a magistrate in the county
3 in which the warrant was issued, other than the magistrate who issued it, as
4 hereinbefore provided, the affidavits on which the warrant was issued must
5 be sent to such magistrate, or if they cannot be procured, the informant and
his witnesses must be subpoenaed to make new affidavits.

CHAPTER 194. *Arrest, by whom and how made.*

2 Sec. 4545. Arrest is the taking of a person in custody, in a case, and in
3 the manner authorized by law.

2 Sec. 4546. An arrest may be made by a peace officer, or by a private
3 person.

2 Sec. 4547. A peace officer may make an arrest in obedience to a warrant
3 delivered to him.

2 Sec. 4548. A peace officer without a warrant may make an arrest:

- 3 1. For a public offense committed or attempted in his presence.
- 4 2. Where a public offense has in fact been committed, and he has reason-
5 able ground for believing that the person to be arrested has commit-
ted it.

2 Sec. 4549. A private person may make an arrest:

- 3 1. For a public offense committed or attempted in his presence.
- 4 2. When a felony has been committed, and he has reasonable ground for
believing that the person to be arrested has committed it.

2 Sec. 4550. A magistrate may orally order a peace officer, or a private
3 perso, to arrest any one committing or attempting to commit a public
4 offense, in the presence of such magistrate, which order shall authorize
the arrest.

2 Sec. 4551. An arrest may be made on any day, or at any time of the
3 day or night.

2 Sec. 4552. The person making the arrest must inform the person to be
3 arrested, of the intention to arrest him, of the cause of the arrest, of his au-
4 thority to make it, and that he is a peace officer, if such be the case and re-
5 quire him to submit to his custody, except when the person to be arrested
is actually engaged in the commission of, or attempt to commit the offense,

6 or flies immediately after its commission, and if acting under the authori-
7 ty of a warrant, he must give information thereof, and show the warrant, if
8 required.

2 Sec. 4553. When the arrest is being made by an officer, under the au-
3 thority of a warrant, after information of the intention to make the arrest, if
4 the person to be arrested, either flee or forcibly resist, the officer may use all
5 necessary means to effect the arrest.

2 Sec. 4554. To make an arrest, if the offense be a felony, a private per-
3 son; if any public offense, a peace officer, acting under the authority of a
4 warrant, or without a warrant, may break open a door or window of a house
5 in which the person to be arrested may be, or in which they have reasonable
6 grounds for believing he is, after having demanded admittance and explain-
7 ed the purpose for which admittance is desired.

2 Sec. 4555. Any person who has lawfully entered a house for the purpose
3 of making an arrest under the provisions of the last preceding section, may
4 break open the door or window thereof, if detained therein, when necessary
5 for the purpose of liberating himself, and an officer may do the same when
6 necessary for the purpose of liberating a person who, acting in his aid, and
7 by his command, lawfully entered for the purpose of making an arrest, and
is detained therein.

2 Sec. 4556. Any person making an arrest, may orally summon as many
3 persons as he deems necessary to aid him in making the arrest, and all per-
4 sons failing to obey such summons shall be guilty of a misdemeanor.

2 Sec. 4557. An arrest is made by an actual restraint of the person to
3 be arrested, or by his submission to the custody of the person making the
4 arrest.

2 Sec. 4558. No unnecessary force or violence shall be used in making an
3 arrest.

2 Sec. 4559. A person arrested, is not to be subjected to any more re-
3 straint than is necessary for his detention.

2 Sec. 4560. He who makes an arrest, may take from the person arrested
3 all offensive weapons which he may have about his person, and must de-
4 liver them to the magistrate before whom he is taken, to be disposed of
5 according to law.

2 Sec. 4561. If a person, after being arrested, either by a peace officer
3 without a warrant, or by a private person, escape, or be rescued, the per-
4 son from whose custody he escaped or was rescued, may immediately pursue
5 and re-take him, in any part of the state, and for that purpose may, if nec-
6 essary, break open the door or window of a house, in which he may be,
7 or in which he has reasonable ground to believe he is, after having stated
8 his purpose and demanded admittance, and when the person escaping or
9 rescued was in custody under a warrant or commitment, this may be done
at any time under the original warrant or commitment.

2 Sec. 4562. A peace officer may take before a magistrate, a person who,
3 being engaged in a breach of the peace, is arrested by a bystander, and
4 delivered to him.

2 Sec. 4563. A private person who has arrested another for the commission
3 of an offense, must, without unnecessary delay, take him before a magis-
4 trate or deliver him to a peace officer.

2 Sec. 4564. A private person who makes an arrest and delivers the
3 person arrested to a peace officer, must also accompany the officer before the
4 magistrate.

2 Sec. 4565. An officer making an arrest in obedience to a warrant, shall
 3 proceed with the person arrested as commanded by the warrant, or as pro-
 4 vided by law.

2 Sec. 4566. When an arrest is made without a warrant, whether by a
 3 peace officer or a private person, the person arrested shall, without unneces-
 4 sary delay, be taken before the nearest, or most accessible magistrate in the
 5 county in which the arrest is made, and the grounds on which the arrest
 6 was made shall be stated to the magistrate by affidavit subscribed and sworn
 7 to by the person making the statement, before the magistrate, in the same
 8 manner as upon a preliminary information, as nearly as may be.

2 Sec. 4567. If the magistrate believes from the statements in the affidavit
 3 that the offense charged is triable in the county in which the arrest was
 4 made, and that there is sufficient ground for a trial or preliminary exami-
 5 nation, as the case may require, and that it will not be inconvenient for the
 6 witnesses on the part of the state that such trial or preliminary examina-
 7 tion should be had before him, he shall proceed as if the person arrested
 8 had been brought before him on arrest under a warrant, and if the case be
 9 one within his jurisdiction, to try and determine, shall order an information
 10 to be filed against him.

2 Sec. 4568. If the magistrate believes from the statements in the affidavit,
 3 that the offense charged is triable in the county in which the arrest is made,
 4 and that there is sufficient ground for a trial or a preliminary examination,
 5 and that it will be more convenient for the witnesses on part of the state, that
 6 such trial or examination, should be had before some other magistrate, he
 7 shall by a written order, by him signed with his name of office, commit the
 8 person arrested to a peace officer, to be by him taken before such magistrate
 9 in the same county, who has jurisdiction, to try or examine the charge as
 10 the case may require, and as shall be convenient for the witnesses on the
 11 part of the state, and deliver the affidavit and the order of commitment to
 12 the peace officer, who shall proceed with the person arrested, as directed by
 13 the order, and such magistrate, when the person arrested is brought before
 14 him, shall proceed as on an arrest under a warrant, and if the case be
 15 within his jurisdiction to try and determine, shall order an information to be
 16 filed against the person arrested.

2 Sec. 4569. If the magistrate believes from the statements in the affidavit
 3 that the offense charged is triable in a county different from that in which
 4 the arrest is made, and that there is sufficient ground for a trial or prelimi-
 5 nary examination, he shall by a written order by him signed with his name
 6 of office, commit the person arrested to a peace officer, to be by him taken
 7 before a magistrate in the county in which the offence is triable, who has
 8 jurisdiction to make either preliminary examination into the charge, or try
 9 and determine the same, as the case may require, and if the offense be a
 10 misdemeanor only, triable on indictment, shall fix in the order the amount
 11 of bail, which the person arrested may give for his appearance at the district
 12 court of the county in which the offense is indictable, on the first day of the
 13 next term thereof, to answer an indictment.

2 Sec. 4570. If bail be given, as provided in the last preceding section,
 3 it may be, either before the magistrate making the order, or the magistrate,
 4 in the county in which the offense is triable, before whom he is taken, under
 5 the order, or a magistrate of any county through which he passes in going
 6 from the county in which the arrest was made to that in which the offense
 7 is triable, or the clerk of the district court of either of said counties; and
 8 when given it shall be the duty of the magistrate or clerk taking the same,

8 to make on the order of commitment an order for the discharge of the per-
9 son arrested from custody, who shall forthwith be discharged accordingly,
10 and to transmit by mail, or otherwise, to the clerk of the district court of the
11 county at which the person arrested is bound to appear, on or before the
12 first day of the next term thereof, and as soon as it can be conveniently done,
13 after taking the bail, the affidavits, the order of commitment and discharge,
14 together with the undertaking of the bail, who shall file the same together,
15 in his office.

2 SEC. 4571. If bail be not given, as provided in the last two preceding
3 sections, before the magistrate in the county in which the arrest was made,
4 or if the offense charged is a felony, or a misdemeanor, triable on informa-
5 tion, the magistrates must deliver the affidavits and the order of commit-
6 ment to a peace officer, who shall proceed with the person arrested as directed
7 by the order, or provided by law; and the magistrate in the county in which
8 the offense is triable, when the person arrested is brought before him, shall
9 proceed as on an arrest under a warrant, and if the case be within his juris-
10 diction to try and determine, shall order an information to be filed against
11 the person arrested.

2 SEC. 4572. In the cases contemplated in the last three preceding sections,
3 it shall be the duty of the officer having the person arrested in custody, under
4 the order, to take him before the proper magistrate in the county in which the
5 offense is triable, which is most convenient for the witnesses on the part of
6 the state, unless, in case of a misdemeanor triable on indictment, as herein
7 before provided, the person arrested desires to give bail, in which case he
8 shall take him before the most convenient magistrate in the county in which
9 the offense with which he is charged is triable, or any county through which
10 he passes, in going from the county in which the arrest was made, to the
11 county in which the offense is triable, or before the clerk of the district court,
of either of said counties, for the purpose of giving bail.

2 SEC. 4573. In all cases the peace officer when he takes a person com-
3 mitted to him under an order as provided in this chapter, before a magistrate,
4 or clerk of the district court, either for the purpose of giving bail, (if bail be
5 taken) or for trial or preliminary examination, must make his return on such
6 order, and sign such return with his name of office, and deliver the same to
the magistrate, or clerk.

CHAPTER 195. *Preliminary Examination by a Magistrate.*

2 SEC. 4574. A magistrate in a county in which a public offense, triable on
3 indictment therein, has been committed, having jurisdiction within the local
4 limits of such county, as prescribed by section 4447 of this code, has authority
5 to make preliminary examination into the charge, and to commit to jail, or
6 hold to bail, the person charged with its commission, in the manner provided
in this chapter.

2 Sec. 4575. When the defendant is brought before the magistrate on
3 arrest, either with or without a warrant, the magistrate must immediately in-
4 form him of the offense with which he is charged, and of his right to the aid
5 of counsel in every stage of the proceedings.

2 Sec. 4576. The magistrate must allow the defendant a reasonable time to
3 send for counsel, and if necessary must adjourn the examination for that pur-
4 pose.

2 Sec. 4577. The magistrate immediately after the appearance of counsel,
3 or, if the defendant require the aid of counsel, after waiting a reasonable time
4 therefor, must proceed to examine the case.

2 Sec. 4578. The examination must be terminated at one session unless
3 the magistrate for good cause shown adjourn it.

2 Sec. 4579. No examination can be adjourned for a longer period than
3 thirty days.

2 Sec. 4580. If an adjournment be had for any cause, the magistrate shall
3 commit the defendant for examination or require him to give ample security
4 for his appearance at the time and place to which the examination is adjourned.

2 Sec. 4581. If the defendant is charged with an offense punishable with
3 death he must be committed.

2 Sec. 4582. If there is no jail in the county the sheriff must retain the de-
3 fendant in his custody until the time of examination.

2 Sec. 4583. At the examination the magistrate must, in the first place,
3 read to the defendant the affidavits of the informant or prosecutor and his
4 witnesses, made on the taking of the information, or of the person making the
5 arrest, as the case may be ; and if the defendant request it must subpoena the
6 affiants, if they be within the state. He must also issue subpoenas for any
7 additional witnesses, required by the prosecutor or the defendant.

2 Sec. 4584. The witnesses must be examined in the presence of the defend-
3 ant, and he may cross-examine those against him.

2 Sec. 4585. When the examination of the witnesses on the part of the
3 state is closed, the magistrate must inform the defendant that it is his right
4 to make a statement explaining the charge made against him, or that he may
5 waive the same, and such waiver can not be used against him on the exami-
6 nation before the magistrate, or on trial.

2 Sec. 4586. If the defendant choose to take a statement, the magistrate
3 shall proceed to take the same in writing without oath, and shall put to the
4 defendant the following questions only :

4 What is your name and age ?

5 Where were you born ?

6 Where do you reside, and how long have you resided there ?

7 What is your business or profession ?

8 Give any explanation you think proper of the circumstances appearing in
9 the testimony against you, and state any facts which you think may tend to
10 your exculpation.

2 Sec. 4587. The answer of the defendant to each of the questions must
3 be read to him as it is taken down, and he may thereupon correct or add to
4 the same until it is made conformable to what he declares is the truth.

2 Sec. 4588. Such answer or statement of the defendant shall be signed
3 by him, or if he refuses to sign it his reasons for such refusal shall be stated
4 by the magistrate.

2 Sec. 4589. After the waiver of the defendant to make a statement
3 or after he has made it, his witnesses, if he produce any, may be sworn, and
3 examined.

2 Sec. 4590. Neither the witnesses on the part of the state, or of the
3 defendant, shall be present during the time the defendant makes his state-
3 ment.

2 Sec. 4591. While a witness is under examination before the magistrate
3 he may exclude all others who have not been examined. He may also cause
3 the witnesses to be kept separate that they may not converse with each other
4 until they are all examined.

2 Sec. 4592. The magistrate must also, upon the request of the defendant,
3 exclude from hearing the examination, all persons except the magistrate, his
3 clerk, the peace officer, who has the custody of the defendant, the
4 attorney or attorneys representing the state, and the defendant and his
5 counsel.

2 Sec. 4593. The magistrate shall, in the minutes of the examination,
3 write out, or cause to be written out, the substance of what was proved on
3 the examination by each witness; showing the name of the witness, his
4 place of residence, and his business or profession, and the amount to which
5 each witness is entitled for mileage and attendance.

2 Sec. 4594. After the examination is closed, the magistrate must attach
3 together the affidavits taken on the taking of the information, or of the
3 person making the arrest, as the case may be; the warrant or order of com-
4 mitment, if any, under which the defendant was brought before him; the
5 minutes of the examination, including the statement of the defendant, if any
6 was made by him, and annex thereto his certificate, which must be set forth
7 in substance, the time and place of the examination, and that the minutes
8 thereof are true—and the certificate must be signed by the magistrate, with
9 his name of office.

2 Sec. 4595. If after hearing the testimony and statement, it appear to the
3 magistrate, either, that a public offense has not been committed or that there
3 is no sufficient reason for believing the defendant guilty thereof, he must
4 order the defendant to be discharged; and such order must be indorsed on
5 the minutes of the examination or annexed thereto and signed by the mag-
6 istrate, to the following effect: "There being no sufficient cause for believ-
7 ing the defendant guilty of the offense herein mentioned, or of any other of-
8 fense, I order him to be discharged."

2 Sec. 4596. If it appear from the examination that a public offense, triable
3 on indictment, has been committed, and that there is sufficient reason for
3 believing the defendant guilty thereof, the magistrate shall in like manner
4 indorse on or annex to the minutes of the examination an order signed by
5 him, to the following effect: "It appearing to me by the within minutes
6 and statement, (if any,) that the offense therein mentioned, (or any other
7 offense triable on indictment, according to the fact, stating generally the nature
8 thereof,) has been committed, and there is sufficient cause for believing the
9 defendant guilty thereof, I order that he be held to answer the same."

2 Sec. 4597. If the offense be not bailable, the following words, or words to
3 the same effect, must be added to the order mentioned in the last section:
3 "and that he be committed to the jail of the county of," (here name the
4 county.)

2 Sec. 4598. If the offense be bailable, and bail be taken by the magistrate,
3 the following words in substance must be added to the order mentioned in

3 section 4596 : "and I have admitted him to bail to answer thereto by the under-
4 taking hereto annexed,"—and the undertaking of bail must be annexed
5 thereto.

2 Sec. 4599. If the offense be bailable, and bail be not given by the defend-
3 ant, then the magistrate must add to the order mentioned in section 4596
4 the following words in substance : "and that he be admitted to bail in the
5 sum of (here state the the amount,) and that he be committed to the jail of
6 the county of [here name the county,]until he give such bail."

2 Sec. 4600. If the magistrate order the defendant to be committed, he
3 shall make out a warrant of commitment signed by him with his name of
4 office, and deliver it with the defendant to the officer to whom he is commit-
5 ted, or if the officer be not present, to a peace officer who shall deliver the
6 defendant into the proper custody, together with the warrant of commitment,
7 which warrant may be in form following :

7 " THE STATE OF IOWA :

8 To the sheriff of ——county.

9 An order having been this day made by me, that A——— B———, (the
10 name of the defendant) be held to answer upon a charge of (state the offense)
11 you are commanded to receive him into your custody and detain him in the
12 jail of the county until he be legally discharged.

13 Dated at——this——day of—— A. D.—."

2 Sec. 4601. On holding the defendant to answer the magistrate must take
3 from each material witness examined by him on the part of the state, a
4 writtenundertaking, to the effect that he will appear and testify at the court
5 to which the defendant is bound to answer, or that he will forfeit the sum of
6 one hundred dollars.

2 Sec. 4602. Whenever the magistrate is satisfied by oath or otherwise,
3 that there is reason to believe that any such witness will not fulfill his
4 undertaking and appear and testify unless surety be required, he may order
5 the witness to enter into a written undertaking with sureties, and in such
6 sum as he may deem proper for his appearance.

2 Sec. 4603. Infants and married women who are material witnesses
3 against the defendant may in like manner be required to procure sureties
4 for their appearance as provided in the preceding section.

2 Sec. 4604. If a witness, required to enter into an undertaking to appear
3 and testify, either with or without sureties, refuse compliance with the order
4 for that purpose, the magistrate must commit him until he comply, or be
5 legally discharged.

2 Sec. 4605. When a magistrate has discharged a defendant, or held him
3 to answer an indictment, he must return to the district court of the county,
4 on or before its opening, on the first day of the next term thereof, and as
5 soon after the closing of the examination as practicable, all the papers men-
6 tioned in section 4594, together with the undertaking of bail for the appear-
7 ance of the defendant, and the undertakings of the witnesses, or for them,
8 taken by him.

2 Sec. 4606. Neither the magistrate nor his clerk, before the return of the
3 papers mentioned in the last section, to the district court, nor the clerk of the

3 district court, when they are so returned, and until after the defendant is either
 4 discharged from custody, or his bail exonerated, or until after the trial of the
 5 defendant on the indictment, shall permit any person except the judge of the
 6 district court, the attorney or attorneys on behalf of the state, or his or their
 7 clerk, and the defendant and his counsel, or the clerk or clerks of such counsel,
 8 to inspect the affidavits, or substance of the testimony of the witnesses,
 9 and the statement, if any, or to take a copy of the same, except in laying the
 10 same before the grand jury, or in permitting either party to inspect the same,
 11 upon the trial of the indictment. And either the magistrate or the clerk of
 12 the district court must, within two days after demand made, whilst the papers
 13 remain in their possession, respectively, furnish the defendant or his counsel, a
 14 copy thereof, or of such part thereof as may be demanded, upon the payment
 15 of the legal fee therefor, or permit such counsel or his clerk to take a copy with-
 16 out charge. A violation of either of the provisions of this section is a mis-
 17 demeanor.

Sec. 4607. If it appear from the examination that a public offense has been
 2 committed, which is not triable, on indictment, but on information only, and
 3 that there is sufficient reason for believing the defendant guilty thereof, the
 4 magistrate shall retain all the papers, and forthwith order an information to
 5 be filed against the defendant, before him, if he have jurisdiction to try and
 6 determine the same, he shall indorse on, or annex to the minutes of the exam-
 7 ination an order signed by him to the following effect: "It appearing to me
 8 by the within minutes and statement, (if any) that the offense of (here state
 9 its name, or nature generally) has been committed, and that there is sufficient
 10 reason for believing the defendant guilty thereof. I order that an information
 11 be filed against him therefor before (here name some magistrate who is the
 12 nearest and most accessible in the same county, and who has jurisdiction, giv-
 13 ing his name of office,) and that the defendant be committed to any peace
 14 officer to be taken before such magistrate." And the magistrate shall there-
 15 upon cause each material witness on the part of the state to enter into a writ-
 16 ten undertaking, to the effect that he will appear forthwith before the magis-
 17 trate, before whom the defendant is to be taken, or that he will forfeit the sum
 18 of fifty dollars, and deliver the same with all the other papers to a peace offi-
 19 cer, who shall forthwith, proceed, as directed by the order, and take the defend-
 20 ant before such magistrate, and deliver all the papers with the undertakings
 21 of the witnesses to the magistrate directed in the order, and make his return
 22 thereto, and sign the same with his name of office, and the magistrate before
 23 whom he is taken shall thereupon proceed accordingly.

CHAPTER 196. *Selecting, Drawing, Summoning, and Impannelling of the Grand Jury.*

2 Sec. 4608. The selecting, drawing, and summoning of the grand jury
is as prescribed in the code of civil practice.

2 Sec. 4609. At a term of court at which grand jurors are required to ap-
3 pear, the panel shall be called, and the names of the grand jurors who ap-
4 pear, shall be entered on the record. If fifteen grand jurors do not ap-
5 pear, or if the number appearing be reduced from any cause, either then or
6 afterwards, to less than fifteen, the court may order the sheriff of the county
to summon a sufficient number of qualified persons, to complete the panel.

2 Sec. 4610. Persons summoned by the sheriff to supply a deficiency in the
3 requisite number of grand jurors, serve only during the term at which they
are summoned.

2 Sec. 4611. A defendant held to answer for a public offense may chal-
lenge the panel of the grand jury or any individual juror.

2 Sec. 4612. A challenge to the panel can be interposed only for the rea-
3 son that they were not appointed, drawn, or summoned as prescribed by
law.

2 Sec. 4613. A challenge to an individual juror may be made for one or
more of the following causes only :

- 3 1. That he is a minor, insane, or not competent by law to serve as such
- 4 juror ;
- 5 2. That he is the prosecutor upon a charge against the defendant ;
- 6 3. That he has formed or expressed an unqualified opinion that the de-
7 fendant is guilty of the offense for which he is held to answer.

2 Sec. 4614. Challenges to the panel must be in writing specifically
stating the grounds thereof, but challenges to individual jurors may be oral.

2 Sec. 4615. Challenges to the panel or to an individual juror must be de-
3 cided by the court.

2 Sec. 4616. If a challenge to the panel be allowed, the grand jury is pro-
hibited from inquiring into the charge against the defendant by whom it
3 was interposed. If the jury does so and finds an indictment, the court must
4 set it aside.

2 Sec. 4617. If a challenge to an individual juror be allowed he shall not
3 be present at or take any part in the consideration of the charge against
the defendant.

2 Sec. 4618. The grand jury must inform the court of a violation of the
last section, that it may be punished as a contempt.

2 Sec. 4619. When several persons are held to answer for one and the
3 same offense no challenge to the panel can be made unless they all join in
4 such challenge, nor can any objection be interposed by a defendant to the
5 grand jury or to an individual juror for any cause of challenge after they
are sworn.

SEC. 4620. From the persons summoned to serve as grand jurors, the
 2 court must appoint a foreman ; the court must also appoint a foreman when
 3 the person already appointed is discharged, excused, or from any cause
 4 becomes unable to act, before the grand jury is finally discharged.

SEC. 4621. The following oath must be administered to the foreman
 2 of the grand jury: "You, as foreman of the grand jury, shall diligently
 3 inquire, and true presentment make of all public offenses against the
 4 people of this state, committed or triable within this county, of which you
 5 have, or can obtain legal evidence; you shall present no person through
 6 malice, hatred, or ill-will, nor leave any unrepresented, through fear, favor,
 7 or affection, or any for reward, or the promise or hope thereof, but in all your
 8 presentments, you shall present the truth, the whole truth, and nothing
 9 but the truth, according to the best of your skill and understanding. So
 10 help you God."

SEC. 4622. The following oath must thereupo be administered to the
 2 other grand jurors present: "The same oath which your foreman
 3 has now taken before you on his part, you and each of you shall well
 4 and truly observe on your part. So help you God."

SEC. 4623. The grand jury being impaneled and sworn, may be
 2 charged by the court. In doing so the court shall give them such infor-
 3 mation as it may deem proper as to the nature of their duties, and any
 4 charges for public offenses returned to the court or likely to come before
 5 the grand jury. And it is hereby made the duty of the court to specially
 6 give in charge to the grand jury, the provisions of law regulating the
 7 accounting by public officers for fines and fees collected by them, and
 8 providing for the suppression of intemperance.

SEC. 4624. The grand jury must appoint one of its number as clerk, who
 2 must preserve minutes of the proceedings and of the evidence given before
 3 them, except the votes of individual members on indictments.

SEC. 4625. The grand jury on the completion of its business shall be dis-
 2 charged by the court. But whether its business be completed or not, it is dis-
 3 charged by the final adjournment thereof.

CHAPTER 197. *Powers and Duties of the Grand Jury.*

SEC. 4626. The grand jury has power, and it is made its duty, to inquire
 2 into all indictable offenses committed or which may be tried within the county,
 3 and present them to the court by indictment.

SEC. 4627. The indictment must, in all cases, be found only upon evidence
 2 given by witnesses, produced, sworn, and examined before the grand jury, or
 3 furnished by legal documentary proof.

SEC. 4628. The grand jury has power, by its foreman, to administer the
 2 oath to all witnesses produced and examined before it.

SEC. 4629. It is the duty of the grand jury to appoint one of its number,

2 who is not foreman, clerk thereof, who must take and preserve the minutes of
3 the proceedings and of the evidence given before it, except the votes of the
4 individual members thereof on indictments.

2 SEC. 4630. The grand jury is not bound to hear evidence for the defend-
3 ant, but it is its duty to weigh all the evidence submitted to it, and when it
4 has reason to believe that other evidence within its reach will explain away
the charge, it may order such evidence to be produced.

2 SEC. 4631. If a member of the grand jury knows, or has reason to believe
3 that a public offense has been committed, triable in the county, he must
4 declare the same to his fellow jurors and be sworn as a witness upon the
investigation before them.

2 SEC. 4632 It is made the special duty of the grand jury to inquire:

- 3 1. Into the case of every person imprisoned in the jail of the county on a
4 criminal charge and not indicted.
- 5 2. Into the condition and management of the public prisons within the
6 county.
- 7 3. Into the wilful and corrupt misconduct in office of all county offi-
8 cers.
4. Into the obstruction of roads and highways.

2 SEC. 4633. The clerk of the court must, whenever required by the forman
3 of the grand jury, or district attorney issue subpoenas for witnesses to appear
4 before the grand jury.

2 SEC. 4634. The jury is entitled to free access at all reasonable times to the
3 county jails, and to the examination without charge, of all public records
within the county.

2 SEC. 4635. The grand jury may, at all reasonable times, ask the advice of
3 the district attorney, or the court, and the district attorney may attend before
4 it for the purpose of examining witnesses when the grand jury deems it neces-
sary.

2 SEC. 4636. Such attorney shall be allowed at all times to appear before the
3 grand jury on his own request for the purpose of giving information relative
4 to any matter cognizable by it, but no such attorney nor any other officer or
5 person except the grand jury must be present when the question is taken upon
the finding of an indictment.

2 SEC. 4637. The grand jury should find an indictment, when all the evi-
3 dence before it, taken together, is such as in its own judgment would, if unex-
4 plained, warrant a conviction by the trial jury. When the evidence is not
such, it should not.

2 SEC. 4638. Every member of the grand jury must keep secret the pro-
3 ceedings of that body, and the testimony given before them, except as here-
4 inafter required. Nor shall any grand juror or officer of the court disclose
5 the fact that an indictment for a felony has been found against any person
6 not in custody or under bail, otherwise than by presenting the same in court,
7 or issuing, or executing process thereon, until such person has been arrested.
A violation of this section is a misdemeanor.

2 SEC. 4639. A member of the grand jury may be required by the court to
3 disclose the testimony of a witness examined before them, for the purpose of
4 ascertaining whether it is consistent with that given by the witness before
5 court, or to disclose the testimony given before them by any witness upon a
charge against him for perjury.

2 SEC. 4640. No grand juror shall be questioned for anything he may say

2 or any vote he may give in the grand jury, relative to a matter legally pend-
 3 ing before them, except for perjury of which he may have been guilty in
 4 making an accusation or in giving testimony to his fellow jurors.

2 Sec. 4641. When a witness, under examination before the grand jury,
 3 refuses to testify, or to answer a question put to him by the grand jury, the
 4 grand jury shall proceed with the witness into the presence of the court, and
 5 the foreman shall then distinctly state to the court, the refusal of the wit-
 6 ness, and if the court, upon hearing the witness, shall decide that he is
 7 bound to testify, or answer the question propounded, he shall inquire of the
 8 witness if he persists in his refusal, and if he does, shall proceed with him as
 9 in cases of similar refusal in open court.

2 Sec. 4642. If a witness fail to attend before the grand jury in obedience
 3 to a subpoena issued for that purpose, and duly served, the court shall, upon
 4 the application of the district attorney, or foreman of the grand jury, pro-
 5 ceed and coerce the attendance of the witness, and may punish his disobedi-
 6 ence as in the case of a witness failing to attend on the trial.

2 Sec. 4643. All the papers and other matters of evidence relating to the
 3 arrest and preliminary examination of the charge against defendants who
 4 have been held to answer, returned to the court by magistrates, shall be laid
 5 before the grand jury, and if upon investigation, it refuses to find an indict-
 6 ment, they must be returned to the court, with an indorsement thereon, signed
 7 by the foreman, to the effect that the charge is dismissed, and thereupon the
 8 court must order the discharge of the defendant from custody, if in jail, or
 9 the exhonoration of the bail, if bail be given, unless the court should, upon
 10 good cause shown, be of opinion that the charge should again be submitted
 11 to the grand jury, in which case the defendant may be continued in custody,
 12 or on bail, until the next term of the court.

2 Sec. 4644. Such dismissal of the charge does not prevent the same from
 3 being again submitted to a grand jury, as often as the court may direct, but
 4 without such direction it cannot again be submitted.

CHAPTER 198. *Finding and Presentment of Indictment.*

2 Section 4645. An indictment cannot be found without the concurrence
 3 of twelve grand jurors; and when so found it must be indorsed "A true
 4 bill," and the indorsement must be signed by the foreman of the grand
 5 jury.

2 Sec. 4646. When an indictment is found at the instance of a private
 3 prosecutor, the following must be added to the indorsement required by the
 4 last preceding section, "found at the instance of" (here state the name of
 5 the person,) and in such case, if the prosecution fails, the court trying the
 6 cause may award costs against the private prosecutor, if satisfied from all the
 7 circumstances, that the prosecution was malicious or without probable cause

2 Sec. 4647. When an indictment is found, the names of all the witnesses

2 examined before the grand jury, must be endorsed thereon, before it is pre-
 3 sented to the court, and the minutes of the evidence of each witness exam-
 4 ined before the grand jury, taken by the clerk of the grand jury, must be
 5 presented with the indictment to the court, and filed by the clerk of the
 6 court, and remain in his office as a record, but the minutes of the evidence
 7 shall not be open to the inspection of any person, except the judge of the
 8 court, the district attorney, or his clerk, and the defendant and his counsel,
 9 or the clerk of such counsel, and the clerk of the court must, within two
 10 days after demand made, furnish the defendant or his counsel a copy thereof,
 11 without charge, or permit the defendant's counsel, or the clerk of such coun-
 12 sel, to take a copy. A violation of either of the provisions of this section is
 13 a misdemeanor.

2 Sec. 4648. The indictment when found and indorsed, as prescribed by
 3 this chapter, must be presented by the foreman, in the presence of the grand
 4 jury, to the court, and marked filed, by the clerk of the court, and remain in
 5 his office as a record.

CHAPTER 199.—*Indictment, its Form and Requisites.*

2 Section 4649. An indictment is an accusation in writing found and pre-
 3 sented by a grand jury, legally convoked and sworn, to the court in which it
 4 is impanelled, charging, that a person therein named, has done some act, or
 5 been guilty of some omission, which by law, is a public offense, punishable on
 6 indictment.

2 Sec. 4650. The indictment must contain :

- 2 1 The title of the action, specifying the name of the court to which it is
- 3 presented, and the name of the parties.
- 4 2 A statement of the facts constituting the offense, in ordinary and concise
- 5 language, without repetition, and in such manner as to enable a per-
- 6 son of common understanding to know what is intended.

2 Sec. 4651. It may be substantially in the following form :

2 District court of the county of———
 3 The state of Iowa }
 4 against }
 5 A. B. }

6 The grand jury of the county of———, in the name and by the authority
 7 of the state of Iowa, accuse A. B. of the crime of (here insert the name of
 8 the offense, if it have one, such as treason, murder, man-slaughter, robbery,
 9 larceny, or the like, or if it have no general name, than a brief general descrip-
 10 tion of it as given by law, such as "mingling poison with food, with intent to
 11 kill a human being") committed as follows :

12 The said A. B, on the 1st day of January, A. D. 18—, in the county as
13 aforesaid, (here insert the act or omission constituting the offense.)

—————, District Attorney,
of the——judicial district.

Sec. 4652. The indictment must be direct and certain as regards :

- 2 1. the party charged.
- 3 2. The offense charged.
- 4 3. The particular circumstances of the offense charged, when they are
- 5 necessary to constitute a complete offense.

2 Sec. 4653. When a defendant is indicted by a fictitious or erroneous
3 name, and in any subsequent stage of the proceedings, before execution, his
4 true name is discovered, an entry shall be made in the record of the proceed-
5 ings, of his true name, referring to the fact of his being indicted by the name
6 mentioned in the indictment, and the subsequent proceedings shall be in the
7 true name, substantially as follows :

7 The State of Iowa, }
8 } against
9 A. B. indicted by the name of C. D. }

2 Sec. 4654. The indictment must charge but one offense, but it may be
3 charged in different forms to meet the testimony, and if it may have been
4 committed in different modes, and by different means, the indictment may
5 allege the modes and means in the alternative ; *provided*, that in case of com-
6 pound offenses, where in the same transaction more than one offense has been
7 committed, the indictment may charge the several offenses, and the defendant
8 may be convicted of any offense included therein ; *provided further*, that
9 this section shall in no manner affect any provision of this code providing for
the suppression of intemperance.

2 Sec. 4655. The precise time at which the offense was committed, need
3 not be stated in the indictment, but it is sufficient if it allege that the offense
4 was committed at any time prior to the time of the finding thereof, except
5 where the time is a material ingredient in the offense.

2 Sec. 4656. When an offense involves the commission, or an attempt to
3 commit an injury to person or property, and is described in other respects
4 with sufficient certainty to identify the act, an erroneous allegation as to
the name of person injured, or attempted to be injured, is not material.

2 Sec. 4657. The words used in an indictment must be construed in their
3 usual acceptation, in common language, except words and phrases defined
by law, which are to be construed according to their legal meaning.

2 Sec. 4658. Words used in a statute to define a public offense, need not
3 be strictly pursued in an indictment, but other words conveying the same
meaning may be used.

2 Sec. 4659. The indictment is sufficient if it can be understood there-
3 from :

- 3 1. That it was found by a grand jury of the county impaneled in
- 4 the court having authority to receive it, though the name of the
- 5 court is not actually stated.
- 6 2. That the defendant is named, or, if his true name is unknown to the
- 7 grand jury, that fact be stated, and that he be described by a fictitious
- 8 name.

- 9 3. That the offense was committed within the jurisdiction of the court, or
10 is triable therein.
- 11 4. That the offense was committed at some time prior at to time of the
12 finding of the indictment.
- 13 5. That the act or omission charged as the offense, is stated with such a
14 degree of certainty, in ordinary and concise language, and in such a
15 manner as to enable a person of common understanding to know
16 what is intended, and the court to pronounce judgment upon a con-
17 viction according to the law of the case.
- 18 6. That when material, the name of the person injured, or attempted to be
19 injured, be set forth, when known to the grand jury, or if not known
20 to it, that it be so stated in the indictment.

2 Sec. 4660. No indictment is insufficient nor can the trial, judgment, or
3 other proceedings thereon, be affected by reason of any of the following
4 matters, which were formerly deemed defects or imperfections :

- 4 1. For the want of an allegation of the time or place of any material fact,
5 when the time and place have been once stated.
- 6 2. For the omission of any of the following allegations, namely :
7 "with force and arms," "contrary to the form of the statute, or of the
8 statutes," or "against the peace and dignity of the state."
- 9 3. For the omission to allege that the grand jury was impaneled, sworn
10 or charged.
- 11 4. For any surplusage or repugnant allegation, or for any repetition, when
12 there is sufficient matter alleged to indicate clearly the offense and
13 the person charged ; nor,
- 14 5. For any other matter which was formerly deemed a defect or imperfec-
15 tion, but which does not tend to the prejudice of the substantial rights
16 of the defendant upon the merits.

2 Sec. 4661. Neither presumptions of law nor matters of which judicial
3 notice is taken need be stated in an indictment.

2 Sec. 4662. In pleading a judgment or other determination of, or pro-
3 ceeding, before a court or officer of special jurisdiction, the facts conferring
4 jurisdiction need not be stated in the indictment, but it is sufficient to state
5 that the judgment or determination was duly made or the proceedings duly
6 had before such court or officer ; but the facts constituting the jurisdiction
7 must be established on the trial.

2 Sec. 4663. In pleading a private statute or right derived therefrom, it is
3 sufficient to refer to the same by its title and the day of its approval, and
4 the court must thereupon take judicial notice thereof.

2 Sec. 4664. An indictment for a libel need not set forth any extrinsic
3 facts for the purpose of showing the application to the party libeled of the
4 defamatory matter upon which the indictment is founded, but it is sufficient
5 to state generally that the same was published concerning him, and the fact
6 that it was so published must be established on trial.

2 Sec. 4665. When an instrument which is the subject of an indictment
3 has been destroyed or withheld by the act of procurement of the defendant,
4 and the fact of such destruction or withholding is alleged in the indictment
5 and established on the trial, the misdescription of the instrument is immate-
6 rial.

2 Sec. 4666. In an indictment for perjury, or subornation of perjury it is
3 sufficient to set forth the substance of the controversy or matter in respect

3 to which the offense was committed, and in what court or before whom the
 4 oath alleged to be false was taken, and that the court or person before whom
 5 it was taken had authority to administer the same, with proper allegations of
 6 the falsity of the matter on which the perjury is assigned; but the indict-
 7 ment need not set forth the pleadings, record, or proceedings with which the
 8 oath is connected, nor the commission or the authority of the court or per-
 9 son before whom the perjury was committed.

SEC. 4667. In any case where an intent to defraud is required to consti-
 2 tute the offense of forgery or any other offense that may be prosecuted, it
 3 shall be sufficient to allege in the indictment an intent to defraud without
 4 naming the particular person or body corporate intended to be defrauded,
 5 and on the trial of such indictment it is sufficient if there appear to be an
 6 intent to defraud the United States, or any state, county, city, or township,
 7 or any body corporate, or any public officer in his official capacity, or any
 8 co-partnership or member thereof, or any particular person.

SEC. 4668. The distinction between an accessory before the fact, and
 2 a principal, is abrogated, and all persons concerned in the commission of a
 3 public offense, whether they directly commit the act constituting the offense,
 4 or aid and abet its commission, though not present, must hereafter be indict-
 5 ed, tried and punished as principals.

SEC. 4669. An accessory after the fact to the commission of a public of-
 2 fense, may be indicted, tried and punished, though the principal be neither
 3 tried nor convicted.

SEC. 4670. A person may be indicted for having, with the knowledge of
 2 the commission of a public offense, taken money or property of another or a
 3 gratuity or reward, or engagement or promise therefor, upon agreement or
 4 understanding express or implied to compound or conceal the offense, or to
 5 abstain from a prosecution therefor, or to withhold any evidence thereof
 6 though the person guilty of the original offense has not been indicted or
 7 tried.

SEC. 4671. In an indictment for the embezzlement or fraudulent conver-
 2 sion of money, it shall be sufficient to allege the embezzlement or fraudulent
 3 conversion to have been of money generally, without designating its partic-
 4 ular species, and proof that the defendant embezzled, or fraudulently con-
 5 verted any money, or bank note, will be sufficient to support the averment,
 6 although the particular species be not proved.

CHAPTER 200. *Process Upon an Indictment.*

Sec. 4672. The process upon an indictment for the arrest of the defend-
 2 ant, shall be a bench warrant.

Sec. 4673. When an indictment is filed by the clerk of the court, against
 2 a defendant, not in custody, or under bail, or who has not deposited money
 3 instead of bail, the judge of the court shall make an order on the indict-
 4 ment, which shall be signed by him, with his name of office, that a bench

5 warrant issue for the arrest of the defendant, and, if the offense charged in
6 the indictment beailable, fix the amount in which bail may be taken.

2 Sec. 4674. The clerk, on the application of the district attorney, shall
3 accordingly, at any time after the making of the order by the judge,
4 whether the court be in session or not, issue a bench warrant, into one or
5 more counties.

2 Sec. 4675. A bench warrant, if the offense be a felony, may be substan-
tially, in the following form :

3 County of ———

4 The state of Iowa.

5 *To any peace officer in the state :*

6 An indictment having been found in the district court of said county, on
7 the — day of ———, A. D., 18—, (the day on which the indictments is
8 marked filed, by the clerk of the court,) charging A. B. with the crime of
9 (here designate the offense by the name, if it have one, or by a brief gen-
10 eral description of it, as given by law, substantially, as in the indictment.)

11 You are, therefore, hereby commanded to arrest the said A. B., and bring
12 him before said court to answer said indictment, if the said court be then in
13 session in said county, or if the said court be not then session in said
14 county, that you deliver him into the custody of the sheriff of said county.

15 Given under my hand, and the seal of said court, at my office
16 [SEAL.] in ———, in the county aforesaid, this — day of ———, A.
17 D., 18—.

18 By order of the judge of the court.

——— — —, clerk.

2 Sec. 4676. If the offense be a misdemeanor, the bench warrant may be
3 in a similar form, adding to the body thereof, a direction, substantially to the
4 following effect :

5 “Or, if the said A. B. require it, that you take him before a magistrate,
6 or the clerk of the district court, in said county, or, in the county in which
7 you arrest him, that he may give bail to answer the said indictment.”

2 Sec. 4677. If the offense charged beailable, the clerk must make an
3 indorsement on the bench warrant, to the following effect: “The defendant
4 is to be admitted to bail in the sum of — dollars.” (The amount fixed by
5 the judge and indorsed on the indictment.)

2 Sec. 4678. The bench warrant may be served in any county in the
3 state.

2 Sec. 4679. If the defendant, when arrested, be brought before a magis-
3 trate, or the clerk of the district court, of the same county in which it was
4 issued, or another county, for the purpose of giving bail, the same proceed-
5 ings must be had, in all respects, as if he had been arrested on a warrant of
6 arrest, issued by a magistrate, on a preliminary information, as nearly as
7 may be.

CHAPTER 201.—*Arraignment of the Defendant.*

2 Sec. 4680. As soon as practicable, after an indictment is found, the
 2 defendant must be arraigned thereon, unless he waive the same.

2 Sec. 4681. If the indictment be for a felony the defendant must be person-
 2 ally present, but if for a misdemeanor only, his personal appearance is unne-
 3 cessary and he may appear upon arraignment by counsel.

2 Sec. 4682. When he is in custody, the court must direct the officer in whose
 2 custody he is, to bring him before it, to be arraigned, and the officer must do
 3 so accordingly.

2 Sec. 4683. If the defendant has been discharged on bail, or has deposited
 2 money instead thereof, and does not appear for arraignment, when his personal
 3 appearance is necessary, the court, in addition to the forfeiture of the under-
 4 taking of bail, or of the money deposited, may on motion of the district attor-
 5 ney, make an order directing the clerk to issue a bench warrant for his arrest,
 6 and fix the amount, in which bail may be taken, if the offense beailable.

2 Sec. 4684. The clerk on the application of the prosecuting attorney may
 2 accordingly at anytime after the order, whether the court be in session or not,
 3 issue a bench warrant into one or more counties of this state for the arrest of
 4 the defendant.

2 Sec. 4685. If the defendant appear for arraignment without counsel, he
 2 must be informed by the court, that it is his right to have counsel before being
 3 arraigned, and must be asked if he desire the aid of consnel, and if he does,
 4 and is unable to employ any, must allow him to select, or assign him counsel,
 5 not exceeding two, who shall have free access to him at all reasonable hours.

2 Sec. 4686. The arraignment may be made by the court, or by the clerk, or
 2 district attorney, under its direction, and consists in reading the indictment to
 3 the defendant, and unless previously done, delivering to him a copy of the in-
 4 dictment, and the indorsements thereon, and informing him, that if the name
 5 by which he is indicted, is not his true name, he must then declare what his true
 6 name is, or be proceeded against by the name in the indictment, and asking
 7 him what he answers to the indictment.

2 Sec. 4687. If he gives no other name or give his true name, he is there-
 2 after precluded from objecting to the indictment upon the ground of being
 3 therein improperly named.

2 Sec. 4688. If he allege that another name is his true name the court must
 2 direct an entry thereof in the minutes of the arraignment, and the subsequent
 3 proceedings on the indictment may be had against him by that name, referring
 4 also to the name by which he is indicted.

2 Sec. 4689. If on the arraignment the defendant require it, he may be al-
 2 lowed until the next day, or such farther time may be given him as the court
 3 may deem reasonable, to answer the indictment.

2 Sec. 4690. If the defendant require time as provided in the last section,
 2 then on the next day or at such further day as the court may have allowed
 3 him, he may, in answer to the arraignment, either move the court to set aside
 4 the indictment, or may demur or plead thereto.

CHAPTER 202. *Setting aside the Indictment.*

2 SEC. 4691. The motion to set aside the indictment can be made
3 by the defendant on one or more of the following grounds, and must be sus-
4 tained :

- 5 1. When it is not indorsed "a true bill," and the indorsement signed
6 by the foreman of the grand jury as prescribed in section 4645.
- 7 2. When the names of all the witnesses examined before the grand jury
8 are not indorsed thereon.
- 9 3. When it has not been presented and marked "filed," as prescribed in
10 section 4648.
- 11 4. When any person other than the grand jurors was present before the
12 grand jury, when the question was taken upon the finding of the
13 indictment, as prohibited in section 4636, or when any person
14 other than the grand jurors was present before the grand jury
15 during the investigation of the charge, except as required or per-
16 mitted by law.
- 17 5. That the grand jury were not selected, drawn, summoned, impaneled,
 or sworn, as prescribed by law.

2 SEC. 4692. A motion to set aside the indictment, on the ground that the
3 names of all the witnesses examined before the grand jury are not indorsed
4 thereon ; or that the name of any other witness than those so examined, is
5 indorsed thereon, as prescribed in the second sub-division of section 4691,
6 shall not be sustained, if the indorsement is corrected by the insertion, or
7 striking out of such names, or name, by the district attorney, or the clerk of
8 the court, under the direction of the court, so as to correspond with the min-
9 utes required to be kept by the clerk of the grand jury, and returned and
10 presented with the indictment to the court.

2 SEC. 4693. The ground of the motion to set aside the indictment men-
3 tioned in the fifth sub-division of section 4691, is not allowed to a defendant
4 who has been held to answer before indictment.

2 SEC. 4694. If the motion to set aside the indictment be not made before
3 demurring or pleading, the defendant is precluded from afterward taking the
4 objections mentioned in section 4691.

2 SEC. 4695. The motion must be heard when it is made, unless for good
3 cause the court postpone the hearing to another time.

2 SEC. 4696. If the motion be denied, the defendant must immediately
3 answer the indictment either by demurring or pleading thereto.

2 SEC. 4697. If the motion be granted, the court must order the defendant,
3 if in custody, to be discharged, or if admitted to bail that his bail be exone-
4 rated, or if he has deposited money instead of bail that the money deposited
5 be refunded to him, unless the court direct that the case be re-submitted to
6 the same or another grand jury.

2 SEC. 4698. If the court direct that the case be re-submitted, the defen-
3 dant, if already in custody, must so remain unless he be admitted to bail ; or
4 if already admitted to bail, or money has been deposited instead thereof, the

4 bail or money is answerable for the appearance of the defendant to answer
5 a new indictment.

2 Sec. 4699. An order to set aside the indictment as provided in this
chapter shall be no bar to a future prosecution for the same offense.

CHAPTER 203. *Pleadings by the Defendant.*

2 Sec. 4700. The only pleading on the part of the defendant is either a
demurrer or plea.

2 Sec. 4701. The demurrer and plea must be put in in open court, and may
be oral, but an entry thereof must be made on the record.

CHAPTER 204. *Mode of Trial.*

2 Sec. 4702. Issues of law shall be tried by the court. Issues of fact shall
be tried by a jury.

2 Sec. 4703. An issue of law arises upon a demurrer to the indictment,
No joinder in demurrer is necessary.

2 Sec. 4704. An issue of fact arises on a plea of not guilty, or of former
conviction or acquittal of the same offense. No replication or further plead-
3 ing is necessary.

2 Sec. 4705. An issue of fact must be tried by a jury of the county
in which the indictment is found, unless a change of venue has been
3 awarded.

2 Sec. 4706. If the indictment be for a misdemeanor, the trial may
be had in the absence of the defendant, if he appear by counsel; but, if for
3 a felony, he must be personally present.

CHAPTER 205. *Demurrer.*

2 Sec. 4707. The defendant may demur to the indictment, when it appears
3 upon its face, either:

3 1. That it does not substantially conform to the requirements of this
4 code.

5 2. That the indictment contains any matter, which, if true, would consti-
6 tute a legal defense, or bar, to the prosecution.

2 Sec. 4708. The entry on the record of a demurrer, may be substan-
3 tially, in the following form. "The defendant demurs to the indictment."

2 Sec. 4709. When the demurrer is put in, the objection thereby presented
3 must be heard immediately, or at such time as the court may appoint.

2 Sec. 4710. If the demurrer is sustained, on the ground that the offense
3 charged, was within the exclusive jurisdiction of another county in this state
4 the same proceedings shall be had, as are provided in sections —, —,
5 —, and —, of this code.

2 Sec. 4711. If the demurrer is sustained, because the indictment contains
3 matter which is a legal defense, or bar, to the indictment, the judgment
4 shall be final, and the defendant must be discharged.

2 Sec. 4712. If the demurrer is sustained on any other ground than that
3 mentioned in the last two sections, the defendant must be dealt with as pro-
4 vided in section 4697, unless the court is of opinion, on good cause shown,
5 that the objection can be remedied, or avoided, in another indictment; in
6 which case the court may order the cause to be re-submitted to the same or
7 another grand jury, and the defendant may be dealt with as provided in sec-
8 tion 4698.

2 Sec. 4713. If the demurrer is overruled, the defendant has a right to put
3 in a plea. If he fails to do so, final judgment may be rendered against him,
4 on the demurrer, and if necessary, a jury may be impaneled to inquire and
5 ascertain the degree of the offense.

CHAPTER 206. *Pleas to the Indictment.*

SEC. 4714. There are but three pleas to an indictment. A plea of—

- 2 1. Guilty.
- 3 2. Not guilty.
- 4 3. A former judgment of conviction or acquittal of the offense charged,
- 5 which may be pleaded with or without the plea of not guilty.

SEC. 4715. The plea may be entered on the record, substantially in the following form:

- 2 1. A plea of guilty. "The defendant pleads that he is guilty of the of-
- 3 fense charged in the indictment."
- 4 2. A plea of not guilty. "The defendant pleads that he is not guilty of
- 5 the offense charged in the indictment."
- 6 3. A plea of former conviction or acquittal. "The defendant pleads that
- 7 he has formerly been convicted or acquitted, (as the case may be,) of
- 8 the offense charged in the indictment, by the judgment of the
- 9 court of _____, (naming it), rendered on the _____ day of
- 10 _____, A. D. 18____, (naming the time.)"
- 11

SEC. 4716. The plea of guilty can only be put in by the defendant him-
2 self, in open court.

SEC. 4717. At any time before judgment the court may permit the plea
3 of guilty to be withdrawn, and another plea or pleas substituted.

SEC. 4718. The plea of not guilty is a denial of every material allegation
2 in the indictment; and all matters of fact may be given in evidence under
3 it, except a former conviction or acquittal.

SEC. 4719. A conviction or acquittal by a judgment upon a verdict shall
2 bar another prosecution for the same offense, notwithstanding a defect in
3 form or substance in the indictment on which the conviction or acquittal
4 took place.

SEC. 4720. When the defendant has been convicted or acquitted upon an
2 indictment for an offense consisting of different degrees, the conviction or
3 acquittal shall be a bar to another indictment for the offense charged in the
4 former or for any lower degree of that offense, or for an offense necessarily
5 included therein.

SEC. 4721. The judgment for the defendant, on a demurrer, except where
2 it is otherwise provided, or for an objection to its form or substance taken
3 on the trial, or for variance between the indictment and the proof, shall not
4 bar another prosecution for the same offense.

SEC. 4722. If the defendant fail or refuse to answer the indictment by
2 demurrer or plea, a plea of not guilty must be entered by the court.

CHAPTER 207.—*Time of Trial.*

2 Sec. 4723 If the defendant is in custody, or on bail, or has deposited
3 money instead of bail when the indictment is found, the trial may take place
4 at the same term of the court, on a day to be fixed by the court.

2 Sec. 4724. If not tried at the same term, all indictments, together with all
3 other criminal prosecutions, shall be docketed for the first day of the next term
4 of the court, unless a different day be fixed by the order of the court; but no
5 indictment for a felony shall be docketed until after the defendant has been
6 arrested or given bail, or deposited money instead thereof.

2 Sec. 3725. All prosecutions by indictment, in the same court in which the
3 indictment was found, and on appeal or change of venue, shall stand for trial
4 on the day for which they are docketed, if the defendant has been arrested, and
5 the papers returned or transmitted to the clerk, and received by him, and filed
6 in his office, ten days before the first day of the term for which they are so
docketed, subject to the provisions of section 3006 of the code of civil practice.

2 Sec. 4726. After plea put into an indictment, the defendant is entitled to
3 three clear days, at least, to prepare for his trial, if he require it.

CHAPTER 208. *Change of Venue in Criminal Cases.*

2 Sec. 4727. In all criminal cases which may be pending in any of the dis-
3 trict courts of this state, any defendant therein may petition the court for a
4 change of venue to another county.

2 Sec. 4728. Such petition must set forth the nature of the prosecution, the
3 court where the same is pending, and that such defendant can not receive a
4 fair and impartial trial owing to the prejudice of the judge, or to excitement
5 and prejudice against him in such county, and must verify the same by his
6 affidavit stating the same to be true as he verily believes.

2 Sec. 4729. When the ground alleged in the petition, is excitement and
3 prejudice against him, in the county, it must be verified by three disinterested
4 persons, in addition to the petitioner himself.

2 Sec. 4730. The petition need not state the facts upon which the belief of
3 the petitioner, or other person, verifying the same, is founded, but may allege
4 the belief of the particular ground thereof, in general terms.

2 Sec. 4731. The court may receive additional testimony by affidavits only,
3 either on the part of the defendant, or the state, when the alleged ground in
3 the petition, is excitement and prejudice, in the county, against the petitioner.

2 Sec. 4732. The petition and affidavits, if any, must be filed with the clerk,
2 and are parts of the record.

2 Sec. 4733. The court, in the exercise of a sound discretion, must decide
2 the matter of the petition, when fully advised, according to the very right of it.

2 Sec. 4734. If sustained, the court must, if the ground alleged be the
2 prejudice of the judge, order the change of venue to the most convenient
3 county, in an adjoining district, to which no objection exists.

2 Sec. 4735. If sustained on the ground of excitement and prejudice in the
2 county, it must be awarded to such county in the same district, in which no
3 such objection exists.

2 Sec. 4736. Upon the making of the order, if there be but one defendant
2 in the case, unless all have joined in the petition, the clerk must make out
3 and certify a transcript of all papers on file in the case, including the indict-
4 ment, and file the same in his office, and a certified copy of all record entries,
5 and all the original papers on file must be, without unnecessary delay, trans-
6 mitted to the clerk of the court to which the change of venue is ordered.

2 Sec. 4737. If there be more than one defendant in the case, and all the
2 defendants have not joined in the petition, the clerk, upon the making of such
3 order, must, without unnecessary delay, make out and certify a transcript of
4 all entries appearing on the record, and of all the papers on file in the case,
5 including the indictment, and transmit the copy of such order, the sheriff last
6 mentioned must receive and detain the defendant in his custody, until legally
7 discharged therefrom, and give a certificate of such delivery.

2 Sec. 4739. The court to which such change of venue is granted must
2 take cognizance of the cause and proceed therein to trial, judgment and exe-
3 cution, in all respects as if the indictment had been found by the grand jury
4 impaneled in such court.

2 Sec. 4740. In all changes of venue under the provisions of this chapter,
2 the county from which the change of venue was taken shall pay the ex-
3 penses and charges of removing, delivering and keeping the defendant, and
4 all other expenses necessary and consequent upon such change of venue and
5 the trial of such defendant, which shall be audited and allowed by the court
6 trying such case.

2 Sec. 4741. Sheriffs, for delivering prisoners under the provisions of this
2 chapter, are entitled to the same fees therefor as are allowed for the convey-
3 ance of convicts to the penitentiary.

2 Sec. 4742. When any district judge in this state is satisfied from his own
2 knowledge or otherwise that any organized county in his district does not
3 contain a sufficient number of inhabitants possessing the qualifications of ju-
4 rors to compose grand and petit juries for the presentment and trial of any
5 person or persons charged with the commission of an offense in said county
6 requiring the intervention of a grand jury, it shall be the duty of said judge
7 to make an order transferring all prosecutions for such offenses committed in
8 said county, to the next nearest county in the same judicial district possess-
9 ing the requisite number of inhabitants qualified to serve as jurors.

2 Sec. 4743. Said order may be made by the judge in vacation or by the
2 court, and the district court of the county to which said prosecution may be
3 transferred shall have full and complete jurisdiction of the offense, and the
4 person or persons charged with committing the offense may be indicted and

5 tried in the county to which the prosecution is so transferred in the same
6 manner as though the offense had been committed in said county.

2 Sec. 4744. When any prosecution has been transferred by the court or
judge under the provisions of this act, the person charged with committing
8 the offense shall be required to appear at the next succeeding term of the
4 district court of the county to which the prosecution is transferred, and shall
5 give bond accordingly, and the court or judge may require all material wit-
6 nesses in behalf of the prosecution to enter into recognizance for their ap-
7 pearance at the district court of the county to which the prosecution is
8 transferred.

2 Sec. 4745. The county in which the offense was committed and from
which the prosecution was transferred shall pay all the costs attending the
3 prosecution.

2 Sec. 4748. No appeal or writ of error shall lie from any order for the
transfer of prosecutions made under the provisions of this act.

2 Sec. 4747. The provisions of this act apply to prosecutions or charges
now pending or that may hereafter be instituted for offenses heretofore or
3 hereafter committed.

Sec. 4748. Is omitted as unnecessary.

CHAPTER 209.—*Postponement of Trial.*

2 Sec. 4749. When an indictment is called for trial, or any time previous
thereto, the court may upon sufficient cause shown by either party, direct the
3 trial to be postponed to another day in the same term, or until another term.

2 Sec. 4750. The provisions of the code of civil practice, relative to the con-
tinuances of the trial of civil causes, shall apply to the continuance of criminal
3 actions, except that no judgment for costs shall be rendered against a defend-
4 ant in a criminal action on account of such continuance, and except as in this
5 code otherwise provided.

CHAPTER 310.—*Formation of Trial Jury.*

2 Sec. 4751. The jury for the trial of criminal actions, is selected, drawn,
and summoned as provided in the code of civil practice.

2 Sec. 4752. At the opening of the court the clerk shall prepare separate
3 ballots containing the names of the persons returned as jurors, which shall be
4 folded each in the same manner as near as may be, and so that the name
5 thereon shall not be visible, and must deposit them in a box to be kept for
that purpose.

2 Sec. 4753. When the indictment is called for trial and before drawing the
3 jury, either party may require the names of all the jurors in the panel to be
4 called, and that an attachment issue against those who are absent, but the
court may in its discretion wait or not, for the return of the attachment.

2 Sec. 4754. Before the name of any juror is drawn the box must be closed
3 and shaken, so as to intermingle the ballots therein, and the clerk shall draw
4 such ballots without seeing the names written on them, from the box, through
the top or lid thereof.

2 Sec. 4755. When the jury is completed, the ballots containing the names
3 of the jurors sworn must be laid aside and kept apart from the ballots con-
taining the names of the other jurors, until the jury so sworn is discharged.

2 Sec. 4756. After the jury is so discharged, the ballots containing their
3 names must be again folded and returned to the box, and so on, as often as a
trial is had.

2 Sec. 4757. If a juror be absent when his name is drawn or be set aside
3 or excused from serving on that trial, the ballot containing his name must be
folded and returned to the box as soon as the jury is sworn.

2 Sec. 4758. If by reason of there being one or more juries impaneled, or
3 for any other reason there should not remain any ballots undrawn, or if in
4 consequence of jurors being set aside no jury can be obtained from the list of
5 those returned by the sheriff for the trial of issues, the court may order the
6 sheriff, or if he be a party to or interested in the cause, some other person, to
7 summon jurors from the bystanders, or other persons, who shall be returned
for the trial of the indictment.

2 Sec. 4759. The jury consists of twelve men accepted and sworn to try
the issue.

CHAPTER 211. *Challenging the Jury.*

2 Sec. 4760. A challenge is an objection made to the trial jurors, and is of
3 two kinds :

- 3 1. To the panel;
- 4 2. To an individual juror.

2 Sec. 4761. When several defendants are tried together, they are not al-
3 lowed to sever their challenges, but must join therein.

2 Sec. 4762. A challenge to the panel can be interposed, only on the
3 ground that they were not selected, drawn or summoned, as prescribed by
4 law.

2 Sec. 4763. A challenge to the panel must be taken before a chal-
3 lenge to any individual juror, and must be in writing, specifying distinctly
4 and plainly, the facts constituting the ground of challenge.

2 Sec. 4764. A challenge to the panel may be taken by either party, and
3 upon the trial thereof the officers whether judicial or ministerial whose ir-
4 regularity is complained of, as well as any other persons, may be examined
5 to prove or disprove the facts alleged as the ground of the challenge.

2 Sec. 4765. If the facts of the challenge be allowed by the court the jury
3 must be discharged so far as the trial of the indictment in question is con-
4 cerned. If it be disallowed the court shall direct the jury to be impaneled.

2 Sec. 4766. A challenge to an individual juror, may be taken orally, and
3 is either,

- 3 1. For cause;
- 4 2. Peremptory.

2 Sec. 4767. A challenge for cause may be taken, either by the state or
3 by the defendant, and must distinctly specify the facts constituting the
4 causes of challenge.

2 Sec. 4768. It is an objection to a particular juror, and is either :

- 2 1. General, that the juror is disqualified from serving in any case; or,
- 3 2. Particular, that he is disqualified in the case on trial.

2 Sec. 4769. General causes of challenge are :

- 2 1. A conviction for felony;
- 3 2. A want of any of the qualifications prescribed by statute to render
4 a person a competent juror.
- 5 3. Unsoundness of mind, or such defects in the faculties of the mind or
6 organs of the body, as render him incapable of performing the
7 duties of a juror.

2 Sec. 4770. Particular causes of challenge are of two kinds :

- 2 1. For such a bias as, when the existence of the fact is ascertained, in
3 judgment of the law disqualifies the juror, and which is known in
4 this chapter as implied bias;
- 5 2. For the existence of a state of mind on the part of the juror in refer-
6 ence to the case which, in the exercise of a sound discretion, leads

7 to the inference that he will not act with entire impartiality, and
8 which is actual bias.

2 SEC. 4771. A challenge for implied bias may be taken for any of the
3 following causes :

- 3 1. Affinity, or consanguinity within the ninth degree, to the person
4 alleged to be injured by the offense charged, or on whose prelim-
5 inary information, or at whose instance, the prosecution was insti-
6 tuted, or to the defendant, to be computed according to the rule of
7 the civil law.
- 8 2. Standing in the relation of guardian and ward, attorney and client,
9 master and servant, or landlord and tenant, or being a member of
10 the family of the defendant, or of the person alleged to be injured
11 by the offense charged, or on whose preliminary information, or
12 at whose instance, the prosecution was instituted, or in his employ
13 on wages.
- 14 3. Being a party adverse to the defendant in a civil action, or having
15 been the prosecutor against, or accused by him, in a criminal
16 prosecution.
- 17 4. Having served on the grand jury which found the indictment, or on
18 a coroner's jury which inquired into the death of a person, whose
19 death is the subject of the indictment.
- 20 5. Having served on a trial jury, which has tried another defendant for
21 the offense charged in the indictment.
- 22 6. Having been one of a jury formerly sworn to try the same indictment,
23 and whose verdict was set aside, or which was discharged without
24 a verdict, after the cause was submitted to it.
- 25 7. Having served as a juror in a civil action brought against the defend-
26 ant, for the act charged as an offense.
- 27 8. Having formed or expressed an unqualified opinion, or belief, that
28 the prisoner is guilty or not guilty of the offense charged.
- 29 9. If the offense charged be punishable with death, the entertaining of
30 such conscientious opinions as would preclude his finding the
31 defendant guilty ; in which case he shall neither be permitted nor
32 compelled to serve as a juror.

2 SEC. 4772. An exemption from service on a jury is not a cause of chal-
3 lenge, but the privilege of the person exempted.

2 SEC. 4773. Upon the trial of a challenge to an individual juror, the juror
3 challenged may be examined as a witness to prove or disprove the chal-
4 lenge, and must answer every question pertinent to the inquiry thereon.

2 SEC. 4774. Other witnesses may also be examined on either side ; and
3 the rules of evidence applicable to the trial of other issues shall govern the
4 admission or exclusion of testimony on the trial of the challenge.

2 SEC. 4775. In all challenges the court shall determine the law and
3 the fact and must either allow or disallow the challenge.

2 SEC. 4776. The state shall first complete its challenges for cause, and
3 the defendant afterwards.

2 SEC. 4777. After twelve jurors have been obtained, against whom no
3 cause of challenge has been found to exist, peremptory challenges may be
4 made.

2 SEC. 4778. A peremptory challenge is an objection to a juror for which
3 no reason need be given, but upon which, the court must exclude him.

Section 4779. (ch. 10, 10th G. A.) If the offense charged in the indictment is punishable with death, or imprisonment in the penitentiary for life, or may be so punishable in the discretion of the court, the state is entitled to ten peremptory challenges and the defendant to twenty; if any other felony, the state is entitled to six and the defendant to twelve; and if a misdemeanor, the state to three and the defendant to six challenges.

Sec. 4780. The state shall be entitled to the first challenge and shall challenge one juror; the defendant shall be intitled to the second challenge, and shall challenge two jurors; the state shall be entitled to the third challenge and shall challenge one juror; the defendant shall be entitled to the fourth challenge and challenge two jurors; and so on, alternately, until all the challenges are exhausted.

Sec. 4781. The challenges of either party need not be all taken at once, but separately, in the following order, including in each challenge all the causes challenge belonging to the same class :

- 1 To the panel.
- 2 To an individual juror, for general cause.
- 3 To an individual juror, for implied bias.
- 4 To an individual juror, for actual bias.
- 5 To an individual juror, peremptorily.

Sec. 4782. After each challenge, which is allowed, the vacancy occasioned thereby, shall, if required, be filled before any further challenge is made, and any new juror thus introduced may be challenged for cause, as well as peremptorily, if the peremptory challenges are not exhausted.

Sec. 4783. No juror shall be sworn to try the issue, until twelve jurors are accepted.

Sec. 4784. Bias in a juror, against either party, is no cause of challenge by the other. It may be waived by the party against whom it exists.

CHAPTER 212. *The Trial of the Issue of Fact on an Indictment.*

Sec. 4785. The jury having been empaneled and sworn, the trial must proceed in the following order :

1. The clerk or district attorney must, if the indictment be for a felony, read it, and state the defendant's plea to the jury. In all other cases, this formality may be dispensed with.
2. The district attorney must then offer the evidence in support of the indictment.
3. The defendant or his counsel, may then offer his evidence in support of his defence.
4. The parties may then, respectively, offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

- 13 5. When the evidence is concluded, unless the case is submitted to the
 14 jury on either side, or both sides, without argument, the district
 15 attorney must commence, the defendant follow, by one or two
 16 counsel at his option, unless the court shall permit him to be heard
 17 by a larger number, and the district attorney conclude, confining
 18 himself to a response to the arguments of the defendant's counsel,
 19 provided that where two or more defendants are on trial for the
 20 same offense, they may be heard by one counsel each, and provided
 21 further that the court, when the affirmative of the issue is with the
 22 defendant, may, in its discretion, award to the defendant the last
 23 argument.
- 24 6. The court shall then charge the jury in writing without oral explana-
 25 tion or qualification.

SEC. 4786. The district attorney, in offering the evidence in support of
 2 the indictment, in pursuance of the order prescribed in the last preceding
 3 section, under the second sub-division thereof, shall not be permitted to in-
 4 troduce any witness who was not examined before the grand jury, and the
 5 minutes of whose testimony was not taken by the clerk of the grand jury,
 6 and presented with the indictment to the court, unless he shall have given
 7 to the defendant a notice in writing, stating the name, place of residence,
 8 and occupation of such witness, and the substance of what he expects to
 9 prove by him on the trial, at least three clear days before the commencement
 10 of such trial.

SEC. 4787. When the defendant's only plea is a former conviction or ac-
 2 quittal, the order prescribed in the second and third sub-divisions of the
 3 section immediately preceding the last, shall be reversed, and the defendant
 4 shall first offer his evidence in support of his defense.

SEC. 4788. The court shall not restrict counsel, as to time, in their argu-
 2 ment.

SEC. 4789. When two or more defendants are jointly indicted for felo-
 2 ny, any defendant requiring it may be tried separately. In other cases, defen-
 3 dau's jointly indicted may be tried separately or jointly in the discretion of
 4 the court.

SEC. 4790. Upon a trial for a conspiracy in a case where an overt act is
 2 required by law to constitute the offense, the defendant cannot be convicted
 3 unless one or more overt acts be expressly alleged in the indictment, nor
 4 unless one or more of the acts alleged be proved; but other overt acts not
 5 alleged in the indictment may be given in evidence.

SEC. 4791. If it appear by the testimony that the facts proved constitute
 2 an offense of a higher nature than that charged in the indictment, the court
 3 may direct the jury to be discharged and all proceedings on the indictment
 4 to be suspended, and may order the defendant to be committed or continued
 5 on bail to answer any new indictment which may be found against him for
 6 the higher offense.

SEC. 4792. If the indictment for the higher offense be submitted by the
 2 grand jury or be not found at the next term, the court must proceed to try
 3 the defendant on the original indictment.

SEC. 4793. The court may also discharge the jury where it appears that it
 2 has not jurisdiction of the offense or that the facts as charged in the indict-
 3 ment do not constitute an offense punishable by law.

SEC. 4794. If the jury be discharged because the court has not jurisdiction
 2 of the offense charged in the indictment, and it appear that it was committed

3 out of the jurisdiction of this state, the defendant must be discharged, or
 4 ordered to be retained in custody a reasonable time, until the district attorney
 5 shall have a reasonable opportunity to inform the chief executive of the state,
 6 in which the offense was committed, of the facts, and for said officer to require
 7 the delivery of the offender.

2 Sec. 4795. If the offense was committed within the exclusive jurisdiction
 3 of another county of this state, the court must direct the defendant to be com-
 4 mitted for such time as shall be deemed reasonable to await a warrant from
 5 the proper county for his arrest ; or if the offense be bailable he may be ad-
 6 mitted to bail, in an undertaking with sufficient sureties, that he will within
 7 such time as the court may appoint, render himself amenable to a warrant for
 8 his arrest from the proper county, and if not sooner arrested thereon will at-
 9 tend at the office of the sheriff of the county where the trial was had, at a
 10 certain time particularly designated in the undertaking, to surrender himself
 11 upon the warrant, if issued, or that the bail will forfeit such sum as the court
 may fix, to be mentioned in the undertaking.

2 Sec. 4796. In the case provided for in the last section, the clerk must
 3 transmit, forthwith, a certified copy of the indictment and all the papers in
 4 the action, filed with him, except the undertaking mentioned in the last sec-
 5 tion, to the district attorney of the proper county.

2 Sec. 4797. If the defendant be not arrested on a warrant from the proper
 3 county he shall be discharged from custody, or his bail in the action shall be
 4 exonerated, or money deposited instead of bail shall be refunded, as the case
 5 may be, and the sureties in the undertaking must be discharged.

2 Sec. 4798. If he be arrested, the same proceedings must be had thereon,
 3 as upon the arrest of a defendant in another county on a warrant of arrest
 4 issued by a magistrate.

2 Sec. 4799. If the jury be discharged because the facts set forth do not con-
 3 stitute an offense punishable by law, the court must order that the defendant,
 4 if in custody, be discharged therefrom, or if admitted to bail, that his bail be
 5 exonerated, or if he has deposited money instead of bail, that the money de-
 6 posited be refunded, unless in its opinion a new indictment can be framed
 7 upon which the defendant can be legally convicted, in which case the court
 may direct that the case be submitted to the same or another grand jury.

2 Sec. 4800. Whenever, in the opinion of the court, it is proper that the
 3 jury should view the place in which the offense is charged to have been com-
 4 mitted, or in which any other material fact occurred, it may order the jury
 5 to be conducted in a body, in the custody of proper officers, to the place,
 6 which shall be shown them by a person appointed by the court for that pur-
 7 pose. The officers must be sworn to suffer no person to speak to or cummu-
 8 nicate with the jury, on any subject connected with the trial, nor to do so
 9 themselves, except the person appointed by the court for that purpose, and
 10 that only to show the place to be viewed, and to return them into court with-
 out unnecessary delay, at a specified time.

2 Sec. 4801. If a juror have any personal knowledge, respecting a fact in
 3 controversy, in a cause, he must declare the same in open court, during the
 4 trial, and if during the retirement of the jury a juror declare any fact which
 5 could be evidence in the cause, as of his own knowledge, the jury must return
 6 into court and the juror must be sworn as a witness, and examined in the
 7 presence of the parties, if his evidence be admissable.

2 Sec. 4802 The jurors sworn to try an indictment, may, at any time before
 the final submission of the cause to them, in the discretion of the court, be

3 permitted to separate, or be kept together in charge of proper officers. The
 4 officers must be sworn to keep the jury together during the adjournment of
 5 the court, and to suffer no person to speak to or communicate with them, on
 6 any subject connected with the trial, nor do so themselves, and to return them
 7 into court at the time to which it adjourns.

Sec. 4803. The jury, whether permitted to separate, or kept together, in
 2 charge of sworn officers, must be admonished by the court, that it is their
 3 duty not to permit any person to speak to, or communicate with them, on any
 4 subject connected with the trial, and that any and all attempts to do so,
 5 should be immediately reported by them to the court, and that they should
 6 not converse among themselves on any subject connected with the trial, or
 7 form or express an opinion thereon, until the cause is finally submitted to
 8 hem. This admonition must be given or referred to by the court, at each
 9 adjournment, during the progress of the trial, previous to the final submis-
 10 sion of the cause to the jury.

Sec. 4804. If before the conclusion of a trial a juror become sick, so as
 2 to be unable to perform his duty, the court may order him to be dis-
 3 charged, and in such case a new juror may be sworn and the trial begin
 4 anew, or the jury may be discharged and a new jury then or afterward be
 5 impaneled.

Sec. 4805. The rules of evidence in civil cases, are applicable, also, to
 2 criminal cases, except as otherwise provided.

Sec. 4806. The confession of the defendant, unless made in open court,
 2 will not warrant a conviction unless accompanied with other proof that the
 3 offense was committed.

Sec. 4807. Where there is a reasonable doubt of the defendant being
 2 proven to be guilty, he is entitled to an acquittal.

Sec. 4808. Where there is a reasonable doubt of the degree of the offense
 2 of which the defendant is proven to be guilty, he shall only be convicted of
 3 the lower degree.

Sec. 4809. The court shall, on the trial of every indictment, when re-
 2 quested by either party, keep, or cause to be kept, by some person for that
 3 purpose by it appointed, full and accurate minutes of the testimony of each
 4 witness examined on the trial, showing the name of the witness, his place of
 5 residence, and his occupation, as well as of any oral evidence introduced,
 6 either by the state or defendant, after a plea or verdict of guilty to be con-
 7 sidered by the court in aggravation or alleviation of the punishment in pro-
 8 ceeding sentence against the defendant, which shall be certified to be full
 9 and accurate by the judge, and signed by him, and filed with the clerk, and
 10 so marked by him, which shall be deemed a part of the record of the
 11 cause.

Sec. 4810. Upon an indictment against several defendants any one or
 2 more may be convicted or acquitted.

Sec. 4811. On the trial of an indictment for a libel the jury have the
 2 right to determine the law and the fact.

Sec. 4812. On the trial of an indictment for any other offense than libel,
 2 questions of law are to be decided by the court; saving the right of the de-
 3 fendant and the state to except. Questions of fact are to be tried by jury.
 4 And although the jury have the power to find a general verdict which in-
 5 cludes questions of law as well as fact, they are bound nevertheless to receive
 6 as law what is laid down as such by the court.

Sec. 4813. The court shall, on motion of either party, instruct the jury on
 2 the law applicable to the case, which must always be in writing, signed by

3 the judge and filed with the clerk, and so marked by him, and it is to be
4 deemed a part of the record of the cause, and no oral qualification thereof
5 shall be permitted.

2 Sec. 4814. Any instruction asked by either party to be given by the
3 court must be in writing, and must be either given or refused, and so mark-
4 ed and signed by the judge, and filed with the clerk, and so marked by him,
5 and is to be deemed a part of the record. It may be qualified in writing, by
6 the court, but not orally, and the qualification must be distinguished, intel-
7 ligibly, from the instruction as originally asked by the party, and signed by
8 the judge.

2 Sec. 4815. After hearing the charge the jury may either decide in court
3 or may retire for deliberation. If they do not agree without retiring, one
4 or more officers must be sworn to keep them together, in some private and
5 convenient place, without meat or drink, (water excepted,) and not to suffer
6 any person to speak to, or communicate with them, nor speak to, or com-
7 municate with themselves unless it be to ask them whether they have
8 agreed upon their verdict, and not to communicate to any one the state of
9 their deliberation or the verdict agreed upon, until after the same shall have
10 been declared in open court, and received by the court, and to return
11 them into court when they shall have so agreed upon their verdict,
12 unless by permission, or order of the court, or they be sooner discharged.

2 Sec. 4816. When a defendant, having given bail, appears for trial, the
3 court may in its discretion at any time after his appearance for trial order
4 him to be committed to the custody of the proper officer to abide the judg-
5 ment or farther order of the court; and he shall be committed and held in
6 custody accordingly.

CHAPTER 213. *Conduct of jury after the cause is submitted to it.*

2 Section 4817. Upon retiring for deliberation the jury may take with it
3 all papers which have been received as evidence in the case, except depositions
4 and copies of such parts of public records or private documents as
5 ought not, in the opinion of the court, to be taken from the person having
6 them in possession.

2 Sec. 4818. The jury may also take with them notes of the testimony or
3 other proceedings on the trial taken by themselves or any of them, but none
4 taken by any other person.

2 Sec. 4819. After the jury have retired for deliberation, if there be any
3 disagreement between them, as to any part of the testimony, or if they de-
4 sire to be informed on any point of law arising in the cause, they must
5 require the officer to conduct them into court, and upon their being brought
6 in, the information required must be given in the presence of, or after oral
7 notice to, the district attorney and the defendant, or his counsel.

2 Sec. 4820. If, after the retirement of the jury one of them be taken
3 sick so as to prevent the continuance of his duty, or any other accident or
4 cause occur to prevent their being kept together for deliberation, the court
5 may discharge them.

2 Sec. 4821. Except as provided in the last section, the jury can not be
3 discharged after the cause is submitted to them until they have agreed upon
4 their verdict and rendered it in open court, unless by the consent of both
5 parties entered upon the record, or unless at the expiration of such time as
6 as the court may deem proper it satisfactorily appear that there is no reason-
7 able probability that the jury can agree.

2 Sec. 4822. In all cases where a jury is discharged or prevented from
3 giving a verdict by reason of any accident or other cause, except where
4 the defendant is discharged from the indictment, during the progress of the
5 trial, or after the cause is submitted to them, the cause may be again tried
6 at the same or another term of the court.

2 Sec. 4823. While the jury is absent the court may adjourn from time to
3 time as to other business, but it shall be nevertheless deemed open for
4 every purpose connected with the cause submitted to the jury until a verdict
5 be rendered or the jury is discharged.

6 Sec. 4824. A final adjournment of the court discharges the jury.

CHAPTER 214. *Verdict.*

2 Sec. 4825. When the jury has agreed upon its verdict it must be con-
3 ducted into court by the officer having it in charge. The names of the jurors
4 must then be called, and if all do not appear the rest must be discharged
5 without giving a verdict. In such case the cause may again be tried at the
6 same or another term.

2 Sec. 4826. If the indictment be for a felony the defendant must be pres-
3 ent at the rendition of the verdict. If it be for a misdemeanor the verdict
4 may be rendered in his absence.

2 Sec. 4827. When the jury have answered to their names the court or
3 the clerk shall ask them whether they have agreed upon the verdict, and if
4 the foreman answers in the affirmative they must on being required declare
5 the same.

2 Sec. 4829. The jury may either render a general verdict, or where they
3 are in doubt as to the legal effect of the facts proven, they may, except
4 upon an indictment for libel, find a special verdict.

2 Sec. 4829. A general verdict upon a plea of not guilty is either "guilty" or
3 "not guilty," which imports a conviction or acquittal on every material alle-
4 gation in the indictment. Upon a plea of a former conviction or acquittal
5 of the same offense it is either "for the state" or "for the defendant."

6 Sec. 4830. A special verdict is that by which the jury finds the facts

2 only, leaving the judgment to the court. It must present the conclusions of
 3 fact as established by the evidence and not the evidence to prove them, and
 4 these conclusions of fact must be so presented as that nothing remains to
 5 the court but to draw conclusions of law upon them.

2 Sec. 4831. The special verdict must be reduced to writing by the jury or
 2 in their presence, entered upon the minutes of the court, read to the jury
 3 and agreed to by them, before they are discharged.

2 Sec. 4832. The special verdict need not be in any particular form but
 2 shall be sufficient if it present intelligibly the facts found by the jury.

2 Sec. 4833. The court must give judgment upon the special verdict as
 2 follows:

3 1. If the plea be not guilty and the facts prove the defendant guilty of
 4 the offense charged in the indictment or of any other offense of
 5 which he could be convicted in law, under that indictment, judg-
 6 ment shall be given accordingly. But if the facts found do not
 7 prove the defendant guilty of the offense charged or of any offense
 8 of which he could be so convicted under the indictment, judg-
 9 ment of acquittal must be rendered.

10 2. If the plea be a former conviction or acquittal of the same offense, the
 11 court must give judgment of conviction or acquittal according as
 12 the facts prove or fail to prove the former conviction or acquittal.

2 Sec. 4834. If the jury do not, in a special verdict, pronounce affirma-
 2 tively or negatively on the facts necessary to enable the court to give judg-
 3 ment, or if they find the evidence of facts merely, and not the conclusions
 4 of fact from the evidence as established to their satisfaction, the court may
 5 order them to retire for farther deliberation.

2 Sec. 4835. Upon an indictment for an offense consisting of different de-
 2 grees, the jury may find the defendant not guilty of the degree charged in the
 3 indictment, and guilty of any degree inferior thereto, or of an attempt to com-
 4 mit the offense, if punishable by indictment.

2 Sec. 4836. In all other cases the defendant may be found guilty of any
 2 offense the commission of which is necessarily included in that with which he
 3 is charged in the indictment.

2 Sec. 4837. On an indictment against several, if the jury cannot agree
 2 upon a verdict as to all, they may render a verdict as to those in regard to
 3 whom they do agree, on which a judgment shall be entered accordingly, and
 4 the case as to the rest may be tried by another jury.

2 Sec. 4838. If the jury render a verdict which is neither a general nor
 2 special verdict, the court may direct them to reconsider it, and it shall not be
 3 recorded until it be rendered in some form from which it can be clearly under-
 4 stood what is the intent of the jury, whether to render a general verdict, or
 5 to find the facts specially and to leave the judgment to the court.

2 Sec. 4839. If the jury persist in finding an informal verdict, from which,
 2 however, it can be understood that their intention is to find for the defend-
 3 ant upon the issue, it shall be entered in the terms in which it is found, and
 4 the court must give judgment of acquittal. But no judgment of conviction
 5 can be given unless the jury expressly find against the defendant upon the
 6 issue, or judgment be given against him upon a special verdict.

2 Sec. 4840. When a verdict is rendered and before it is recorded, the jury
 2 may be polled on the requirement of either party; in which case they shall
 3 be severally asked whether it be their verdict, and if any one answer in the
 4 negative, the jury must be sent out for further deliberation.

2 Sec. 4841. When the verdict is given, and is such as the court may
3 receive, the clerk may immediately enter it in full upon the record, and must
4 read it to the jury, and inquire of them whether it is their verdict. If any
5 juror disagree, the fact must be entered upon the record, and the jury again
6 sent out. But if no disagreement be expressed, the verdict is complete, and
the jury must be discharged from the case.

2 Sec. 4842. If the defense be the insanity of the defendant, the jury must
3 be instructed, if they acquit him on that ground, to state that fact in their
4 verdict. The court may thereupon, if the defendant be in custody, and his
5 discharge is deemed dangerous to the public peace and safety, order him to
6 be committed to the Iowa insane hospital, or retained in custody until he
becomes sane.

2 Sec. 4843. If judgment of acquittal be given on a general verdict, and
3 the defendant be not detained for any other legal cause, he must be dis-
4 charged as soon as the judgment is given.

CHAPTER 215. *Bills of Exception.*

2 Sec. 4844. On the trial of an indictment, exceptions may be taken by the
3 state, or by the defendant, to any decision of the court upon matters of law,
4 in any of the following cases :

- 4 1. In disallowing a challenge to an individual juror.
- 5 2. In admitting or rejecting witnesses or evidence on the trial of any
6 challenge.
- 7 3. In admitting or rejecting witnesses or evidence, or in deciding any mat-
8 ter of law, not purely discretionary, on the trial of the issue.

2 Sec. 4845. Nothing herein contained is to be construed so as to deprive
3 either party of the right of excepting to any action or decision of the court,
4 which affects any other material or substantial right of either party, whether
5 before or after the trial of the indictment, or on such trial.

2 Sec. 4846. The office of a bill of exceptions is to make a part of the
3 proceedings or evidence appear of record, which would not otherwise so
4 appear.

2 Sec. 4847. All papers pertaining to the cause and filed with the clerk,
3 and all entries made by the clerk in the record book, pertaining to them, and
4 showing the action or decision of the court upon them, or any part of them,
5 are to be deemed parts of the record, and it is not necessary to except to any
6 action or decision of the court, so appearing of record.

2 Sec. 4848. Either party may allege an exception to any decision or action
3 of the court, on any application of either party, which may be, and is made
4 orally to the court, in any stage of the proceedings upon which the decision
5 or action of the court is not required to be, and is not entered in the record
6 book, and reduce the same to writing, and tender the same to the judge ;
7 whose duty it is to sign it ; and if he sign the same, it shall be filed with the
clerk, and thereupon become a part of the record of the cause ; but if the

8 judge refuse to sign it, such refusal must be stated at the end thereof; and it
 9 may then be signed by two or more attorneys or officers of the court or dis-
 10 interested bystanders, and sworn to by the persons so signing the same, and
 11 filed with the clerk, and it shall thereupon become a part of the record of the
 12 cause.

Sec. 4849. The judge shall be allowed one clear day to examine the bill
 2 of exceptions, and the party excepting shall be allowed three clear days
 3 thereafter to procure the signatures and file the same.

Sec. 4850. If the judge and the party excepting, can agree in modifying
 2 the bill of exceptions, it shall be modified accordingly.

Sec. 4851. Time must be given to prepare the bill of exceptions when it
 2 is necessary. When it can reasonably be done, it shall be settled at the time
 3 of taking the exception.

CHAPTER 216.—*New Trial.*

Sec. 4852. A new trial is a re-examination of the issue in the same court
 2 before another jury, after a verdict has been given.

Sec. 4853. The granting of a new trial places the parties in the same po-
 2 sition as if no trial had been had. All the testimony must be produced anew
 3 and the former verdict can not be used or referred to either in the evidence or
 4 in argument.

Sec. 4854. The court may grant a new trial for the following causes, or
 2 any of them :

- 3 1 When the trial has been had in the absence of the defendant, if the in-
 4 dictment be for a felony.
- 5 2 When the jury has received any evidence, paper, or document out of
 6 court not authorized by the court.
- 7 3 When the jury have separated without leave of the court after retiring to
 8 deliberate upon their verdict, or have been guilty of any misconduct
 9 tending to prevent a fair and due consideration of the case.
- 10 4 When the verdict has been decided by lot or by means other than a fair
 11 expression of opinion on the part of all the jurors.
- 12 5 When the court has misdirected the jury in a material matter of law.
- 13 6 When the verdict is contrary to law or evidence. But no more than
 14 two new trials shall be granted for this cause alone.
- 15 7 When the court has refused properly to instruct the jury.
- 16 8 When from any other cause the defendant has not received a fair and
 17 impartial trial.
- 18 9 When by reason of any other matter the defendant is legally entitled to
 19 a new trial.

Sec. 4855. The application for a new trial can be made only by the defend-
 2 ant, and must be made before judgment.

CHAPTER 217. *Arrest of judgment.*

Section 4856. A motion in arrest of judgment, is an application to the court in which the trial was had, on the part of the defendant, that no judgment be rendered upon a verdict against him, or on a plea of guilty, and shall be granted :

1. Upon any ground which would have been ground of demurrer.
2. When upon the whole record no legal judgment can be pronounced.

Sec. 4857. The court may also, upon its own observation, of any of these grounds, arrest the judgment on its own motion.

Sec. 4858. If the court is of opinion, from the evidence, on the trial, that the defendant is guilty of a public offense, of which no legal conviction can be had on the indictment, he may be held to answer the offense, in like manner, as upon a preliminary examination.

Sec. 4859. The motion may be made at any time before judgment, or after judgment, during the same term.

CHAPTER 218. *Judgment.*

Section 4860. Upon a verdict of not guilty, for the defendant, or a special verdict upon which a judgment of acquittal must be given, the court must render judgment of acquittal immediately.

Sec. 4861. Upon a plea of guilty, upon a verdict of guilty, or a special verdict upon which a judgment of conviction must be rendered, the court must appoint a time for pronouncing judgment.

Sec. 4862. The time appointed for pronouncing judgment, must be at least three clear days after the verdict is recorded, if the court remains in session so long, or if not, as remote a time as can reasonably be allowed, but in no case can the judgment be pronounced in less than six hours after the verdict is recorded.

Sec. 4863. For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for a misdemeanor, judgment may be pronounced in his absence.

Sec. 4864. When the defendant is in custody, the court must direct the proper officer to bring him before it for judgment.

2 Sec. 4865. If the defendant has been discharged on bail, or has deposited
3 money instead thereof, and do not appear for judgment, when his personal
4 appearance is necessary, the court, in addition to the forfeiture of the under-
5 taking of bail, or money deposited, may make an order directing the clerk
6 to issue a bench warrant for his arrest.

2 Sec. 4866. The clerk, on the application of the district attorney, may
3 accordingly, at any time after the order, whether the court be in session or
4 not, issue a bench warrant, into one or more counties, for his arrest.

2 Sec. 4867. The bench warrant may be substantially, in the following
3 form.

3 COUNTY OF _____,

4 THE STATE OF IOWA.

5 *To any peace officer in the State:*

6 A. B. having been duly convicted on the _____ day of _____, A. D., 18—, in
7 the district court of _____ county, of the crime of (here designate it gen-
8 erally, as in the indictment.)

9 You are therefore hereby commanded to arrest the said A. B. and bring
10 him before said court for judgment, if it be then in session, or if it be not
11 then in session, you deliver him into the custody of the sheriff of said county.

12 Given under my hand, and the seal of said court, at my office
13 [SEAL.] in _____, in said county, this _____ day of _____, A. D., 18—.

14 By order of the court.

15 _____, clerk.

2 Sec. 4868. The bench warrant may be served in any county in the
3 state.

2 Sec. 4869. Whether the bench warrant be served in the county where
3 it was issued or in another county, the officer must arrest the defendant and
4 bring him before the court or commit him to the officer mentioned in the
5 warrant according to the command thereof.

2 SEC. 4870. When the defendant appears for judgment, he shall be in-
3 formed by the court, or by the clerk under its direction, of the nature of
4 the indictment and of his plea, and the verdict, if any thereon, and must be
5 asked whether he have any legal cause to show why judgment should not
6 be pronounced against him.

2 SEC. 4871. He may show for cause against the judgment, that he is
3 insane, or any sufficient ground for a new trial, or in arrest of judg-
4 ment.

2 SEC. 4872. If the court is of opinion that there is reasonable ground
3 for believing him insane, the question of his insanity shall be determined as
4 provided in this code, and if he is found to be insane, such proceedings shall
5 be had as are therein directed.

2 SEC. 4873. If he move for a new trial, or in arrest of judgment, the
3 court shall defer the judgment, and proceed to hear and decide the motions.

2 SEC. 4874. If no sufficient cause be alleged or appear to the court why
3 judgment should not be pronounced, it shall thereupon be rendered.

2 SEC. 4875. In a case where there is a discretion conferred upon the

2 court as to the extent of the punishment, the following, and such other
3 circumstances as are proper, are to be considered in aggravation :

- 4 1. If the person committing the offense was, by the duties of his office,
5 or by his condition, obliged to prevent the particular offense com-
6 mitted, or to bring offenders committing it to justice.
- 7 2. If he hold any other public office, although not one requiring the
8 suppression of the particular offense.
- 9 3. Although holding no office, if his education, fortune, profession, or
10 reputation, placed him in a situation in which his example would
11 probably influence the conduct of others.
- 12 4. When the offense was committed with premeditation, in consequence
13 of a plan formed with others.
- 14 5. When the defendant attempted to induce others to join in committing
15 the offense.
- 16 6. When the condition of the offender created a trust, which was broken
17 by the offense, or when it afforded him easier means of committing
18 the offense.
- 19 7. When in the commission of the offense, any other injury was offered,
20 than that necessarily suffered by the offense itself, such as wanton
21 cruelty, or humiliating language, in case of personal injury.
- 22 8. When the offense was attended with a breach of any other moral duty
23 than that necessarily broken in committing it, such as personal
24 injury accompanied by ingratitude.
- 25 9. When the injury was offered to one whose age, sex, office, conduct, or
26 condition, entitled him to respect from the offender.
- 27 10. When the injury was offered to one whose age, sex, or infirmity, ren-
28 dered him incapable of resistance.
- 29 11. When the general character of the defendant is marked by those
30 passions or vices, which generally lead to the commission of the
31 offense of which he has been convicted.

Sec. 4876. The following and such other circumstances as are proper,
are to be considered in alleviation of the punishment :

- 2 1. The minority of the offender, if so young as to justify a supposition
3 that he was ignorant of the law, or that he acted under the influ-
4 ence of another.
- 5 2. If the offender was so old, as to render it probable that the faculties
6 of his mind were weakened.
- 7 3. Those conditions which suppose the party to have been influenced in
8 committing the offense by another, standing in a correlative
9 superior situation to him.
- 10 4. The order of a superior officer, is no justification for committing a
11 public offense, but under circumstances of misapprehension of the
12 duty of obedience, may be shown in extenuation of the offense.
- 13 5. When the offense has been caused by great provocation, or other
14 cause sufficient to excite in men of ordinary tempers, such passions
15 as require unusual strength of mind to restrain.
- 16

2 Sec. 4877. All circumstances of aggravation and alleviation, which have
3 not necessarily or incidentally, been proved or shown on the trial, may be
4 shown by the examination of witnesses in open court, or by their affidavit,
5 as the court may deem most conducive to justice in each particular case ; but
6 the opposite party must, in all cases, have an opportunity of cross-examin-
7 ing the witnesses, or of producing counter-affidavits, or evidence, if he
require it.

2 Sec. 4878. No affidavit, testimony, or representation of any kind, oral or
3 written, can be offered to, or received by the court, of any circumstance of
4 aggravation, or alleviation of the punishment except as provided in the last
5 section.

2 Sec. 4879. A violation of the last section is a misdemeanor, and the per-
3 son offering such affidavit, testimony, or information, may, in addition, be pun-
4 ished by the court for contempt.

2 Sec. 4880. If the defendant is convicted of two or more offenses, before
3 judgment on either, the punishment of each of which is, or may be, imprison-
4 ment, the judgment may be so rendered that the imprisonment upon any one,
5 shall commence at the expiration of the imprisonment upon any other of the
6 offenses.

2 Sec. 4881. A judgment that the defendant pay a fine, may also direct that
3 he be imprisoned until the fine be satisfied, specifying the extent of the impris-
4 onment, which shall not exceed one day for every three and one-third dollars
5 of the fine.

2 Sec. 4882. When judgment of death is pronounced, the day of the execu-
3 tion thereof shall be fixed in the judgment, and shall not be in less than forty
4 days after the day on which the judgement is rendered.

2 Sec. 4883. Immediately after the entry of a judgment of death, the court
3 rendering such judgment must transmit by mail, to the governor, a copy of
4 the indictment, plea, verdict, and judgment, and of the testimony in the case.

2 Sec. 4884. When a person is in any event to be committed to jail, if there be
3 no jail or no sufficient one in the county where the party would be committed
4 under the ordinary provisions of law, the court or magistrate committing may
5 order him to be committed to the jail of some other county, which shall be
6 one which is the most convenient and safe, and the county to which the cause
7 originally belonged shall be holden for all the expenses thereof.

2 Sec. 4885. In all cases bailable on appeal to the supreme court, when the
3 judgment is imprisonment, the court rendering such judgment, must make an
4 order fixing the amount in which bail must be taken, and there shall be no ex-
5 ecution of the judgment until such order be made.

CHAPTER 219. *Execution.*

2 Sec. 4886. When a judgment of death or imprisonment, either in the pen-
3 itentiary or county jail, is pronounced, a certified copy of the entry thereof in
4 the record book, must be forthwith furnished to the officer whose duty it is to
5 execute the same, who shall proceed and execute it accordingly, and no other
6 warrant or authority is necessary to justify or require its execution.

2 Sec. 4887. The only officers who shall have the power of reprieving or
3 suspending the execution of a judgment of death, are the governor, the
4 sheriff, as provided in the next section, unless, in case of an appeal to the
5 supreme court, as provided in section 4913 of this code.

Sec. 4888. When the sheriff is satisfied that there are reasonable grounds for believing that the defendant is insane or pregnant, he may summon a jury of twelve persons on the jury list, to be drawn by the clerk, who shall be sworn by the sheriff, well and truly to inquire into the insanity or pregnancy of the defendant, and a true inquisition return ; and they shall examine the defendant, and hear any evidence that may be presented ; and by a written inquisition, signed by each of them, find as to the insanity or pregnancy. And unless the inquisition find the defendant insane or pregnant, the sheriff shall not suspend the execution ; but if the inquisition find the defendant insane or pregnant, he shall suspend the execution, and immediately transmit the inquisition to the governor.

Sec. 4889. Whenever a judgment of death has not been executed on the day appointed therefor, by the court, from any cause whatever, the governor, by a warrant under his hand and the seal of the state, shall fix the day of execution, which warrant, shall be obeyed by the sheriff, and no one but the governor can then suspend its execution.

Sec. 4890. A judgment of death must be executed by the sheriff, on the day fixed in the judgment, between sunrise and sunset, by hanging the defendant by the neck, until he is dead.

Sec. 4891. A judgment of death must be executed within the walls of the jail of the county in which the judgment was rendered, or, within a yard or inclosure, adjoining thereto, unless, as provided, in the next two sections.

Sec. 4892. If there be no jail in the county in which the judgment was rendered, or if it becomes unfit or unsafe for the confinement of prisoners, or be destroyed by fire or otherwise, and the jail of another county has been legally designated for the imprisonment of the defendant, until the day fixed for his execution, the judgment must be executed within the walls of the jail of the county so designated, or within a yard or inclosure, adjoining the same, and by the sheriff of such county.

Sec. 4893. If there be two or more jails or prisons in the same county, a judgment of death shall be executed within the walls of either of such jails or prisons, or within an enclosure adjoining thereto, as the court rendering such judgment, shall therein direct.

Sec. 4894. The sheriff executing a judgment of death, must, at least three clear days before inflicting a punishment of death, notify the judges of the district and circuit courts of his county, the district attorney, the clerk of the district court, together with two physicians, and twelve reputable citizens of his county, to be selected by him, and the sheriff of the county in which the trial was had, and the offense committed, (if it be in a different county,) to be present as witnesses of such execution. He must also at the request of the defendant permit one or more ministers of the gospel, whom the defendant shall name, and any of his relatives to attend the execution, and also such magistrates, peace officers, and guards as the sheriff shall deem proper. But no person other than those mentioned in this section, can be present at the execution, nor shall any person under age be permitted to witness the same.

Sec. 4895. The sheriff or his deputy executing the judgment of death, and the judges attending the execution, must prepare and sign with their name of office, a certificate, setting forth the time and the place of the execution, and that judgment was executed upon the defendant according to the foregoing provisions, and must cause the certificate to be signed by the public

6 officers, and at least twelve persons, not relatives of the defendant, who wit-
7 nessed the execution.

2 Sec. 4896. The sheriff or his deputy executing such judgment of death,
3 must cause the certificate to be filed in the office of the clerk of the district
4 court of the county in which the judgment was rendered, and a copy thereof
5 to be published in a newspaper printed at the capital of the state, and in one
6 (if any) published in his county.

2 Sec. 4897. If the judgment be imprisonment, or a fine and imprisonment
3 until it be satisfied, the defendant must forthwith be committed to the cus-
4 tody of the proper officer, and by him detained until the judgment be com-
5 plied with or the defendant discharged by due course of law.

2 Sec. 4898. When the judgment is imprisonment in the county jail of the
3 county in which the trial is had, or a fine, and that the defendant be impris-
4 oned in such county jail until it be satisfied, the judgment must be executed
5 by the sheriff of that county. In all other cases, when the judgment is
6 imprisonment, the sheriff of the county in which the trial was had, must
7 deliver the defendant to the proper officer, in execution of the judgment.

2 Sec. 4899. If the judgment be imprisonment, or a fine and imprisonment
3 until it be satisfied, except in the county jail of the county in which the trial
4 was had, the sheriff of the county in which the trial was had, shall deliver a
5 certified copy of the entry of the judgment, together with the body of the
6 defendant, to the keeper of the jail, or prison, in which the defendant is to
7 be imprisoned, and take his receipt therefor on a duplicate copy of such
8 entry, which he must forthwith return to the clerk of the court in which the
9 judgment was rendered, with his return thereon.

2 Sec. 4900. The sheriff or his deputy while conveying the defendant to
3 the proper prison, has the same authority to require the assistance of any
4 citizen of the state in securing the defendant and re-taking him if he escape
5 as if the sheriff were in his own county; and every person who neglects or
6 refuses to assist the sheriff when so required shall be punishable as if the
7 sheriff were in his own county.

2 Sec. 4901. An officer executing a judgment of imprisonment shall make
3 a written return of the execution of such judgment, forthwith after such
4 execution, and file the same with the clerk of the court, by which the judg-
5 ment was rendered.

2 Sec. 4902. Upon a judgment for a fine, a writ of execution may be issued
3 as upon a judgment in a civil case.

2 Sec. 4903. When the judgment is for the abatement or removal of a
3 nuisance, or for anything other than the payment of money by the defend-
4 ant, a certified copy of the entry of such judgment, delivered to the sheriff
5 of the proper county, shall authorize and require him to execute such judg-
6 ment, and he shall return the same with his doings under the same thereon
7 indorsed, to the clerk of the court in which the judgment was rendered,
8 within seventy days after the date of the certificate of such certified copy,
9 unless it be a judgment of death, or imprisonment, which are hereinbefore
provided for.

CHAPTER 220. *Appeals.*

2 Sec. 4704. The mode of reviewing in the supreme court, any judg-
3 ment, action, or decision of the district court, in a criminal case, is by an
4 appeal.

5 Sec. 4905. Either the defendant, or the state may take an appeal.

6 Sec. 4906. No appeal can be taken until after judgment, and then only
7 within one year thereafter.

8 Sec. 4907. An appeal is taken, by the party taking it, or the attorney of
9 such party, serving on the adverse party, or the attorney of the adverse
10 party, who acted as attorney of record in the district court, at the time of the
11 rendition of the judgment, and also on the clerk of the district court, by
12 which the judgment was rendered, a notice in writing of the taking of the
13 appeal from the judgment.

14 Sec. 4908. The appeal is deemed to be taken, when the notices thereof,
15 required by the last section, are filed in the office of the clerk of the court
16 in which the judgment was rendered, with evidence of the service thereof
indorsed thereon, or annexed thereto.

17 Sec. 4909. When an appeal is taken, it is the duty of the clerk of the
18 court, in which the judgment was rendered, without unnecessary delay, to
19 make out two full and perfect transcripts of all papers in the case on file,
20 in his office, (except the papers returned by the examining magistrate, on
21 the preliminary examination, where there has been one, and the minutes of
22 the evidence of the witness examined before the grand jury,) and of all en-
23 tries made in the record book, and certify the same under his hand and the
24 seal of the court, and deliver, or transmit by mail, one to the defendant, his
25 agent or attorney, who acted for him at the time of the rendition of the
26 judgment, or the taking of the appeal, and the other, to the district attorney,
27 whose duty it shall be, after examination of the same, to make such suggestions,
28 as he may deem proper, in writing, or otherwise, and deliver or transmit by
29 mail to the attorney-general, the transcript, received by him, with his sug-
30 gestions. The clerk shall in his certificate to the transcripts, state the true
31 day of his certifying the same, and shall on the same day, mentioned in the
32 certificate, transmit, or deliver the same, as hereinbefore provided.

33 Sec. 4910. If bail be put in by a defendant, after taking an appeal in a
34 bailable case, and before the transcripts are made out, and forwarded or de-
35 livered by the clerk as provided in the last section, two transcripts of the
36 undertaking and justification of the bail, shall in like manner be made out,
37 certified, and delivered, or forwarded as provided in the last section.

38 Sec. 4911. An appeal taken by the state, in no case, stays the operation
39 of a judgment, in favor of the defendant.

40 Sec. 4912. An appeal by the defendant from a judgment of death, stays
41 the infliction of that punishment, but the defendant is to be detained in cus-
42 tody, to abide the judgment on the appeal.

2 Sec. 4913. When an appeal is taken from a judgment of death, it is the duty
 3 of the clerk of the district court, in which the judgment was rendered, to give
 4 forthwith, to the defendant, his agent or attorney, a certificate under his
 5 hand and seal of the court, stating that an appeal has been taken in the case
 6 and the sheriff or other officer having the custody of the defendant, must,
 7 upon the delivery of such certificate to him, refrain from the infliction of the
 8 punishment of death on the defendant, but retain him in his custody, to
 abide the judgment, on the appeal.

2 Sec. 4914. An appeal taken by the defendant, in a bailable case, does
 3 not stay the execution of the judgment, unless bail be put in, except, as pro-
 4 vided, in the next section.

2 Sec. 4915. In a bailable case, where the judgment is imprisonment in
 3 the penitentiary, and an appeal is taken during the term at which the judg-
 4 ment is rendered, and the defendant is unable to give bail, and that fact is
 5 satisfactorily shown to the court, it may in its discretion, order the sheriff or
 6 officer having the defendant in custody, to detain him in custody, without
 7 taking him to the penitentiary, to abide the judgment on the appeal, if the
 defendant desire it.

2 Sec. 4916. When an appeal is taken by the defendant, in a bailable case,
 3 and bail is put in, it is the duty of the clerk to give forthwith, to the defend-
 4 ant, his agent or attorney, a certificate under his hand and the seal of the
 5 court, stating that an appeal has been taken and bail put in, and the sheriff
 6 or other officer having the defendant in custody, must, upon the delivery of
 7 such certificate to him, discharge the defendant from custody, where impris-
 8 onment forms any part of the judgment, and cease all further proceedings
 9 in execution of the judgment, and return forthwith to the clerk of
 10 the court, who issued it, the execution or certified copy of the entry of
 11 judgment, under which he acted, with his return thereto, if such execution
 12 or certified copy has been issued, and if such execution or certified copy has
 13 not been issued, it shall not be issued, but shall abide the judgment, on the
 appeal.

2 Sec. 4917. When several defendants are indicted and tried jointly, any
 3 one or more of them may join in taking the appeal, but those of their co-
 4 defendants who do not join, shall take no benefit therefrom, yet they may
 appeal, afterwards.

2 Sec. 4918. The party taking the appeal, is known as the appellant, the
 3 adverse party as the appellee, but the title of action is not changed in con-
 4 sequence of the appeal; it shall be docketed in the supreme court, as it was
 in the district court.

2 Sec. 4919. Appeals in criminal cases, shall be docketed in the supreme
 3 court for trial, at the commencement of that portion of the term which has
 4 been assigned for trying causes from the judicial district, from which the
 5 appeal comes, which is twenty days after the date of the certificate of the
 6 transcripts from the clerk of the district court, and if the appellant does not
 7 file his transcript by that time with the clerk of the supreme court, the ap-
 8 pellee may file his, and have the case docketed. They shall take precedence
 9 of all other business, and shall be tried at the term at which the transcript
 10 is filed, unless, continued for cause, or by consent of the parties, and shall
 be decided, if practicable, at the same term.

2 Sec. 4920. The personal appearance of the defendant in the supreme
 3 court, on the trial of an appeal, is in no case necessary.

2 Sec. 4921. An appeal shall not be dismissed for any informality or defect
3 in taking the appeal, if the same be corrected in a reasonable time, and the
3 supreme court must direct how it shall be corrected.

2 Sec. 4922. No assignment of error, or joinder in error, shall be nec-
2 essary.

 Sec. 4923. The defendant shall be entitled to close the argument.

2 Sec. 4924. The opinion of the supreme court, must be in writing, filed
2 with its clerk, and recorded.

2 Sec. 4925. If the appeal was taken by the defendant, from a judgment
2 against him, the supreme court must examine the record and without regard
3 to technical errors or defects, which do not affect the substantial rights
4 of the parties, render such judgment on the record as the law demands. It
5 may affirm, reverse, or modify the judgment, and render such judgment as
6 the district court should have rendered, and may, if necessary or proper,
7 order a new trial. It may reduce the punishment, but can not increase it.

2 Sec. 4926. If the appeal was taken by the state, the supreme court cannot
2 reverse the judgment, or modify it, so as to increase the punishment, but may
3 affirm it, and shall point out any error in the proceedings, or in the measure
4 of punishment, and its decision shall be obligatory on the district court, as
5 the correct exposition of the law.

2 Sec. 4927. If a judgment against the defendant be reversed, without or-
2 dering a new trial, the supreme court must direct, if the defendant be in
3 custody, that he be discharged, or if he be admitted to bail, that his bail be
4 exonerated, or if money be deposited instead of bail, that it be refunded to
5 him.

2 Sec. 4928. On a judgment of affirmance against the defendant, the origi-
2 nal judgment shall be carried into execution, as the supreme court shall
3 direct, except as hereinafter provided.

2 Sec. 4929. When a judgment of the supreme court is rendered, it must
2 be recorded, and a certified copy of the judgment must be forthwith
3 remitted to the clerk of the district court in which judgment appealed
4 from was rendered, with proper instructions, and a copy of the opinion,
5 in such time, and in such manner, as the supreme court may, by rule, pre-
6 scribe.

2 Sec. 4930. After the certified copy of the entry of the judgment of the
2 supreme court, and its instructions have been remitted, as provided in the
3 preceding section, the supreme court has no farther jurisdiction of the pro-
4 ceedings therein, and all proceedings which may be necessary to carry the
5 judgment of the supreme court into effect, must be had in the court to which
6 it is remitted, or by the clerk thereof, except as provided in the next two
7 sections.

2 Sec. 4931. Unless where some proceedings in the district court are di-
2 rected by the supreme court, a copy of the certified copy of the judgment of
3 the supreme court, with its directions certified by the clerk of the district
4 court, to whom the same has been transmitted, delivered to the sheriff, or
5 other proper officer, shall authorize him to execute the judgment of the su-
6 preme court, or take any steps to bring the proceedings to a conclusion, ex-
7 cept as provided in the next section.

2 Sec. 4932. When a judgment of death has been affirmed, the supreme
2 court must cause a copy of the entry of judgment, to be remitted to the go-
3 vernor, to the end that a warrant for the execution may be issued by the
4 governor. The governor shall send his warrant of execution by a special

5 messenger, or by mail, to the proper officer, and shall name therein the day
6 and time of execution, but shall not appoint an earlier day than that fixed
7 in the judgment of the district court. The officer receiving the same, shall
8 execute the warrant of the governor, as therein directed, and shall report
9 his action, both to the governor and the district court which rendered the
10 original judgment. If, for any cause, the execution does not take place
11 on the day appointed by the governor, the governor may, from time to
12 time, appoint another day for execution, until the judgment is carried into
13 effect.

2 SEC. 4933. If a defendant, who has been imprisoned during the penden-
3 cy of an appeal, upon a new trial ordered by the supreme court, shall be
4 again convicted, the period of his former imprisonment, shall be deducted
5 by the district court, from the period of imprisonment to be fixed, on the
6 last verdict of conviction.

CHAPTER 221. *Impeachments.*

2 SECTION 4934. The governor, judges of the supreme and district courts,
3 and other state officers, are liable to impeachment for any misdemeanor or
4 malfeasance in office.

2 Sec. 4935. The house of representatives has the sole power of impeach-
3 ment.

Sec. 4936. The senate tries all impeachments.

2 Sec. 4937. An impeachment is the written accusation of a state officer,
3 by the house of representatives, before the senate, of any misdemeanor or
4 malfeasance in office.

2 Sec. 4938. A majority of all the members of the house of representa-
3 tives elected must concur in an impeachment.

2 Sec. 4939. The impeachment must specify the offenses charged with the
3 same precision as is requisite in an indictment, and the accused must be al-
4 lowed counsel as in cases of other prosecution.

2 Sec. 4940. If the impeachment charge more than one misdemeanor or
3 act of malfeasance, they shall be stated separately and distinctly.

2 Sec. 4941. When possessed of an impeachment, the senate must forth-
3 with cause the person accused to be brought before it.

2 Sec. 4942. All writs and process must be issued by the secretary of the
3 senate, and tested in his name, and may be served by any person thereto
4 authorized by the senate or its president.

2 Sec. 4943. Upon the appearance of the person impeached, he is entitled
3 to a copy of the impeachment, and to a reasonable time in which to answer
4 the same.

2 Sec. 4944. Before proceeding to the trial, an oath truly and impartially
3 to try and determine the charge in question according to the evidence shall
4 be administered by the secretary of the senate to the president, and by him
5 to each of the members of that body.

2 Sec. 4945. The person impeached shall be declared acquitted unless two-
3 thirds of the members present assent to his conviction.

3 Sec. 4946. Upon conviction the judgment cannot extend beyond removal
4 from office, and a disqualification to hold any office of honor, trust or profit,
5 under this state.

2 Sec. 4947. The party impeached, whether convicted or acquitted, is nev-
3 ertheless liable to indictment, trial and punishment, according to law.

2 Sec. 4948. Every officer impeached shall be suspended from the exercise
3 of his official duties until his acquittal.

2 Sec. 4949. If the president of the senate be impeached, notice thereof
3 must be immediately given to the senate; which shall thereupon choose
4 another president, to hold his office until the result of the trial is deter-
5 mined.

CHAPTER 222. *Compelling the Attendance of Witnesses.*

2 Sec. 4950. A magistrate in any criminal proceeding before him, may
3 issue subpoenas, subscribed by him, with his name of office, for witnesses
4 within the state, on behalf of either party thereto.

2 Sec. 4951. The clerk of the court in which any criminal case is pending
3 must, at all times, upon the application of the defendant or his attorney,
4 issue as many blank subpoenas, under the seal of the court, subscribed by
5 him, for witnesses within the state, as may be required by the defend-
6 ant. He must also issue subpoenas, on the part of the state, when re-
7 quired.

2 Sec. 4952. A peace officer must serve within his town, or county, as the
3 case may be, any subpoena delivered to him for service on the part of either
4 the state or defendant, and must make a written return of the service sub-
5 scribed by him and stating the time and place of service, without delay. A sub-
6 poena may, however, be served by any other person.

2 Sec. 4953. The service of a subpoena must be by delivering a copy and
3 showing the original to the witness personally.

2 Sec. 4954. If a witness conceal himself to avoid the service of a subpoena
3 the officer may break open doors or windows for the purpose of making
4 service.

2 Sec. 4955. Disobedience to a subpoena, or refusal to be sworn, or to
3 answer as a witness, may be punished by the court or magistrate as a
4 contempt.

2 Sec. 4956. A witness, wilfully disobeying a subpoena, in a criminal case
3 without good cause, shall be liable to the party injured, for the amount of the
4 damages sustained by such party.

2 Sec. 4957. The undertakings of witnesses, in criminal cases, may be for-
3 feited and enforced, like the undertaking of bail.

2 Sec. 4958. A subpoena in a criminal case, runs into any part of the
state.

2 Sec. 4959. In cases of impeachment, subpoenas may be issued on behalf
2 of either party, by the secretary of the senate.

CHAPTER 223.—*Examination of Witnesses, Conditionally or on Condition.*

2 Sec. 4960. A defendant in a criminal case, either after preliminary inform-
2 ation, indictment, or information, may examine witnesses conditionally or on
3 commission, in the same manner and with like effect as in civil actions.

CHAPTER 224.—*Perpetuating Testimony.*

2 Sec. 4961. A person apprehensive of a criminal prosecution, may perpet-
2 uate testimony in his favor, in the same manner, and with like effect, as it may
3 be done in apprehension of any civil action.

CHAPTER 225.—*Bailable Offenses.*

2 Sec. 4962. All defendants are bailable both before and after conviction,
2 by sufficient surety, except for capital offenses, where the proof is evident, and
3 the presumption great.

CHAPTER 226. *Admission to Bail.*

2 Sec. 4963. Admission to bail is the order of a competent court, officer, or
3 magistrate, that the defendant be discharged from actual custody, upon the
4 taking of bail.

2 Sec. 4964. The taking of bail consists in the acceptance by a competent
3 court, officer, or magistrate, of the undertaking of sufficient bail for the appear-
4 ance of the defendant, according to the terms of the undertaking, or that
5 the bail will pay to the state a specified sum.

2 Sec. 4965. Before conviction a defendant must be admitted to bail:

- 3 1. For his appearance before the magistrate on the preliminary examina-
4 tion of the charge, before being held to answer.
- 5 2. For his appearance before the court to which the magistrate is requi-
6 red to return the papers, upon the defendant being held to answer,
7 after preliminary examination.
- 8 3. After indictment, either upon his arrest upon a bench warrant, or upon
9 the order of the court committing him, or enlarging the amount of
10 his bail, or upon his being surrendered by his bail to answer the in-
11 dictment, in the court in which it is found, or to which the case
may be removed.

Sec. 4966. Transferred to chapter 229.

CHAPTER 227. *Bail, Upon being held to answer, Before Indictment.*

2 Sec. 4967. When the defendant has been held to answer for any bailable
3 offense, bail must be taken by the magistrate who held him to answer, or by
4 any judge of the supreme, district, or circuit courts, or by the court to which
5 the papers on the preliminary examination are to be returned by the magis-
6 trate who held him to answer, or by the clerk of such court, or by any mag-
7 istrate of the county in which the offense is triable.

2 Sec. 4968. Bail is put in by a written undertaking, executed by one or
3 more sufficient sureties, (with or without the defendant, in the discretion of
4 the court, clerk, or magistrate,) acknowledged before, and accepted by, the
5 court, clerk, or magistrate, taking the same, and may be substantially, in the
following form:

6 County of _____

7 An order having been made on the _____ day of _____, A. D. 18—, by
 8 A. B., a justice of the peace of the township of _____, (or as the case may
 9 be,) that C. D. be held to answer upon a charge of (stating briefly the nature
 10 of the offense,) upon which he has been duly admitted to bail, in the sum
 11 of _____ dollars.

12 We, E. F., of (stating his place of residence and occupation,) and G. H.,
 13 of (stating his place of residence and occupation,) hereby undertake that the
 14 said C. D. shall appear at the district court of the county of _____, at the
 15 next term thereof, and answer said charge, and abide the orders and judg-
 16 ment of said court, and not depart without leave of the same, or if he fail to
 17 perform either of these conditions, that we will pay to the state of Iowa the
 18 sum of _____ dollars, (inserting the sum in which the defendant is admitted
 19 to bail.)

20 E. F.

21 G. H.

22 Acknowledged before, and accepted by me, at _____, in the township of
 23 _____, in the county of _____, this _____ day of _____, A. D. 18—

24 I. J., justice of the peace.

25 (Or, as the case may be.)

Sec. 4969. The qualifications of bail are as follows :

- 2 1. Such bail must be a resident and house-holder, or free-holder, within
 3 the state.
- 4 2. Such bail must be worth the amount specified in the undertaking, ex-
 5 clusive of property exempt from execution, but the court, clerk, or
 6 magistrate taking the bail, may allow more than one bail to justify
 7 severally in amounts less than that expressed in the undertaking,
 8 if the whole justification be equivalent to one sufficient bail.

2 Sec. 4970. The bail must in all cases justify, by affidavit taken before
 3 the court, clerk, or magistrate, as the case may be, taking such bail, and the
 4 affidavit must state that they each possess the qualifications prescribed in the
 5 last section.

2 Sec. 4971. The district attorney, or the court, clerk, or magistrate, as the
 3 case may be, may thereupon further examine the bail upon oath, concerning
 4 their sufficiency, in such manner as may be deemed proper.

2 Sec. 4972. The court, clerk or magistrate, may also receive other testi-
 3 mony, either for or against the sufficiency of the bail.

2 Sec. 4973. When the examination is closed, the court, clerk, or magis-
 3 trate, must make an order, either allowing or disallowing the bail, and must
 4 forthwith, cause the same, with the affidavits of justification, and the under-
 5 taking of bail, to be filed with the clerk of the court, to which the papers on
 6 the preliminary examination are required to be sent.

2 Sec. 4974. Upon the allowance of the bail and the execution of the under-
 3 taking, the court, clerk, or magistrate, must make an order, signed with his
 4 name of office, for the discharge of the defendant, to the following effect :

4 The State of Iowa.

5 *To the sheriff of the county of ———*

6 C. D., who is detained by you on commitment, to answer a charge for the
7 offense of, (here designate it generally,) having given sufficient bail to answer
8 the same, you are commanded forthwith to discharge him from custody.

9 Dated at ———, in the township of ———, in the county of ———, this
10 ——— day of ———, A. D. 18—

11 K. L., justice of the peace.

12 (Or, as the case may be.)

2 Sec. 4975. If the bail be disallowed, the defendant must be detained in
custody until other bail be put in and justify.

CHAPTER 228.—*Bail, Upon an Indictment, Before Conviction.*

2 Sec. 4976. When the offense charged in the indictment is a misdemeanor,
3 the officer serving the bench warrant, if therein required, must take the
4 defendant before a magistrate in the county in which it was issued, or in
5 which he is arrested, or before the clerk of the district court of either of such
counties, for the purpose of giving bail.

2 Sec. 4977. If the offense charged in the indictment be a felony, the officer
3 arresting the defendant must deliver him into custody, according to the com-
mand of the warrant.

2 Sec. 4978. When the defendant is so delivered into custody, if the felony
3 charged beailable, bail must be taken by that court, or the clerk of that
court or by any magistrate in the same county.

2 Sec. 4979. The bail must be put in by a written undertaking, executed
3 by one sufficient surety, (with or without the defendant, in the discretion of
4 the court, clerk, or magistrate,) acknowledged before and accepted by the
5 court, clerk, or magistrate taking the same, and may be substantially in the fol-
lowing form :

6 COUNTY OF ———.

7 " An indictment having been found in the district court of the county of
8 ———, on the ——— day of ———, A. D. 18—, charging A. B. with the
9 crime of (designating it as in the bench warrant,) and he having been duly
10 admitted to bail in the sum of ——— dollars :

11 We, A. B., of (stating his place of residence and occupation,) C. D., of
 12 (stating his place of residence and occupation,) and E. F., of (stating his
 13 place of residence and occupation,) hereby undertake that the said A. B. shall
 14 appear and answer the said indictment, and abide the orders and judgment of
 15 said court, and not depart without leave of the same, or if he fail to perform
 16 either of these conditions, that we will pay to the state of Iowa the sum of
 17 _____ dollars (inserting the sum in which the defendant is admitted to bail.)

18
 19
 20

A. B.,
 C. D.,
 E. F.

21 Acknowledged before and accepted by me, at _____ in the township of
 22 _____, in the county of _____, this _____ day of _____, A. D. 18—

23
 24

G. H., justice of the peace.
 (Or, as the case may be.)

25 Sec. 4980. The provisions of the last preceding chapter, subsequent to
 26 the form of the undertaking relative to the qualifications of bail, the justifi-
 27 cation, the examination, receiving other testimony against the sufficiency, and
 28 the order of allowance or disallowance thereof, and the filing of the under-
 29 taking with the affidavits, and all proceedings incidental thereto, in the cases
 30 therein provided for, apply also to the cases provided for in this chapter.

CHAPTER 229. *Bail, upon an Appeal to the Supreme Court, after Conviction.*

31 SEC. 4981. After conviction upon an appeal to the supreme court, the
 32 defendant must be admitted to bail as follows :

- 33 1. If the appeal be from a judgment imposing a fine, upon the underta-
 34 king of bail, that will pay the same, or such part of it, as the
 35 supreme court may direct, and in all respects abide the orders and
 36 judgment of the supreme court, upon the appeal.
- 37 2. If the appeal be from a judgment of imprisonment, upon the under-
 38 taking of bail, that he will surrender himself in execution of the
 39 judgment and direction of the supreme court, and in all respects
 40 abide the orders and judgment of the supreme court, upon the
 41 appeal. The bail may be taken, either by the court where the
 42 judgment was rendered, or the judge thereof, or the district court
 43 of the county in which he is imprisoned, or the judge thereof, or
 44 the judge of the circuit court of either of such counties, or by
 45 the supreme court, or a judge thereof, or by the clerk of either of such
 46 courts.

2 SEC. 4982. The bail must possess the qualifications, must justify, and
 3 must be put in and taken, in the manner prescribed in chapter 227 of this
 4 code, and the same proceedings had in all respects, as nearly as applicable,
 5 varying to suit the case, and the undertaking of the bail must be, in effect,
 6 as prescribed by section 4966; but no order shall be made by the court,
 7 clerk, or magistrate taking the bail, for the discharge of the defendant, as
 8 provided in section 4974. And the clerk of the district court in which
 9 the judgment was rendered, must, upon the filing of the order of allowance
 10 of the bail, the affidavits of justification, and the undertaking, in his office,
 give the certificate prescribed by section 4916 of this code.

CHAPTER 230. *Deposit of Money instead of Bail.*

2 SEC. 4982. The defendant at any time after an order admitting him to
 3 bail, instead of giving bail, may deposit with the clerk of the district court,
 4 to which the undertaking, in case of bail, is required to be sent, the sum
 5 mentioned in the order, and upon delivering to the officer in whose custody
 6 he is, a certificate under seal from said clerk of the deposit, he must be dis-
 charged from custody.

2 SEC. 4984. If the defendant have given bail he may at any time before
 3 the forfeiture of the undertaking in like manner deposit the sum mentioned
 4 in the undertaking, and upon the deposit being made the bail shall be ex-
 onerated.

2 SEC. 4985. If money be deposited as provided in the last section, bail
 3 may be given in the same manner as if it had been originally given upon
 4 the order for admission to bail at any time before the forfeiture of the
 5 deposit. The court or magistrate before whom the bail is taken
 6 shall thereupon direct in the order of allowance, that the money de-
 7 posited be refunded by the clerk to the defendant, and it shall be re-
 funded accordingly.

2 SEC. 4986. Where money has been deposited, if it remain on deposit at
 3 the time of a judgment against the defendant, the clerk shall, under the
 4 direction of the court, apply the money in satisfaction of so much of the
 5 judgment as requires the payment of money, and after paying the same,
 6 shall refund the surplus, if any, to the defendant, unless an appeal be taken
 7 to the supreme court, and bail put in, in which case the deposit shall be
 returned to the defendant.

CHAPTER 231. *Surrender of the Defendant.*

2 Sec. 4987. At any time before the forfeiture of their undertaking, the
3 bail may surrender the defendant in their exoneration, or he may surren-
4 der himself to the officer to whose custody he was committed at the time of
5 giving bail, in the following manner :

- 6 1. A certified copy of the undertaking of bail must be delivered to the
7 officer, who shall detain the defendant in his custody thereon as
8 upon a commitment, and must by a certificate in writing, acknowl-
9 edge the surrender.
- 10 2. Upon the undertaking and the certificate of the officer, the district
11 court in which the indictment is pending, or was tried, at the next
12 term after the surrender, or if during term time, at the same term,
13 and upon three clear days' notice thereof to the district attorney,
14 with a copy of the undertaking and certificate, may order the bail
to be exonerated.

2 Sec. 4988. For the purpose of surrendering the defendant, the bail, at any
3 time before they are finally charged and at any place within the state, may
4 themselves arrest him, or by a written authority indorsed on a certified copy
5 of the undertaking may empower any person of suitable age and discretion
6 to do so.

2 Sec. 4989. If money has been deposited instead of bail, and the de-
3 fendant, at any time before the forfeiture thereof, shall surrender himself to
4 the officer to whom the commitment was made, or directed in the manner
5 prescribed in this chapter, the court in which the indictment is pending, or
6 was tried, at the next term after the surrender, or it during the term, at the
7 same term, must order a return of the deposit to the defendant, upon pro-
8 ducing the certificate of the officer, showing the surrender, and upon three
clear days' notice to the district attorney, with a copy of the certificate.

CHAPTER 232. *Forfeiture of the Undertaking of Bail, or Deposit of Money.*

2 Sec. 4990. If the defendant fail to appear for arraignment, trial or judg-
3 ment, or at any other time when his personal appearance in court may be
4 lawfully required, or to surrender himself in execution of the judgment, the
5 court must direct an entry of such failure to be made on the record, and the
6 undertaking of his bail or the money deposited instead of bail, as the case
may be, is thereupon forfeited.

2 Sec. 4991. If, before the final adjournment of the court for the term, the
 3 the defendant appear and satisfactorily excuse his failure, the court may di-
 4 rect an entry to be made on the record, that the forfeiture of the undertak-
 5 ing, or deposit to be discharged.

2 Sec. 4992. If the forfeiture is not discharged, the district attorney may
 3 at at any time after the adjournment of the court for the term, proceed by
 4 civil action only, upon the undertaking.

2 Sec. 4993. The action on the undertaking must be in the court in which
 3 the defendant was, or would have been, required to appear by the under-
 4 taking, Provided, that when the undertaking requires the defendant to ap-
 5 pear before a justice of the peace or at the court of limited jurisdiction, or
 6 before an examining magistrate, it shall be the duty of said justice, or court,
 7 or examining magistrate, upon the forfeiture of the undertaking, and within
 8 thirty days thereafter, to file the same, together with a copy of all his official
 9 entries in relation thereto, in the office of the clerk of the district court of the
 10 county; and thereupon it shall be the duty of the district-attorney to
 11 proceed to collect the same by civil action in the district court of said county
 12 or any other court of said county, having jurisdiction equal to the penalty of
 13 said bord. [Ch. 12, 11th G. A.]

2 Sec. 4994. If, before judgment is entered against the bail, the defendant
 3 be surrendered or arrested, the court may, in its discretion, remit the whole,
 4 or any part, of the sum specified in the undertaking.

CHAPTER 233.—*Re-commitment of the Defendant, after giving Bail, or de-
 positing Money.*

2 Sec. 4995. The district court in which a criminal action is pending, or
 3 during the pendency of an appeal from its judgment in such action, or in which
 4 a judgment is to be carried into effect; may by an order entered on the record,
 5 direct the defendant to be arrested and committed to jail until legally discharg-
 6 ed, after he has given bail, or deposited money instead thereof in the follow-
 7 ing cases :

- 8 1 When by reason of his failure to appear, he has incurred a forfeiture of
 9 his bail, or money deposited instead thereof.
- 10 2 When it satisfactorily appears to the court, that his bail, either by reason
 11 of the death of one, or more of them, or from any other cause, is in-
 12 sufficient, or have removed from the state.
- 13 3 When upon the finding of an indictment, the court deems the bail tak-
 14 en by the committing magistrate insufficient.

2 Sec. 4996. The order for re-commitment of the defendant must recite gen-
 3 erally the facts upon which it is founded, and must direct that the defendant
 4 be arrested and committed to the custody of the sheriff of the county where
 5 the depositions and statement were returned, or the indictment was found, or

5 the conviction was had, as the case may be, to be detained until legally dis-
6 charged.

2 Sec. 4997. The defendant may be arrested pursuant to the order upon a
certified copy thereof, in any county in the state.

2 Sec. 4998. If the order recite as the ground on which it is made, the fail-
2 ure of the defendant to appear for judgment upon conviction, the defendant
3 must be committed according to the requirements of the order.

2 Sec. 4999. If the order be made for any other cause and the offense be
2 bailable, the court may fix the amount of bail and may cause a direction to be
3 inserted in the order that the defendant be admitted to bail in the sum fixed,
4 which must be specified in the order.

CHAPTER 234. *Undertakings of Bail when Liens.*

2 Section 5000. Undertakings of bail, from the time of filing the same in
3 the office of the clerk of the district court in which they are required to be
4 filed, shall be, and may be made, liens upon real estate of the persons ac-
4 knowledging the same, in the same manner, to the same extent, and with
5 like effect, as in judgments civil actions.

2 Sec. 5001. They shall, when filed, be immediately docketed, and indexed,
2 by the clerk of the court in which they are filed, as judgments in civil actions
3 are required to be docketed and indexed.

2 Sec. 5002. Attested copies of such undertakings, may be filed in the
3 office of the clerk of the district court of the county in which the real estate
3 is situated, in the same manner, and with like effect, as attested copies of
4 judgments, and shall be immediately docketed and indexed, in the same
manner.

CHAPTER 235. *Judgments for Fines, when Liens, and how Executions thereon Stayed.*

2 Section 5003. Judgment for fines, in all criminal actions rendered, are,
3 and may be made, liens upon the real estate of the defendant, in the same
3 manner, and with like effect, as judgment in civil actions.

2 Sec. 5004. The defendant may have a stay of execution for the same
2 length of time, and in the same manner, as provided by law in civil actions,
3 and with like effect, and the same proceedings may be had therein.

CHAPTER 246. *Liberation of Poor Convicts.*

Section 5005. When any person convicted of a criminal offense is sentenced to pay a fine and costs only, and stand committed until sentence be performed, if the sentence be not complied with by payment of the sum due within thirty days next following, the sheriff may liberate him from prison, if committed for no other cause, and if he be unable to pay such fine and costs, upon his giving his promissory note for the amount due payable to the treasurer of the county where he was committed, on demand with interest, accompanied with a written schedule containing a true account of all his property, of every kind, by him signed and sworn to ; which note and schedule must be by such sheriff delivered without delay to the treasurer for the use of the county.

Sec. 5006. If such convict knowingly and willfully make any false schedule, on oath relating to the amount or nature of his property, he is guilty of perjury.

CHAPTER 237. *Dismissal of Criminal Actions, before and after Indictment, for want of Prosecution or otherwise.*

Sec. 5007. When a person has been held to answer for a public offense if an indictment be not found against him at the next regular term of the court at which he is held to answer, the court must order the prosecution to be dismissed unless good cause to the contrary be shown.

Sec. 5008. If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next regular term of the court in which the indictment is triable after the same is found, the court must order it to be dismissed unless good cause to the contrary be shown.

Sec. 5009. If the defendant be not indicted or tried as provided in the last two sections, and sufficient reason therefor shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody on his own undertaking or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued, but no such continuance can be extended beyond three terms of the court.

2 Sec. 5010. If the court direct the action to be dismissed, the defendant
3 must, if in custody, be discharged therefrom, or if admitted to bail, his bail
4 must be exonerated, and if money has been deposited instead of bail, it
5 must be refunded to him.

2 Sec. 5011. The court may, either upon its own motion, or upon the
3 application of the district attorney, and in furtherance of justice, order an
4 action, after an indictment, to be dismissed, but in such case, the reason of
5 the dismissal must be set forth in the order, which must be entered upon the
6 record.

2 Sec. 5012. The entry of a *nolle prosequi* is abolished, and neither the
3 attorney-general, nor the district attorney, shall hereafter discontinue, or
4 abandon, a prosecution for a public offense, except as provided in the last
5 section.

2 Sec. 5013. An order for the dismissal of the action, as provided in this
3 chapter, is a bar to another prosecution for the same offense, if it be a mis-
4 demenor; but it is not a bar, if the offense charged be a felony.

CHAPTER 238. *Inquiry Into the Insanity of a Defendant, Before Trial, or
After Conviction.*

2 Sec. 5014. An act done by a person in a state of insanity, can not be
3 punished as a public offense, nor can a person be arraigned, tried, adjudged
4 to punishment, or punished, for a public offense, whilst he is insane.

2 Sec. 5015. When a defendant appears for arraignment, trial, judgment, or
3 on any other occasion, when he is required, if a reasonable doubt arise as
4 to his sanity, the court must order a jury to be impaneled from the petit
5 jurors in attendance, at the term, or who may be summoned by the direc-
6 tion of the court, as provided in this code, to inquire into the fact.

2 Sec. 5016. The arraignment, trial, judgment or other proceedings, as
3 the case may be, must be suspended until the question of insanity is deter-
4 mined by the verdict of the jury.

2 Sec. 5017. The trial for the question of insanity must proceed in the fol-
3 lowing order.

- 3 1. The counsel of the defendant must offer the evidence in support of the
4 allegation of insanity.
- 5 2. The district attorney must then offer the evidence in support of the
6 case on the part of the state.
- 7 3. The parties may then respectively offer rebutting evidence only, un-
8 less the court for good reason, in furtherance of justice, permit
9 them to offer evidence upon their original case.
- 10 4. When the evidence is concluded, unless the case is submitted, on

11 either side or both sides, without argument, the district attorney must
 12 commence, and the defendant's counsel conclude the argument to
 13 the jury.

14 5. If more than one counsel on each side argue the case to the jury, they
 15 must do so alternately.

16 6. The court shall then, on motion of either party, charge the jury.
 17 The provisions of this code, so far as the same are applicable, and
 18 not herein changed, shall regulate the trial of the question of in-
 19 sanity.

Sec. 5018. If the jury find that the defendant is sane, the proceedings
 2 on the indictment shall be resumed.

Sec. 5019. If the jury find the defendant insane, the proceedings on the
 2 indictment shall be suspended, until he becomes sane, and the court, if it
 3 deem his discharge dangerous to the public peace or safety, may order that
 4 he be, in the meantime, committed by the sheriff to the Iowa Insane Hos-
 5 pital, and that upon his becoming sane, he be delivered by the superinten-
 6 dent of the hospital to the sheriff.

Sec. 5020. The commitment of the defendant, as provided in the last
 2 section, exonerates his bail, or entitles a person authorized to receive the
 3 property of the defendant, to a return of the money he may have deposited
 4 instead of bail.

Sec. 5021. If the defendant be received into the hospital, he must be
 2 detained there until he becomes sane. When he becomes sane, the superin-
 3 tendant of the hospital must give notice of that fact to the sheriff, and to the
 4 district attorney of the proper district. The sheriff must thereupon without
 5 delay, bring the defendant from the hospital, and place him in the proper
 6 custody, until he be brought to trial, or judgment, as the case may be, or be
 7 legally discharged.

Sec. 5022. The expenses of sending the defendant to the hospital, bring-
 2 ing him back, and any other expenses incurred, are to be paid in the first in-
 3 stance by the county from which he was sent, but the county may recover
 4 from the estate of the defendant, if he have any, or from a relative, or
 5 another county, town, township, or city, bound to provide for or maintain
 6 him elsewhere.

Sec. 5023. Sheriffs for delivering persons found to be insane, under the
 2 provisions of this chapter, are entitled to the same fees therefor, as are al-
 3 lowed for conveying convicts to the penitentiary.

CHAPTER 239.—*Search Warrants, and Proceedings thereon.*

2 Sec. 5024. A search warrant is an order in writing, in the name of the
3 state, signed by a magistrate, directed to a peace officer, commanding him to
4 search for personal property and bring it before the magistrate.

5 Sec. 5025. It may be issued upon either of the following grounds:

- 6 1 When the property was stolen or embezzled, in which case it may be
7 taken on the warrant from any house or other place in which it is
8 concealed, or from the possession of the person by whom it was stol-
9 en or embezzled, or of any other person in whose possession it may
10 be.
- 11 2 When it was used as the means of committing a felony; in which case
12 it may be taken on the warrant from any house or other place in
13 which it is concealed, or from the possession of the person by whom
14 it was used in the commission of the offense or of any other person
15 in whose possession it may be.
- 16 3 When it is in the possession of any person with the intent to use it as
17 the means of committing a public offense, or in the possession of
18 another to which he may have delivered it for the purpose of con-
cealing it or preventing its being discovered; in which case it may be
taken on the warrant, from such a person, from a house or other
place occupied by him or under his control, or from the possession
of the person to whom he may have so delivered it.

2 Sec. 5026. No search warrant can be issued but upon probable cause,
3 supported by affidavit, naming or describing the person and particularly de-
4 scribing the property, and the place to be searched.

2 Sec. 5027. The magistrate must, before issuing a warrant, examine on
3 oath the applicant therefor, and any witnesses he may produce, and take their
4 affidavits in writing, and cause each affidavit to be subscribed and sworn to
5 before him, by the person making it.

2 Sec. 5028. The affidavit must set forth the facts, tending to establish the
3 grounds of the application, or probable cause for believing that they exist.

2 Sec. 5029. If the magistrate be thereupon satisfied of the existence of
3 the grounds of the application, or that there is probable cause to believe their
4 existence, he shall issue a search warrant, signed by him with his name of
5 office, directed to any peace officer in the county, commanding him forthwith
6 to search the person or place named, for the property specified, and bring it
before him.

2 Sec. 5030. The local jurisdiction of magistrates, in exercising the powers
3 conferred on them by this chapter, is as defined in this code.

4 Sec. 5031. The warrant may be, substantially, in the following form :

2 County of _____,

3 The state of Iowa :

4 "To any peace officer of said county—

5 "Proof, by affidavit, having been this day made before me by (naming ev-
6 ery person whose affidavit has been taken) that (stating the particular grounds
7 of the application according to section 5025; or, if the affidavit be not positive,
8 'that there is probable cause for believing that'—(stating the ground of the
9 application in the same manner); you are therefor commanded, in the day
10 time, (or at 'any time of the day or night,' as the case may be according to sec-
11 tion 5035) to make immediate search *on the person* of C. D., (or, 'in the house
12 situated'—describing it or any other place to be searched, with reasonable
13 particularity, as the case may be,) for the following property (describing it
14 with reasonable particularity): and if you find the same, or any part thereof,
15 to bring it forthwith before me, at, (stating the place.)

16 'Dated at _____ this _____ day of _____ A. D. 18—.

17 E. F., justice of the peace.' "

(Or, as the case may be.)

2 Sec. 5032. A search warrant may in all cases be served by any of the offi-
3 cers mentioned in its direction, but by no other person except in aid of the
4 officer, on his requisition, he being present and acting in its execution.

2 Sec. 5033. The officer may break open any outer or inner door or win-
3 dow of a house, or any part of the house, or anything therein to execute
4 the warrant, if, after notice of his authority and purpose, he be refused ad-
5 mittance.

2 Sec. 5034. He may break open any outer or inner door or window of a
3 house, for the purpose of liberating a person, who, having entered to aid
4 him in the execution of the warrant, is detained therein, or when necessary
5 for his own liberation.

2 Sec. 5035. The magistrate must insert a direction in the warrant, that it
3 be served in the day time, unless the affidavit be positive that the
4 property is on the person, or in the place to be searched; in which case,
5 he may insert a direction, that it may be served at any time of the day
or night.

2 Sec. 5036. A search warrant must be executed and returned to the
3 magistrate by whom it was issued within ten days after its date. After the
4 expiration of such time, the warrant, unless executed, is void.

2 Sec. 5037. When the officer takes any property under the warrant he
3 must give a receipt for the property taken, (specifying it in detail) to the
4 person from whom it was taken or in whose possession it was found, or in
5 the absence of the person he must leave it in the place where he found the
property.

2 Sec. 5038. The officer must forthwith return the warrant to the magistrate
3 and at the same time deliver to him a written inventory of the property
taken, made publicly or in the presence of the person from whose possession

4 it was taken and of the applicant for the warrant if they be present, verified
5 by the affidavit of the officer at the foot of the inventory and taken before
6 the magistrate, to the following effect: "I, the officer by whom the
7 annexed warrant was executed, do swear that the above inventory contains a
8 true and detailed account of all the property taken by me on the
9 warrant."

2 Sec. 5039. The magistrate, if required, must deliver a copy of the in-
3 ventory to the person from whose possession the property was taken and to
4 the applicant for the warrant.

2 Sec. 5040. If the grounds on which the warrant was issued, be contro-
3 verted, the magistrate must proceed to take testimony in relation thereto.

2 5041. The testimony given by each witness must be reduced to writing
3 and authenticated by the magistrate.

2 Sec. 5042. If it appear that the property taken is not the same as that
3 described in the warrant or that there is no probable cause for believing the
4 existence of the grounds on which the warrant was issued, the magistrate
5 shall cause it to be restored to the person from whom it was taken.

2 Sec. 5043. If the property taken by virtue of a search warrant, was
3 stolen or embezzled, it must be restored to the owner, upon his making
4 satisfactory proof to the magistrate, of his ownership thereof, or of his right
5 of possession thereto, as provided in the next chapter. If it was taken on a
6 warrant issued on the grounds stated in the second and third subdivisions of
7 section 5025 of this code, the magistrate must retain it in his possession,
8 subject to the order of the court, to which he is required to return the pro-
9 ceedings before him, or of any other court in which the offense which the
10 property taken was used as a means of committing, or so intended to be, is
11 triable.

2 Sec. 5044. The magistrate must annex together the affidavits taken be-
3 fore the issuing of the warrant; the warrant, the return, and the inventory,
4 and return them to the next district court of the county, at or before its
5 opening, on the first day of the next term thereof.

2 Sec. 5045. Whoever maliciously, and without probable cause procures
3 a search warrant to be issued and executed, is guilty of a misdemeanor.

2 Sec. 5046. A peace officer who, in executing a search warrant, willfully
3 exceeds his authority, or exercises it with unnecessary severity, is guilty of a
4 misdemeanor.

2 Sec. 5047. When a person charged with a felony is supposed by the
3 magistrate before whom he is brought, to have upon his person a dangerous
4 weapon or anything which may be used as evidence of the commission of
5 the offense, the magistrate may direct him to be searched in his presence,
6 and the weapon or other thing to be retained, subject to his order, or the
7 order of the court in which the defendant may be tried.

2 Sec. 5048. When any officer, in the execution of a search warrant, shall
3 find any stolen or embezzled property, or shall seize any other things, for
4 which a search is allowed by this chapter, all the property and things so
5 seized, shall be safely kept by the direction of the court or magistrate, so
6 long as shall be necessary for the purpose of being produced as evidence on
7 any trial; and as soon as may be afterwards, all such stolen and embez-
8 zled property shall be restored to the owner thereof, and all other things
9 seized by virtue of such warrant shall be destroyed, under the direction of
10 the court or magistrate.

CHAPTER 240. *Disposal of Property Stolen or Embezzled.*

2 Sec. 5049. When property alleged to have been stolen or embezzled
3 comes into the custody of a peace officer, he must hold the same subject to
4 the order of the magistrate authorized by the next section to direct the dis-
posal thereof.

2 Sec. 5050. On satisfactory proof of title by the owner of the property,
3 the magistrate before whom the information is laid, or who shall examine
4 the charge against the person accused of stealing or embezzling the same,
5 may order it to be delivered to the owner, on his paying the reasonable and
6 necessary expenses incurred in the preservation and keeping thereof, to be
7 certified by the magistrate. The order shall entitle the owner to demand
and receive the property.

2 Sec. 5051. If the property stolen or embezzled come into the custody of
3 a magistrate, it must be delivered to the owner on satisfactory proof of his
4 title and on his paying the necessary expenses incurred in its preservation,
5 to be certified as before provided.

2 Sec. 5052. If the property stolen or embezzled has not been delivered
3 to the owner, the court before which a conviction is had, may on proof of his
4 title, order its restoration.

2 Sec. 5053. If property stolen or embezzled be not claimed by the owner
3 before the expiration of six months from the conviction of the person for
4 stealing or embezzling it, the magistrate or other officer having it in his cus-
5 tody, must, on payment of the necessary expenses incurred for its preserva-
6 tion, deliver it to the clerk of the county court to be applied under the direc-
tion of the judge thereof for the benefit of the poor of the county.

2 Sec. 5054. When the money or other property is taken from the defend-
3 ant arrested upon a charge of a public offense, the officer taking it shall at
4 the time give duplicate receipts therefor, specifying particularly the amount
5 of money and the kind of property taken; one of which receipts he must
6 deliver to the defendant, and the other he must forthwith file with the clerk
7 of the district court of the county where the depositions and statements are
to be sent by the magistrate.

CHAPTER 241.—*Proceedings and Trial, before Justices of the Peace.*

2 Sec. 5055. Justices of the peace in their respective counties have juris-
 3 diction of, and must hear, try, and determine all public offenses less than
 4 felony, in which the punishment prescribed by law does not exceed a fine of
 5 one hundred dollars, or imprisonment thirty days, on information under oath
 6 without indictment, or the intervention of a grand jury, saving to the defend-
 7 ant the right of appeal, as specified in the third sub-division of section 4499,
 8 committed within the limits of their local jurisdiction as defined in section
 4503, of this code.

2 Sec. 5056. Criminal actions for the commission of a public offense must
 3 be commenced before a justice of the peace by an information subscribed and
 3 sworn to, and filed with the justice.

2 Sec. 5057. Such information must contain :

- 3 1. The name of the county and of the justice where the information is
- 4 filed.
- 5 2. The names of the parties, if the defendants be known, and if not, then
- 6 such name as may be given him by the complainant.
- 7 3. A statement of the acts constituting the offense in ordinary and concise
- 8 language, and the time and place of the commission of the offense as
- near as may be.

2 Sec. 5058. The information may be substantially in the following form :

2 — county 3 The State of Iowa, 4 against 5 A— B—, defendant.	}	Before justice (here insert the name of the jus- tice.)
--	---	--

6 The defendant is accused of the crime (here name the offense.)
 7 For that the defendant on the — day of —, A. D. 1 —, at the (here
 8 name the city, village, or township,) in the county aforesaid, (here state the
 9 act, or omission constituting the offense as in an indictment.)

2 Sec. 5059. The justice must file such information, and mark thereon the
 time of filing the same.

2 Sec. 5060. Immediately upon the filing of such information, the justice
 3 may, in his discretion, issue a warrant for the arrest of the defendant, directed
 4 in the same manner as a warrant of arrest upon a preliminary information,
 and may be served in like manner.

2 Sec. 5061. The officer who receives the warrant must serve the same by
 3 arresting the defendant, if in his power, and bringing him without unneces-
 sary delay before the justice who issued the same.

2 Sec. 5062. When the defendant is brought before the justice, the charge
 3 against him must be distinctly read to him, and he shall be asked whether he
 is presented by his right name and be required to plead. If he object that

4 he is wrongly named in the information, he must give his right name, and if
 5 he refuse to do so, or does not object that he is wrongly named, the justice
 6 shall make an entry thereof in his docket, and he is thereafter precluded from
 7 making any such objection.

2 Sec. 5063. The defendant may plead the same pleas as upon an indict-
 2 ment. His pleas must be oral, and shall be entered on the docket of the
 3 justice.

2 Sec. 5064. Upon a plea other than a plea of guilty, if the defendant do
 2 not demand a trial by jury, the justice must proceed to try the issue, unless
 3 a change of venue be applied for by the defendant.

2 Sec. 5065. If a change of venue be applied for, an affidavit must be filed,
 2 stating that the justice is prejudiced against the defendant, or is of near rela-
 3 tion to the prosecutor upon the charge, or the party injured or interested, or
 4 is a material witness for either party, or that the defendant cannot obtain jus-
 5 tice before him, as the affiant verily believes.

2 Sec. 5066. (9th G. A., ch. 33.) If such affidavit be filed, the change of
 2 venue must be allowed, and the justice must immediately transmit all the
 3 original papers, and a transcript of all his docket entries, in the case to the
 4 next nearest justice in the township, unless said justice be a party to the
 5 action, or is related to either party by consanguinity or affinity within the
 6 fourth degree, or where he has been attorney for either party in the action or
 7 proceeding, and in such case the justice before whom such action or proceed-
 8 ing is commenced, shall transmit all the original papers, together with a
 9 transcript of all his docket entries, to the next nearest justice in the county,
 10 against whom none of the above objections exist, who shall proceed to try
 11 the case, unless a jury trial be demanded, but no more than one change of
 12 venue in the same case shall be allowed.

2 Sec. 5067. Before the justice has heard any testimony upon the trial, the
 2 defendant may demand a trial by jury.

2 Sec. 5068. If a trial by jury be demanded, the justice shall direct any
 2 peace officer of the county to make a list in writing of the names of eighteen
 3 inhabitants of the county having the qualifications of jurors in the district
 4 court, from which list the prosecutor and defendant may each strike out
 5 three names.

2 Sec. 5069. In case the prosecutor or the defendant neglect or refuse to
 2 strike out such names, the justice shall direct some disinterested person to
 3 strike out the names, for either, or both of the parties so neglecting or refus-
 4 ing, and upon such names being struck out, the justice must issue a venire
 5 directed to any peace officer of the county, requiring him to summon the
 6 twelve persons whose names remain upon the list, to appear before such jus-
 7 tice, at the time and place named therein, to make a jury for the trial of the
 8 cause.

2 Sec. 5070. The officer to whom such venire is delivered must forthwith
 2 summon such jurors, and return the venire to the justice, with the time
 3 therein specified, naming the persons summoned, and the manner of ser-
 4 vice.

2 Sec. 5071. The names of the persons returned as jurors shall be written
 2 on separate ballots, folded each in the same manner as nearly as possible,
 3 and so that the name be not visible, and shall under the direction of the
 4 justice be deposited in a box or other convenient thing.

2 Sec. 5072. The justice must then draw out six of the ballots successively

2 and if any of the persons whose names are drawn do not appear or are chal-
 3 langed, or set aside, such farther number must be drawn, as will make a jury
 4 of six, after all legal challenges have been allowed.

2 Sec. 5073. The same challenges may be taken by either party to any in-
 3 dividual juror as on the trial of an indictment for a misdemeanor, but no
 4 challenge to the panel is allowed.

2 Sec. 5074. If any of the jurors named in the venire cannot be found, or
 3 do not attend, or are challenged by either party, so that a sufficient number
 4 cannot be obtained, the justice may direct the officer to summon any by-
 5 standers or others who may be competent, and against whom no sufficient
 6 cause of challenge appears, to act as jurors.

2 Sec. 5075. If the officer by whom the venire is received do not return it
 3 as required, he may be punished by the justice as for a contempt, and the
 4 justice shall issue a new venire for the summoning of the same jurors, upon
 5 which the same proceeding shall be had as upon the one first issued.

2 Sec. 5076. When six jurors appear and are accepted, they shall consti-
 3 tute the jury.

2 Sec. 5077. The justice must thereupon administer to them the following
 3 oath or affirmation: "You do swear, (or you do solemnly affirm, as the case
 4 may be,) that you will well and truly try the issue between the state of Iowa
 5 and the defendant, and a true verdict give according to the evidence."

2 Sec. 5078. After the jury are sworn, they must sit together and hear the
 3 proofs and allegations of the parties, which must be delivered in public.
 4 After which they may either decide in court or retire for consideration.

2 Sec. 5079. If they do not immediately agree they must retire with the
 3 officer who shall be sworn to the following effect: "You do swear that you
 4 will keep the jury together in some private and convenient place, without
 5 meat or drink, unless otherwise ordered by the court; that you will not per-
 6 mit any person to speak to them, nor speak to them yourself, unless it be to
 7 ask them whether they have agreed upon a verdict, and that you will return
 8 them into court when they have so agreed."

2 Sec. 5080. When the jury have agreed upon their verdict, they must de-
 3 liver it publicly to the justice, who shall enter it on his docket.

2 Sec. 5081. The jury must be kept together after the cause is submitted to
 3 them, until they have agreed upon and rendered their verdict, unless for
 4 good cause the justice sooner discharge them.

2 Sec. 5082. If the jury be discharged as provided in the last section, the
 3 justice may proceed again to the trial in the same manner as upon the first
 4 trial; and so on till a verdict is rendered.

2 Sec. 5083. When the defendant pleads guilty, or is convicted, either by
 3 the justice or by a jury, the justice shall render judgment thereon, or fine,
 4 or imprisonment, as the case may require, being governed by the rules pre-
 5 scribed for the district court, as far as the same are applicable, in rendering
 6 such judgment.

2 Sec. 5084. A judgment that the defendant pay a fine may also direct that
 3 he be imprisoned until the fine is satisfied.

2 Sec. 5085. When the defendant is acquitted, either by the justice, or by
 3 a jury, he must be immediately discharged.

2 Sec. 5086. When the defendant is acquitted the justice shall, if he is sat-
 3 isfied that the prosecution is malicious, or without probable cause, tax the
 4 costs against the prosecuting witness and render judgment therefor.

2 Sec. 5087. Whenever a conviction is had upon a plea of guilty, or upon

2 trial, the justice must make and sign with his name of office, a certificate of
 3 such conviction, in which it shall be sufficient briefly to state the offense
 4 charged and the conviction and judgment thereon, and if any fine has been
 5 collected, the amount thereof.

2 Sec. 5088. Within twenty days after such conviction, the justice must
 3 cause such certificate to be filed in the office of the judge of the county court
 4 of the county where the conviction was had.

2 Sec. 5089. Every certificate of conviction made and filed under the fore-
 3 going provisions, or a duly certified copy thereof, shall be evidence in all
 4 courts and places, of the facts therein contained.

2 Sec. 5090. The judgment shall be executed by a peace officer of the coun-
 3 ty where the conviction is had, by virtue of a warrant under the hand of
 4 the justice specifying the particulars of such judgment.

2 Sec. 5091. If a fine be imposed and paid, before commitment, it shall
 3 be received by the justice, and by him paid over to the county treasurer,
 4 within thirty days after the receipt thereof, for the use of the schools in the
 5 county, as provided by law.

2 Sec. 5092. If the defendant be committed for not paying a fine, he may
 3 pay it to the sheriff of the county, but to no other person, who must in like
 4 manner, within thirty days after the receipt thereof, pay it into the county
 5 treasury, for the use of the schools in the county as provided by law.

2 Sec. 5093. If the fine or any part thereof, is paid to the justice or sheriff,
 3 he must execute duplicate receipts therefor, one of which he must file without
 4 delay, without delay, with the county auditor.

2 Sec. 5094. Either party may appeal from the judgment, to the district
 3 court of the county, at the term which commences not less than fifteen days
 4 after the day on which the appeal is taken, the state in the same manner as
 5 the defendant.

2 Sec. 5095. The justice rendering a judgment against the defendant, must
 3 inform him of his right to an appeal therefrom, and make an entry on his
 4 docket of the giving of such information, and the defendant may thereupon,
 5 take an appeal, by giving notice orally to the justice, that he appeals, and
 6 the justice must make an entry on his docket, of the giving of such notice.

2 Sec. 5096. The justice must, thereupon, enter an order on his docket,
 3 fixing the amount in which bail may be given by the defendant, and the
 4 execution of the judgment against the defendant shall not be stayed, unless
 5 bail in that amount be put in, by an undertaking substantially in the follow-
 6 ing form :

7 COUNTY OF _____

8 A. B. having been convicted before C. D., a justice of the peace of said
 9 county, of the crime of (here designate it generally as in the information,) by a judgment rendered on the ____ day of ____, A. D. 18__, and having
 10 appealed from said judgment to the district court of said county:

11 We, A. B., and E. F., (or I. E. F.,) or, (we, E. F. and H. G.) hereby un-
 12 dertake that the said A. B. will appear in the district court of said county, at
 13 the term thereof, to which the appeal is returnable, and abide the judgment
 14 of said court, and not depart without leave of the same, or that we (or "I", as
 15 the case may be,) will pay to the state of Iowa, the sum of ____ dollars, (the
 16 amount of bail fixed.)

17

A. B.

18

E. F.

19

(as the case may be.)

20 Acknowledged before, and accepted by me, at ———, in the township of
 21 ———, this ——— day of ———, A. D. 18—.

22 C. D., justice of the peace.

2 Sec. 5097. The bail must possess the qualifications, must justify, and
 3 must be taken in the same manner prescribed in sections 4969, to 4975 of
 4 this code inclusive, and the same proceedings had in all respects, as nearly
 5 as applicable, except as in this chapter otherwise provided.

2 Sec. 5098. The bail may be taken by the justice who rendered the judg-
 3 ment, or by any magistrate in the county who has authority to admit to bail,
 4 or by the district court or the clerk thereof.

2 Sec. 5099. When an appeal is taken, the justice must cause all material
 3 witnesses to enter into an undertaking, as in a case where a defendant is held
 4 to answer on a preliminary examination, to appear and testify on the trial of
 5 the appeal in the district court, at the term at which it is returnable, and
 6 shall, as soon as practicable, and at least ten days before the first day of such
 7 term of the district court of the county, file in the office of the clerk thereof
 8 a certified copy of the entries on his docket, together with all the undertak-
 9 ings and papers in the case.

2 Sec. 5100. The cause, when thus appealed, shall stand for trial anew in
 3 the district court, in the same manner that it should have been tried before
 4 the justice, and as nearly as practicable as an issue of fact upon an indict-
 5 ment, without regard to technical errors or defects which have not preju-
 6 diced the substantial rights of either party, and the court has full power
 7 over the case, the justice of the peace, his docket entries, and his return, to
 8 administer the justice of the case according to the law, and shall give judg-
 9 ment accordingly.

2 Sec. 5101. No appeal from the judgment of a justice of the peace in a
 3 criminal case shall be dismissed.

2 Sec. 5102. If any proceedings be necessary to carry the judgment upon
 3 the appeal into effect they shall be had in the district court.

2 Sec. 5103. Either party may appeal from the judgment of the district
 3 court, to the supreme court, in the same manner as from a judgment in a
 4 prosecution by indictment, and the defendant may be admitted to bail in like
 5 manner, and similar proceedings shall be had on the appeal in all respects,
 6 as nearly as applicable.

2 Sec. 5104. The same proceedings shall be had to carry into effect the
 3 judgment of the supreme court upon the appeal, as if it had been taken from
 4 a judgment prosecuted by indictment.

CHAPTER 242. *Proceedings and trial before police and city courts in incorporated cities and towns.*

SECTION 5105. The proceedings in police and city courts, in incorporated
2 cities and towns, in hearing, trying, and determining criminal cases, within
3 their jurisdiction, shall be governed and regulated by the provisions of this
4 code, except when they are otherwise regulated by the special statutes creat-
5 ing or regulating such courts, or by law.

CHAPTER 243. *Compromising certain offenses by leave of the court.*

SEC. 5106. When a defendant is prosecuted in a criminal action for a
2 misdemeanor, for which the person injured by the act constituting the offense,
3 has a remedy, by a civil action, the offense may be compromised, as provided
4 in the next section, except when it was committed :

- 5 1. By, or upon an officer while in the execution of the duties of his
6 office.
- 7 2. Riotously ; or
- 8 3. With an intent to commit a felony.

Sec. 5107. If the party injured in such a case, appear before the court to
2 which the papers on a preliminary examination are required to be returned,
3 at any time before trial, on an indictment for the offense, or the trial of an
4 appeal in the district court, and acknowledge in writing that he has received
5 satisfaction for the injury, the court may, in its discretion, on payment of
6 the costs incurred, order all proceedings to be stayed upon the prosecution,
7 and the defendant to be discharged therefrom. But in that case the reasons
8 for the order must be set forth therein, and entered upon the minutes.

Sec. 5108. The order authorized by the last section, is a bar to another
2 prosecution for the same offense.

Sec. 5109. No public offense can be compromised, nor can any proceed-
2 ings for the prosecution or punishment thereof, upon a compromise, be stayed,
3 except as provided in this chapter.

CHAPTER 244. *General Provisions.*

2 SEC. 5110. The provisions of the existing laws respecting the coroner
3 and his duties; the removal from office of officers other than state officers;
4 the settlement and support of the poor; illegitimate children, and their
5 maintenance; intoxicating liquors, their sale and manufacture; master and
6 apprentice; *habeas corpus*, and any other special proceedings of a criminal
7 nature shall govern the special subjects to which they relate, respectively,
except where it is otherwise provided in this code.

2 Sec. 5111. Neither a departure from the form or mode prescribed by
3 this code, in respect to any pleadings or other proceedings, nor an error or
4 mistake therein, renders it invalid, unless it has actually prejudiced the de-
5 fendant, or tends to his prejudice, in respect to a substantial right.

2 Sec. 5112. The rule of the common law, that penal statutes are to be
3 strictly construed, has no application to this code. This code establishes the
4 law of this state, respecting the subjects to which it relates; and its provis-
5 ions, and all proceedings under it are to be literally construed, with a view
6 to promote its objects, and in furtherance of justice.

2 Sec. 5113. The provisions of the existing laws relative to the construc-
3 tion of the statutes of this state, are applicable to the construction of this
4 code, unless when it may in this code be otherwise provided.

2 Sec. 5114. The terms "heretofore," and "hereafter," as used in this
3 code, have relation to the time this code takes effect.

2 Sec. 5115. Whenever any act of a general nature passed at the present
3 session of the general assembly, separate from this code, conflicts with, or
4 contravenes any of the provisions thereof, the provisions of this code shall
5 prevail.

CHAPTER 245. *Reprieve, Commutations, and Pardons, and Remission of
Fines and Forfeitures.*

2 Sec. 5116. The governor has power to grant reprieves, commutations
3 and pardons, after conviction, for all offenses, except treason, and to remit
4 fines and forfeitures, upon such conditions, and with such restrictions and
5 limitations, as he may think proper, subject to the regulations prescribed in
6 this chapter.

2 Sec. 5117. He has power, also, to suspend the execution of the sentence
3 upon a conviction for treason, until the case shall be reported to the general
4 assembly at its next meeting, when the general assembly shall either grant a
5 pardon, commute the sentence, or grant further reprieve.

2 Sec. 5118. He shall have power to issue his warrant to all proper officers,
3 to carry into effect any act which he has power to do, and which is regulated
4 in this chapter, subject to such regulations, and all such officers are required
5 to obey such warrant.

6 Sec. 5119. He must report to the general assembly, at its next meeting
7 thereafter, each case of reprieve, commutation, or pardon, granted, and the
8 reason, therefor, stating the name of the convict, the crime of which he was
9 convicted, the sentence and its date, and the date of the reprieve, commuta-
10 tion or pardon. He must, in like manner, also report the names of all per-
11 sons in whose favor fines and forfeitures shall have been remitted, and the
12 several amounts remitted.

13 Sec. 5120. When an application is made to the governor for a pardon,
14 reprieve, or commutation, or for the remission of a fine or forfeiture, he may
15 require the judge of the court, or the district attorney, or attorney-general, by
16 whom the action was prosecuted, or the clerk of such court, to furnish him,
17 without delay, a copy of the minutes of the evidence taken on the trial, and
18 of any other facts having reference to the propriety of the exercise of his
19 powers in the premises.

20 Sec. 5121. Whenever any convict is pardoned, or reprieved, or his sen-
21 tence commuted, or any fine or forfeiture is remitted, it is the duty of the
22 officer to whom the warrant is directed, as soon as may be after executing the
23 same, to make a return in writing thereon, to the secretary of state, of his
24 doings under the same, and sign the same with his name of office, and must
25 also file in the office of the clerk of the court in which the conviction was had,
26 or in which it was to have been enforced, a certified copy of the warrant and
27 return, the proper entries in relation to which shall be made by such clerk.
28

TITLE III.—OF THE DISCIPLINE AND GOVERNMENT OF PRISONS, AND OF THE
PENITENTIARY, ITS GOVERNMENT AND DISCIPLINE.

CHAPTER 246. *Imprisonment for Public Offenses, and the Discipline of
Prisons.*

2 Sec. 5122. The common jails now erected or which may hereafter be
3 erected in the several counties in this state, in charge of the respective sheriffs,
4 are to be used as prisons :

- 5 1. For the detention of persons charged with an offense, and duly com-
6 mitted for trial or examination.
- 7 2. For the detention of persons who may be duly committed to secure
8 their attendance as witnesses on the trial of any criminal cause.
- 9 3. For the confinement of persons pursuant to sentence upon conviction
10 for any offense, and of all other persons duly committed for any
11 cause authorized by law.

12 And the provisions of this section extend to persons detained or com-
13 mitted by authority of the courts of the United States as well as the
courts and magistrates of this state.

2 Sec. 5123. It is the duty of the keeper of the jail of the county to see that
3 the same is constantly kept in a cleanly and healthy condition, and he must
4 pay strict attention to the personal cleanliness of all the prisoners in his cus-
5 tody as far as may be. Each prisoner must be furnished daily with as much
6 clean water as may be necessary for drink and for personal cleanliness, and
7 with a clean towel and shirt once a week, and must be served three times
8 each day with wholesome food which must be well cooked and in sufficient
9 quantity.

2 Sec. 5124. The sheriff of the county must keep a true and exact calendar
3 of all prisoners committed to any prison under his care, which calendar must
4 contain the names of all persons who are committed, their place of abode, the
5 time of their commitment, the time of discharge, the cause of commitment,
6 the authority that committed them, and description of their person ; and
7 when any prisoner is liberated such calendar must state the time when and
8 the authority by which such liberation took place ; and if any person escape
9 it must state particularly the time and manner of such escape.

2 **Sec. 5125.** At the opening of each term of the district court within his
3 county the sheriff must return a copy of such calendar under his hand to the
4 judge of such court, and if any sheriff neglect or refuse so to do he shall be
punished by fine not exceeding one hundred dollars.

Sec. 5126. Superceded by sections 5135 C, and 5135 D.

2 **Sec. 5127.** The keeper of each jail must furnish necessary bedding,
3 clothing, fuel, and medical aid for all prisoners under his charge, and keep
4 an accurate account of the same.

2 **Sec. 5128.** Whenever by reason of any jail being on fire, or any building
3 contiguous or near to a jail being on fire, there be reason to apprehend that
4 the prisoners confined in such jail may be injured or endangered thereby,
5 the sheriff or keeper of such jail may at his discretion remove such prison-
6 ers to some safe and convenient place, and there confine them so long as may
be necessary to avoid such danger.

2 **5129.** In each county of this state, the judge of the circuit court and dis-
3 trict attorney are inspectors of the jails respectively, and have power from
4 time to time, to visit and inspect the same, and inquire into all matters con-
5 nected with the government, discipline, and police of such prisons.

2 **Sec. 5130.** It is the duty of such inspectors to visit and inspect such pris-
3 ons twice each year, and at the next district court which is thereafter held
4 in their county, to present to such court on the first day of its sitting, a
5 detailed report of the condition of such prisons at the time of such inspec-
6 tion.

2 **Sec. 5131.** Such report must state the number of persons confined in
3 such prison and for what cause respectively, the number of persons usually
4 confined in one room, the distinction, if any, usually observed in the treat-
5 ment of prisoners, the evils, if any found to exist in such prisons; and par-
6 ticularly, whether any provisions of this chapter have been violated or neg-
lected, and the causes of such violation or neglect.

2 **Sec. 5132.** It is the duty of the keepers of such prisons to admit the
3 said inspectors or any of them into any part of such prisons, to exhibit to
4 them on demand, all the books, papers, documents, and accounts pertaining
5 to the prison or to the prisoners confined therein, and to render them every
6 other facility in their power to enable them to discharge the duties above
prescribed.

2 **Sec. 5133.** For the purpose of obtaining the necessary information to
3 enable them to make such report as is above required in this chapter, the
4 said inspectors have power to examine on oath to be administered by
5 either of them, any of the officers of such prison or any of the prisoners
6 therein.

2 **Sec. 5134.** If any person confined in any jail upon a conviction or charge
3 of any offense, is refractory or disorderly, or if he willfully destroy or injure
4 any article of bedding or other furniture, door or window, or any other
5 part of such prison, the sheriff of the county, after due inquiry, may chain
6 and secure such person, or cause him to be kept in solitary confinement not
7 more than ten days for any one offense; and during such solitary confine-
8 ment he must be fed with bread and water only, unless other food is neces-
9 sary for the preservation of his health.

2 **Sec. 5135.** All charges and expenses of safe keeping and maintaining
3 convicts and persons charged with public offenses and committed for exami-
nation or trial to the county jail, shall be paid from the county treasury, the

4 accounts therefor being first settled and allowed by the county court; except
 5 prisoners committed or detained by the authority of the courts of the United
 6 States, in which cases the United States must pay such expenses to the
 7 county.

2 Sec. 5135a. (13 G. A. ch. sec. 1.) Any able bodied male person over the
 3 age of sixteen years, and not over the age of fifty years, now or hereafter
 4 confined in any jail in this state, under the judgment of any court of record
 5 or of any other tribunal authorized to imprison for the violation of any law,
 6 ordinance, by-law, or police regulation, may be required to labor during the
 7 whole or part of the time of his sentence, as hereinafter provided, and such
 8 court or other tribunal, when passing final judgment of imprisonment, whe-
 9 ther for non-payment of fine or otherwise, shall have the power to deter-
 10 mine, and shall determine, whether such imprisonment shall be at hard
 labor or not.

2 Sec. 5135b. (13 G. A., ch. 69, sec. 2). Such labor may be on the roads,
 3 streets, or public highways, on or about public buildings or grounds, or at
 4 such other places in the county, where confined, and during such reasonable
 5 time of the day, as the person having charge of the prisoners may direct,
 6 and not exceeding eight hours per day.

2 Sec. 5135c. (13 G. A., ch. 69, sec. 3). In case the sentence be for the
 3 violation of any of the statutes of the state, the sheriff of the county where
 4 the imprisonment is, shall superintend the performance of the labor herein
 5 contemplated, and shall furnish the tools and material, if necessary, to work
 6 with at the expense of the county in which the convict is confined, and such
 7 county shall be entitled to his earnings.

2 Sec. 5135d. [13th G. A., ch. 69, sec. 4.] When the imprisonment is
 3 pursuant to the judgment of any court, police court, police magistrate, mayor,
 4 or other tribunal of any incorporated city or town, for the violation of any ordi-
 5 nance, by-law, or other regulation, the marshal shall superintend the perform-
 6 ance of the labor herein contemplated, and shall furnish the tools and materials
 7 if necessary, at the expense of the city or town requiring the labor, and such
 8 city or town shall be entitled to the earnings of its convicts.

2 Sec. 5135e. [13th G. A., ch. 60, sec. 5.] The officer having charge of
 3 any convicts, for the purpose specified in this act, may use such means as,
 4 and no more than, are necessary to prevent escape, and if any convict attempt
 5 to escape, either while going from or returning to the jail, or while at labor,
 6 or at any time, or if he refuse to labor, the officer having him in charge, after
 7 due inquiry, may, to secure such person, or to cause him to labor, use the
 8 means authorized by section 5134 of this chapter: *Provided*, such punish-
 ment shall be inflicted within the jail or jail inclosure for refusal to work shall
 not be considered as any part of the time for which the prisoner is sentenced.

2 Sec. 5135f. [13th G. A., ch. 69, sec. 6.] For every day's labor perform-
 3 ed by any convict, under the provisions hereof, there shall be credited on any
 4 judgment for fine and costs against him, the sum of one dollar and fifty cents,
 5 and no person shall be entitled to the benefits of the law providing for the
 6 liberation of poor convicts if, in the opinion of the sheriff, the judgment may
 be satisfied by the labor of the person as herein authorized.

2 Sec. 5135g. [13th G. A., ch. 69, sec. 7. If any officer or other person
 3 treat any prisoner in a cruel or inhuman manner, he shall be punished by fine
 4 not exceeding one thousand dollars, or by imprisonment in the county jail not
 5 exceeding twelve months, or by both such fine and imprisonment.

2 Sec. 5135h. [13th G. A., ch. 69, sec. 8.] It shall be the duty of the officer
 3 having such prisoner in charge, to protect him from insult and annoyance,

3 and communication with others while at labor, and going to and returning
 4 from the same, and he may use such means as are necessary and proper there-
 5 for; and any person persisting in insulting, and annoying, or communicating
 6 with any prisoner, after being commanded by such officer to desist, shall be
 7 punished by a fine not exceeding ten dollars, or by imprisonment not exceed-
 8 ing three days.

CHAPTER 247.—*The Penitentiary of the State, and the Government and Disci-
 pline thereof.*

2 Sec. 5136. The penitentiary at Fort Madison, in the county of Lee, shall
 3 continue to be maintained as the penitentiary of this state, in which convicts
 4 sentenced for life or any period of time, shall be confined, employed, and
 5 governed, as hereinafter provided.

3 Sec. 5137. It shall be governed by a warden, subject to the supervision of
 4 the governor of the state.

2 Sec. 5138. The warden shall be elected by joint ballot of the general
 3 assembly of the state of Iowa, and shall hold his office for two years from the
 4 date of his election, and until his successor is elected and qualified. He shall
 5 be the general financial and superintending agent of the state for said institu-
 6 tion, and shall be held responsible for its government and disciplinary regula-
 7 tions, for the receipt and disbursement of all moneys that may be appropri-
 8 ated for building, construction, general support, the payment of indebtedness,
 9 or salaries of his under officers, or for any other purpose whatever in connec-
 10 tion with said institution.

2 Sec. 5139. Before entering upon the discharge of his duty, he shall exe-
 3 cute a bond payable to the state of Iowa, in the penal sum of fifty thousand
 4 dollars, with not less than five free-hold securities, to be approved by the gov-
 5 ernor, conditioned that he will faithfully discharge all of his duties as general
 6 superintendent and financial agent of the state for said institution, that he
 7 will faithfully apply any and all moneys that may come into his hands by
 8 virtue of his office, to the purposes for which they are appropriated, and none
 9 other; that he will cause to be kept a fair, intelligible, and business-like
 10 record of all the transactions of a monetary character, connected with the insti-
 11 tution; that he will impartially and to the best of his ability administer the
 12 disciplinary regulations of the institution, so as to contribute to the health,
 13 safe-keeping, and profitable employment of the convicts; that he will appoint
 14 no one to the office of clerk, deputy warden, or guard, through favoritism or
 15 other personal consideration; and no one without due and proper regard to
 16 their qualifications for said stations; that he will render a faithful account of
 17 all the transactions of the institution to the governor, or his lawfully author-
 18 ized agent, every thirty days, and as much oftener as he may be required;
 that he will not become directly or indirectly interested in any contract, for

19 supplying materials, labor, provisions, clothing, or any other thing for the use
 20 of said penitentiary, whereby any profit may inure to him privately, and that
 21 at the expiration of his official term he will surrender all books, papers,
 22 records, moneys, or other property or securities belonging to said institution
 23 to his successor in office. Said warden shall also take and subscribe an oath
 24 or affirmation, which shall be indorsed on the back of said bond, that he will
 25 support the constitution of the United States and the constitution of the state
 26 of Iowa, and that he will scrupulously observe all the stipulations and con-
 27 ditions of said bond, and faithfully discharge all his duties agreeably to law,
 28 according to the best of his ability, which bond shall be filed with the secre-
 29 tary of state.

Sec. 5140. The warden must not carry on nor be concerned in the busi-
 2 ness of trade or commerce during his continuance in office ; he must reside
 3 constantly within the precincts of the prison, and shall take charge of the
 4 penitentiary, and of all the interests of the state therewith connected, and
 5 shall appoint some suitable person as clerk, (who shall also act as commissary
 6 under the direction of the warden,) and one deputy, and as many guards as
 7 may be necessary to the safe-keeping and government of the convicts, not
 8 exceeding one for every ten convicts under his charge, (provided that at no
 9 time shall there be less than thirteen guards.—Ex. ses. 8th G. A. ch. 5.)

Sec. 5141. The warden shall render to the governor of state, between
 2 the 1st and 10th day of every month, and as nearly as practicable every
 3 thirty days, and as much oftener as the governor may require, a statement,
 4 under oath, of all the transactions of the institution, including the receipts
 5 or disbursements of funds, (for which disbursements he shall, in all cases,
 6 present the proper voucher,) the entering into or discharging contracts, the
 7 reception and discharge of convicts, the construction, altering or repairing
 8 the buildings, walls, &c., and of all his official acts and doings for thirty
 9 days next preceding the presentation of said monthly report, which state-
 10 ment must contain an exact account of all moneys received, from what
 11 source, and on what account, and of all moneys paid out, and for what pur-
 12 pose the same was expended, and a succinct account of all his doings, as
 13 warden, during the said period, and a reference to his authority for such
 14 action.

Sec. 5142. The warden shall, in addition to the monthly report provided
 2 for in the preceding section, on or before the 20th day of December next
 3 preceding the commencement of any regular session of the general assembly,
 4 report to the governor, under oath, all his acts and doings for the preceding
 5 two years, and the general condition of the institution, financially and other-
 6 wise, together with the estimates necessary for for the next succeeding two
 7 years, specifying distinctly the items for which those estimates and the ba-
 8 sis upon which his calculations are made, and the governor may require a
 9 like or any other report before any special session of the general assembly.

Sec. 5143. The warden shall see that the laws and disciplinary rules and
 2 regulations of the institution are faithfully executed by his under officers,
 3 and obeyed by the convicts; and it shall be his duty, upon failure or refusal
 4 of any clerk, deputy warden or guard, to discharge their respective duties
 5 agreeably to law, forthwith to discharge such delinquent, and fill the vacancy
 6 by the appointment of another person ; and disobedience of the convicts
 7 shall be punished by the infliction of such penalties as are now provided for
 8 by law, and the rules which are now, or may hereafter be prescribed for the

9 government of said institution; provided, that it shall be the duty of the
 10 warden to keep a register of all punishments inflicted on any convict for
 11 disobedience, disorderly conduct, indolence, and of the cause for which
 12 they were inflicted.

Sec. 5144. The clerk of the penitentiary shall receive his appointment
 2 from and hold his office during the pleasure of the warden, and be in all
 3 things responsible to said warden. Before he enters upon the discharge of
 4 his duties he shall give bond to the state of Iowa in the penal sum of five
 5 thousand dollars, with two or more free-hold securities to be approved by
 6 the governor, conditioned that he will keep a fair, honest, impartial and
 7 faithful record of the affairs of the penitentiary, written in a fair round hand
 8 with proper indices, upon a system of book-keeping, which shall enable him
 9 at all times to present in a plain and intelligible style the financial condition
 10 of the institution, that he will discharge all his duties of clerk, and com-
 11 missary faithfully, and with direct reference to the best interests of the
 12 penitentiary, agreeably to law, and that he will not become interested di-
 13 rectly or indirectly in any contract for furnishing supplies of any nature, kind
 14 or description, for the use of said institution, and that he will yield strict
 15 and implicit obedience to the laws, rules and regulations of the institution,
 16 and to all the legal orders of the warden. He shall, also, take and sub-
 17 scribe an oath which shall be indorsed on the back of said bond, that he
 18 will support the constitution of the United States, and the constitution of
 19 the state of Iowa, and that he will scrupulously observe all the conditions,
 20 stipulations and requirements of his bond, and will faithfully discharge his
 21 duty as clerk and commissary during his continuance in office agreeably to
 22 law, according to the best of his judgment and ability; which bond shall be
 23 filed in the office of the secretary of state, and suit thereon may be brought
 24 for the violation of any of its conditions in the name of the state, for the use
 25 of the warden, or any other person injured by such violation.

Sec. 5145. Among other entries which it shall be the duty of the clerk
 2 to make in the books of the institution, he shall open a separate account in
 3 said books with the state, and he also shall have a cash, prisoners fund, con-
 4 struction, repairing, provision, bedding and lights, fuel, salaries, hospital,
 5 and miscellaneous account, and an account with the lessees of convict labor,
 6 and an account with each officer and guard; and all the entries belonging
 7 to any one of the classes whether they are debits or credits shall be made
 8 under the appropriate head; and in order to enable the warden to render
 9 his statements herein provided for, to the governor, the clerk shall whenever
 10 required by the warden, make out a complete balance sheet and swear to
 11 the same.

Sec. 5146. The deputy warden shall receive his appointment from the
 2 warden, and shall hold his office during the pleasure of the warden; and he
 3 shall give bond and security for a like amount, and in the same manner;
 4 and take a like oath, and be in all respects subject to like responsibilities
 5 with the clerk, so far as the same are applicable. He shall keep a regular
 6 time table of the convict labor and record the same in a book to be kept
 7 for that purpose, and he shall moreover keep a record of all the
 8 business under his control, and return an account thereof, together with an
 9 account of the convict labor to the clerk at the close of each day. It shall
 10 also be the duty of the deputy warden to keep a book in which shall be en-
 11 tered a record of every infraction of published rules of discipline, with the

12 name of the prisoner so guilty, and every prisoner who shall have been sen-
 13 tenced for a term of years, who shall at the end of the month have no in-
 14 fraction of discipline recorded against him, shall for the first month be en-
 15 titled to a diminution of one day from the time he was sentenced to the
 16 penitentiary; and if at the end of the second month, no infraction of the
 17 rules is recorded against him, two additional days of diminution from his
 18 sentence; and if he shall continue to have no such record against him for
 19 the third month, his time shall be shortened three additional days; and if
 20 he shall so continue, for subsequent months, he shall be entitled to four days
 21 diminution of time from his sentence for each month he shall so continue
 22 his good behavior; and if any prisoner shall so pass the whole term of his
 23 service, or the remainder of his sentence, after this code takes effect, if he
 24 have one year yet to serve, he shall be entitled to a certificate thereof from
 25 the warden, and upon the presentation thereof to the governor, he shall be
 26 entitled to a restoration of the rights of citizenship, which may have been
 27 forfeited by his conviction, and it shall be the duty of the warden to dis-
 28 charge such convict from the penitentiary, when he shall have served the
 29 time of his service, less the number of days he may be entitled to have
 30 deducted therefrom, in the same manner as if no such deduction had been
 31 made.

Sec. 5147. Each of the guards when appointed shall give bond to the
 2 warden with security to be approved of by said warden, in the penal sum of
 3 one thousand dollars, conditioned that he will faithfully discharge his duty
 4 as such guard, agreeable to law and the rules and regulations of the prison,
 5 and the lawful orders of the warden; and shall also take and subscribe an
 6 oath which shall be indorsed on the back of the bond, that he will support
 7 the constitution of the United States, and the constitution of the state of
 8 Iowa, and that he will scrupulously observe all the conditions and stipula-
 9 tions of his bond; which bond shall be filed in the office of the clerk of the
 10 penitentiary, and a note thereof made on the record as to the date, amount
 11 and name of the principal and his securities.

Sec. 5148. Guards thus appointed and qualified shall hold their offices
 2 during the pleasure of the warden.

Sec. 5149. It shall be the duty of the warden to appoint some suitable
 2 discreet minister of the gospel, chaplain of the penitentiary, who shall hold
 3 his office at the pleasure of the warden, and who shall give as much of his
 4 time as the condition and employment of the convicts will reasonably jus-
 5 tify, in giving them moral and religious instruction, and who shall at all
 6 times, when in the opinion of the warden, the necessary labor of the con-
 7 victs or the safety of the prison do not forbid it, have access to the convicts
 8 for that purpose; and should any of the convicts be illiterate, the chaplain
 9 should so instruct them as that he may sustain the character among them of
 10 teacher as well as spiritual adviser and minister.

Sec. 5150. [9th G. A., ch. 48.] It shall be the duty of the physician of
 2 the penitentiary to visit the prison once every day, and oftener if necessary;
 3 examine personally all sick or complaining prisoners reported to him, and
 4 prescribe such treatment as in his judgment their cases require.

Sec. 5151. [9th G. A. ch. 48.] He shall keep a book to be called the hos-
 2 pital record, in which he shall accurately record the name of the patient, the
 3 age, occupation symptoms, disease, and treatment.

Sec. 5152. (9th G. A., ch. 48.) He shall examine every prisoner upon
 2 his reception, and make a record of his condition, as to age, constitution,
 3 habits, health, ability, or disability.

2 Sec. 5153. (9th G. A., ch. 48.) When a prisoner dies, the physician
3 may have the privilege of a post mortem examination, unless objection be
4 made by the relatives of such patient, and shall record the result of it, mak-
5 ing reference in the record of treatment.

2 Sec. 5154 [9th G. A., ch. 48.] He shall have power and authority to
3 purchase by concurrence with and assent of the warden, such medicines and
4 other things, as in his judgment are necessary for the use of the hospital, and
5 furnish the clerk immediately with the bills of purchase, who shall compare
6 them with the articles received.

2 Sec. 5155. [9th G. A., ch. 48.] He shall, when visiting the prison,
3 strictly conform to the rules and regulations thereof; he shall express no
4 opinion of the ability or disability of a prisoner except in his record, which
5 shall be authority.

2 Sec. 5156. [9th G. A., ch. 48.] He shall be a graduate of some regularly
3 established medical college, and must be possessed of surgical instruments
4 sufficient to perform any surgical operation liable to be required.

2 Sec. 5157. [9th G. A., ch. 48.] He shall receive his appointment from
3 the warden, with the concurrence of the governor of the state.

2 Sec. 5158. [9th G. A., ch. 48.] There shall be a steward nominated by him,
3 who shall receive his appointment from the warden, and whose duty it shall
4 be to dispense the medicine prescribed by the physician, and to do all other
5 things necessary to carry out the treatment as directed. He shall act as
6 guard or keeper of the prisoners in the hospital, and shall receive the same
7 wages as other day guards or keepers, and be subject to the same rules and
8 regulations.

2 Sec. 5159. No officer or other person employed in or about the peniten-
3 tentiary, shall be permitted to receive in any way, perquisites for themselves
4 or families, except that the warden shall keep his office, and reside with his
5 family in the penitentiary, and shall be furnished with a garden of a quarter
6 of an acre, and with fuel, lights, [provisions for his family and guests, ch.
7 167. 13th G. A.,] and stationery, from the stock provided for the use of the
8 prison. Nor shall they be permitted to receive any compensation or reward
9 from any contractor, under penalty of dismissal from their office, and for-
10 feiture of one month's pay; and if any officer procure the escape of any
11 convict, or connive at, aid or assist in the escape of any convict from the
12 penitentiary, whether such convict escape or not, he shall be guilty of felony;
13 and shall, upon conviction thereof, be sentenced to hard labor in the peni-
14 tentiary for any term not less than one nor more than three years.

2 Sec. 5160. No officer of the Iowa penitentiary shall be interested directly
3 or indirectly in contracts for furnishing such penitentiary with provisions,
4 clothing, or other necessaries, to be used in any manner by the inmates of
5 such penitentiary, or for the use of such penitentiary, nor shall any or either
6 of such officers be concerned or interested in any manner in contracts for
7 buildings of any kind connected with such penitentiary, or for materials to
8 be used in any such buildings.

2 Sec. 5161. Should any officer, in the contemplation of the preceding sec-
3 tion, be or become in any manner interested in contracts for furnishing pro-
4 visions, clothing, or other necessaries for the use of such penitentiary, or be
5 or become in any manner interested in contracts for buildings, or the con-
6 struction of buildings, of any kind, in any way connected with such peni-
7 tentiary, or for furnishing material of any kind for the construction of such
8 buildings, such officer so interested shall, on proof being made of his being

8 so interested, be removed from office, and shall forfeit any interest he may
 9 have in any such contract, and on conviction of being so interested by a
 10 court of competent jurisdiction, shall be fined in any sum not more than
 11 two thousand dollars or less than five hundred dollars.

2 Sec. 5162. All punishment in the penitentiary by imprisonment must be
 3 by confinement to hard labor, and not by solitary imprisonment; but solitary
 4 imprisonment may be used as a prison discipline for the government and
 5 good order of the convicts.

2 Sec. 5163. Convicts sentenced to hard labor in the penitentiary for life
 3 or any term of time by any court of the United States held within this state
 4 must be received into the prison by the warden thereof, when delivered by
 5 the authority of the United States, and there kept in pursuance of their sen-
 6 tences.

2 Sec. 5164. The warden or his deputy shall serve, execute and return all
 3 process within the precincts of the prison, and such process may be direc-
 4 ted to him or his deputy accordingly; and for the doings of his deputy the
 5 warden, as well as his deputy, is answerable.

2 Sec. 5165. All articles of food, clothing, bedding, raw materials for
 3 manufacture, fuel, and other articles that may be necessary for the use of the
 4 prison, must be contracted for by the year when such contracts can be ad-
 5 vantageously made, in the following manner: the warden shall annually
 6 make an estimate of the quantity of each article necessary for the then next
 7 ensuing year, commencing on the first day of October of each year and end-
 8 ing on the last day of September thereafter, and advertise that he will
 9 receive sealed proposals for furnishing and delivering at the prison such
 10 articles or any of them until the first day of October; payments to be made
 11 quarterly, stating the quantity and quality of each article required, the
 12 time when each article must be delivered, and the terms of payment; which
 13 advertisement he shall cause to be inserted in one or more of the papers
 14 published in Fort Madison, and in one or more of the papers published
 15 at the seat of government of this state, three weeks successively, the last
 16 publication to be at least one month before the first day of October in each
 17 year.

2 Sec. 5166. The warden must take bills of the quantity and price of the
 3 supplies furnished for the prison at the time of delivery and must exhibit
 4 the same to the clerk who must compare the same with the articles deliv-
 5 ered; if the bills are found correct he must enter them with the date in a
 6 book to be kept for that purpose; in like manner bills shall be taken and en-
 7 tered of all services rendered for the prison; if any such bill be found in-
 8 correct the clerk shall omit to enter it and immediately give notice to the
 9 warden, that the error may be corrected.

2 Sec. 5167. No contract can be accepted by the warden unless the con-
 3 tractor give satisfactory security for the performance of it.

2 Sec. 5168. When any convict escapes from the penitentiary it is the duty
 3 of the warden to take all proper measures for his apprehension; and for that
 4 purpose he may offer a reward not exceeding fifty dollars, to be paid by the
 5 state, for the apprehension and delivery of such convict.

2 Sec. 5169. No convict can be discharged from the penitentiary until he
 3 has remained the full term for which he was sentenced, to be computed from
 4 and including the day on which he was received into the same, exclusive of
 5 the time he may have been in solitary confinement for any violation of the

5 rules and regulation of the prison, unless he be pardoned or otherwise released
6 by legal authority.

2 Sec. 5170. It is the duty of the warden to receive and take care of any
3 property that a convict may have with him at the time of his entering the
4 penitentiary, and, when it may be convenient, to place the same at interest for
5 the benefit of such convict; of which property the warden must keep an ac-
6 count and pay the same to such convict on his discharge, or in case of his
7 death to his representatives, unless the same have been otherwise legally
taken and disposed of.²

2 Sec. 5171. When any convict is discharged from the penitentiary who
3 has conducted well during his imprisonment, the warden at his discretion
4 may give to such convict from the funds of the prison a sum not exceeding
5 five dollars, and if he desire it a certificate of such good conduct, and must
6 take care that every convict on his discharge from the penitentiary is pro-
7 vided with decent clothing

2 Sec. 5172. The warden has authority to demand and receive of each per-
3 son, not exempt by law, who visits the prison for the purpose of viewing the
4 interior or precincts, a sum not exceeding twenty-five cents, of which the war-
5 den must keep an account, and which money shall be applied for the purchase
6 of books for the use of the prison under the direction of the inspectors.

2 Sec. 5173. The following persons are authorized to visit the penitentiary
3 at pleasure; the governor, secretary, auditor and treasurer of state, members
4 of the general assembly, judges of the supreme, district and circuit courts,
5 district attorneys of any of the districts of this state, and all regular offici-
6 ating ministers of the gospel; and no other person shall be permitted to go
7 within the walls of the prison where convicts are confined except by special
permission of the warden.

2 Sec. 5174. It is the duty of the warden to see that rigid economy is
3 practiced in all matters pertaining to the prison and the employment of the
4 convicts, and that duplicate receipts be taken for all expenditures made on
5 account of the prison, one copy of which must be forwarded to the auditor
6 of state monthly.

2 Sec. 5175. [12th G. A., ch 69.] There is hereby appropriated, out of
3 any moneys in the treasury not otherwise appropriated, so much as may be
4 necessary to pay monthly to the persons herein named the following sums,
5 viz.: To the warden one hundred and twenty-five dollars, to the deputy-
6 warden eighty three and one-third dollars, to the clerk sixty-two dollars and
7 fifty cents, to the chaplain fifty dollars, to the surgeon, fifty dollars, to each
8 night-guard fifty-five dollars, to each day-guard fifty dollars, to the hospital-
steward fifty dollars, to the turnkey fifty dollars.

2 Sec. 5176. [12th G. A., ch. 69.] The above sums shall be paid to the
3 warden on his requisition, monthly, accompanied with a detailed statement, in
4 such form as the auditor shall prescribe, of the number and kinds of guards
5 employed; and each statement shall also exhibit the payments made by the
6 money drawn on the previous requisition.

2 Sec. 5177. [12th G. A., ch. 69.] For the general support of the convicts
3 there is hereby appropriated the monthly sum of eight and one-third dollars,
4 or so much thereof as may be necessary to each convict in said prison, to be
5 estimated by the average number for the preceding month, subject however to
6 a deduction from the whole amount for the month of the sum charged to
the contractors for convict labor for that month.

2 Sec. 5178. [12th G. A., ch. 69.] The sum appropriated by the last sec-
 3 tion shall be paid on the requisition of the warden, accompanied with a state-
 4 ment of the number of convicts in his charge, and the amount charged to the
 5 contractors for that month, all in such form as the auditor shall prescribe.

2 Sec. 5179. [12th G. A., ch. 69.] If for any reason the amount charged
 3 to the contractors for any month can not be collected in time to be available
 4 for such support, the governor may, by his order, direct the payment of the
 5 whole or any part of the eight and one-third dollars per month.

2 Sec. 5180. (12th G. A., ch. 69.) The state auditor is required to take
 3 immediate steps to cause to be collected and accounted for all those debts
 4 owing to the state on account of the penitentiary, or in any manner con-
 5 nected therewith, and all outstanding claims of whatever nature which the
 6 state may have on that account, and to that end he may, if he finds it
 7 necessary, place any claim in the hands of the attorney-general for prosecu-
 8 tion.

2 Sec. 5181. (9th G. A., ch. 156.) That in all cases where claims have
 3 accrued or may hereafter accrue in favor of the warden of the penitentiary
 4 of this state, which the warden shall deem it advisable to collect by law, it
 5 shall be the duty of the district attorney of the first judicial district to bring
 6 suit upon and collect the same; and in case the governor of the state shall so
 7 direct, the attorney general of the state shall also give his personal attention
 8 to said suits.

2 Sec. 5182 (9th G. A., ch. 156.) Judgments now or hereafter rendered
 3 in favor of the warden of the penitentiary, shall be collected upon execution,
 4 and the attorney general, or district attorney shall have the same power to
 5 bid upon and purchase property upon such executions as is given, where
 6 judgments are in favor of the state, and the property shall be held and dis-
 7 posed of for the use of the penitentiary by the governor, in the same man-
 8 ner.

2 Sec. 5183. All actions founded on contract made with the warden in his
 3 official capacity, may be brought by or against the warden for the time be-
 4 ing; and any action for injuries done or occasioned to the real or personal
 5 property belonging to the state and appropriated to the use of the prison, or
 6 being under the management of the warden thereof, may be prosecuted in
 7 the name of the warden for the time being, and no such action shall abate
 8 by the warden's ceasing to be in office, but his successor, upon notice, is re-
 9 quired to assume the prosecution or defense of the same. In any such ac-
 10 tion the warden is a competent witness, and his property shall not be taken
 11 or attached in any such suit, nor shall any execution issue against him on
 12 any judgment thereon, but such judgment shall stand as an ascertained
 13 claim against the state; and whenever a new warden is appointed all the
 14 books, accounts, and papers belonging to the prison shall be delivered to
 15 him, and he shall be vested with all the powers and subject to all the obli-
 16 gations with regard to any contracts or any debts due to or from the prison
 17 that his predecessor would have been if no change had taken place in the
 18 office.

2 Sec. 5184. Whenever the office of warden is vacant, or he is absent from
 3 the prison, or unable to perform the duties of his office, the deputy warden
 4 has the power to perform the duties and shall be subject to all the obliga-
 5 tions and liabilities of the warden.

2 Sec. 5185. Persons having suitable knowledge and skill in the branches
 3 of labor and manufacture carried on in the prison may when practicable, be

3 employed as overseers; and they must respectively superintend such portions
4 of the labor of convicts for which they are most suitably qualified, and
5 which shall be assigned to them by the warden; and all of them as well as
6 the other subordinate officers of the prison, must perform such ser-
7 vices in the management, superintending, and guarding of the prison,
8 as may be prescribed by the rules and regulations, or directed by the war-
9 den.

Sec. 5186. If any subordinate officer of the prison is guilty of negligence
2 or unfaithfulness in the discharge of his duties or of a violation of any of the
3 laws or rules and regulations for the government of the prison, the warden,
4 * * * * may deduct from the pay of such officer a sum not exceeding
5 his pay for one month.*

Sec. 5187. In case of any pestilence or contagious sickness breaking
2 out among the convicts in the prison the * * warden* may cause the
3 convicts confined therein or any of them to be removed to some suitable
4 place of security where such of them as are sick shall receive all necessary
5 care and medical assistance. Such convicts must be returned as soon as may
6 be to the penitentiary, to be confined according to their respective sentences
7 if the same be unexpired.

Sec. 5188. If any officer or other person employed in the prison or its
2 precincts negligently suffer any convict confined therein to be at large with-
3 out the precincts of the prison or out of the cell or apartment assigned to him
4 or to be conversed with, relieved, or comforted contrary to law or the rules
5 and regulations of the prison, he shall be punished by a fine not exceeding
6 five hundred dollars.

Sec. 5189. If a convict sentenced to the penitentiary resist the authority
2 of any officer or refuse to obey his lawful commands, it is the duty of such
3 officer immediately to force obedience by the use of such weapons or other
4 aid as may be effectual; and if in so doing any convict thus resisting be
5 wounded or killed by such officer or his assistants they are justified and shall
6 be held guiltless.

Sec. 5190. It is the duty of all the officers and other citizens of this state
2 by every means in their power to suppress any insurrection among the con-
3 victs sentenced to the penitentiary, and to prevent the escape or rescue of any
4 such convict therefrom, or from any other legal confinement, or from any
5 person in whose legal custody they may be; and if in so doing or in arrest-
6 ing any convict who may have escaped such officer or other person wound
7 or kill such convict, or other person aiding or assisting such convict they
8 shall be justified and held guiltless.

Sec. 5191. It shall be the duty of the governor to visit said penitentiary
2 personally, as often at least, as once in three months, to inspect the books,
3 papers, and records of the clerk, and deputy warden, and strictly to inquire
4 into the official conduct of the warden, to examine into the general eco-
5 nomical, sanitary and disciplinary regulations of the prison; and to alter
6 and amend the same in any manner which may be best calculated to pro-
7 mote economy in expenditure, and the health, safe keeping and obedience of
8 convicts, and all such alterations and amendments shall be reduced to writ-
9 ing, and signed by the governor, and filed by him with the clerk, who shall
10 forthwith record the same. And in case it is impracticable at any time for
11 the governor to make such visit and inspection personally, he may appoint
12 some suitable person to perform that service and report to him; but
13 such person so appointed shall not have the power to make any alteration in

14 the government of the institution, but may report to the governor only ; and
 15 it is hereby made the duty of the governor to perform the service personally
 16 if practicable.

2 Sec. 5192. In making the appointment of visitor, as provided for in the
 3 last section, the governor shall take care that no one is appointed who may
 4 be supposed to be under the influence surrounding said penitentiary, or any
 5 of its officers, nor shall any one be appointed who has hitherto been offi-
 6 cially connected therewith, nor shall the same person be appointed twice in
 7 succession.

2 Sec. 5193. Should the governor at any time become satisfied that the war-
 3 den is guilty of official negligence or malfeasance, in any particular, so that
 4 the safety or health of the convicts is endangered, or any funds appropriated
 5 for said institution illegally invested or misapplied, or that said warden is in
 6 any manner conducting the affairs of the prison contrary to law and good
 7 faith, he shall forthwith remove said warden, notifying him of the specific
 8 causes for his removal, and also reporting to the next session of the general
 9 assembly, specifically his reasons therefor. He shall also appoint a warden
 10 to fill the vacancy thus occasioned, who shall qualify in the same manner as
 11 the regularly elected warden, but shall hold his office only until the next
 succeeding general assembly.

2 Sec. 5194. The governor shall also fill all vacancies that may occur in the
 3 office of warden by death, resignation or otherwise, between the sessions of
 4 the general assembly, but no appointment thus made shall last over a session
 5 of the general assembly.

2 Sec. 5195. For the services herein required of the governor, he shall be
 3 allowed out of the state treasury his traveling expenses, and he shall present
 4 a bill therefor, under oath, to the auditor of state, which bill, thus sworn to,
 5 shall be a sufficient voucher for the auditor to issue his warrant on the
 6 treasury of the state for the amount so claimed.

2 Sec. 5196. Should the governor be compelled to appoint any person, or
 3 persons, to visit the penitentiary, as herein provided, such person shall ren-
 4 der to the governor an account of his travelling expenses and time em-
 5 ployed under said appointment, which account shall be sworn to, and the
 6 governor shall determine the amount to which said person is entitled, not
 7 exceeding three dollars per day and expenses, and shall give him a certifi-
 8 cate thereof, which certificate shall authorize the auditor to issue his warrant
 9 on the treasury of state for said amount, in favor of the person entitled
 10 thereto.

2 Sec. 5197. Should any person required to perform any duty relative to
 3 the penitentiary, wilfully fail or refuse obedience thereto, he shall be deemed
 4 guilty of misdemeanor, and shall be punished by fine in any sum not ex-
 5 ceeding one thousand dollars, and shall forfeit his office, and should said
 6 willful failure or refusal result in the escape of any of the convicts, or in
 7 loss of any of the funds appropriated to the use and benefit of the peniten-
 8 tiary, provided said sum so lost shall exceed the amount of twenty dollars,
 9 he shall be deemed guilty of a felony, and shall be punished by impris-
 10 onment in the penitentiary for a term not less than two nor more than ten
 11 years.

NOTE :—As the arrangement of this chapter is different from its arrange in the revision, we make the following statement showing what sections of the chapter in the revision are embodied, and what sections are not, and why they are not embodied in the chapter as reported.

- Sec. 5136, new code, embodies sec. 3117 of Revision.
- Sec. 5137, new code, embodies sec. 5173 of Revision.
- Sec. 5138, new code, embodies sec. 5174 of Revision.
- Sec. 5139, new code, embodies sec. 5175 of Revision.
- Sec. 5140, new code, embodies sec. 5142 of Revision, and ch. 5. Ex. Session, 8th G. A.
- Sec. 5141, new code, embodies sec. 5177 of Revision.
- Sec. 5142, new code, embodies sec. 5178 of Revision.
- Sec. 5143, new code, embodies sec. 5179 of Revision.
- Sec. 5144, new code, embodies sec. 5180 of Revision.
- Sec. 5145, new code, embodies sec. 5181 of Revision.
- Sec. 5146, new code, embodies sec. 5182 and 5169 of Revision.
- Sec. 5147, new code, embodies sec. 5183 of Revision.
- Sec. 5148, new code, embodies sec. 5148 of Revision.
- Sec. 5149, new code, embodies sec. 5185 of Revision.
- Sec. 5150,)
- Sec. 5151,)
- Sec. 5152,)
- Sec. 5153,)
- Sec. 5154,) new code, embody ch. 48, 9th G. A.
- Sec. 5155,)
- Sec. 5156,)
- Sec. 5157,)
- Sec. 5158,)
- Sec. 5159, new code, embodies sec. 5168 of Revision, and ch. 107, 13th G. A.
- Sec. 5160, new code, embodies sec. 5170 of Revision.
- Sec. 5161, new code, embodies sec. 5171 of Revision.
- Sec. 5162, new code, embodies sec. 5137 of Revision.
- Sec. 5163, new code, embodies sec. 5138 of Revision.
- Sec. 5164, new code, embodies sec. 5144 of Revision.
- Sec. 5165, new code, embodies sec. 5145 of Revision.
- Sec. 5166, new code, embodies sec. 5148 of Revision.
- Sec. 5167, new code, embodies sec. 5149 of Revision.
- Sec. 5168, new code, embodies sec. 5160 of Revision.
- Sec. 5169, new code, embodies sec. 2161 of Revision.
- Sec. 5170, new code, embodies sec. 5162 of Revision.
- Sec. 5171, new code, embodies sec. 5163 of Revision.
- Sec. 5172, new code, embodies sec. 5164 of Revision.
- Sec. 5173, new code, embodies sec. 5165 of Revision.
- Sec. 5174, new code, embodies sec. 5166 of Revision.
- Sec. 5175,)
- Sec. 5176,)
- Sec. 5177,) new code, embody ch. 69, 12th G. A.
- Sec. 5178,)
- Sec. 5179,)
- Sec. 5180,)
- Sec. 5181,)
- Sec. 5182,) new code, embody ch. 15, 9th G. A.

Sec. 5183, new code, embodies sec. 5150 of Revision.
Sec. 5184, new code, embodies sec. 5151 of Revision.
Sec. 5185, new code, embodies sec. 5153 of Revision.
Sec. 5186, new code, embodies sec. 5154 of Revision.
Sec. 5187, new code, embodies sec. 5156 of Revision.
Sec. 5188, new code, embodies sec. 5157 of Revision.
Sec. 5189, new code, embodies sec. 5158 of Revision.
Sec. 5190, new code, embodies sec. 5159 of Revision.
Sec. 5191, new code, embodies sec. 5186 of Revision.
Sec. 5192, new code, embodies sec. 5187 of Revision.
Sec. 5193, new code, embodies sec. 5188 of Revision.
Sec. 5194, new code, embodies sec. 5189 of Revision.
Sec. 5195, new code, embodies sec. 5194 of Revision.
Sec. 5196, new code, embodies sec. 5195 of Revision.
Sec. 5197, new code, embodies sec. 5196 of Revision.
Sections of the Revision omitted from this chapter, and why omitted

Section 5139, repealed.
5140, repealed.
5141, repealed.
5143, covered by section 5143, as reported.
5146, repealed.
5147, repealed.
5152, unnecessary ; fully provided for by sections 5154, 5155, and 5156, and by sections giving warden full control of subordinate officers.
5155, superceded by section 5150, *et seq*
5167, obsolete.
5172, unnecessary.
5190, superceded by section 5175, as reported.
5191, superceded by section 5175, as reported.
5192, superceded by section 5175, as reported.
5193, superceded by section 5175, as reported.
5197, obsolete.
5198, obsolete.