Iowa Laws, statutes, etc. Codes

SUPPLEMENT

TO

REVISED AND ANNOTATED

CODE OF IOWA

CONTAINING

THE ACTS AND RESOLUTIONS

OF THE

Twenty-Third General Assembly,

TOGETHER WITH NOTES AND DECISIONS OF THE SUPREME COURT, ANNOUNCED SINCE 1888 DOWN TO AND INCLUDING MAY TERM, 1890.

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ADDITIONAL NOTES

TO REVISED AND ANNOTATED CODE OF 1888.

SECTION 34.—
Prior to July 4, 1884, the sale of beer was not unlawful, and instructions which authorized the finding of a defendant guilty of a nuisance in keeping of a place for the sale of beer prior to that time, were erroneous. *State v. Jacobs*, 75 Iowa, 247.

SECTION 180.—
Chapter 134, laws of 1886, conferring authority upon the district judges of the state in convention to adopt rules of practice to prevail in all of the districts of the state, does not abrogate the common law power of the district court of a particular district to make a rule upon a point not covered by the rules adopted by the judges in convention; nor does it abrogate a rule in existence in a particular district when the act was passed, on a point not covered by the rules adopted by such convention. Accordingly, *held* that a rule in a particular district, requiring the clerk to tax a certain sum as costs against the losing party to a demurrer, was not abrogated by that chapter, the judges in convention having failed to make any rule upon that point; and the change in the number of a district by the statute, the counties therein remaining the same as before, makes no difference. *Shane v. McNeill et al.*, 76 Iowa, 459.

SECTION 183.—
An agreement to submit a cause for decision by the court in vacation, to be entered as of the last day of the preceding term, authorized by this section of the Code, does not extend the time for filing a bill of exceptions to a ruling on instructions, which is limited in such cases to three days after verdict, by section 2789. *Edwards et al. v. Cosgro et al.*, 77 Iowa, 428.

Where the parties consented that judgment should be entered in vacation as of the last day of the preceding term, but it was entered a few days after the opening of the next term, *held* that this was not prejudicial to defendant, and was no ground for reversal. *Farley v. O'Malley*, 77 Iowa, 531.

SECTION 190.—
Under this section, rendering a judge incompetent to preside at the trial of an action where one of the parties is related to him within the fourth degree, unless by mutual consent, the objection is waived, if the party adverse to the one so related, knowing the fact of such relationship, and that the judge is expected to preside, agrees to try at the pending term, and goes through the trial without objection until after a verdict is rendered against him. *Stone et al. v. Marion County*, 78 Iowa, 14.

SECTION 197.—
This section requires the clerk to keep, as a record, a book in which an index of all liens shall be kept, and also requires the keeping of indexes of judgment dockets, etc. *Held*, that it is sufficient to search the "index of all liens" for a judgment or other lien, and none being indexed there, it is not necessary to refer to other indexes. *Ætna Life Insurance Co. v. Hesser et al.*, 77 Iowa, 387.

SECTION 190.—
Plaintiff brought his action in the district court, for an injunction, one of the judges, there being three, was his uncle, but he procured his temporary injunction from one of the other judges of the district. He then let his case lie for about two years, when the defendant brought it on for trial at a term when the plaintiff's uncle was presiding over the court in that county. The plaintiff then moved to have the cause set down for trial on depositions and documentary evidence, which motion was overruled. He then moved for a continuance till the next term, and in his affidavit in support of his motion stated that the presiding judge was his uncle, and, therefore, prohibited from trying the cause. This motion was also overruled. Plaintiff then moved for a change of forum, on the ground that the presiding judge was prejudiced against him, but he did not present the relationship of the judge as a reason for such change, nor did he at any time specifically call the court's attention to section 190 of the Code, under which he now insisted that the judge was disqualified; the only reference to that matter was made in his affidavit for continuance. This motion for change of forum was also overruled, and upon a trial before the court judgment was rendered for the defendant, from which plaintiff appealed. *Held* that the judge being related to the plaintiff in the third degree according to the civil law was, under section 190 of the Code, disqualified from the first to try the cause without the mutual consent of the parties, and that nothing done or omitted by plaintiff amounted to consent on his part. *Chase v. Watson*, 75 Iowa, 150.

SECTION 200.—
The provisions of this section requiring the clerk immediately upon the filing of a paper in court to make in the "appearance docket a memorandum of the date of filing of all petitions, demurrers, answers, motions or papers of any other description in the cause, and no pleading of any description shall be considered as filed in the cause * * * until the said memorandum is made," is mandatory as to all pleadings in a cause, and that they cannot be regarded as filed until the proper memorandum is made; but this mandatory provision applies only to papers of that character. *Everling v. Holcomb*, 74 Iowa, 722.

Minutes of testimony taken before the grand jury, not being "pleadings" are not required by this section to be entered in the appearance docket; and, though they are required to be filed in the case, they are sufficiently filed when handed to

the clerk to be kept as a part of the record, and such filing need not be evidenced by the clerk's signature indorsed thereon, though such indorsement is always advisable. Consequently the want of the memorandum in the appearance docket and the clerk's signature to the filing, does not bar the state from calling the witnesses on the trial of the indictment. *The State v. Craig*, 78 Iowa, 637.

The failure of the clerk in entering a suit in the appearance docket, as directed by section 198 of the Code, does not, under section 200, amount to a failure to file a petition against a defendant in the action whose name is not mentioned in the petition. *Toliver et al. v. Morgan et al.*, 75 Iowa, 619.

In section 3583 of the Code, requiring a justice of the peace when an appeal is taken, to file in the office of the clerk of the appellate court all of the original papers and a transcript of his docket, the word "file" means deposit, and when the papers and transcript are so deposited by the justice, the cause is deemed to be in the appellate court, and the neglect of the clerk to note the filing in the appearance docket is immaterial, as section 200 of the Code, making it the duty of the clerk to note therein the filing of pleadings, is not applicable. *Harrison v. Clifton*, 75 Iowa, 736.

SECTION 213.—

A motion to strike from the files an additional abstract filed by the appellees in the supreme court, on the ground that it was verbally agreed between the attorneys for the respective parties to submit the case on the printed abstract of appellants, which was denied by appellees, was refused, though affidavits of attorneys for appellants were filed in support thereof, as such an agreement can not be established by such affidavits, under this section of the Code. *Reigleman et al. v. Todd, Sheriff, et al.*, 77 Iowa, 696.

Under this section, relating to the power of attorneys to bind their clients by agreements as to the management of a case, irregularities in the taking of depositions cannot be cured by the affidavit of counsel offering such depositions, setting out an oral agreement or understanding between the counsel, waiving such defects. *Hardin et al. v. Iowa R'y & Const. Co. et al.*, 43 N. W. R., 544.

Under this section of the Code, an agreement between the attorneys in a case affecting the rights of clients cannot be established by oral evidence, except it be the admission of the attorney whose client is to be charged by the agreement. *The State v. Stewart*, 74 Iowa, 336.

SECTIONS 230, 239, 242.—

Section 230 of the Code, which provides that "unless the judge otherwise orders jurors shall be summoned to appear at 10 o'clock A. M. of the second day of the term," furnishes no ground of objection to an indictment found at the August term, at which the grand jury was impaneled on the first day, because said section, as to grand jurors, can refer only to the first term of the year, at which alone the grand jurors are summoned. *The State v. Standley*, 76 Iowa, 215.

CHAPTER 42, LAWS OF 1886.—

This chapter, in providing that *grand juries*, in counties having a population of sixteen thousand or less, shall consist of five persons, is not in conflict with section 6, article 1, of the state constitution, which provides that "all laws of a general nature shall have a uniform operation," etc., especially since the third constitutional amendment gives the general assembly power to fix the number of the grand jury at from five to fifteen. *The State v. Standley*, 76 Iowa, 215.

SECTIONS 240, 241.—

In a county containing fifteen townships, from which twelve jurors are to be drawn, the ballots bearing the names to be drawn from each township were sealed in separate envelopes, which were placed in a box, and the clerk drew twelve. The ballots from each of these envelopes were placed in a box, and one drawn therefrom, and the person named thereon placed on the panel. *Held*, that this was such a departure from the mode prescribed in the statute as to invalidate any indictment found by the grand jury so drawn. *State v. Beckey*, 44 N. W. R., 679.

SECTION 301.—

Under this section of the Code, six days' notice to each member of the board of supervisors of a special meeting of the board is not required where the notice is personally served, but only in cases where it is served by leaving it at his place of residence; nor is it necessary that one week's notice of such meeting be given to the public when it is given by publication in a newspaper, but only when it is given by posting. And where personal notice of the special meeting was served on the supervisors four days prior to the meeting, and general notice was given by five days' prior publication in a newspaper, *held*, that was sufficient to make the special meeting valid. *Supervisors of Mitchell County v. Horton et al.*, 75 Iowa, 271.

SECTION 303.—

There is no reason why business cannot be done by the board of supervisors as properly at a special meeting as at a regular one, if it be specified in the request for, and notice of, the meeting, excepting in cases where, from the nature of the business, or the provisions of the law, or the rights of others, requires that it be done at a regular meeting. *Id.*

SECTION 303, SUBD. 16.—

Although this section authorizes boards of supervisors "to alter, vacate or discontinue any state or territorial highway within their respective counties; to lay out, establish, alter or discontinue any county highway heretofore or now laid out, or hereafter to be laid through or within their respective counties, as may be provided by law," etc., yet such boards have no authority, in the absence of a statute directly confirming it, to construct a bridge across a navigable lake, the bed of which belongs to the state. *Snyder v. Foster*, 77 Iowa, 638.

SECTION 303.—

This section constitutes the township trustees a board of health, and gives them charge of all cemeteries within their townships, dedicated to public use, not controlled by other trustees or incorporated bodies. Section 415 confers upon them power to make regulations for the protection of the public health, and respecting nuisances; and the trustees having purchased property with township funds, for use as a cemetery, and finding it unfit for that purpose, may sell the same, with a restriction that it shall not be used for a private or public cemetery. *Bushel v. Whitlock et al.*, 77 Iowa, 285.

SECTION 456.—

A city cannot maintain an action in equity to enjoin and abate a nuisance on the ground of injury to its citizens, since that remedy is given only to "any person injured thereby." But the authority of the corporation to abate a nuisance, given by section 456 of the Code, is to be exercised in the enforcement of an ordinance enacted under section 482. Whether if the corporation, as such, were specially injured by the nuisance, it might not then maintain an action in equity, under section 3331 of the Code, not decided. *The City of Ottumwa v. Chinn et al.*, 75 Iowa, 405.

SECTION 464.—

Under this section, which forbids a railroad corporation to lay tracks in the streets of a city until the damages to owners of abutting lots have been ascertained and compensated, the occupation of a street prior to the ascertainment and compensation therefor is a nuisance, and the rights of the abutting owner to enjoin the occupancy of the street by the purchaser of a railroad at a foreclosure sale is not merged in an unpaid judgment obtained against the railroad company for the damages. *Harbach v. Des Moines & K. C. R'y Co.*, 44 N. W. R., 348.

Under this section of the Code a railroad company cannot lay a track in a street longitudinally without the consent of the city and compensation made to the abutting lot owners. *Enos v. St. P. & K. C. R'y Co.*, 42 N. W. R., 575.

SECTION 465.—
A city cannot, without complying with the terms of the statute, establish or change the grade of its streets, or order or cause the work of grading to be done on its streets, resulting in injury to a property owner, and escape liability to him. And so where plaintiff's alleged damages to themselves resulting from such change of grade of the streets and that such grade "was not ordered to be done by the affirmative vote of two-thirds of the city council or trustees of said city, as required by law," and that said city did not "before thus changing the physical grade of said streets, nor at any time have the damages caused by said change assessed, appraised, appropriated or paid as required by law. *Held* that the petition contains such allegations as stated a good cause of action. *Trustees of Diocese of Iowa v. City of Anamosa*, 76 Iowa, 538.

SECTION 469.—
In an action against a city for damages to property caused by the grading of a street in such a manner as to injure and diminish the value of the abbutting property, the plaintiff alleged that the grading was not done by order of an affirmative vote of two-thirds of the city council, nor by resolution, ordinance or other legislative proceeding, nor did the defendant at any time have the damages assessed and paid as required by law, *held* that the petition stated a cause of action. *Trustees of the P. E. Church v. City of Anamosa*, 76 Iowa, 538.

SECTION 470.—
This section which confers upon cities and towns organized under the general laws authority to acquire lands for various municipal purposes, further provides that they shall have power "to dispose of and convey" such lands, should they be deemed unsuitable for the purpose for which they were acquired. Section 1, chapter 80, laws of 1880, authorizes such cities to purchase lands sold under execution when the city has any interest in the proceeding, and "to dispose of the property," or of any real estate, or any interest therein, "in such manner, and upon such terms as the city council shall deem just and proper." *Held* that these statutes do not confer upon cities the authority which can only exist by a legislative grant, to donate land and buildings to the county in which it is situated in order to induce a relocation of the county seat in such city. *Brockman v. The City of Creston et al.*, 44 N. W. R., 822.

SECTIONS 478, 479.—
Where a sewer has been constructed and a tax therefor levied upon adjacent property, the city may recover such tax by actions under these sections of the Code, notwithstanding formal irregularities and defects in the proceedings, which do not affect the real merits of the case. *City of Burlington v. Quick*, 47 Iowa. *Ditto v. City of Davenport*, 74 Id., 66.

SECTION 481.—
Under this section a municipal corporation, if by ordinance they so elect, may cause delinquent taxes levied for certain purposes to be certified to the county auditor, etc. Such taxes may be so certified and collected by the county treasurer, as directed in said section, even though the ordinance electing so to proceed is passed after the work is done for which the tax is levied. *Shaw v. Des Moines County*, 74 Iowa, 679.

SECTION 527.—
Though this section of the Code declares that no street or alley which shall hereafter be dedicated to public use by the proprietors of the ground in any city, shall be deemed a public street or alley, or to be under the use or control of the city council, unless the dedication be accepted and confirmed by an ordinance especially passed for such purpose, the statute does not forbid the assumption of control, without the acceptance by ordinance; and where a street has been used for many years, and the city has by ordinance ordered it to be improved, and sidewalks to be laid, it becomes liable for failure to keep the street in repair. *Byerly v. The City of Anamosa*, 44 N. W. R., 359.

SECTION 527.—
Viewed in the light of the settled policy of the State, and of the public interest, and of other provisions of the statute (Code, secs. 303, 990, 994), the proper meaning of section 527 of the Code is that it fixes absolutely the liabilities of counties for public bridges, over streams crossing State and county highways, which exceed forty feet in length, and that their liability for constructing and maintaining bridges forty feet or less in length is not affected by said section, but depends upon the necessity and importance to the public of each bridge, its character and cost, and the financial ability of the road-district in which it is situated to construct and maintain it. *Casey v. Tama County*, 75 Iowa, 655.

SECTION 478.—
When notice of a special assessment on city property to pay for street improvements is necessary to be given to the respective owners, and the city has provided by ordinance for giving such notice by publication in a newspaper of general circulation published in the city, notice given in accordance with the provisions of such ordinance is sufficient, and personal notice is not required. *Lyman v. Plummer et al.*, 75 Iowa, 353.

SECTION 690.—
While it is the duty of the board of supervisors, under this section of the Code, to require an officer who has been re-elected to produce and account for all public funds which have come into his hands under color of his office, before approving his bond for a second term; yet a failure to perform such duty, and a false pretense by the board that it has been performed, will not discharge the sureties on the bond for the second term, after it has been accepted and approved, from liability for a defalcation occurring during that term. *Palmer & Seawright v. Woods et al.*, 75 Iowa, 402.

SECTION 697.—
This section directing the contestant of an election to file his statement of contest within twenty days after the canvass of the votes, does not prevent the contestant from afterward amending the grounds of contest. *Brown v. McCallam*, 76 Iowa, 479.

The limit of twenty days within which, under this section, the statement of the contestant of an election must be filed, does not operate as a statute of limitation so as to prevent any amendment to the statement after the expiration of the twenty days. *Brown v. McCollum*, 76 Iowa, 479.

SECTION 771.—
Under this section when a county officer receiving a salary is compelled by the pressure of the business of his office to employ a clerk, he may do so without authority from the board of supervisors, and they may be compelled to make a reasonable allowance for such clerk. *Harris v. Chickasaw County*, 77 Iowa, 345.

SECTION 784.—
The board of directors of a school district township met for the purpose of electing a treasurer on the third Monday of September, as required by section 1721 of the Code, and elected a person to that office, and adjourned to the first day of October to give him opportunity to accept or decline. At the adjourned meeting he appeared and declined the office, and the board again adjourned to October 15, when another election for treasurer was had which resulted in a tie, and the board again adjourned to November 8, at which time the plaintiff was elected treasurer. Prior to this the defendant, who had been treasurer for the previous year, claiming that he had a right to hold over as treasurer, now filed his bond and oath of office with the president of the board, but the board refused to accept or approve it. In an action by *quo warranto* to oust the defendant from the office it was *held* that, since the board had entered upon the election of treasurer on the day prescribed by law, it might complete that business at any adjourned meeting—such adjourned meeting being but a continuation of the regular one from

which the adjournment was taken; that the refusal to accept by the person elected did not entitle the defendant to hold over, because the meeting adjourned to a day fixed for the very purpose of learning whether he would accept or not; and his refusing at the adjourned meeting was the same in law as if he had been present and refused at the regular meeting; and thereupon the board had the right to proceed as if no ballot had been taken. *Carter v. McFarland*, 75 Iowa, 196.

SECTION 797.—
The act of congress of July 12, 1862, was a grant to the state of Iowa, *in presenti*, of the alternate sections of the public lands, lying within five miles of the Des Moines river, between the Raccoon forks and the northern boundary of the state of Iowa; and said lands became the property of the Des Moines Valley R'y Co., under chapter 57, laws of 1868, and became taxable upon the railroad company had compling with the conditions of said chapter, which was January 1, 1871. Although the secretary of the interior had not yet certified them to the state, and although the governor refused to execute patents therefor to the company until several years thereafter. *Whitehead v. Plummer et al.*, 76 Iowa, 181.

SECTION 803.—
This section requires that a trustee shall list for taxation, trust property held by him, for the beneficiary of such property. *Equitable Life Ins. Co. v. Board of Equalization of City of Des Moines*, 74 Iowa, 178.

SECTIONS 829, 830.—
For an excessive assessment of property for taxation, the tax-payers remedy is with the township board of equalization, and by appeal from such board to the district court, if not satisfied with its action. The board of supervisors has no power to grant him relief, and the fact that the board of supervisors has not classified the property, as it has power to do, under Code, section 821, makes no deference. *Missouri Valley & Blair R'y & Bridge Co. v. Harrison County*, 74 Iowa, 283.

From comparison of these and other sections of the Code it is held that the board of equalization of a township, town, or city has no authority, in the even numbered years, to add to or change the assessed value of real estate as established in the next preceding odd numbered years, in which alone such property is assessable; and where such change was attempted, the collection of the additional taxes arising from an increase of the assessed value was properly enjoined. *Goold v. Lyon County et al., and nine other like cases*, 74 Iowa, 95.

SECTION 831.—
On an appeal from an order of the board of equalization increasing the assessment of a tax-payer, the appelate court tries the case anew upon the evidence introduced in that court, and not alone upon the record of the board of equalization; the object of an appeal, according to the true meaning of the word, being to secure a new trial upon the merits. *Grimes v. The City of Burlington*, 74 Iowa, 123.

SECTIONS 832, 836, 837.—
Where the board of supervisors, acting as a board of equalization, directs that the assessed value of the realty in a certain town be reduced a certain per centum, and the county auditor fails and refuses, upon demand, to enter the property in said town in the tax lists at the reduced and equalized assessment, owners of the real estate in the town, who have not yet paid their taxes, may proceed against the auditor by *mandamus* to compel him to comply with the law as provided in these sections of the Code. The auditor has no discretion in the matter, and the tax-payers are not deprived of the remedy by *mandamus* on the ground that they have an adequate remedy at law or by injunction; for those remedies would not afford the relief sought and to which they are entitled, to-wit: the correction of the tax list. *Ridley et al. v. Dougherty*, 77 Iowa, 226.

SECTION 845.—
Where a party has title based upon a sale of land for delinquent taxes not carried forward, and therefore invalid under the statute, and he conveys by warranty deed, and his grantee buys in the patent title and sues him for a breach of warranty and recovers, that is an adjudication that the patent title is superior to the tax title, and the grantor cannot, after a few years, be heard to claim that his tax title has now, by the lapse of time, ripened into a perfect title, and ask to have it quieted against his grantee. The adjudication cut off all claims based on or growing out of the the title decreed to be invalid. *Sac County Bank v. Hooper*, 77 Iowa, 435.

Certain delinquent taxes upon personal property were not carried forward on the regular tax lists, as required by this section of the Code, but were entered by the treasurer in a separate book which he kept for the purpose, but which was unknown to the law. Afterwards, the person who was liable for the taxes sold certain land to the plaintiffs, who had no actual knowledge or notice of such taxes, or that they were or would be a lien on such lands if they had been properly carried forward on the tax books. *Held*, that the entries in the treasurer's special book did not impart constructive notice to the plaintiffs of such entries, and that a subsequent sale of the land for such taxes was void. *Dows & Co. v. Dale et al.*, 74 Iowa, 108.

Before the enactment of this section of the Code a sale of land for delinquent taxes not brought forward upon the treasurer's tax list was valid, at least as against the owner. By the enactment of that section the rule was changed. *Hunt v. Gray*, 76 Iowa, 208.

SECTION 870.—
Where a tax-payer was assessed at the place of his residence with shares in a bank located in another state, and, without complaining to the city or township board of equalization, he applied to the board of supervisors for an abatement of the tax, and they granted the relief asked; *held*, that they acted without jurisdiction, and that a tax-payer of the county was entitled to have the said action of the board of supervisors reviewed and set aside on *certiorari*. *Van Wagener et al. v. Supervisors of Lyon County*, 74 Iowa, 716.

SECTION 876.—
This section provides that when a "purchaser at tax-sale shall designate the portion of any tract of land or town lot for which he will pay the whole amount of taxes assessed against such tract or lot, the portion thus designated shall, in all cases, be considered an undivided portion." In these cases it appears from the tax-sale record, which is the authoritative record of the sales, that the bids were made upon fractions of the tracts, as one-twentieth and one-eightieth, *Held*, that the law would regard the sales as of undivided interests, and valid, though the list of lands advertised for sale showed that the bids were for "two acres" and "one-half acre." *Jenswold & Doran and The State v. Rutledge*, 77 Iowa, 692.

SECTION 891.—
Where a person entitled to redeem lands sold at tax-sale applies to the proper officer for the amount necessary to redeem, and on being informed as to the amount, pays it, and receives a certificate of redemption, the certificate is not rendered invalid by the fact that the officer made a mistake in computing the amount due, and a deed subsequently issued to the purchaser at the tax-sale is void. *Hintrager v. Maloney et al.*, 43 N. W. R., 522.

Nor is a mere notice, subsequently given to the redemptioner, of the mistake made by the officer sufficient to avoid the certificate. *Id.*

When a decree in defendants' favor is on condition that they pay certain moneys into court for plaintiff within a certain time, payment within the required time is a performance of the judgment, and an appeal by defendants will not lie. *Id.*

A tax-deed is not void on its face because it shows that the land was sold for less than the whole amount of the taxes due, for such sale is

not unlawful. Chapter 79, laws 1876, provides that in certain cases lands may be sold for less than the amount of taxes due thereon (see Miller's Code, page 299, ed. of 1888), and the deed is presumptive evidence that the sale was lawfully made. *Griffin v. Tuttle et al.*, 74 Iowa, 219.

SECTION 893.—
Under this section of the Code in an action for the redemption of land sold for taxes, begun after the delivery of the treasurer's deed, the court must determine claims for improvements made on the land by the person claiming under the tax-deed. In such case where the land belonged to a minor at the time of the sale, and the action was brought by those who inherited from him, and all the costs made on part of plaintiffs were made in the establishment of their right to redeem, and all of those made on part of the defendants in establishing their claim for improvements, as to which claim they were successful: *held*, that the court did not err in taxing all the costs to the plaintiffs. *Serrin et al. v. Brush et al.*, 74 Iowa. 489.

SECTION 894.—
Under this section of the Code, which provides that the notice to redeem from a tax-sale shall be given by "the lawful holder of the certificate," when the purchaser indorses the certificate in blank and delivers it to another person with the intent thereby to transfer the property in it to such other person, such person is "the lawful holder," and is the proper person to give the notice, no matter whether or not the assignment has been recorded in the office of the county treasurer, under section 888 of the Code. *Swan v. Whaley et al.*, 75 Iowa 623.

SECTIONS 894, 895.—
Under these sections of the Code providing that a purchaser at a tax sale may obtain a treasurer's deed for the property after three years from the sale, and section 902, providing that no action to recover the property shall lie unless brought within five years after the treasurer's deed is executed and recorded, if a purchaser fails to procure a deed within eight years from the sale, his title to the property and all rights dependent thereon are completely extinguished. *Times v. Drexel*, 43 N. W. R., 201.

The purchaser at tax sale who has received a tax-deed and afterwards conveyed the same by quit-claim deed and it passed through several grantees, but the tax purchaser had never had at any time assigned the certificate of purchase, *held* that under section 894 of the Code he was the proper party to file proper proof of the service of notice to redeem, which had been originally given, and to receive a new treasurer's deed for the land. *Babcock v. Bonebrake et al.*, 77 Iowa, 710.

In an action to quiet title, *held* that the statutory notice required by this section where the land was taxed to an unknown owner, and the name of holder of the certificate was first entered on the tax-list as owner, in accordance with the custom of the treasurer, upon payment of the taxes. *Irwin v. Burdick*, 44 N. W. R., 375. Followed in *Irwin v. Dakin*, Id., 376.

SECTION 897.—
Under this section the tax-title of the plaintiffs cannot be resisted by defendant by showing that he held a tax-certificate to the land in controversy at the time of the tax-sale to the plaintiffs. *Johns et al v. Griffin et al.*, 76 Iowa, 419.

SECTION 902.—
Where five years have elapsed since the execution and recording of a tax-deed, the prior owner is barred from questioning the tax-title under this section of the Code. The deed also affords such color of title to one in possession under it as will bring him within the general statute of limitations. *Hunt v. Gray*, 76 Iowa, 268.

This section providing that no action for the recovery of real property sold for the non-payment of taxes shall lie, unless brought within five years after the treasurer's deed is executed and recorded, and action by the owner to quiet title brought more than five years after the execution of the deed is not barred where the deed was given after redemption, such deed being void and gave no right to the purchaser. *Burke v. Cutler et al.*, 43 N. W. R., 204.

SECTION 902.—
Action begun June 23, 1888, by the holder of the patent title, to quiet the same against the owner of a tax-title. The lot was sold in 1872 for the taxes of 1871. The tax-deed was executed in 1881, and recorded in 1883. The lot was unenclosed and unoccupied, and not in the actual possession of any person, from the date of the tax-sale to the recording of the tax-deed. *Held*, that the tax-title was extinguished by the special statute of limitations (Code, § 902)—the rule being that the statute begins to run when the purchaser *might* obtain his tax-deed, and that after five years from that time, *that title*, and all rights dependent upon it are extinguished. *Innes v. Drexel*, 78 Iowa, 253.

SECTION 213.—
A stipulation that plaintiff might use in his own behalf a deposition taken in another case, but not filed in this, did not warrant the use of it by the defendant on his behalf; and the claim of the defendant, that plaintiff orally agreed to the use of it by defendant, could not be considered when denied by plaintiff. *Borland v. the Chicago, M. & St. P. R'y Co.*, 78 Iowa, 95.

Disputes as to oral arguments of counsel cannot be settled by their affidavits. They can only be settled in the manner prescribed in the statute. *Hardin & Sons v. The Iowa R'y & Cont. Co.*, 78 Iowa, 726.

SECTION 464.—
Under this section city streets cannot be occupied longitudinally by railways without the consent of the city and compensation to abutting lot-owners; and also, under the same section, where a railway was laid diagonally across two streets at their intersection, so that the street in front of plaintiff's corner lot was occupied thereby, *held* that plaintiff was entitled to compensation. *Enos v. The Chicago, St. P. & K. C. R'y Co.*, 78 Iowa, 28.

The five years limitation imposed by this section, within which actions for the recovery of real property sold for the non-payment of taxes, must be brought, is available as a defense, in an action for foreclosure, where the plaintiff seeks to show a tax-title to be invalid for defects in proof of the service of notice of expiration of redemption. *Bull v. Gilbert et al.*, 44 N. W. R., 815.

SECTION 912.—
This section of the Code, authorizing the county treasurer to deposit the county funds in a bank on its filing a bond, with sureties, to be approved by him, in double the maximum amount which shall be permitted by resolution of the board of supervisors of the county, does not prevent the treasurer from demanding and taking from the bank additional collateral. *Richards, County Treasurer, v. Osceola Bank*, 45 N. W. R., 294.

This section of the Code authorizing the county treasurer to deposit the funds in a bank on its filing a bond with sureties, to be approved by him, in double the maximum amount which shall be permitted to be deposited by resolution of the board of supervisors of the county, does not prevent the treasurer from demanding and receiving from the bank additional collateral. *Richards, County Treas. v. Osceola Bank, et al.*, 45 N. W. R., 294.

SECTION 936.—
Where it does not appear that land proposed to be taken as a highway stands in the name of any one as owner on the auditor's books, a railway corporation, which is in the open and notorious occupation of the land, is entitled to notice if a resident of the county. *Ch., R. I. & P. R'y Co. v. Ellithrope*, 43 N. W. R., 277.

Where the notice required by this section to be given is not given, the highway asked for cannot be established. *Snyder v. Foster*, 77 Iowa, on page 641.

SECTION 950.—
Where a public road is established, and the owner of the land through which it passes, is given time to take down his fences across it, a private citizen has no right, before the fences are down and the road formally opened to the public by the supervisors, to undertake to open it himself and force his way across it. The owner of the land has the right to use sufficient force or threats to resist such an attempt. *State v. Stoke*, 45 N. W. R., 542.

SECTION 959.—
In order to give the district court jurisdiction of an appeal under the provisions of this section when the decision requires the petitioners therefor the damages, the notice of appeal must be served on the four persons first named in the petition for the highway. This provision is mandatory, and service of the notice upon a less number will not give the court jurisdiction. *Finke v. Geigelmiller et al.*, 77 Iowa, 251.

SECTION 989.—
This section of the Code, as amended by chapter 87, laws of 1886, was not intended to prevent necessary improvements in the highways, where they can be made without material injury to adjacent property, even though some inconveniences might result to the owners of such property. And in a case where the plaintiff, a practicing physician, had graded the street in front of his dwelling and office to suit his convenience, making a smooth driveway to his premises, and had so maintained it for many years, *held*, that he thereby acquired no vested right as against the road supervisor, and that an injunction restraining the supervisor from so grading the street as to leave a ditch or gutter six inches deep in front of the plaintiff's premises was properly denied, there being no reason to presume that the supervisor would not use due care in providing a proper crossing. *Randall v. Christianson*, 76 Iowa, 169.

SECTION 997.—
This section of the Code provides that on final settlement with the supervisors of road districts the township trustees, if there shall be no money in the treasury, shall order the clerk to issue orders for the amount due, with the number of the district to which they belong, which shall be received as money in payment of highway tax in such district. Sections 969-971 authorize the trustees to levy a tax for township and road funds, and require them to set apart for the use of the whole town a sum sufficient to purchase tools, machinery and guide posts. By section 982 the supervisor of each district is the collector of its road tax, and is not required to pay any part of it to the clerk, except that portion required for tools, etc. The balance must be expended exclusively in the district in which it was levied. *Held*, that road orders given supervisors on general settlements for labor done in their respective districts, and not including outlay for tools, etc., cannot be paid out of the general fund, but each must be confined to the particular district. *Bradley et al. v. Love, Twp. Clerk, et al.*, 26 Iowa, 397.

SECTION 1001.—
By this section, bridges erected or maintained by the public constitute parts of the public highway, and must not be less than sixteen feet in width. *Snyder v Foster*, 77 Iowa, 641.

SECTIONS 1058, 1064.—
A corporation may lawfully commence business, that is, exercise its corporate power and authority, when its articles of incorporation are properly filed. It is not necessary that any particular amount of capital stock first be subscribed, unless the articles of incorporation so provide. *Johnson et al. v. Kessler et al.*, 76 Iowa, 411.

SECTION 1062.—
Under this section of the Code, which makes stockholders in a corporation individually liable to the amount of unpaid installments on stock owned by them, defendant was held liable to a creditor of the corporation for the difference between the par value of his stock and what he paid for it. *Boulton Carbon Co. v. Mills*, 43 N. W. Rep., 290.

SECTION 1160.—
Where neither the policy of a mutual fire insurance company nor the articles or by-laws therein referred to, contained any limitation of liability to the amount realized from an assessment, *held* that an action for the full amount of the loss, not exceeding the insurance, could be maintained against the company before any assessment was made to meet the loss. *Harl, Adm'r, v. The Pottawattamie Co. Mut. Fire Ins. Co.*, 74 Iowa, 39.

SECTION 1260.—
This section, as amended by chapter 15, laws of 1880, applies to railways abandoned before its enactment and on which work was commenced within a period of less than eight years thereafter. *Skillman v. C., M. & St. P. R'y Co.*, 43 N. W. R., 275.

As the statute does not create the suspension, but simply prescribes its effect, it cannot be said to operate retractively. *Id.*

Nor does the statute interfere with vested rights, or impair the obligation of contracts, as the property right of the holder of a right of way does not attach to the land independent of, and distinct from its use for public purposes, and when the public use becomes impossible or is abandoned, the right to hold the land ceases. *Id.*

SECTION 1265.—
The defendant was about to construct a railroad so as to cross the plaintiff's track at grade. Plaintiff's track was level for three hundred feet east and nine hundred feet west of the proposed point of crossing. Just east of this level portion of plaintiff's track said track descends at the rate of thirty-seven (37) feet per mile for one thousand feet, and nine hundred feet west of the said point of crossing, there is an ascending grade varying from sixty to seventy feet per mile for seven thousand feet. On account of these grades, and of the necessity of stopping all trains before crossing another track at grade, the cost, danger and inconvenience of operating plaintiff's road would be greatly increased by the proposed crossing at grade. In view of these facts, and of the further fact that the cost of an under crossing would be only about fifteen thousand dollars more than the grade crossing, *held*, that defendant was not entitled under this section of the statute to cross at grade, and that the proposed crossing was properly enjoined. *The Humeston & Shenandoah R'y Co. v. The Chicago, St. P. & K. C. R'y Co.*, 74 Iowa, 554.

SECTION 1289.—
This section provides that "the operating of trains upon depot grounds necessarily used by the company and public, where no fence is built, at a greater rate of speed than eight miles per hour, shall be deemed negligence, and render the company liable under this section." *Held* that, in order to enable the owner of stock injured beyond the limits of the depot grounds to recover under this section, it must appear that the stock were upon the depot grounds, and by reason of the excessive speed of the train, were driven therefrom to another portion of the track, and injured. *Story v. Chicago, M. & St. P. R'y Co.*, 44 N. W R., 690.

In an action against a railroad company for damages caused by fire set out on its right of way by an engine, the defendant cannot escape liability for its own negligence, even though it appears that the plaintiff was negligent also, and that his negligence contributed to the loss. Under this section of the Code the doctrine of contributory negligence does not apply. *West v. Chicago & N. W. R'y Co.*, 77 Iowa, 654. This point affirmed on rehearing. See, also, *Johnson v. C. & N. W. R'y Co.*, Id. 668.

Under this section of the Code a railroad company is liable for injury to stock upon its right of way for want of fence only when such want, in connection with some act of the company, is the proximate cause of the injury; and in this case no such act was shown. *Ashbach v. the Chicago, R. & Q. R'y Co.*, 74 Iowa, 248.

On an action for injury to stock by a railway company where the petition set up merely that the injury was caused by the want of a fence, *held*, that the plaintiff was not entitled to have the question of general negligence adjudicated. *Id.*

Under this section providing that where the owner of an animal that has been killed by a railroad company serves a notice in writing, accompanied by an affidavit, of the death, on the company, it shall be liable for double the value of the animal unless it pays the value thereof within thirty days. Service of a copy of the notice is sufficient, the method of service not being prescribed. *Van Slyke v. Chicago, St. P. & K. C. R'y Co.*, 45 N. W. R., 396.

Under this section of the Code, in an action for the value of stock killed by reason of a failure to fence the track of a railroad, the owner cannot recover for the killing of a cow when he was himself present, and saw the efforts of the trainmen to stop the train, and had the power and opportunity to drive the cow from the track, but willfully refused to do so. *Moody v. Minneapolis & St. Paul R'y Co'*, 77 Iowa, 29.

Under this section of the Code a railroad company is liable for setting a fire on its right of way which destroyed certain stacks of hay of plaintiff, though he was guilty of contributory negligence in failing to protect them by ploughing around them. *West v. Chicago & N. W. R'y Co.*, 77 Iowa, 654; *Enyle v. Same*, 77 Id., 661; *Johnson v. Same*, Id., 666.

SECTION 1307.—

A railway company is liable for injuries resulting from negligence of agents, or mismanagement of engineers or other employes, etc., sustained by laborer employ to keep the track free from snow, where it appears that it was his duty to ride on the train, and remove obstructions as they were encountered, though the train was not actually in motion at the time the injury was received. *Smith v. Humeston & S. R'y Co.*, 43 N. W. R., 545.

This section authorizing actions against railway companies by employes for injuries caused by the negligence of co-employes, is not in conflict with the fourteenth amendment to the constitution of the United States. *Rayburn v. The Central Iowa R'y Co.*, 74 Iowa, 637. Following *Bucklew v. Central Iowa R'y Co.*, 64 Id., 603.

In such case, the plaintiff is not precluded from bringing his action against the company, under this section on the ground that the negligence complained of was in no manner connected with the use and operation of the railrord. See opinion on page 638, 74 Id.

SECTION 1317.—

This section of the Code, authorizing actions against railroad companies by employes for injuries caused by the negligence of co-employes, is not in conflict with the fourteenth amendment to the constitution of the United States. *Rayburn v. The Central Iowa R'y Co.*, 74 Iowa, 637.

SECTION 1319.—

Under this section, 808 of the Code, all railroad bridges are to be assessed for taxation by the executive council, except those over the Mississippi and Missouri rivers, and they are to be assessed by the assessors of the local districts in which they are situated; and such construction does not render section 808 unconstitutional. *The Missouri Valley & Blair R'y & Bridge Co. v. Harrison County*, 74 Iowa, 283.

SECTIONS 1332, 2466.—

In a bastardy proceeding the defendant pleaded guilty and an order was made that he pay certain installments for the support of the child "until the further order of the court." Afterward in a supplementary proceeding by the father to recover the child with a view of supporting it himself, the custody was left with the mother, but the order to pay for its support was vacated. *Held*, that this order was proper, in view of the fact that the father had recognized the child as his, and was, without any order to that effect, under obligations to support it. *The State v. Hastings*, 74 Iowa, 574.

SECTIONS 1361, 1365.

Under these sections of the Code, the board of supervisors of a county having a poor-house may discontinue relief to a poor person after the township trustees have once determined that he is a proper subject for relief, and that, in their judgment, he should not be sent to the poor-house. *Ellison v. Harrison County*, 74 Iowa, 494.

SECTION 1452.—

One who causes his cattle to be herded upon the unimproved and uninclosed prairie lands of another, without the consent of the owner of the lands, is liable therefor to such owner, though by the Iowa law a trespass is not committed when cattle running at large enter uninclosed land. *Harrison v. Adamson*, 76 Iowa, 337.

SECTIONS 1453, 1454.—

Notice to the person having charge of a mare distrained under these sections, and to the person having charge of the farm on which the mare was kept, of the distraint, and of a notice to the trustees, was held sufficient. *Lyons v. Van Gorder*, 77 Iowa, 600,

SECTION 1454.—

Where one who distrains a trespassing animal gives the notice required by the statute to the person who has charge of the animal, as well as to the one having charge of the farm on which it is usually kept, it is sufficient, under this section, to give the township trustees jurisdiction to appraise the damages done by the animal, though the owner has not been notified. *Id.*

SECTION 1523.—

Where liquors are purchased out of the state and put into bottles securely sealed and packed in cases, boxes and barrels, and thus transported to a point within this state, the prohibition of the sale of such liquor after it has arrived at its destination, whether of the unopened bottles taken from the boxes and barrels in which they are packed, or of the original packages themselves, is within the police power of the state, and is not in violation of the constitution of the United States, vesting in congress the power to regulate commerce between the states. *Collins v. Hills et al.*, 77 Iowa, 181.

An injunction forbidding the sale of intoxicating liquors at a certain place in the state is violated by a sale at that place of liquors in the original packages in which they were purchased outside of the state, and transported within the state. Following *Collins v. Hills*, 41 N. W. R., 571. *Grusendorf v. Howat, Judge, etc.*, Id., 573; *Leisey et al. v. Hardin*, 43 Id., 1888.

The prohibitory law, as amended, so as to cover the manufacture and sale of beer, which was previously legal, is constitutional. *Kaufman v. Dostal*, 73 Iowa, 691. Following *Magler v. Kansas*, 123 U. S., 623.

This section prohibits the manufacture and sale of intoxicating liquors except as permitted or authorized by statute, and the manufacture for exportation from the state not being permitted or authorized, is illegal, even though the manufacturer holds a permit to manufacture for lawful purposes. *Pearson v. The International Distillery*, 72 Iowa, 348.

This section of the Code prohibits the manufacture and sale of intoxicating liquors, except as permitted or authorized by law, and the manufacture for exportation from the state not being permitted or authorized, such manufacturing is illegal, even though the manufacturer holds a permit to manufacture for lawful purposes. *Id.*

Where intoxicating liquors purchased outside of the state is put up in bottles securely sealed, and packed in boxes, cases, and barrels, and thus transported to a place within the state, the prohibition of the sale of such liquors after it has arrived at its destination, whether of the unopened bottles taken from the boxes and barrels in which they were packed, or of the original packages themselves, is within the police power of the state, and is not in violation of the constitution of the United States, vesting in congress the power to regulate commerce between the states. *Leisey &*

Co. v. Hardin, 78 Iowa, 286. Following *Collins v. Hills*, 77 Id., 181.

[The first above cause was removed to the supreme court of the United States, where the judgment of the supreme court of Iowa was reversed by a majority opinion—Justices..... ..... *dissenting*. The federal court decides that the Iowa statute under which the action was brought, and which was sustained as being valid and constitutional, by the supreme court of Iowa, is in conflict with that clause of the constitution of the United States which confers upon congress the power "to regulate commerce with foreign nations and among the several states, and with the Indian tribes," and therefore said statute is invalid and of no effect.]

The manufacture of intoxicating liquors within the state of Iowa, without a lawful permit, though for the purposes of export only, renders the manufactory a nuisance. *Craig v. Werthmueller & Ende et al.*, 78 Iowa, 598.

SECTION 1526.—

Defendants, who were brewers, obtained a permit in November, 1885, to manufacture and sell intoxicating liquors for mechanical, medicinal, culinary and sacramental purposes only, for one year from that date. *Held*, that their right to sell for *medicinal* purposes was taken away on the 8th day of April, 1886, when chapter 83 of the laws of 1886 took effect, whereby the right to sell liquors for medicinal purposes was vested exclusively in registered pharmacists. *The State v. Aulman*, 76 Iowa, 624.

For a flagrant violation of the law in relation to the sale of intoxicating liquors, a fine of one thousand dollars will not be reduced by the supreme court as excessive. *Id.*

SECTION 1531.—

The principal of the bond in suit had made application for a permit to sell intoxicating liquors for lawful purposes, in a certain town, and the application described the particular house in which the sales were to be made, as required by law it should. For the purpose of obtaining such permit, the bond in suit was executed. The bond referred to the application, and recited the town in which the sales were to be made, but not the lot and block, and it did not recite the fact that the application was for leave to sell such liquors for mechanical, culinary and sacramental purposes only, but these matters were inserted in the bond after its execution. The condition of the bond was that the principal should "faithfully carry out the provisions of all laws now or hereafter in force, relating to the sale of intoxicating liquors." *Held*, that the bond was not materially altered by the insertion of the matters above referred to, and that the sureties were not discharged thereby. *Starr v. Blatner et al.*, 76 Iowa, 356.

SECTIONS 1537, 1538.

In an action on a bond given to obtain a permit to sell intoxicating liquors for lawful purposes, the alleged cause of action was that the defendant made false returns to the auditor. In an amendment to his answer, the defendant stated in substance that the reports were erroneous in several particulars, but that such errors were the result of mistakes on his part. *Held* that the amendment should have been stricken out on motion, because, in an action at law at least, the penalty of the statute cannot be avoided on the ground of mistake. *State, ex rel. Braden v. Chamberlin et al.*, 74 Iowa, 286.

SECTION 1539.—

Sales of liquors to the classes of persons enumerated in this section are not by its terms declared to be misdemeanors, and the penalty imposed by it can be enforced only by civil action by a citizen of the county. *State v. Douglass*, 73 Iowa, 279.

SECTION 1593.—

In an action by the state to recover of a registered pharmacist the penalty prescribed by the statute for selling intoxicating liquors to a person in the habit of becoming intoxicated, papers purporting to be applications from such person to defendant for the purchase of intoxicating liquors, which are produced from the county auditor's office, and are testified to by the defendant himself, as appearing to be in his handwriting, are sufficiently identified to be admitted in evidence, though the usual sworn certificate was not attached, and the deputy auditor testifies that the defendant, in reporting his sales, always made a sworn certificate. *State v. Oeder*, 45 N. W. R., 543.

SECTION 1540.—

This section, providing that if "any person not holding *such* permit * * * sell * * * any intoxicating liquors," etc., the permit referred to, is that provided for in the preceding sections, viz.: A permit granted by the board of supervisors for the sale of intoxicating liquors for certain enumerated purposes, and not the permit of a registered pharmacist to sell for the actual necessities of medicine only, granted under chapter 83, laws of 1886. Hence, sales by a registered pharmacist for any other purpose than the actual necessities of medicine are as certainly forbidden and made punishable by this section as are sales by persons having no authority to sell for any purpose; and the keeping of a place where such sales are made is prohibited and declared a nuisance by section 1543 of the Code. *State v. Salts*, 77 Iowa, 193.

On proof of the sale of intoxicating liquors place of business the burden is upon him to prove that the sales were lawful, *State v. Coughly* 73 Id., 626.

In this section providing that "if any person not holding such permit * * * sell * * * any intoxicating liquor, etc., the permit referred to is that provided for in the preceding sections, viz: A permit granted by the board of supervisors for the sale of intoxicating liquors for certain enumerated purposes, and not to the permit of a registered pharmacist to sell for the actual necessities of medicine only, granted under chapter 83, laws of 1886. Hence, sales by a registered pharmacist for any other purpose than the actual necessities of medicine, are as certainly forbidden and made punishable by this section as are sales by persons having no authority to sell for any purpose; and the keeping of a place where such sales are made is prohibited and declared to be a nuisance by section 1543 of the Code. *State v. Salts*, 77 Iowa, 193. (*State v. Douglas*, 73 Id., 279, *distinguished.*)

SECTION 1542.—

Sales of intoxicating liquors by a registered pharmacist for any purpose, except for the actual *necessities of medicine*, is forbidden unless he has a permit from the board of supervisors authorizing such sales for lawful purposes. *State v. Salts*, 77 Iowa, 193.

SECTION 1543.—

The defendant was indicted under this section for nuisance in keeping a place for the unlawful sale of intoxicating liquors. It was admitted that during the time covered by the indictment he had a diploma as a physician, a certificate as a pharmacist, and a valid permit from the board of supervisors for the sale of liquors for lawful purposes. The testimony of witnesses as to sales was to the effect that they were made in good faith for medical purposes, and no unlawful sales were shown. *Held*, that the conviction was not supported by the evidence. *State v. Flusche*, 44 N. W. R., 608.

A pharmacist is bound to know whether the persons to whom he sells liquors are such as he may lawfully make sales to; and the burden is on him to show that his sales were lawful. *State v. Thompson*, 74 Iowa, 119. Compare *State v. Coughly*, 73 Id., 626.

The offense under this section and that under the next section are not the same, and a conviction for one will not bar a prosecution for the other. *State v. Graham*, 73 Iowa, 553.

An injunction enjoining a party from the sale of intoxicating liquors upon certain premises described as "part of lot No. 2, in the northeast quarter of the northwest quarter of section 23," etc., is not void for uncertainty in not specifying the particular building or place intended. *Ver Straelen v. Lewis, Judge, etc.*, 77 Iowa, 130.

An injunction to restrain the defendant from maintaining a nuisance by keeping a place for the unlawful sale of intoxicating liquors, though not enforced, is a bar to a second action by another plaintiff seeking the same relief. *Dickenson v. Etchorn*, 43 N. W. R., 620.

Proof of actual sale is presumptive evidence that the sale is illegal, and the burden of proving that the sales made were legal, is on the defendant. *Shear v. Green*, 73 Id., 688.

The provisions of the statute relating to the abatement of the nuisances are applicable to acts committed before the enactment of such provisions. *McLane v. Bonn*, 70 Id., 752; *Drake v. Gordon*, 73 Id., 707.

An order imposing a fine and imprisonment for contempt for the violation of an injunction may be made by the judge in vacation. *McLane v. Granger*, 37 N. W. R., 123.

SECTION 1544.—

A railroad company receiving packages of whisky consigned by a person without the state to a person within the state of Iowa, after the expiration from six to fifteen days from the receipt of the various packages at the point of destination, is no longer a carrier, but becomes a warehouseman and the liquors, if intended for illegal sale, may be seized in its freight depot and confiscated. *State v. Creeden et al.*, 43 N. W. R., 673.

SECTION 1546.—

Where a constable serves a warrant for the seizure of intoxicating liquors he is entitled to a fee of one dollar, and where no liquors are found the county is liable for such fee under this section of the Code. *Byrum v. Polk County*, 76 Iowa, 75.

Under this section, providing that, when intoxicating liquor is taken on a search warrant, and no one is made defendant, the costs shall be paid as in criminal cases, where the prosecution fails, a justice issuing such process can recover fees therefor against the county, though no liquors were found. *Garrett v. Polk County*, 42 N. W. R., 618.

SECTION 1551.—

This section requires that peace officers shall see that the provisions of the law relating to the sale of intoxicating liquors, are enforced, and shall in certain cases, on filing information, institute suits and proceed to trial, and that the county attorney shall appear for the state "unless the person filing such information shall select some other attorney"; and when an information is filed by a constable for warrant for the search of premises and seizure of intoxcating liquors kept for illegal sale, an attorney selected by the constable to prosecute such suit, is entitled, under section 3829 of the Code, to receive five dollars from the county for such services. *Nichols et al. v. Polk County*, 42 N. W. R., 627.

SECTION 1553.—

It is provided in this section of the Code, as amended by chapter 66, laws of 1886, that, "if any express company, railway company, or any agent or person in the employ of any common carrier, or if *any other person* * * * shall knowingly convey between points, or from one place to another within this state, for any person * * * any intoxicating liquors, without first having been furnished with a certificate from the county auditor," etc.: *held*, that the words, "any other person," do not enlarge the classes before named in said section, but mean simply other persons of like kind, or in like employment, with those specified. *Held, further*, that where a man having horses and two wagons was employed exclusively by a wholesale liquor dealer to deliver liquors to retail sellers in the same city, the driver employed by such person, with the horses and wagons thus engaged, was included in the class referred to by the words, "any other person." *The State v. Campbell*, 76 Iowa, 122.

SECTION 1553.—

The statute does not prohibit the transportation of liquors out of the state, but it does prohibit the manufacture of liquors for purposes other than for sale according to the provisions of the statute. This construction does not render the statute unconstitutional as an interference with inter-state commerce. *Pearson v. International Distillery*, 72 Iowa, 348.

SECTION 1554.—

A pure and simple gift of intoxicating liquors by one person to another, who is not a minor, is not a criminal act; but it becomes criminal when it is intended as a subterfuge to conceal an unlawful sale, and to evade the penalties of the law. *State v. Hutchins*, 74 Iowa, 20. See sections 1523, 1539, 1540 of Code.

SECTION 1555.—

Under this section a beverage which contains alcohol is intoxicating liquor, regardless of whether the quantity of alcohol contained therein is, or is not, of itself intoxicating. *State v. Intoxicating Liquors* (Cummings, claimant), 76 Iowa, 243.

SECTION 1557.

This section of the Code providing that the person injured in her means of support by the intoxication of another shall have a right of action against the person selling the liquor "for all damages actually sustained, as well as exemplary damages," it was proper to instruct the jury that if plaintiff was entitled to actual damages, it was their duty to add thereto an amount as exemplary damages. *Thill v. Polman et al.*, 76 Iowa, 638.

SECTION 1558.—

In an action by a wife against a saloon-keeper for damages on account of unlawful sales of liquors to her husband, and against the owner of saloon property for the purpose of establishing her judgment in said action as a lien thereon, where it appeared that not only the sales made to plaintiff's husband were unlawful, but the whole business, as there carried on, was unlawful, it was error to instruct the jury that, although they found the owner of the property or his agent knew of the unlawful business, and assented thereto, yet they could not charge the property with the judgment in the case unless they also found that he or his agent knew of the sales to the plaintiff's husband, and assented thereto; for consent to use the property for an unlawful purpose is consent to every unlawful act done pursuant thereto. Such is the effect of this section. *Wing v. Benham et al.*, 76 Iowa, 17. See, also, *Myers v. Kirt*, 67 Id., 421, and 64 Id., 27.

In order to make saloon property liable for judgments based upon unlawful sales of intoxicating liquors therein, it is sufficient to allege and prove knowledge of the owners of such property of such unlawful sales, without alleging and proving their consent. (See and compare section 12, chapter 66, laws of 1886.) *Judge v. Flournoy et al.*, 74 Iowa, 164. See, also, *Snedaker v. Jones*, Id., 235, and cases cited.

SECTION 1572.—

As to the general assets of a bank in the custody of a receiver, the sureties upon a bond of the bank against whom judgment has been rendered have no prior rights over other creditors, since this section of the Code declares that the assets in such cases shall be "ratably distributed among the creditors, * * * giving preference in payment to depositors." *Richards, County Treasurer v. Osceola Bank et al.*, 45 N. W. R., 294.

CHAPTER 66, LAWS OF 1886.—

Under section one (1) of this chapter attorneys' fees are taxable against the unsuccessful defendant in all cases brought to enjoin liquor nuisances, whether prosecuted in the name of the state by the county attorney, or in the name of a private citizen of the county. *State v. Douglass & Hopkins*, 75 Iowa, 432.

CHAPTER 83, LAWS OF 1886.—

A pharmacist who has a permit to sell intoxicating liquors, but who sells them for purposes other than the legitimate and actual necessities of medicine, is subject to the utmost rigors of the laws relating to the unlawful sales of such liquors, and his liquors may be seized under a search-warrant, as provided in this chapter. *State v. Ward et al.*, 75 Iowa, —.

CHAPTER 66, LAWS OF 1886.—
Under this chapter the plaintiff, if successful in an action to abate a liquor nuisance, is entitled to recover such attorney's fees as may be reasonable for the services necessarily rendered, in whatever court, not less than twenty-five dollars. In a case which was begun in the district court, removed to the federal court, appealed to the supreme court of the United States and remanded to the district court where it was instituted, *held*, that an attorney's fee of three hundred and fifty dollars was not unreasonable, and should have been allowed upon the evidence. *Farley v. O'Malley*, 77 Iowa, 531.

After an action to abate a nuisance by selling liquors had been commenced under the Iowa prohibitory laws, a statute was enacted authorizing the taxing of an attorney's fee against the defendant. *Held*, that to apply this statute in that action did not infringe the constitutional prohibition as to *ex post facto* laws, as the fee thus collected was part of the costs of the case, no part of penalty. *Farley v. Gusheker*, 43 N. W. Rep., 279.

SECTIONS 1717, 1806.—
Under these sections as amended, the electors of a district township have power to authorize their board of directors to obtain, at the expense of the district, such highways as the board may deem necessary for proper access to the school-houses of their district, and to vote a tax upon the taxable property of the district for obtaining such highways; and section 1806 makes this statute applicable to independent school-districts. *McShane v. Indp'd Dist. of Pleasant Grove*, 76 Iowa, 333.

SECTION 1723.—
This section, which provides that contracts for the construction of school houses shall be let to the lowest responsible bidder, and bonds with sufficient sureties for the faithful performance of the contracts, shall be required, confers upon the school directors no authority to contract with one who is not the lowest bidder and does not furnish the bonds required, and hence the acceptance of his bid does not constitute a contract. *Weitz v. Ind. School-Dist. of Des Moines*, 44 N. W. R., 906.

SECTION 1802.—
Where the population of a district having six directors is, at the date of a given election, reduced to less than 500, only one director can then be elected under this section. *State v. Simkins et al.*, 77 Iowa, 676.

SECTION 1806.—
This section does not refer merely to the duties of officers of independent districts, but confers on the electors the same general powers as those conferred on the electors of district townships, and it makes applicable to independent districts acts of nineteenth general assembly, chapter 51, giving electors of district townships the power of obtaining highways necessary for access to school buildings, and of voting taxes for that purpose. *McShane v. Board of School Directors et al.*, 76 Iowa, 333.

SECTION 1923.—
Where a person purchases a stock of goods in another county from that in which he resides, and gives a chattel mortgage for the price, which is recorded in the former county, and leaves them in charge of his brother, who adds to the stock, makes sales therefrom, pays debts, etc., all in the name of the vendee, there is no such "actual possession" by the purchaser as contemplated by this section of the statute, requiring a chattel mortgage, where the mortgagor retains "actual possession," to be recorded in the county where the holder of the property resides, to be valid against creditors and purchasers without notice, and the mortgage has priority over one of a later date, given by the purchaser, and recorded in the county in which he lives. *King v. Wallace et al.*, 42 N. W. R., 776.

SECTION 1934.—
Under this section of the Code an express trust in land cannot be established by parol evidence. *Andrew v. Concannon et al.*, 76 Iowa, 251.

It is incompetent to establish by parol evidence a trust in real property alleged to have been created by an oral agreement. *Richardson v. Haney et al.*, 76 Iowa, 101; *Andrew v. Concannon et al.*, Id. 251.

SECTION 1941.—
Though this section provides that no instrument affecting real estate shall be of any validity as against subsequent purchasers, for a valuable consideration, without notice, unless recorded, etc., an unrecorded bond for title takes precedence of a subsequent quit claim deed; since the grantee therein cannot be regarded as a purchaser without notice. *Steele et al. v. Sioux Valley Bank*, 44 N. W. R., 564; overruling *Pettingill v. Devin*, 35 Iowa, 353.

SECTION 1967.—
A deed of swamp land, by a county judge, may be acknowledged in a county other than that of his residence, or of which he was the judge; and if such acknowledgment were not valid, it is cured by this section of the Code, the acknowledgment having been taken in 1860. *Henderson v. Robinson*, 76 Iowa, 303.

A defective acknowledgment of a power of attorney, executed in 1867, and recorded before the taking effect of the code of 1873, was cured by section 1967. *Collins v. Vallean*, 43 N. W. R., 284.

In a case involving the validity of an acknowledgment of a deed, it was *held* that the defect complained of was cured by this section of the Code. *Henderson v. Robinson et al.*, 76 Iowa, 603.

SECTIONS 1976, 1983.—
Where a party under the occupying claimant laws seeks to recover for improvements made by him or his assignors upon land adjudged to another person, and the only color of title under which the improvements were made was possession, such possession must have been continuous for five years up to the time at which the suit was brought for the recovery of the land; and if there is no evidence of such continued possession, there is nothing to submit to the jury. *Welles et al. v. Newsom*, 76 Iowa, 81.

Under section 1976 an occupying claimant, who is in possession, under color of title, cannot recover for improvements made before he acquired color of title by adverse possession. *Snell v. Mechan*, 45 N. W. R., 398.

SECTION 1990.—
There was a judgment against a married woman, who was the owner of a homestead. She conveyed the homestead by assigning her contract of purchase under which she held the property, but her husband did not join in the assignment, but they both abandoned the homestead to the assignee. *Held*, that the assignment was void, and that the judgment became a lien upon the property. The wife, notwithstanding her assignment, remained the owner of the homestead, which being abandoned, became liable for the judgment. *Belden v. Younger*, 76 Iowa, 567.

Since the conveyance of the homstead by the husband, in which his wife does not join, is, under this section void, such conveyance, when made to a daughter, may be attacked by any one having an interest in the property, though all the beneficiaries of the homestead have apparently acquiesced in the conveyance since it was made. *Bolton v. Oberne et al.*, 44 N. W. R., 547.

SECTION 1993.—
This section subjects the homestead to execution sale for debts created by written contract executed by the persons having power to convey and expressly stipulating that the homestead is liable therefor; it shall not, in such case, be sold except to supply the deficiency remaining after exhausting the other property pledged for the payment of the debt on the same written contract. Section 3039 provides that, when a judgment is against his principal and his surety, the officer having the collection thereof shall exhaust the property of the principal before proceeding to sell that of the surety. In an action to foreclose a mortgage, it appeared that it had been executed

by a husband and wife to secure his indebtedness to the plaintiff; that it conveyed the land of each, including the homestead, which belonged to the husband; that subsequently plaintiff released from the mortgage the wife's land, the value of which was greater than the debt. *Held*, that the homestead could not be subjected to any part of the debt, as the statute giving protection to sureties will be construed as subject to the homestead law. *Roskholt v. Kraft et ux.*, 43 N. W. R., 589.

SECTIONS 1994, 1995, 1998.—
In an action to enjoin an execution sale of forty acres of land claimed as a homestead, the plaintiff's dwelling-house, which must be upon the homestead premises, was partly on the forty-acre tract in question and partly upon a forty-acre tract adjoining, belonging to the wife. *Held*, that the whole of his forty-acre tract was not exempt as a homestead, but that the homestead was partly on his land and partly on that of his wife. Also, that the provisions of the statute relating to the marking out, platting and recording of homesteads gave plaintiff ample protection without the interference of a court in equity, and that his petition was properly dismissed. *Henderson v. Rainbow*, 76 Iowa, 320.

SECTION 1996.—
In an action to set aside an unlawful execution sale of a homestead situated within a town plat, in which it appeared that it consisted of one acre of ground, *held*, that the plaintiff had the burden to show that its value did not exceed five hundred dollars, in order to avoid the sale of the excess over one-half acre, but that the plaintiff's own testimony that he offered to take four hundred and fifty for it was sufficient in the absence of all other evidence. *Boot v. Brewster et al.*, 75 Iowa, 631.

SECTION 1997.—
Where a homestead, owned by the husband, is used by him for the unlawful sale of intoxicating liquors, it becomes liable for fines, costs and judgments rendered against him on account of such unlawful conduct; and the title being in him, it makes no difference that such use of the homestead is without the consent and against the will of his wife. *McClure v. Braniff et al.*, 75 Iowa, 38.

In an action against the husband, who holds the title to the homestead, to subject it to the payment of a judgment, the wife has such an interest in the homestead as to entitle her to intervene for the protection of the homestead, regardless of whether the husband asserts the homestead right or not. *Id.*

SECTION 2007.—
Upon the death of the husband, the widow has the election either to occupy and enjoy the homestead for life, or to take a distributive share of one-third, in fee-simple, of the real estate of which the husband was seized at the time of his death. She cannot take both, but she may elect which she will take; and until the distributive share is set apart, she, by occupying the homestead, must be regarded as having elected to take it; so that a mortgage made by her while occupying it, upon the undivided one-third of her husband's real estate, does not create a valid charge upon the same as against the heirs in an action for partition. *McDonald v. McDonald et al.*, 76 Iowa, 137.

SECTION 2014.
The common law rule, that when a tenant for years holds over after the termination of his lease, with the assent of his landlord, and pays rent according to the terms of his lease, a tenancy from year to year is established, is changed by this section of the Code, which provides that "any person in the possession of real property, with the assent of the owner, is presumed to be a tenant at will, unless the contrary is shown. *O'Brien v. Troxel & Bro.*, 76 Iowa, 760.

SECTION 2015.
Where land is leased for the purpose only of raising a crop of corn thereon, the rights of the lessee expire when the corn is harvested, and he is not entitled, in the absence of a special stipulation therefor, to pasture his cattle upon the stocks. The rights of the parties in such cases cannot be controlled by custom. *Kyte v Keller*, 76 Iowa, 34.

SECTION 2031.
Where the defendant claimed that the highway in question existed both by dedication and prescription, the court instructed that "knowledge in or notice to the owner of the use of the road as a public highway may be inferred from the use of the road by the public in such manner as that the owner, using his faculties as a reasonably prudent and observant person, having care for his property, would see or learn of such use." *Held*, that this was not in conflict with the above section of the Code, which provides that use of land shall not be evidence of adverse possession; because (1) the court did not state that such notice of use would be notice of an adverse claim; (2) other instructions in the charge avoided any misunderstanding by the jury; and (3) the action was based upon an alleged dedication, as well as upon prescription, and said section relates to titles by prescription only. *Duncombe v. Powers*, 75 Iowa, 185.

Under this section requiring that in order to support a claim of easement in land by adverse possession for ten years, such possession must be proved "by evidence distinct from, and independent of the use, and that the party against whom the claim is made had express notice thereof," proof merely that for more than ten years the plaintiff had kept the water of a stream diverted so as to flow over defendant's land, is not sufficient to establish a right to continue such use. *Preston v. Hull*, 74 Iowa, 309.

Where the question was as to the existence of a public highway, which, if it was a legal highway at all, became such either by dedication or prescription, and there was evidence tending to show a dedication, *held*, that evidence of use by the public was competent for the purpose of showing an acceptance of the dedication, though not competent, under this section of the Code, to show title in the public by prescription. *The State v. Birmingham et al.*, 74 Iowa, 407.

SECTION 2077.—
This section of the Code does not prohibit an oral agreement for the payment of ten per cent interest; and where there has been such an oral agreement, and the amount of such interest was afterward ascertained and a promissory note given therefor, it was binding upon the parties, and the creditors of the maker of the note cannot interfere. *First Nat. Bank of Nevada v. Fenn*, 75 Iowa, 221.

SECTIONS 2108, 2109.—
Where the holder of a note neglects either to bring suit thereon or to allow the surety to do so, when requested as provided by the statute, the surety will be discharged, notwithstanding the principal has removed from the state. *Hayward v. Fullerton*, 75 Iowa, 371.

SECTION 2113.—
Under this section, providing that all written contracts import a consideration, when the plaintiff has established the defendant's signature to a promissory note the burden of proving no consideration is on the defendant. *McCormick Harvesting Machine Co. v. Jacobson*, 42 N. W. R., 499.

In an action on drafts drawn on defendants, plaintiff was not required to reply to an answer pleading want of consideration, but had a right to show that the drafts were accepted as a compromise, though he had not pleaded a compromise. *Gafford v. Am. Mort. & Invest. Co.*, 77 Iowa, 736.

SECTION 2115.—
This section of the Code makes invalid a *general* assignment for the benefit of creditors which is not made for the benefit of all the creditors in proportion to the amount of their respective claims; but there is no statute depriving the debtor of the common law right to make a partial assignment of his property for the benefit of his creditors. *Loomis & Son v. Stewart et al.*, 75 Iowa, 387.

SECTION 2120.—

In the prosecution against the assignee of a claim which was resisted, because filed more than three months after the first publication of the notice of assignment, it appeared that the assignee had made and filed a report, as required by this section of the Code, and the report showed that the notice had been duly published, *Held*, that this was *prima facie* evidence of that fact, and that the court would take judicial notice of it, without a formal tender of the report in evidence. *Conlee Lumber Company v. Meyer*, 74 Iowa, 403.

SECTION 2129.—

In an action by a material man against a landlord to establish and enforce a landlord's lien upon improvements, placed on the premises by the tenant, the fact that the plaintiff sought to establish that the landlord was a purchaser of the materials, and to make him personally liable did not defeat the rights to a lien, under this section of the Code, providing that one cannot have a lien who has collateral security on the contract—where the claim of personal liability was, before trial, dismissed without prejudice. *The National Lumber Co. v. Bowman*, 77 Iowa, 706.

SECTION 2130.—

H. W. and S. had agreed to form a corporation, but it was not organized until some months later. Meanwhile H., by arrangement with others, purchased land in his own name and erected a building thereon, all of which became the property of the corporation after its organization. *Held* that H. was not entitled to a mechanic's lien upon the property on account of the improvements made thereon by him, because they were not made under any contract with the owner of the land as required by the statute, he being himself the owner at the time he made the improvements, and the corporation was not in existence. But *held further* that, he was entitled to judgment for the expenditures made by him for its use and benefit. *The Littleton Savs. Bk. et al. v. The Osceola Land Co. et al.*, 76 Iowa, 660.

SECTION 2133, MILLER'S CODE.—

Where in the statement filed with the clerk of of the court as the foundation for a mechanic's lien, the description of the property to be charged was as follows: "Thirty lengths of corn-cribbing at Mill's Station, Pottawattamie county, Iowa"; held that it was too indefinite for the purpose. *Rose & Wainwright v. The Billingsly & Nanson Com. Company*, 74 Iowa, 51.

Where lumber was furnished for the erection of numerous corn-cribs at several different places, and the cribs were afterwards sold to another party, *held* that, if any of them were complete when purchased, and it was not shown that any of the lumber furnished within ninety days of the purchase went into such completed cribs, then the purchaser took them free from any lien for the lumber,—no statement for a lien having been filed until after the purchase. *Id.*

SECTIONS 2135, 2133.—

Under section 2135, which provides that the lien shall attach to the buildings, etc., for which the materials were furnished in preference to any prior lien on the land, and section 2133, which provides that the failure to file the statement within the time prescribed shall not defeat the lien except as to purchasers and incumbancers without notice, such a lien is paramount to the lien of the landlord for rent, he having notice of all of the facts. *National Lumber Co. v. Bowman*, 77 Iowa, 706.

Where the plaintiff was entitled to a mechanic's lien on a building, which was superior to all other liens, but H. had a mortgage which was a prior lien on the land on which the building was situated, *Held*, that the plaintiff was entitled to a decree for the sale of the building as personal property, as against the owner, although the right of redemption was thereby cut off. *Luce et al. v. Curtis et al.*, 77 Iowa, 34v.

SECTION 2203.—

An agreement between husband and wife by which the former conveys land to the latter, in consideration of her relinquishment of all her interests in other lands of his, being void under this section of the Code, is not ratified by her taking possession of the lands conveyed to her, and claiming them as her own, and omitting them, and the rents and profits thereof, from the inventory of her husband's assets filed by her as his executrix, as she is incompetent to satisfy her husband's invalid deed, upon which the agreement to relinquish depends, and for the further reason that the agreement itself is forbidden by law, and she is not thereby barred of claiming dower. *Shane v. McNeill et al.*, 76 Iowa, 459.

SECTION 2211.—

The keeping of boarders by a married woman is such a business, independent of her duties as a wife, as entitles her to the proceeds of such business as her own. *Gilbert, Hedge & Co. v. Glemy et al.*, 75 Iowa, 513.

SECTION 2222.—

In an action by a wife for divorce on the ground of habitual drunkenness of her husband, although there was no direct corroboration of her testimony that he acquired the habit after marriage, yet as the testimony of the other witnesses tended indirectly to establish that claim, *Held*, that the corroboration was sufficient as in this section provided. *Lewis v. Lewis*, 75 Iowa, 200.

SECTION 2223, PAR. 2.—

Want of affection between husband and wife is no defense in an action for divorce on the ground of desertion. *Taylor v. Taylor*, 45 N. W. R., 307.

PAR. 5—

In action for divorce, by the wife, it appeared that the defendant habitually abused her, addressing her in profane and obscene language, applying approbious epethets to her, and on several occasions treated her with physical violence; that he falsely accused her of infidelity, and misused the children in her presence; that she was stricken with paralysis, and during her illiness he showed the utmost indifference, and tried, in many ways, to irritate and annoy her, *Held*, that, while no single act of his was sufficient to endanger her life, yet, since the general effect was to undermine her health, his conduct was sufficient ground for divorce. *Doolittle v. Doolittle*, 43 N. W. R., 616.

SECTION 2224.—

By this section of the Code the pregnancy of a woman by a man other than her husband at the time of the marriage is a cause for divorce to the husband, and he is under no legal obligation to live with her, nor can he be required to support her or maintain the child, and his agreement to do these things is not sufficient consideration for his promissory note. *Brannum v. O'Conner*, 77 Iowa, 632.

SECTION 2229.

Where a decree of divorce has been granted and the custody of a child awarded the plaintiff, and a certain sum in alimony awarded in her favor, this is conclusive on the parties so long as the circumstances remain the same; and a subsequent supplemental proceeding, or independent action seeking to recover an additional sum for the support of the child, cannot be maintained without alleging such change in the circumstances of the parties as would make an additional order expedient. *Reid v. Reid*, 74 Iowa, 651.

SECTION 2236.—

Where a marriage was decreed to be a nullity on account of the insanity of the husband at the time of the contract, and it appeared that the wife was in good health when married, but that she had lost her health on account of the deprivations suffered by her while living with her husband, and it further appeared that he was worth about fifteen thousand dollars at the time the marriage was annulled by the decree, *held*, that an allowance to

her of thirty-five hundred dollars was fair compensation under this section of the Code. *Barber v. Barber*, 74 Iowa, 301.

SECTION 2263.—
A mortgage made by a guardian as such is void as against the ward, unless approved by the court. But after such mortgage has been foreclosed in an action to which the ward has been made a party by due and legal service of notice, he cannot question its validity in an action brought to invalidate it, and set aside the title of the purchaser at the foreclosure sale. *Downs v. Mann et al.*, 76 Iowa, 723.

SECTION 2322.—
Ever since the enactment of the Code of 1851, a testator in this state has had the right to dispose of his property by *will* as he pleased, and an heir to whom nothing is devised takes nothing. *Hall et al. v. Stinnett et al.*, 74 Iowa, 279.

SECTION 2340.—
Since the amendment of this section by chapter 11, laws of 1876, giving the right to a jury trial in cases of the proof of wills when contested, the judgment in such cases is conclusive upon the parties. And in this case, when the will was offered for probate, and parties made their contest, and had a full trial, with the right to demand a jury, which they waived, *held*, that they cannot now institute an original proceeding, and try again the identical questions which have been adjudicated against them. *Smith et al. v. James and Haverstock*, 74 Iowa, 462.

SECTION 2353.—
This section, providing that the probate of a will shall be conclusive until it is set aside in an original or appellate proceeding, allows such original or appellate proceeding to be brought by one who was a party to the probate, but was only notified thereof by publication and did not appear. *Gregg et al. v. Meyatt et al.*, 43 N. W. R., 760. Following same case, 42 Id., 461.

SECTION 2368.—
A debtor residing in a state other than that of his creditors' domicile may legally pay a note to the administrator, appointed in the latter state, before administration is granted in any other state, though the note has never been in said administrator's possession, but is held by an attorney residing in a third state, in whose hands it was placed for collection by the creditor. *Bull v. Fuller et al.*, 42 N. W. R., 572.

SECTION 2275.—
An anti-nuptial contract, providing that during marriage neither party should be restricted in the disposition of their property, real and personal, and authorizing each to execute deeds without the consent or signature of the other, does not include the right of diposal by will so as to defeat the widow's right to an allowance for a year's support for herself and children, as given under this section of the Code, though she may have relinquished by her agreement both her right to dower and homestead. *In re Pest's Estate*, 44 N. W. R., 354.

The fact that the whole estate is disposed of by the will does not prevent an allowance, as the allowance, when necessary, to be paid prior to the debts of the estate, which latter are preferred to the rights of legatees. *Id.*

This section providing that the court shall, if necessary, set off to the widow and children under fifteen years of age, of the decedent, or to either, sufficient of his property, of such kind as shall be deemed appropriate, to support them for twelve months from the time of his death, *Held*, that if the personal property is inadequate, a sale of the real estate may be ordered. *Newans v. Newans et al.*, 44 N. W. R., 213.

SECTION 2379.—
In proceedings by an administrator, under this section of the Code, against the father and mother of his intestate, it appeared that the father had in his possession a note and a sum of money, which he and his wife testified that intestate said were to be given to her. The note and money were in payment for property sold by intestate the day before he died, and were never in his possession, but were delivered to his father shortly after his death, *Held*, that the gift being unaccompanied by possession was void, and the administrator was entitled to the property. *Donover v. Argo et ux.*, 44 N. W. R., 818.

SECTION 2403.—
Where the heirs and devisees, who are "competent to take possession," consent to an order directing the administrator to collect the rents and profits of real estate accruing after the death of decedent, and their appropriation to the payments of debts is shown to be necessary, the administrator may sue for and recover them. *Toerring v. Lamp*, 77 Iowa, 488.

SECTION 2408.—
After the death of the mortgagor of chattels, the mortgagee may, upon breach of the conditions of the mortgage, proceed to foreclose by notice and sale under the statute, just as he might have done had the mortgagor survived, and he is not required to file his claim and submit to the slow process of administration to adjust priorities and determine his rights. *Cocke v. Montgomery et al.*, 75 Iowa, 259.

SECTION 2455.—
A decedent at his death held a policy of life insurance payable to "his legal heirs." He left, surviving him, a widow and one child. This section of the Code, which provides that "if the intestate leave no issue the one-half of his estate shall go to his parents and the other half to his wife," is the only instance where the rights given to the widow under the statute partake of the nature of heirship. *Held*, that the whole amount of the policy went to the child. *Phillips v. Carpenter et al.*, 44 N. W. R., 898.

SECTION 2475.—
Where heirs and representatives make application to open an administrator's account within three months after settlement, and allege that no report was filed until over two years from the appointment, that it was then filed without notice to them, that fees were allowed to attorneys for which no services were rendered, they make out a case for relief. *Van Akin et al. v. Welch*, 45 N. W. R., 406,

SECTION 2514.—
This cause having been brought and tried in the court below as a law action, without any objection on part of defendant, he cannot, on appeal, be heard to complain that it should have been tried as an action in equity. He should have moved in the trial court for a transfer of the cause to the equity calendar, as provided in this section of the Code. *Spelman v. Gill*, 75 Iowa, 717.

Where an action is commenced by equitable proceedings, when the case made is not one for equitable cognizance, the court rightly transferred the cause to the law docket. *Galliers v. Peppers et al.*, 76 Id., 521.

That an action is in equity when the remedy is at law, is no ground for demurrer. *Riddle v. Beattie*, 77 Id., 168.

SECTIONS 2517, 2540.—
Where a defendant in an equitable action to foreclose a mortgage pleaded a counter-claim upon which a legal issue was framed, it was held that he was not entitled to have such issue tried by a jury. *Ryman v. Lynch*, 76 Iowa, 587.

The provisions of this section have no application to double actions seeking the same relief, and a motion to consolidate such actions was rightly refused. *Jamison v Burlington & W. R'y Co.*, 43 N. W. R., 529.

SECTION 2516.—
Where a defendant has filed a motion to transfer the cause to the law calendar, he is not required to file his answer until the motion has been decided. *Ellis & Ellis v. Butler*, 78 Iowa, 632.

SECTION 2517.—
In an action to foreclose a mortgage, the defendant pleaded a counter-claim asking damages against the plaintiff for slander, and he complained on appeal, because the court refused to grant him a trial by jury on the counter-claim. *Held*, that he was not entitled to such trial,—the rule being that all issues of fact arising in equitable actions must be tried by the court. *Ryman v. Lynch*, 76 Iowa, 587.

SECTION 2520.—
"The provisions of this section of the Code, concerning the prosecution of a civil action, providing that it shall be followed in special proceedings, not otherwise regulated, so far as applicable." *Held*, that such application was properly made by petition, and, where the administrator filed no answer and offered no proof, the allegation of the petition should have been taken as confessed, and the relief prayed for granted. *Van Akin et al. v. Welch*, 45 N. W. R., 406.

SECTION 2521.—
It is no objection that an application to the court of probate was made in less than fifteen years after the rendition of the judgment, sought to be enforced, for such action was not an action upon the judgment within the meaning of this section, prohibiting actions on jungments of courts of record within fifteen years after their rendition. *Coffin v. Eistminger*, 75 Iowa, 30.

SECTION 2529.—
Under the third subdivision of this section the statute begins to run against a tax-sale purchaser's action to recover redemption money paid into the auditor's office, which an ordinance directs the auditor to hold subject to the order of the purchaser or his assignee, when the auditor in office receives the money from his predecessor, and not when it is first paid into the office. Successive officers are not to be regarded one and the same person, or as impersonal, except where they stand for and represent the public. *Hintrager v. Richter et al.*, 76 Iowa, 406.

SECTION 2442.—
Under this section, providing that the widow of a non-resident alien shall be entitled to the same rights in the property of her husband as a resident, except as against a purchaser from the decedent, the term "non-resident alien" means one who resides out of the state. *In re Gill's Estate*, 44 N. W. R., 553.
Mortgagees of the property of such non-resident alien are purchasers, within the meaning of this section. *Id.*

SECTION 2421.—
The fact that a claim against an estate is not proven within a year after the first notice of administration is given as required by this section, does not effect the jurisdiction of the court to determine the validity of such claim. *McLeary et al. v. Doran et al.*, 44 N. W. R., 360.
It is the province of the court, sitting in equity, to decide whether the bar of the statute should be removed on account of peculiar circumstances, provided under this section of the Code, but when the bar is removed, it is error to refuse a jury trial to establish the claim, if it is disputed. *Lamm v. Sovy*, (*two cases*). 44 N. W. R., 893.

SECTION 2435.—
Under this section, judgment may be rendered against an administrator, who has made a tender of payment, which was refused, where he fails to keep the tender good by bringing the money into court, or fails to pay the same on demand. *Ramwater v. Hummell*, 44 N. W. R., 814.
Where an administrator has been ordered by the probate court to pay a sum of money to one of the heirs of his intestate, his tender of such sum establishes his liability to pay the same. *Id.*
Where after refusal to accept such tender the administrator deposits the money in bank to the heir's credit, but fails to notify him of such deposit, until after the bank has failed, the administrator remains liable, as if no deposit had been made. *Id.*

SECTION 2440.—
A sale by a referee in partition is a judicial sale within the meaning of this section, giving a widow dower in such property of her husband as has not been sold on execution or any other judicial sale." *Williams v. Wescott*, 77 Iowa, 332

SECTIONS 2441, 2451.—
Section 2441 of the Code provides that the distributive share of the widow in the decedent's estate, "shall be set off as to include the one dwelling house given by law to the homestead * * * unless she prefers a different arrangement. But no different arrangement shall be permitted where it would have the effect to prejudice the rights of creditors. By section 2451, it is provided that if the land cannot be divided it must be sold. *Held* that, where the land is sold, creditors of the decedent's heirs have no such interest in the estate as will entitle them to require the widow's share to be paid exclusively from the proceeds of the homestead, which in the hands of the widow is by section 2908, exempted from liability for antecedent debts. *Kite v. Kite et al.*, 44 N. W. R., 716.
That the plaintiff did not know that her claim was required by law to be filed within one year from the date of publication of the appointment of the administrator was insufficient excuse for want of this section of the statute. *Roof v. Knight*, 76 Iowa, 506.

SECTION 2452.—
A bequest to the wife of the testator "all property of every name and nature, as long as she shall live," followed by a bequest over to the testator's daughters of so much of the property as may remain at the death of the wife, creates a life estate in the wife, with a power of disposition implied from the nature of the property and the use to which it was adapted. Such bequest affects the widow's distributive share of the estate, within the meaning of section 2452 of the Code, and if she does not elect, after notice, to take under the will she cannot take the benefit of the provisions made for her therein. *In re Foster's Will*, 76 Iowa, 36[illegible]
A devise of a life estate to the wife of the testator does not bar her right to a distributive share in his realty, there being no provision in the will contrary to or inconsistent with such construction. *Howard v. Watson et al.*, Id., 229.
Under the provisions of this section of the Code the widow's share cannot be affected by any act of her husband, unless she consents thereto within six months after she receives notice of the provisions of the will, by the other parties interested in the estate, no election by her is necessary, nor does the time within which it must be made begin to run till the notice is given; there being no presumption that she has knowledge of the provisions of the will. *Id.*
The failure of a widow to file her election to take under the will of her husband does not affect her right to so take, when no notice has been served on her of the provisions of the will. The section of the Code gives her six months after service of such notice to file her election, and the fact that she has knowledge of the provisions of the will makes no difference. *Howard v. Watson et al.*, 76 Iowa, 229. See also *In re Will of Foster*, 364.

SECTION 2529.—
An original notice in an action on account was delivered to the sheriff and duly served May 1, 1886. On the 24th of June following would the action have been barred by the statute of limitations. The notice was defective, in that it required the defendants to appear at the next August term of the circuit court, which, it stated, would begin on the 30th day of August, when in fact it began on the 31st of that month. At this term there was no appearance for defendants, and the cause was continued and another notice served on the defendants. *Held*, that the defect in the first notice was fatal, and that the beginning of the action was

from the time the second notice was placed in the hands of the sheriff, which was after the action was barred. *Fernekes & Bros. v. Case et al.*, 75 Iowa, 152.

Covenants of seizin and of good right to convey are synonymous; and if, at the time of the conveyance, the grantor does not own the land, the covenant is broken immediately, and the right of action at once accrues, and is barred by the statute after the lapse of ten years from that time, under this section of the Code. *Mitchell v. Kepler*, 75 Iowa, 207.

The statute of limitations will not commence to run in favor of a bailee until he denies the bailment and converts the property to his own use. Accordingly, where the plaintiff deposited with defendant a watch, to be repaired, and for safe keeping, and did not demand it for a period of ten years, when the defendant refused to deliver it, *held*, that an action for conversion might be brought at any time within five years after such demand and refusal. *Reisenstein v. Marquardt*, 75 Iowa, 294.

Where the statute of limitations begins to run against an ancestor in his life-time, it will not cease to run upon his death, except as to minor heirs. See section 2535 of Code. *Grether v. Clark*, 75 Iowa, 383.

This paragraph provides that actions founded on unwritten contracts, and those brought for injuries to property, or for relief on the ground of fraud, in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for, must be brought within five years after the cause of action accrued. Section 2530 provides that in actions for relief on the ground of fraud or mistake, the cause of action will not be deemed to have accrued until the fraud or mistake complained of shall have been discovered. *Held*, that an action against a railroad company to recover the excess of charges required to be paid by the plaintiff over those required of other persons for the same service, brought more than five years after the cause of action accrued, its existence being fraudulently concealed by defendant, is not within section 2530, being an action at law. *Carrier v. Chicago, R. I. & P. R'y Co.*, 44 N. W. R. 208.

SECTIONS 2529, 2530.

By these sections of the Code, an action for relief for fraud in exclusively equitable cases must be brought within five years after discovery. Where an alleged fraudulent deed was executed in 1874, and recorded two years later, *held*, that the recording of the deed operated as a discovery of the fraud as to a creditor who had obtained judgment before its execution, there being no evidence that such discovery was unavailable as a basis of further inquiry and proceeding. *Hawley v. Page et al.*, 77 Iowa, 230; *Francis v. Wallace*, 77 Id., 373.

SECTION 2531.—

Where in an action for rent of sewing machine for a number of years, the evidence showed no contract except that plaintiff bought the machine, took it to defendant's house and left it there to be used by the family, it was presumed that the account was not continuous, and that the running of the statute of limitations was not suspended under this section of the statute, which provides that when there is a continuous open account the cause of action shall be deemed to have accrued on the date of the last item. *Gavin v. Bischoff*, 45 N. W. R., 306.

SECTION 2532.—

"The sheriff of the proper county," within the meaning of this section, is sheriff of the county in which the action is brought, although the defendant is in fact in another county. *Hampe v. Shaffer et al.*, 76 Iowa, 563.

SECTION 2535.—

For injuries resulting in the death of a minor, a right of action accrues to his administrator at the time of his death, and the statute of limitations begin to run, unaffected by this section. *Murphy v. Chicago, M. & St. P. R'y Co.*, 45 N. W. R., 392.

SECTIONS 2543, 2544.—

Under these sections every action must be prosecuted in the name of the real party in interest, except that a trustee of an express trust, or a party with whom or in whose name a contract is made for another's benefit, and others specified, may sue alone in their own names, it was accordingly *held* that one holding the legal title to land may sue in relation thereto, though she paid nothing for it, and her counsel paid the consideration and had the conveyance made to her without her knowledge. *Cassidy v. Woodward*, 77 Iowa, 354.

The persons who compose the board of health of a township are not trustees of an express trust, and are not entitled under these sections of the Code, sue in their own names to recover money for the use of said board. *Sanderson et al. v. Cerro Gordo County*, 45 N. W. R., 560.

SECTION 2544.—

Upon a division of a religious society, under an agreement for an apportionment of its property between the new societies organized by the several factions, the trustees of one of the new societies, appointed for the purpose of collecting its dues from the other new society under the contract of a division, are the proper parties to bring an action for that purpose, though the society for which they act is not incorporated; and the fact that the name of the society is joined with theirs as plaintiffs does not effect their right to recover. *Arts et al. v. Guthrie et al.*, 75 Iowa, 674.

SECTION 2545.—

This section provides that "all persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs," and section 2683 permits such persons to unite with the plaintiff or to intervene in an action. *Held*, that the several judgment creditors might unite in a petition alleging that they have no adequate remedy at law, seeking a discovery of the judgment debtor's property, and to compel defendants, trustees of the judgment debtor, to perform certain duties which they allege will place such property within reach of legal process. *Gorrell et al. v. Gates et al.*, 44 N. W. R., 905.

SECTION 2566.—

A judgment against a minor is void where there has been no appearance for him, either by his regular guardian or by a guardian *ad litem*. *Dohms v. Mann et al.*, 76 Iowa, 723.

SECTION 2580.—

Under this section of the Code, an action against a foreign corporation may be maintained in the courts of this state when it is aided by attachment proceedings against the property of such corporation found within this state; and a judgment of a federal court in this state, dismissing a former action based on the same cause, but not aided by attachment, on the ground that it had no jurisdiction of the defendant, is no bar to the subsequent action aided by attachment. *Weyand v. The Atchison, Topeka & Santa Fe R'y Co.*, 75 Iowa, 573.

SECTION 2581.—

This section provides that when by its terms a written contract is to be performed in any particular place, an action for the breach thereof may be brought in the county in which such place is situated. Defendant ordered plaintiffs to manufacture and ship to him at S., a wagon, and agreed to pay one-half cash and the balance in six months, "said account to be settled by note at A. on receipt of goods." *Held*, that defendant was to perform by the note at A., and the right of action was for failure to do so, and that the action was properly brought in the county in which A. was situated. *Bradley et al. v. Palen*, 42 N. W. R., 623.

SECTION 2589.—

Where a non-resident defendant is found and served with a notice within a county other than the one in which he is sued, a motion to dismiss the action will be denied, as his remedy is to ask

a removal of the action to the county in which he was served. *Marquardt et al. v. Thompson*, 42 N. W. R., 634.

SECTION 2590.—
Under this section, requiring that a motion for a change of venue on the ground of prejudice of the inhabitants of the county in which suit is brought, or undue influence of an attorney in the suit, must be supported by the filing by the applicant of "an affidavit, verified by himself and three disinterested persons," one affidavit verified by the applicant and a separate affidavit by three disinterested persons, setting forth substantially the same statements as are contained in the applicant's affidavit as to the facts required by the statute, are sufficient. *Deere et al. v. Bagley*, 45 N. W. R., 557.

SECTION 2590, SUBDIVISION 3.—
The granting of a change of venue under this provision is a matter of discretion, though there were no counter affidavits, and the affiants were not brought into court and examined. *Garrett v. Bickler et al.*, 42 N. W. R., 621.

Under this section of the Code, as amended by chapter 94, laws of 1884, an application for a change of venue on the ground of alleged prejudice of the judge, is addressed to the sound discretion of the judge, and this is so though no "counter affidavits" are filed, nor the affiants examined in court. The judge is not, as a matter of course, to grant the change, but "being fully advised," he must decide "according to the very rights and merits of the matter." *Garrett v. Bicklin, Winzer & Co.*, 78 Iowa, 115.

SECTION 2600.—
Where the petition was not filed until after the time fixed therefor in the original notice, it was error for the court to refuse to dismiss the case on the motion of defendant; but this error was waived by the defendants then appearing and answering the petition, thus giving the court jurisdiction of his person—having already jurisdiction of the subject matter of the action. *Paddleford v. Cook*, 74 Iowa, 433.

SECTION 2604.—
Where a return of the service of a notice to redeem land sold at tax-sale, is made on the same paper, it may be verified by a proper affidavit attached and refering thereto; it need not be on the same paper. Nor the return show the county of service; for that is immaterial where the service is personal. Nor is such service deficient because it does not show for what county the acting notary was qualified as such; for of that the courts take judicial notice. *Rowland v. Brown*, 75 Iowa, 679.

SECTION 2610.—
Plaintiff demanded of Benton county five hundred dollars because of injuries to his wife on account of a defective bridge, and the claim was rejected, and an action was brought for that amount, but afterwards, by amendment the amount claimed was enlarged, on the ground that the injuries had turned out to be much more serious than at first supposed. *Held* that it was error to allow a recovery for the larger amount, since no claim therefor had been presented to the board of supervisors, as required by this section of the Code. *Marsh v. Benton County* 75 Iowa, 489.

A claim presented to the board of supervisors and payment demanded for "damages for loss of life of claimant's intestate by falling from a bridge by reason of the negligence of the county" in its construction, and stating the amount of damages, is sufficiently definite, under this section, without proof of the death, or specification of the facts constituting the negligence. *Dale v. Webster County*, 76 Iowa, 370.

SECTION 2612.—
The recording agent of an insurance company, whose business is merely to write policies and look after the interests of company in connection with property insured by him, is not an agent employed in the general management of the business, within the meaning of this section of the Code, relating to the service of process on corporations. *State Ins. Co. v. Waterhouse et al.*, 43 N. W. R., 611.

SECTIONS 2612, 2613.—
An application for insurance was forwarded to the plaintiffs company by one who was not its agent, but a mere volunteer. An original notice in an action to recover on the alleged contract of insurance was served on one B, who was plaintiffs' recording agent in the county; that is, he had nothing to do with the business of the company except to write policies, and give attention to such policies as he had issued, and to look after the business of the company in connection with the property insured by him, *held* that the notice and service were void as to the plaintiff—not being authorized by section 2612 of the Code, because B was not an agent employed in the general management of the business of the company; nor by section 2613, because the action did not grow out of, nor was it connected with the office or agency of B. *The State Ins. Co. v. Waterhouse et al.*, 78 Iowa, 674.

SECTION 2618.—
This section of the Code authorizes service of the original notice in an action for partition of real estate, upon non-resident defendants, and is sufficient service, though such non-residents are minors. *Williams et al. v. Wescott et al.*, 77 Iowa, 332

SECTION 2628.—
The doctrine of *lis pendens* under this section does not apply to a petition for divorce, alleging that defendant has real and personal property, and asking for alimony, and that it be charged as a special lien upon the realty. A mortgage executed and recorded after such petition is filed is superior to either of the judgments for temporary or permanent alimony subsequently rendered. *Scott v. Rogers et al.*, 77 Iowa, 483.

SECTION 2630.—
A plaintiff may, in the same action in different counts, join a claim to recover rent of real property under an implied contract, and also a claim for damages for the wrongful occupation of the same property for the same time. In this case the first claim was pleaded in the original petition and the second one in an amendment. *Foster et al. v. Hinson et al.*, 76 Iowa, 714.

SECTION 2639.—
Under this section but one demurrer to a pleading can be filed, and a so-called "amended demurrer" which presents wholly new matter, and arrests the progress of the cause, is no part of, nor an amendment to, the first demurrer, for which costs may be taxed. *Lundbeck v. Pilmair*, 43 N. W R., 271.

Under a rule that a fee should be taxed in favor of a successful party on the decision of a demurrer, *held*, that such fee should have been taxed against the defendant upon the overruling of his second demurrer, which he entitled an "amended demurrer," but which could not be so regarded, because it presented wholly new matter. Although a demurrer following a demurrer is forbidden by this section of the Code, defendant could not, having had the benefit of his unlawful demurrer, escape the penalty on the ground that it was illegally filed and should have been assailed by motion. *Lundbeck v. Pilmair*, 78 Iowa, 434.

SECTION 2650.—
Where the plaintiff fails to state a material fact in his petition, and no objection is made thereto by demurrer or answer, the objection is deemed waived, and none can be urged thereto in the supreme court on appeal. *Lynn v. Morse*, 76 Iowa, 666.

A defect in verification of a petition in attachment is waived by answering and going to trial. It is not ground for a motion in arrest of judgment. *Turner v. Younker et al.*, 76 Iowa, 258. See, also, *Mitchell v. Joyce*, Id., 449.

SECTIONS 2655, 2657, 2710.—
It is provided in these sections of the Code that the defendant may plead in his answer as many distinct or inconsistent defenses as he has, and that each affirmative defense must be set forth in distinct division of the answer. In an action against a railroad company for negligently burning plaintiff's hay, the first division of the answer, after admitting defendant to be a corporation as alleged, and denied "each and every other allegation contained in said petition not herein otherwise admitted." *Held*, that the words "not herein otherwise admitted," referred to the whole answer, and was not a statement of a different defense in a distinct division; and where the plaintiff's ownership of the hay sued for was admitted in the second division of the answer, the admission of improper evidence of such ownership was not prejudicial. *Comes v. The C., M. & St. P. R'y Co.*, 43 N. W. R., 235.

SECTION 2659, PARAGRAPH 3.—
In an action upon contract against several defendants a cause of action against the plaintiff arising out of matters independent of the contract, must be in favor of *all* the defendants in order to be pleadable as a counter-claim. And so in an action on a promissory note against the principal and surety, a cause of action against the plaintiff and in favor of the surety alone, cannot be thus pleaded; but in such case, as an exception to the rule, a cause of action in favor of the principal alone, may be so pleaded. *Corbett v. Hughes*, 75 Iowa, 281. See, also, *Reeves v. Chambers*, 67 Id., 81.

SECTION 2659.—
In an action by an administrator against several persons on a note given to the intestate, a debt contracted by the intestate to one of the defendants is a proper counter-claim under the Code (§ 2659), being a cause of action in favor of one of the defendants. *Sherman v. Hale et al.*, 76 Iowa, 383.

The term "counter-claim," as used in the Code, includes the "set-off," "counter-claim," and "cross-demand" of the Revision. And in an action by an administrator the two makers of a promissory note to his intestate, a claim in favor of one of the defendants for boarding the intestate's son may be pleaded as a counter-claim under this section of the Code. *Id.*

SECTION 2665.—
A plea in avoidance must, for the purpose of the plea, confess the matter which it seeks to avoid; but such confession need not be in terms, but may be by implication; and such implication will arise by operation of law, where the plea in avoidance does not deny any of the matter sought to be avoided. *Day v. The Mill Owners' Mutual Fire Ins. Co.*, 75 Iowa, 694.

An answer cannot be said to contain a counter-claim, so as to necessitate a reply, where a decree in favor of defendants on the allegations of the petition would give them all the relief which they would obtain on the averments of their answer. *Kavalier v. Machula*, 41 N. W. R., 590.

No reply is necessary to affirmative facts alleged in an answer as a defense, where the defense to such matters does not rest upon the facts avoiding them. *Chase v. Kaynor et al.*, 43 N. W. R., 269.

SECTION 2666.—
Although new matter alleged in a reply must not be inconsistent with the petition, yet where the answer and such reply raised an equitable issue, and the plaintiff filed a motion to try the cause as an equitable action, which was so ordered, and no objection was made to the reply, or the motion in the court below, and the cause proceeded to trial, *held*, that no objection to the reply could be heard in the supreme court. *Adams County v. Hunter et al.*, 78 Iowa, 328.

SECTION 2683.—
Where one creditor brings an action to set aside, in his favor, a conveyance alleged to be fraudulent as to him, and another creditor comes in and alleges that the conveyance is also fraudulent as to him, and asks for similar relief as to himself, he is not an *intervenor*, within the meaning of the Code, (§ 2683) because he is not interested in the matter in litigation, nor in the success of either parties to the action, nor against both; but he is a mere interloper, and his pleadings are unknown to the law and can have no legal effect. Consequently, a petition of intervention, so called, in such a case, does not give constructive notice, under the doctrine of *lis pendens*, that such person claims an interest in the land. *The Des Moines Ins Co. v. Lent et al.*, 75 Iowa, 522.

Where one citizen of a county has brought an action to restrain and abate a liquor nuisance, another citizen of the same county has no right to intervene and join the plaintiff in the prosecution, because the right of intervention, as given by this section of the Code, must be based upon private interest; while no private interest is involved in this case, but the action is brought wholly for the public benefit. *Conley, Int., v. Zerber*, 74 Iowa, 699.

SECTION 2686.—
In an action against a railroad company for a personal injury, alleged to have been caused by the negligence of the section boss in causing the speed of the train to be increased, the evidence showed that it was the conductor who ordered the increase of speed, *Held*, to be an immaterial variance under this section of the Code. *Rayburn v. Central Iowa R'y Co.*, 74 Iowa, 637.

SECTION 2689.—
Although an original assignment of errors may not be filed in the Supreme Court later than ten days before the first day of the trial term, yet an amendment to such assignment may be filed, under this section, upon motion for leave to do so, at any time before the submission of the cause; but, in this case, the costs accrued up to the time of filing the amendment are taxed to the appellant. *Stanley v. Barringer*, 74 Iowa, 34.

It is within the discretion of the court to allow a material amendment to be made in the pleadings at any time. *Eslich v. The Mason City & Fort Dodge R'y Co.*, 75 Iowa, 443.

Under this and other sections of the Code, it has become the rule to allow amendments, and to deny them is the exception. Per ROTHROCK, Justice, in *Newman v. The Cov. Mut. Ins. Ass'n*, 76 Iowa, 59.

SECTION 2691.—
The right of a defendant to a continuance on account of an amendment to the petition cannot for the first time be urged in the Supreme Court on appeal. *Wyland et al. v. Mendel et al.*, 78 Iowa, 739.

SECTION 2704.—
In an action against a city for negligence resulting in injury to the plaintiff while driving on its streets, the plaintiff must allege and prove that he was free from contributory negligence, and the defendant may, under a general denial, prove acts constituting contributory negligence on the part of plaintiff. And in this case it was *held* that the defendant was properly permitted, under a general denial, to prove that the plaintiff was intoxicated at the time of the accident, which was at night; it being beyond controversy that it is negligence for an intoxicated person to drive on the streets of a city in the night-time. *Fernbach v. City of Waterloo*, 76 Iowa, 508.

SECTION 2710.—
In an action to recover the value of hay destroyed by fire, the defendant in the first division of his answer, after admitting certain averments, proceeded: "And it denies each and every other allegation in said petition unless the same is herein otherwise admitted." In the second division certain other admissions were made. *Held*, that the word "herein," used in the first division, referred to the whole answer, and not only to the first division, and that therefore the first division did not set up a distinct defense unaffected by the admissions in the second division. Hence the erroneous admission of evidence to prove one of the

facts admitted in the second division was without prejudice, and it was not error for the court to state these admissions in the instructions to the jury. *Comes v. Chicago, Mil. & St. P. R'y Co.*, 78 Iowa, 391.

SECTION 2712.—
An amendment to a petition pleading a material fact, which is not denied by the answer, is to be regarded as admitted. *Eslich v. The Mason City & Fort Dodge R'y Co.*, 75 Iowa, 444.

SECTION 2717.—
In an action to abate a liquor nuisance, where plaintiff shows his right to maintain the action by alleging that he is a citizen of the county, such allegation is not put in issue by a general denial of the fact, nor by (what amounts to the same thing) a denial of knowledge or information sufficient to form a belief as to the truth of the averment. To form an issue in such case the facts relied on to negative the allegations of the petition must be specifically pleaded in the answer. *Craig v. Hasselman et al.*, 74 Iowa, 538.

SECTION 2729.—
In an action for personal, plaintiff alleged that she was walking north on C street, and that the defendants driving south at a "furious rate of speed" on the same street, and that when they reached M street they turned their horses suddenly to go up M street, and before she could get out of the way the horses ran against her. *Held* that the direction in which the defendants were driving, as well as the rate of speed, was immaterial, and need not be proved as alleged, but that the petition was sustained by evidence that defendants were driving east on M street, and that they negligently ran upon and injured the plaintiff, and an instruction that plaintiff could recover only upon proof of the litteral averments of the petition was erroneous. *Robbins v. Diggins*, 78 Iowa, 521.

SECTION 2730.—
This section provides that in certain cases the signature to a written instrument shall be deemed genuine, and admitted, unless denied by the person whose signature the same purports to be, but that, "if such instrument be not negotiable, and purports to be executed by a person not a party to the proceeding, the signature thereto shall not be deemed genuine, and admitted, if a party to the proceeding * * * state under oath that he has no knowledge or information sufficient to enable him to form a belief as to the genuineness of such signature." *Held*, where the plaintiff alleged himself to be the owner of a contract for the purchase of a machine, by written assignment from the vendor, and defendant put in issue the execution of the assignment and the plaintiff's ownership of the claim, that the burden was upon plaintiff to show the existence of the assignment, its substance, and that the contract was in force at the time of the action. *Probert et al. v. Anderson*, 77 Iowa, 60.

Under this section providing that when a written instrument is referred to in a pleading, and is incorporated in or attached to such pleading, the signature thereto shall be deemed genuine and admitted, unless the person whose signature the same purports to be shall, in a pleading or writing, filed within the time allowed for pleading, deny the genuineness of such signatures, under oath, notes, copies of which were attached to plaintiff's petition, may be introduced in evidence without proof of the genuineness of the signature, though defendant's answer consists of a general denial. *Dickey et. al. v. Baker et. al.*, 41 N. W. R., 24.

In an action on a promisory note, where the signature is not denied under oath, the note may be introduced in evidence without proof of the genuineness of the signature. The fact that the answer is sworn to makes no difference, where it contains no such denial. *Jones, Dickey & Co. v. Baker et. al.*, 76 Iowa, 303,

SECTION 2741.—
When the appellant in a law action seeks have the judgment reversed on the ground err in dismissing the case on the evidence given a received on the trial, it is not necessary or prop to bring up to the supreme court the eviden offered but not received. *The State ex rel Brad v. Chamberlin et al.*, 74 Iowa, 206.

Where on appeal it is designed to present to t court, the rulings of the court below in rejecti certain evidence, it is unnecessary and improp to set out in the abstract evidence not necessa to explain the exceptions taken to such ruling *Hammond v. Wolf*, 78 Iowa, 227.

SECTION 2742.—
Whether the successor in office of the judge w tries a cause may certify the evidence for t purpose of an appeal, *quarre*, but, at all event the certificate so made in this case was disr garded, because it was not entitled as in any ca and did not purport to be attached to the evidenc nor to identify it in any way. *Pattersonville Ed Inst. v. Coad*, 74 Iowa, 710.

A recital in the certificate of the trial judge t the evidence in an equity case, that the cause w submitted upon packages of depositions file upon certain dates, does not identify such ev dence as required by this section of the Code amended by chapter 35, laws of 1882. The certi cate should, by setting out the names of the wi nesses, or the name of the officer before whic the deposition was taken, and the date whe taken, or other explicit recital, identify with ce tainty the items of evidence referred to. *Runge Hahn*, 75 Iowa, 733; *Cross v. Burlington & S. W. R Co.*, 58. *Id.*, 63.

A certificate of the trial judge that the reco contains all the evidence introduced and offere is not sufficient to authorize a trial *de novo*, in th supreme court, where the abstract fails to stat that "*it contains* all the evidence contained in th record." *Polk County v. Nelson et al.*, and th "*Same v. The Same*," 75 Iowa, 648.

Under this section requiring the evidence in a equitable action to be in writing and certified by the judge at any time within the time allowed fo an appeal, and made part of the record, where th translation of the short-hand reporters notes i such action is not filed, though certified by th judge within six months, the time limited by sec tion 3173, for an appeal, the evidence will not b considered on appeal. *Kavalier et al. v. Machin et al.*, 77 Iowa, 121; Followed in *Thomas v. Mc Daneld*. Id., 209.

A certificate of the judge who tried the cau which does not include the evidence offered on th trial, but purports to certify only the evidenc introduced, is fatally defective, for the purp of a trial *de novo*, on appeal. This section requ that for the purpose of trying a cause anew in supreme court all the evidence *offered* on the must be certified by the judge, and made part the record. *Giltrap v Walters et al.*, 72 Iowa. And where the abstract fails to state or s that it contains all the evidence offered on trial, no trial *de novo* can be had. *Parks v. Ge ner*. Id.

An abstract on appeal in an action to set asid conveyance as fraduient, which contains no sta ment that it contains all the evidence and is certified by the judge *a quo*, does not authe a new trial under this section. *State v. Nelson* 43 N. W. R., 80.

Under this section the certificate of the cle for the purpose of identifying and authentica the record, and not for the purpose of ma written evidence of a part of the record. w must be done by the certificate of the ju *Runge v. Hahn*, 38 N. W. Rep., 389.

SECTION 2743.—
Under this section, the court, if either party quest it, shall give its decision in writing, sta separately the facts found, and the legal cond ions found thereon, and the whole decision sha a part of the record, and the finding shall have effect of a special verdict, and it was *held* that findings of fact and law must be made prior t

contemporaneous with the judgment; and that it is irregular for the court to enter judgment and file the said finding at a subsequent day of the term. An agreement between the parties that the time for filing a bill of exceptions should be extended for ninety days, gave no authority to the judge to file his findings of fact after judgment was rendered, *Hodges v. Goetzman*, 76 Iowa, 476.

SECTION 2844.—
When a defendant moves for a verdict at the close of plaintiff's evidence, and the court intimates that the motion will be sustained, but made no entry on the calendar or given a direction for defendant, there has been no "final submission" of the case, within this section, providing that plaintiff may dismiss his action "before final submission of the case to the jury, or to the court, when the trial is to the court." *Morrisey v. The Chicago & N. W. R'y Co.*, 45 N. W. R., 545.

SECTIONS 2779, 2780, 2782, 2783.—
Every party to an action tried to a jury is entitled to have every fact or point essential to his case called to the attention of the jury by his counsel in argument; and, guided by this principle, the court may, in its discretion, determine whether one or more counsel shall address the jury either in the opening or closing of the argument. Accordingly, where the plaintiffs had two counsel, and one of them addressed the jury in the opening argument and then stated that they would next be adressed by counsel for the defendant, after which his associate would address them further on behalf of the plaintiffs, and the court then adjourned until the next morning; when defendant's counsel waived their right to address the jury, whereupon plaintiffs' counsel who was to have made the closing argument claimed the right to further address the jury, which claim the court denied; *held* on appeal, that the supreme court could not find that the court below had abused its discretion; it not appearing that there was any failure by the counsel who addressed the jury on behalf of plaintiff to fully and fairly present every fact and point material to the plaintiffs case. *Carrothers & Murray v. McMurray*, 75 Iowa, 173.

SECTION 2788.—
It is error to read to the jury the pleadings in a case, in charging the jury, when such pleadings are not copied into the instructions as part thereof. *Hall v Carter et al.*, 74 Iowa, 364. But the judgment will not be reversed for such error where the issues were sufficiently stated in other paragraphs of the charge. *Id.*

SECTION 2789.—
This section provides that either party may take and file exceptions to the giving or refusing of instructions within three days after the verdict, and may include them in a motion for a new trial. *Held* that exceptions to instructions alleged for the first time in a motion for a new trial filed by agreement three months after the trial, were not in time to enable the court to review them, the agreement to extend the time for filing the motion for a new trial not having the effect of extending the time for filing exceptions. *Bush v. Nicholls*, 77 Iowa, 171. *Edwards et al. v. Cosgro et al.* Id., 428.

Where an exception to an instruction was filed the next day after the verdict was rendered, but it did not specify the part of the charge objected to, nor the ground of the objection, no question was thereby raised for review on appeal. *Norris v. Kipp*, 74 Iowa, 444.

Where an exception to an instruction was filed the day after the verdict was rendered, but did not specify the part of the charge, objected nor the ground of objection, raises no question for review in the supreme court. Id.

SECTION 2877.—
Under this section of the Code, a defendant served by published notice only, and against whom a judgment by default has been rendered, has two years from the date of the judgment to appear and move for a new trial. The two years do not begin to run from the date of the default, for the entry of a default is not the rendition of a judgment. *Walker v. Cameron et al.*, 78 Iowa, 315.

SECTION 3055.—
An action against a sheriff to recover property seized on execution cannot be maintained unless the notice of ownership provided by this section of the Code has been given. *Doolittle v. Hall*, 78 Iowa, 571.

SECTION 2787.—
Instructions and exception thereto are part of of the record, and they need not be made of record by bill of exceptions. *Allison et al. v. Jack et al.*, 76 Iowa, 205.

SECTION 2808.—
The jury may, in their discretion, return a special verdict. *Hall v. Carter*, 74 Iowa, 364.

SECTION 2822.—
Appellant agreed to submit her cause, on the facts and the law, to a referee, and she moved the court for the confirmation of the report of the referee as a whole; but on motion of the referee the court set aside the conclusions of law as found by the referee and rendered judgment on its own views of the law from the facts found by the referee. *Held* that appellant was not entitled, upon the setting aside of the referee's conclusions of law, to have the case submitted to a jury, as she would have been, had the finding of facts also been set aside. *In re Assignment of Hooker & Son*, 75 Iowa, 377.

SECTION 2831.—
Under this section the bill of exceptions must be filed during the term, unless the time is extended by consent or order of the court. *Deering v. Irving*, 76, Iowa, 519.

The time of filing a bill of exceptions may be extended by the stipulation of the parties filed in the cause and such agreement will be binding without the approval of the court. *The State ex rel Braden v. Chamberlin et al.*, 74 Iowa, 266.

SECTIONS 2831, 2835.—
A bill of exceptions to rulings on evidence, in the trial of an action at law, must be signed by the judge, or, in case he refuses to do so, by the by-standers. It is not sufficient that the bill be noted by the short-hand reporter and included in the extended transcript of his notes, which is certified by him. *The Ind. Dist. of Fairfield v. Farmer et al.*, 74 Iowa, 744.

This section of the Code requires a bill of exceptions to be filed during the term, unless by consent of parties, or by order of the court or judge, the time is extended. In a case where the bill was filed after the term, and without any such consent or order. *Held* that, it should be stricken from the files on motion in the supreme court. *Deering & Co. v. Irving*, 76 Iowa, 519.

SECTION 2837.—
The discretion lodged in the lower court, in the matter of granting new trials will not be disturbed by the supreme court, except in a clear case of abuse of that discretion. *Peebles v. Peebles et al.*, 77 Iowa, 11.

SECTION 2838.—
Matters not in hearing in the verdict may be shown by affidavits of jurors, as for instance, that, in determining whether a witness had, as he testified, signed a paper which was in evidence, they compared it with another paper which was erroneously supposed to be one which also claimed to have written. *Kruidnevier v. Shields*, 70 Iowa, 428.

SECTION 2844.—
Thereupon the final submission of a cause it is error to allow the plaintiff to reverse the right to dismiss without prejudice in the event that the court shall decide the case against him. *McArthur v. Schultz*, 43 N. W. R., 233.

Under this section, one of two or more plaintiffs in an action for partition of land, may dismiss the action as to herself, on the ground that she has

sold her interest in the land, and the fact that there are other plaintiffs in the suit is immaterial. *Ocheltree et al. v. Hill*, 77 Iowa, 721.

SECTION 2871.—
Where the order appealed from was one setting aside a judgment by default, *held* that the supeme court could not consider a complaint made by appellant that appellee was permitted to file a demurrer to the petition after the judgment had been set aside, instead of an answer, as required by this section of the Code. His remedy was to move to strike the demurrer from the files. *Jean v. Hennessy*, 74 Iowa, 348.

SECTION 2877.—
The two years limitation period provide in this section does not begin to run from the time of default, but from the time of the rendition of the judgment. *Walker v. Cameron et al.*, 43 N. W. R., 199.
The two years limitation, provided in this section, do not begin to run from the time of default, but from the time of the rendition of the judgment. *Id.*

SECTION 2882.—
Where judgment creditors are not made parties to the foreclosure of a senior mortgage lien, their right to redeem is absolutely barred in ten years from the date of their judgment, and cannot be extended by the levy of an execution on the land before the expiration of the ten years. *Albee v. Curtis et al.*, 77 Iowa, 644.
An action to enforce the lien of a judgment on real estate twelve years after its rendition is barred by this section of the Code, which makes the judgment a lien upon the land of the judgment debtor for ten years from the date of the judgment. *Polk County v. Nelson*, 43 N. W. R., 80.
A judgment is a lien upon the equitable interest in real estate, owned or held by the defendant at the time of its rendition, or subsequently acquired, so it was *held* that a judgment against defendant was a lien on real estate which he subsequently acquired and took possession of under a contract of purchase, though it had not been conveyed to him. *Rand & Co. v. Garner et al.*, 75 Iowa, 311.
A judgment ceases to be a lien on lands after ten years from the date of rendition. *Polk County v. Nelson et al.*, 75 Iowa, 648.

SECTIONS 2883, 2884.—
By these sections a judgment is a lien upon lands in the county from the date of rendition, but not upon lands in another county until the filing of a certified transcript therein. *Held* that these sections are to be construed with reference to the provisions requiring indexes to be kept and that until a judgment is properly entered in the index, it is not a lien, and the record is not notice, as against persons having no actual notice. A judgment is not rendered within the meaning of these provisions until it is indexed. *Ætna Ins. Co. v. Hesser et al.*, 77 Iowa, 381.

SECTION 2906.—
An adjudication denying the motion made under this section, estops plaintiff from subsequently bringing an action to recover the amount claimed, though in such special proceeding he only asks for a final order requiring defendant to pay over money collected, and not for a judgment for the amount. *Hawk et al. v. Evans et al.*, 76 Iowa, 563.
A motion based on said section and containing only the essential facts entitling plaintiff to the relief asked, is a privileged communication, and not libelous. *Id.*

SECTION 2933.—
It is the duty of an executor to probate the will, and he should not, in the absence of a showing of bad faith, be held personally liable for the costs. And in a case where the executors and others proposed the will for probate, but it was contested on the grounds of undue influence and incapacity, and there was a general verdict for the contestants, *held* that a motion to tax all the costs, except the fees of the witnesses to the will, to the proponents, was properly overruled. *Meeker et al. v. Meeker et al.*, 74 Iowa, 352.

SECTION 2949:—
The plaintiff held a judgment against one of the defendants rendered in Kansas. The other defendant was the wife of the judgment debtor, to her he had conveyed land in Iowa without consideration. *Held* that plaintiff might maintain an action in chancery against both defendants, who were non-residents of Iowa, for the purpose of obtaining judgment against the husband, on the Kansas judgment, and against the wife to subject the land in Iowa standing in her name, to the payment of the judgment so obtained; since it often happens in actions in chancery that the same relief is not sought or granted against all parties joined as defendants. *Taylor v. Branscombe et al.* 74 Iowa, 534.

SECTION 2951.—
Damages resulting from false representations, whereby one is induced to purchase land and pay therefor more than its true value, constitute a "debt for property obtained under false pretenses" within this section of the Code, prescribing such a debt as a cause for attachment. *Stanhope v. Swafford et al.*, 77 Iowa, 594

SECTION 2961.—
Under this section of the Code, where there is a recovery on an attachment bond for the wrongful suing out of the attachment, an attorney's fee may be allowed the plaintiff, even though he recover but nominal damages. *Lyman v. Landerbaugh*, 75 Iowa, 481.

SECTION 3016.—
A proceeding by intervention in an attachment suit, under this section of the Code, is not necessarily of an equitable nature, and cannot be so regarded on appeal, when not so treated in the court below. *The Clinton National Bank v. Studemann*, 74 Iowa, 104.

SECTION 2903.—
This being a provisional proceeding under this section of the Code, for the custody of property pending the determination of its rightful ownership, *held* that the evidence (see opinion) was sufficient to justify an order requiring the property to be placed in the custody of the court. *Brandt v. Allen*, 76 Iowa, 50.

SECTION 2906.—
A motion for an order upon an attorney to pay over money collected by him; under this section of the Code, and which contains only a statement of the facts essential to the recovery of the relief asked, is a privileged communication, and is not libelous. *Hawk & Co. v. Evans et al.* 76 Iowa, 563.

SECTION 2996.—
This secton of the Code requiring delivery bonds, given for attached chattels, to be filed with the clerk of the court, is directory merely, and a failure to so file the bond does not discharge the obligors therein. *The New Haven Lumber Co. v. Raymond et al.*, 76 Iowa, 225.

SECTIONS 3016, 3019.
Where attached property is ordered discharged upon the petition of a third party claiming it, under section 3016 of the Code, the plaintiff, in order to prevent the execution of the order, must perfect his appeal within two days thereafter, as provided in section 3019 of the Code; otherwise, the property will be discharged by operation of law. *Ryan v. Heenan*, 76 Iowa, 589.

SECTION 3019.—
This section is not limited to a dissolution of the attachment on motion of the defendant, but applies to an order of discharge obtained one intervening under section 3016, claiming title to the property, *Id.*

SECTION 3055.—
A notice to the sheriff, under this section that the property about to be levied upon by the sheriff, which states merely that he must not "make levy on * * * any personal property situated on

(certain lands) the same being my own individual property, or that which I have leased, and which I am in full possession of," is indefinite as to the ownership of the property, and cannot be made the basis of replevin against the sheriff. *Doolittle v. Hall, Sheriff*, 43 N. W. R., 535.

Chapter 117, laws of 1886, giving to junior creditors the right to levy on mortgaged chattels, upon tender or payment of the mortgage debt, does not authorize the mortgagee to replevy the chattels from the officer making the levy, without giving the notice of his claim required by section 3055 of the Code, even though the execution creditor has not offered to pay the mortgage debt. *Danforth v. Harlow*, 71 Iowa, 236.

The provisions of this section of the Code applies to special as well as general executions. *The Bank of Reinbeck v. Brown, Sheriff*, 76 Iowa, 696.

SECTION 3090.—

Where an execution sale is set aside because the land was a homestead, a fact not known to the purchaser at the time of the sale, he is entitled under this section to recover the amount paid on his purchase, but has no right to have the judgment assigned to him. *Jones v. Blumenstein et al.*, 77 Iowa, 361.

SECTIONS 3101, 3112.—

Where a confession of judgment authorizing the entry of a decree of foreclosure of a deed of trust contains an agreement that the sale under the decree shall be absolute, with no right of redemption, a decree and sale in accordance with the terms of the agreement is conclusive against a subsequent judgment creditor. *Cook v. McFarland et al.*, 43 N. W. R., 519.

Such agreement is not invalidated by the provisions of the above sections of the Code, regarding the rights of holders of junior liens to redeem from prior judgments and sales thereunder. *Id.*

SECTION 3102.—

While the statutory right to redeem property sold under execution can be exercised only within the period and in the manner prescribed by the statute, the right of the grantee in a fraudulent conveyance to discharge a judgment against his grantor, which has been adjudged a lien on the property, is an equitable one, and quite different. And where a husband conveyed his farm to his wife in fraud of his creditors, and afterwards a judgment was recovered against him, and in an action against her it decreed to be a lien on the farm, and before the sale she appealed from the decree, but the appeal was not decided until more than a year after the sale; *held* that, the sheriff was properly enjoined from executing a deed under the sale at the end of the year, and that upon the decree creating the lien upon the property being affirmed, and the payment by her, soon thereafter, to the clerk of the court in which the decree was rendered, of the amount of the lien, though this was more than a year from the date of the sale, the property was discharged of the lien, and the injunction against the sheriff was properly made perpetual. *Teabout v. Jaffray & Company et al.*, 74 Iowa, 28.

SECTIONS 3112, 3115.—

After the expiration of nine months from the date of an execution sale of land, no creditor has a right to redeem the land, unless the creditor who has last redeemed within the nine months enters on the sale-book within ten days after the expiration of the nine months, the utmost amount he is willing to credit on his claim, as provided in section 3115 of the Code. In other words, the creditor who has last redeemed within the nine months, may if he choose, hold the land as against all persons except the owner, but his lien, and the claims out of which it arose, will in that case be extinguished. *Leap v. Forrest*, 76 Iowa, 195.

SECTION 3133.—

Under this section providing that the death of only one of the defendants shall not prevent execution being issued, which, however, shall operate alone on the survivors, and their property, execution issued after the death of a sole defendant is inoperative, and it is immaterial that the property was already held under attachment before defendant's death, or that the judgment *in rem*; service having been made by publication. *Bull v. Gilbert et al.*, 44 N. W. R., 815.

SECTION 3148.—

A referee appointed under section 3137 of the Code has jurisdiction under this section to issue a warrant of arrest of a debtor, upon the proof being made as required by this section. *Marriage v. Woodruff*, 77 Iowa, 291.

SECTION 3154.—

Where a petition for a new trial was founded on fraud practiced by the successful party in obtaining the judgment and on unavoidable misfortune preventing the petitioner from defending, as authorized by this section of the Code, it was *held*, that the appeal from the order striking the petition from the files, was not taken within six months from the rendition of the default-judgment was immaterial, as that judgment was not involved in the appeal in the sense that the appeal was taken directly from it. *Wiechard v. McNeil*, 42 N. W. R., 578.

Under this section a motion to set aside a judgment by default may be made at a term subsequent to the term at which it was rendered. *Walker v. Freelove*, 45 N. W. R., 303.

SECTION 3154.—

Judgment by default for want of an answer was rendered against the defendant Dec. 17, 1887. June 5, 1888 he filed a petition for a new trial under this section of the Code, on the grounds of fraud and unavoidable casualty, which was stricken from the files. Within six months after the last order, but more than six months after the judgment by default, he appealed to the supreme court. On motion of the appellee to dismiss the appeal because not taken in time, *held* that, though the appeal could not properly be regarded as taken from that judgment, yet that judgment was involved in the appeal from the order striking the petition for a new trial from the files, and hence the motion could not be granted. *Wishard v. McNeil*, 78 Iowa, 40.

Plaintiff made default in an action against him, although he knew that the debt on which he was sued had been paid and receipts given therefor. In an action to set aside this judgment rendered by default, he alleged that he was not able to find the receipts prior to the rendition of the judgment, but that he had since found them; but he did not allege facts showing due diligence in searching for the receipts. *Held*, that he was not entitled to a new trial, under section 3154 of the Code, on the ground of newly discovered evidence. *Heathcote v. Haskins & Co.*, 74 Iowa, 566.

SECTIONS 3163, 3164.—

These sections providing that the supreme court has jurisdiction over all judgments and decisions of all courts of record, do not provide for an appeal from the verdict of a jury, and an appeal will be dismissed where the record simply shows that a verdict was rendered thereon. *Dicky v. Givens et. al.*, 41 N. W. R., 608.

SECTION 3168.—

Where the original notice is merely defective, and having been properly served, on an appeal by the defendant from a judgment by default, without having appeared in the court below to correct the error, the judgment will be affirmed as this section provides that a judgment or order shall not be reversed for any error which can be corrected on motion in an inferior court until such motion has been made and overruled. *Gray v. Wolf*, 77 Iowa, 630.

If the plaintiff has failed to establish his rights to recover, the defendant should move the court to direct a verdict in his favor, or ask an instruction to that effect. He cannot have a reversal of the judgment without a motion in the court below

for a verdict, upon the ground that the evidence does not sustain the allegations of the petition. *Kirk v. Litterest*, 71 Iowa, 71.

SECTION 3173.—

Under this section, prohibiting appeals to the supreme court, when the amount in controversy does not exceed $100, unless the trial judge shall certify that the cause involves a question of law upon which it is desirable to have the opinion of the supreme court, the supreme court has no jurisdiction to review the ruling of the court below, in such a cause touching the sufficiency of evidence, to warrant the submission of questions to the jury or its ruling on a motion to set aside a verdict, as being contrary to law and the evidence, or to instructions given, since these are questions of *fact* and not of *law*. Nor can it review rulings granting or refusing instructions in such cases as this, because this involves questions of fact, as well as of law. *Bensly v. Chicago & N. W. R'y Co.*, 44 N. W. R., 544.

Where a decree was rendered in a cause, adjudicating all the issues between the original parties, but the final disposition of the case was delayed by reason of an intervention. *Held*, that the time for taking an appeal from the decision of the issues between the original parties, commenced to run from the time of entering the first decree, and its correctness could not be called in question in any appeal taken after six months from such decree. *Carter v. Davidson*, 73 Iowa, 45.

The certificate of the trial judge required by this statute for an appeal to the supreme court of a cause involving less than $100, is not sufficient to confer jurisdiction upon the appellate court when it fails to state that the questions certified are involved in the case. *Beeler v. Garrett et al.*, 76 Iowa, 231; citing *Beach v. Donovan*, 74 Id., 543.

An action to foreclose a mortgage is not a case involving an interest in real property within the meaning of this section of the Code, providing that the limitation on appeals prescribed therein shall not apply to such cases, and, if it involve less than $100, can only be appealed on the certificate of the judge upon a question of law. *Brown v. Smith et al.*, 76 Iowa, 315.

The amount in controversy must be determined from the pleadings alone; that it must be possible, consistently with the pleadings, to render judgment against one of the parties for more than $100; and where plaintiff's claim of about $70 is admitted, with the exception of two or three dollars, and defendant puts in a counter-claim of only $102, the case is not appealable without a certificate. *Buckland v. Shephard et al.*, 77 Iowa, 329.

Where the amount in controversy is less than $100, and there is no certificate of the trial judge, as provided in this section, the supreme court has no jurisdiction. *Wilcox v. Chizum, Treas.*, 42 N. W. R., 636.

The fact that it is apparant from appellant's abstract, in an appeal from a refusal to tax an attoyney's fee in an action to abate a nuisance, that he would not be entitled to a fee exceeding $100, in amount, does not necessitate a certificate by the trial judge, as that is required only when it affirmatively appears from the pleadings that the amount involved is *less* than $100. *Farley v. Geisheker*, 43 N. W. R., 279.

Where the averments of the petition and the prayer for judgment together show with certainty that the amount in controversy exceeds one hundred dollars, it is sufficient to give the supreme court jurisdiction under this section of the Code. *Rutter v. Plate et al.*, 41 N. W. R., 474.

Facts essential to the jurisdiction of the supreme court, must appear on the face of the record, and, as an appeal must be taken within six months after the rendition of the judgment, jurisdiction cannot be assumed where the record gives merely the day and month, but not the year, of the entry of judgment, and states that notice of appeal was served on the attorneys of the adverse party and on the clerk, but fails to show how long after the entry of judgment the appeal was taken. *Gleason et al. v. Collett*, 77 Iowa, 448.

The certificate required by this section must be made at the time of the trial, and then made part of the record. *Brown v. Grundy County*, 43 N. W. R., 529.

SECTION 3174.—

The requirement of this section that, when an appeal is taken by "part of several co-parties" the notice of appeal must be served upon the other co-parties, is not jurisdictional, but in such case the appellate court may determine the questions arising between the parties before it, and which do not effect the rights of the parties not served with notice. *Wright et al. v. Mahaffey et al.*, 76 Iowa, 96.

The failure to serve notice of appeal is not jurisdiction, but the court can consider such questions in the case as affect only the rights and interests of the appellant and adverse party. *Moore v. Held*, 73 Iowa, 538.

SECTION 3175.—

A party who has not appealed cannot insist upon other or different relief from that awarded him in the court below. *Lamb v. Council Bluffs Ins. Co.*, 70 Iowa, 268.

SECTION 3178.—

Although appellant's abstract stated that notice of the appeal had been served on the clerk of the trial court, appellee's abstract, which was not controverted, and must therefore be taken as true, denied that the notice was served on the clerk. As such service is necessary to perfect the appeal, it follows that the appeal must be dismissed. *Indt. Dist. of Sheldon v. Apperle et al.*, 76 Iowa, 238. See, also, *McManus v. Swift*, Id., 576; *Littleton Sav. Bank et al.*, Id., 660.

The supreme court is without jurisdiction of a cause submitted on an abstract reciting that defendant "filed notice and acceptance, by plaintiff's attorney, of appeal," but not reciting service of notice on the clerk, as required by this section of the Code; no transcript being filed, having no jurisdiction, the cause was dismissed by the court on its own motion. *McManus v. Swift et al.*, 76 Iowa, 576.

SECTIONS 3178, 3179.—

Where the abstract, on appeal to the supreme court, contains a notice of appeal, but contains no evidence or statement that the notice had been served on the appellee or his attorney, or on the clerk of the trial court, the supreme court acquires no jurisdiction except to dismiss the cause. *Michel v. Michel*, 74 Iowa, 677.

A notice stating the appeal to be "from the decision of the said district court," was insufficient, as not showing what decision, final or otherwise, was intended. *Weiser v. Day et al.*, 77 Iowa, 25.

Under this section of the Code, an appeal is taken by the service of a notice in writing on the adverse party, and also on the clerk of the court wherein the proceedings were had, stating the appeal, etc. Where the abstract or appeal fails to show service of such notice on the clerk, the cause will be dismissed. *Hayden v. Goeppinger et al.*, 41 N. W. R., 607.

SECTION 3179.—

In the absence from the record of copies of notices of appeals to the supreme court, there is no sufficient showing that an appeal has been taken. *Cox et al. v. Macy et al.*, 76 Iowa, 316.

Under this section the clerk of the court from which an appeal is taken to the supreme court must transmit a *copy* of the record to that court. Such court cannot recognize the *original* papers, except the testimony; nor that, when only certified by the original certificate filed with the other papers. *Id.*

SECTIONS 3179, 3181.—

When the statute requires a transcript of the record in a case to be sent to the court on appeal, the requirement is not complied with by filing the original papers in the court. And so, in an equity case, where a trial *de novo* was sought, and there was no agreed abstract, and appellee claimed that

did not appear that the evidence was before the court, *held*, that the original certificate of the trial judge to the evidence could not be considered, and, there being no transcript of such certificate, the evidence must be regarded as without certificate and the appeal dismissed. And in the same case, for a like reason, *held*, further, that the original notices of appeal filed in the appellate court, instead of copies thereof, as the law requires, could not be considered as showing that an appeal had been taken, and for that reason, also, the appeal must be dismissed; especially since the original notices of appeal showed that service thereof was made before the day of the judgment appealed from. *Id.*

SECTIONS 3180, 3182.—
Under these sections all causes appealed more than thirty days before a term of the supreme court are for hearing at that term, unless continued by consent for cause; and a recital in an appellant's notice of appeal that the case will be for hearing at a term following one which is more than thirty days from the service of such notice is mere surplusage, and does not affect the appeal or the time of the trial thereof. *Mickley v. Tomlinson et al.*, 41 N. W. R., 311.

SECTION 3185.—
Since the abolition of the circuit court (chap. 134, laws of 1886) applications for change in, or correction of, the records of that court, must be made to the district court, and that without an order from the supreme court. *DeWolfe v. Taylor*, 71 Iowa, 648; *Reynolds v. Sutliff*, Id., 549.

SECTION 3181, CHAPTER 56, LAWS OF 1874.—
It is not the practice in the supreme court under this section of the Code to affirm causes summarily on motion, after they have been prepared for submission on the part of appellants, on the ground of delay in presenting abstracts and arguments. If prejudice has resulted to the other party by reason of such delay, redress must be sought in some other way. *Fowler v. Town of Sawberry Hill*, 74 Iowa, 644.

SECTION 3183.—
An original assignment of errors cannot be filed in the supreme court later than ten days preceding the first day of the term at which the appeal is for hearing. *Stanley v. Barrenger*, 74 Iowa, 34.

SECTION 3186.—
An appeal from a decree abating and enjoining a liquor nuisance, and the filing of a *supersedeas* bond, does not suspend the injunction, but only the abatement of the nuisance, and for violation of the injunction pending the appeal the defendant may be punished for contempt. *Lindsey v. Clayton District Court*, 75 Iowa, 510.

SECTION 3207.—
Under this section, providing that assignments of error must point out the very error objected to, and among several points in a motion must point out which is relied on as error, and that the court will only regard errors assigned with requisite exactness, an assignment of error objecting to the admission of testimony, which does not point out the testimony to which objection is made, is insufficient and will not be considered. And the same is true as to an assignment that the court erred in refusing to instruct the jury to return a verdict for the defendant when the motion to instruct was based upon three grounds, neither of which was designated; also as to an assignment with reference to a motion to set aside the verdict and for a new trial, based upon seven grounds, neither of which is specifically relied on; and also as to a general assignment that "the court erred in rendering judgment against the defendant on the verdict." *Albrawskey v. Iowa City*, 76 Iowa, 301.
This section provides that assignments of error must point out the very error objected to, and that among several points in a demurrer or motion the assignment must designate which is relied on as error, and that the supreme court shall regard only such errors as are assigned with the requisite exactness. Under this rule five different assignments of error in the present case were disregarded. *Id.*

SECTIONS 3226, 3228, 3229, 3242.—
Section 3226, providing that no counter-claim shall be allowed in an action of replevin, was not meant to prevent the defendant from setting up the value of the property and the damages suffered by him on account of the wrongful detention of the property under the writ, and recovering the property, or its value, and the damages, etc., for the statute specially provides that he may do this. *McIntire v. Eastman*, 76 Iowa, 455.

SECTION 3216.—
By this section of the Code the writ of *certiorari* lies in which an inferior court or officer exercising judicial functions is alleged to have exceeded his proper jurisdiction, or is otherwise acting illegally, "when in the judgment of the superior court there is no other plain, speedy and adequate remedy." section 3345 provides that a civil action may be brought in the name of the state, *inter alia*, "against any person acting as a corporation within this state without being authorized by law"; also, "against any corporation doing or omitting acts which amount to a forfeiture of their rights and privileges as a corporation, or exercising powers not conferred by law." The defendant, a foreign insurance corporation, having received from the auditor of Iowa, a certificate under the provisions of the law as to insurance corporations, was alleged to be offending against the laws of the state by making more than one kind of insurance. *Held* that *quo warranto* and not *certiorari* was the proper manner of inquiry into such charges. *State, ex rel. Phillipps, v. Fidelity & Casualty Co.*, 77 Iowa, 648.

SECTION 3226.—
This section of the Code providing that no counter-claim shall be allowed in an action of replevin does not prevent the defendant from recovering damages in such action for the detention of the property replevied. *McIntire v. Eastman*, 76 Iowa, 455.

SECTIONS 3329, 3330.—
Where the holder of a first mortgage on land, for further security, takes a deed for the land, and gives back a bond to recover upon the payment of the sum named, the mortgage does not, in the absence of an intention to that effect, merge into the legal title, so as to let in a second mortgage as a first lien on the land; and such intetention will not be presumed, but the contrary. Since such result would be against the interest of the first mortgagee. Indeed, the effect of the deed and bond to reconvey is simply that of another mortgage under section 3329 of the Code. *McElhaney v. Shoemaker et al.* 76 Iowa, 416.

Under section 3329 of the Code, providing that where the vendor of real estate has given a bond to convey the same upon payment of the purchase money, the purchaser may in default of payment, be subjected to an action to foreclose his interest, and under section 3330 the vendee, for the purpose of foreclosure, will be treated as a mortgagor, and a transaction in which a mortgagee takes a conveyance of the legal title and executes a bond for a deed to reconvey to the mortgagor on payment of the debt, is a mortgage; and a mortgage to the previous lien, and prior to such transaction, does not acquire priority, in the absence of an intent to effect a merger. *McElhaney v. Shoemaker et al.*, 76 Iowa, 416.

SECTION 3331.—
Under this section of the Code, as well as at common law, a private individual is not allowed to maintain an action to restrain or abate a public nuisance, unless he can show that it occasions some peculiar or special damage or injury to him. Accordingly, where defendant built a bridge over a lake claimed by the plaintiff to be navigable, and the plaintiff afterwards engaged in the business of keeping boats to let for pleasure and fishing purposes on the lake, and the bridge proved an impediment to his boats, and made his business

less profitable than it would have been, *held* that he had no peculiar right to navigate the lake, and could not maintain an action to abate the bridge as a nuisance. *Innis v. The Cedar Rapids, Iowa Falls & N. W. R'y Co. et al.*, 76 Iowa, 165.

SECTION 3388.—
Plaintiff and defendant entered into a contract by which the former leased the road of the latter for forty years at a stated sum per mile per year. This action was brought to vacate the contract on the ground of fraud by defendant in procuring it, and to restrain the defendant from bringing any actions to recover installments of rent due under it. *Held* that, the case did not justify the interposition of equity, because the fraud complained of could be finally adjudicated in one action at law for rent, and that a temporary injunction was warranted neither by this section of the Code, nor by the usages of courts of equity in such cases. *The D. & S. C. R'y Co. v. The C. F. & Minn. R'y Co.*, 76 Iowa, 702.

SECTION 3483.—
The validity of a judgment sentencing a defendant to imprisonment until his fine is paid cannot be questioned upon *habeas corpus*, on the ground that no time is fixed for the imprisonment. Since this section of the Code provides that it shall not be permissible in such a proceeding to question the judgment of a court when acting within its legitimate province and in a proper manner, and the judgment is only erroneous and not void. *Elsmer v. Shirgley*, 45 N. W. R., 393.

SECTION 3497.—
A commitment for contempt upon facts not within the knowledge of the court, but proved by the testimony of others, is void, unless the evidence be reduced to writing and filed and made of record, as required by this section of the Code, before the order of commitment is made. And in a case where the evidence was taken down by the short-hand reporter, but his notes were never filed, but some weeks later a translation was filed, not for the purpose of remaining of record in the district court, but for use in the supreme court, *held* that the order of commitment was of no effect, and that the party committed should be discharged. *Dorgan v. Granger, Judge*, 76 Iowa, 156. See, also, *Gietz v. Aylesworth*, 66 Id., 632; *Goetz v. Stutsman*, 73 Id., 694.

SECTION 3511.—
Under this section of the Code a justice of the peace has jurisdiction of an action commenced by attachment of property within the township, though the defendant is a non-resident of, and is not found within, the state, and is not personally served with notice. Sections 3507, 3509, limiting the jurisdiction of justices of the peace, apply only to actions commenced by personal service, or to actions in the district court. *Anderson v. Union Pacific R'y Co.*, 77 Iowa, 443.

SECTION 3516.—
A party objecting to a decision rendered in a justice's court must, in an intelligible manner, and at the time, make his objections known, in order to have the proceedings reviewed by proceedings in error. *Condsay v. Stifel*, 77 Iowa. 283.

SECTIONS 3567, 3568, 4609.—
Judgments for fines and costs rendered in justice's courts, in prosecutions for violations of the prohibitory liquor law, are not in any case liens on the real estate used for the unlawful sales, but may be made such in proper cases, by filing transcripts in the office of the clerk of the district court, under sections 3567, 3568 and 4609 of the Code; and the district court has no authority, in an action brought for that purpose, to declare such a judgment, of which no transcript has been filed, a lien on real estate and to direct the same to be sold for its satisfaction. *State v. McCulloch et al.*, 77 Iowa, 450.

SECTION 3568.—
A judgment rendered in a justice's court, a transcript of which is filed in the district court, becomes a lien on real estate of defendant for t years from the filing of the transcript, and from the date of the judgment only. *Rand & Co. Garner et al.*, 75 Iowa, 311.

SECTION 3583.—
In this section, requiring a justice of the pea when an appeal is taken, to file in the office of t clerk of the appellate court all the original pap and a transcript of his docket, the word "f means deposit, and when the papers and tra script are so deposited by him the cause is deem in the appellate court. *Harrison v. Clifton*, 75 Iow 737.

SECTIONS 3664, 3665.—
Section 3665 of the Code provides that the rul the fourth subdivision of section 3664 shall n apply "when the purchase money, or any port thereof, has been received by the vendor, or wh the vendee, with the actual or implied consent the vendor, has taken and held possession the under and by virtue of the contract." *Held*, t this last provision relates solely to contracts f the purchase and sale of real estate, and does n have the effect to qualify the rule enacted in t preceding provision as to leases for a period n exceeding one year. *Thorp v. Bradley*, 75 Iowa. Following *Hunt v. Coe*, 15 Id., 197.

SECTION 3502.—
The provision of this section that the "app lant must pay the costs of the appeal unless obtains a more favorable judgment than that fo which he appealed," applies only to appeals the party recovering the judgment. Where a appeal is by the party against whom the judgme was rendered, he must, to avoid the costs of t appeal in case the appellee recovers some amou proffer to pay a certain amount, with costs provided in section 3503. *Cohen v. Gibson*, 62 N. W R., 654.

SECTION 3614.—
The "three days' notice to quit" required b this section to be given to the defendant in a action of forcible entry and detainer, authoriz by section 3611 to be brought against a tena holding over after the expiration of his term, ca be given before the expiration of the term, and not bad though given more than three days befo such expiration. *McClain v. Calkins*, 77 Iowa, 4 Followed in *Drain v. Jacks*, Id., 629.

SECTION 3620.—
In an action of forcible entry and detainer, contention by defendant that he is entitled to d possessions of the land in controversy, because a contract by plaintiff to sell it, defendant co ceding the title to be in plaintiff, is not prohibi by this section of the code, providing that t question of title shall not be investigated in th kind of action. *Hall v. Jackson*, 77 Iowa, 201.

SECTION 3636.—
Where the defendant in a criminal cause tes fies in his own behalf, and there is evidence ten ing to impeach his character for truth, i instruction that such evidence shall be regard by the jury only in determining the credit, if a to be given defendant's testimony as a witnes his own behalf, sufficiently restricts the appl tion of such evidence to defendant's character a witness. *State v. Rainsbarger*, 45 N. W. R., 38

SECTION 3639.—
Non-expert witnesses cannot be allowed to opinions as to the mental condition of a tes on the day the will was made, when they di see him, and could not testify as to his cond on that day. *Blake . Rourke*, 74 Iowa, 519.
This section of the Code does not prohib heir from testifying for the executor, in an a against him by another heir, where the act not based on any alleged hereditary rights. *row v. Brown*, 76 Iowa, 179.

SECTION 3647.—
Before a witness is entitled, under this sec to be excused from answering questions rel

to his participation in a fraudulent conveyance, on the ground that his answers would tend to criminate himself, it must reasonably appear, not only that the conveyance was constructively fraudulent so as to be invalid as against creditors, but that it was criminally fraudulent under the statute; also, that prosecution for the offense, if any, is not barred by the statute of limitations. *Mahanke v. Cleland*, 76 Iowa, 401.

SECTION 3643.—
This section of the Code prohibits physicians to testify as to communications made to them in their professional capacity, unless the party in whose favor the prohibition is made waives the right conferred. *Held*, the fact that plaintiff testified to her general good health during several years prior to an accident, and that a certain physician had occasionally attended her, constituted no waiver of the right; and it was error to allow him to testify to communications then made as to her condition of health. *McConnell v. City of Osage*, 45 N. W. R., 550.

A plaintiff and her husband were held competent to testify as to an oral contract between plaintiff and her mother, who was dead, in a suit to enjoin the sale of the homestead to satisfy an execution against plaintiff's brother as an heir of her mother in the homestead. This section of the Code, in prohibiting them from testifying in a suit against the executor, etc., in support of such contract, not applying to a suit of a judgment creditor of an heir. *Drake v. Painter et al.* 77 Iowa, 731.

SECTION 3641.—
In a civil action by an administrator, the wife of defendant is a competent witness for him as to transactions between the deceased payee of the note sued on, and the defendant, at which she claimed to have been present under the provisions of this section, which makes husband and wife competent witnesses for each other in civil actions. *Auchampaugh v. Schmidt*, 77 Iowa, 13.

SECTION 3647.—
Under this section, which provides that a witness shall not be required to answer a question, when the matter sought to be elicted will tend to render him criminally liable, or to expose him to public ignominy, a witness is not *prima facie* excused from answering questions asked in support of allegations of a petition that witnesses' husband had conveyed land to her in fraud of creditors, and that she had received with like intent, and without consideration, unless she can show reasonable grounds for believing that her answer to any particular question would expose her to public ignominy, or to prosecution under section 4074 of the Code. Neither ignominy nor criminality is necessarily involved in such conduct as that alleged, and there is nothing to show but that, were she criminal in the matter, her prosecution would be barred by limitation. *Mahanke v. Cleland, Judge, et al.*, 76 Iowa, 401.

SECTION 3648.—
A witness may be asked whether he has ever been convicted of a felony; but not whether he has ever been convicted of a crime, since crimes are not all felonies. *Hanners v. McClelland.*

SECTION 3655.—
No valid objection can be made to the testimony of experts as to the characteristics of different signatures, where it is confined to the signature in controversy, and others admitted to be genuine. *Riordan v. Guggerty*, 74 Iowa, 688.

Under this section, providing that "evidence respecting handwriting may be given by comparison made by experts, or by the jury, with writings of the same person which are proved to be genuine," the opinion of a witness as to the genuineness of a disputed lost signature which he has seen, based upon a comparison of his recollection of it with a signature of the same person in evidence, and admitted to be genuine, is competent. *Hammond v. Wolf*, 78 Iowa, 227.

SECTION 3652.—
The provisions of this section of the Code applies as well to oral as to written agreements. *Cobb v. McElroy*, 44 N. W. R., 824.

SECTION 3655.—
This section of the Code renders competent the opinion of an expert as to the genuineness of the signature to the disputed instrument, which was lost before the trial, but after he had examined it, based on a comparison of a genuine signature with his recollection of the appearance of the disputed signature. *Hammond v. Wolf*, 42 N. W. R., 778.

SECTIONS 3663, 3665.—
These sections of the Code provide that no evidence of contract for the creation or transfer of any interest in lands, except leases for a term not exceeding one year, is competent, unless it be in writing and signed by the party to be charged; but that this provision shall not apply where the purchase money, or any portion thereof, has been received by the vendor, or the vendee, with the actual or implied consent of the vendor, has taken and held possession thereof under and by virtue of the contract, *held*, that when land is sold under an oral agreement that the vendee will execute a mortgage for the unpaid purchase money, the delivery of possession to the vendee being the consideration for such oral agreement, brings the same within the exception of the statute. *Devin et al. v. Egleston et al.*, 44 N. W. R., 545.

The lien acquired by the vendor by virtue of such oral contract, is superior to that of a subsequent judgment creditor of the vendee, where the credit was not extended on the faith of the land. *Id.*

This lien arising by contract, and not by mere vendors, the lien is not affected by the vendee's conveyance of the land, under section 1949 of the Code. *Id.*

SECTION 3664.—
It is not competent to establish by parol evidence a trust in real estate alleged to have been established by a verbal agreement. *Richardson v. Haney et al.*, 76 Iowa, 101.

SECTION 3665.—
In order to take a parol gift of lands out of the statute of frauds, on the ground of part performance, the burden is upon the person seeking to enforce it to establish the parol contract by definite and unequivocal testimony, and to show that the acts alleged to be done thereunder are clear and definite, and referably to such contract. *Truman v. Truman et al.*, 44 N. W. R., 721.

SECTIONS 3685, 3687.—
The plaintiff served upon defendant's secretary a subpœna, directing him to produce at the trial certain papers to be used as evidence. The secretary refused to produce the papers, although admitting that he had them in his possession. Plaintiff then orally moved the court for a rule on the defendant for the production of the papers, but the court denied the order. *Held*, that this ruling was right, because under these sections of the Code, the application for such an order must be based upon a petition, stating the facts expected to be proved by the papers. The motion was not directed against the witness for contempt in refusing to obey the subpœna, which would have made an entirely different case. *Beebe & Co. v. The Eq. Mut. Life Ins. Association*, 76 Iowa, 129.

SECTION 3732.—
Under this section, in respect to serving notice to take depositions, it is a good service on the plaintiff and one of the defendants, if a notice addressed to the attorney who has appeared for both, is accepted by him, though he appends to his signature to the acceptance language indicating that he is the attorney of plaintiff only. *Walker v. Abbey et al.*, 77 Iowa, 702.

SECTION 3777.—
Although this section does not, nor does any statute, prescribe the time within which the translation of the short-hand reporter's notes

must be filed, yet it has been *held* in *Hammond v. Wolf*, 42 N. W. R., 778, that they could be properly filed at any time before the appeal was required to be perfected.

Where a skeleton bill of exceptions states that the short-hand reporter's notes are on file, and makes them and the translation thereof a part of the bill, and directs the clerk to copy the translation thereof into the bill, this is sufficient, even though the translation is not filed until after the filing of the bill. *Hunter v. The Bur., Cedar Rapids & N. R'y Co.*, 76 Iowa, 490.

SECTION 3804.—

Under this section of the Code entitling a justice of the peace to fees "for each official certificate," the justice was not entitled to fees for the certificates attached to the copies of papers, as they failed to comply with section 3806, which requires that the certificate shall show that the fees claimed were taxed in criminal cases when the prosecution failed, or that the fees could not be made from the persons liable to pay them. *Hinesley v. Mahaska County*, 43 N. W. R., 198.

SECTIONS 3804, 4348, 4349.—

This section provides that the fees of a justices of the peace for the *trial* of criminal cases shall be one dollar for each six hours or fraction thereof; section 2730, defines a trial to be the judicial examination of the issues whether of law or fact, in the cause; and sections 4348, 4349 declare that in a criminal case an issue of law arises upon a demurrer to the indictment, and issue of fact on a plea of not guilty, or of former convictions or acquittal. *Held* that, under these provisions, where a justice of the peace pronounces judgment on a plea of guilty, there being no objection to the information, and no evidence introduced, there is no trial, and the justice not entitled to such fee. *Mathews v. Clayton County*, 44 N. W. R., 722.

SECTION 3814.—

This section allows witnesses five cents per mile for actual travel, both ways, to attend court, and provides that, in criminal cases, where the defendant is adjudged not guilty, such fees shall be paid by the county. Section 3818, provides that, in no criminal case shall witnesses for the defense be subpœnaed at the expense of the county, except upon order of the court or judge before whom the case is pending, and then only upon a satisfactory showing that the witness are material and necessary for the defense. *Held* that, where a witness in a criminal case attends without being subpœnaed, at the request of the defendant's counsel, he is not entitled to mileage, though he may have been included in the order granting the defendant authority to subpœna witnesses, that not being an order or request of the court to such witness to attend. *State v. Willis*, 44 N. W. R., 699.

SECTION 3829.—

An attorney selected by a peace officer, for appearing before a justice of the peace and prosecuting a defendant for the unlawful sale of intoxicating liquors, is entitled to only $5, under this section of the Code, no matter how many distinct offenses stated in as many counts, are charged in the information upon which the prosecution is based. *Schulte v. Keokuk County*, 74 Iowa, 202.

SECTION 3841.—

Exceptions duly taken to an order overruling a motion to retax costs bring up the question as to whether they were properly taxed, without any exception to the order taxing the costs. *The State v. Rainsbarger*, 74 Iowa, 539.

SECTION 3862.—

Forcible defilement is defined by this section of the Code as taking a woman unlawfully and against her will, and by force, menace, or duress, compelling her to be defiled. An indictment alleged that the defendant did willfully take one S., unlawfully and against her will, and by force and menace and duress compelled her to be defiled, and then and there lay hold of her with his hands, and held her upon the ground, and did then and there force, ravish, and have carnal knowledge of her in manner and form aforesaid was *held* not bad for duplicity on the ground that it charged both forcible defilement and rape, *State v. Montgomery*, 45 N. W. R., 292.

SECTION 3867.—

On the trial of an indictment for seduction, testimony of the prosecutrix that she understood that defendant had other living children was incompetent. *State v. Thompson*, 45 N. W. R., 293.

It is also incompetent to prove by testimony of the prosecutrix that the defendant, after moving from the state, wrote letters to her and to others, denying that he was the father of her child; the letters themselves being the best evidence. *Id.*

SECTION 3872.—

The elements of the crime of assault with intent to commit murder are (1) the assault, (2) the specific intent to kill; and (3) malice aforethought; and an indictment which charges these facts is sufficient, even though the facts alleged are not such that, if death had resulted, the crime would have been murder in the first degree. *The State v. Keasling*, 74 Iowa, 528.

SECTION 3894.—

Under this section the essence of the offense of burglary is the *intent* to commit larceny, and an indictment for burglary need not allege the kind, value or ownership of the property intended to be stolen. *State v. Jennings*, 44 N. W. R., 799.

SECTION 3909.—

In an indictment under this section of the Code it was *held* that it was not necessary to allege the particular nature or character of the defendant's employment, but that it would have been sufficient to allege generally that he was in the employment of the person named as clerk, servant or agent. And if, having alleged in the indictment that the defendant's employment was of a special character, the prosecution was bound to aver that the money came into his hands by virtue of such special employment, *held* that the indictment (for which, see opinion) was not deficient in that respect. *State v. Jamison*, 74 Iowa, 602.

To fraudulently obtain the signature of a party to a mortgage containing the ordinary covenants is an offense under section 4073 of the Code. And an indictment which sets out a copy of the mortgage showing the covenants is not bad, because it fails to allege that the person whose signature was fraudulently obtained, owned the land. *State v. Jamison* 74 Iowa, 613.

SECTIONS 4012, 4424.

It is within the discretion of the trial court to grant or refuse separate trials to defendants jointly indicted, for an offense less than a felony. *State v. Kirkpatrick*, 74 Iowa, 505.

SECTION 4013.—

The indictment in this case charged the defendant with keeping a house of ill-fame, to which he permitted persons to resort for purposes of prostitution and lewdness; also that, at his solicitation and request, prostitution and lewdness were practiced in said house. *Held*, that the latter allegation was mere surplusage, being the allegation of matter of evidence, which it was unnecessary to prove. *State v. Schaffer*, 74 Iowa, 704.

An instruction that if defendant kept house of ill-fame, which was resorted to for purposes of prostitution, with the knowledge and consent of the defendant, the jury should find him guilty of keeping a house of ill-fame, sufficiently defines the crime of wilfully keeping a house of ill-fame, resorted to for purposes of prostitution, under this section. *State v. Clark*, 43 N. W. R., 273.

SECTION 4015.—

To let a house to a fallen woman for lewd purposes for one night is a statutory offense under this section of the Code, and to charge one falsely with such offense is actionable *per se* without pleading special damages. *Halley v. Gregg*, 74 Iowa, 563.

SECTION 4016.—
Under this section, as amended by section 2 of chapter 142, laws of 1884, the inveigling or enticing of a female before reputed virtuous to a house of ill-fame, constitutes one offense, and to knowingly conceal or assist or abet in concealing such female so deluded or enticed, for the purpose of prostitution or lewdness, constitutes another offense; and where in some of the counts of an indictment one offense is charged, and in another count both are charged, and the verdict is "guilty as charged in the indictment," with nothing in the record to show what count or counts the jury found to be sustained, *held* that it was error to overrule a motion in arrest of judgment. *State v. Terrill*, 76 Iowa, 149.

SECTION 4029.—
Where a certain seed company agreed with the defendant to sell for him sixty bushels of "Bohemain oats" at $10 a bushel. The contract containing a clause to the effect that it was agreed and understood between the parties thereto that the transaction was "of a speculative character, and not based upon the real value of the grain." *Held* that, this was not a gambling contract, as the promisor's obligation thereunder was definite, and independent of any contingency. *Hanks v. Brown*, 44 N. W. R., 811.

SECTION 4074.—
Where a chattel mortgage is made without consideration, and solely for the purpose of defeating the creditors of the mortgagor, but ostensibly to secure a promissory note, and the property remains in the hands of the mortgagor, and the mortgagee attempts to enforce the mortgage by taking the property, the mortgagor may plead and show in defense the want of consideration and fraudulent character of the mortgage. Both parties in such case being guilty of the crime defined in section 4074 of the Code, the law will leave them where it finds them, and will not lend its aid to the consumation of the fraud by refusing to hear testimony, showing the fraudulent nature and intent of the transaction, to overcome the *prima facie* case made by the mortgage itself. *Galpin v. Galpin*, 74 Iowa, 454.

SECTION 4097.—
To constitute libel, it is not necessary that the publication should charge the commission of a statutory crime. And where the charge made constitutes libel, as defined by this section of the Code, it is actionable *per se*, and special damages may not be alleged. *Halley v. Gregg*, 74 Iowa, 503; *Call v Larrabee*, 60 Id., 212.

SECTION 4107.—
Under this section, as amended by chapter 103 of laws of 1878, which provides that "no defendant convicted of murder shall be admitted to bail," and which must be regarded as repealing all prior inconsistent legislation relating to the subject matter, one convicted of murder in the second degree is not entitled to be admitted to bail pending to an appeal to the supreme court from the judgment of conviction. *Baldwin v. Westenhaver et al.*, 75 Iowa, 547.

SECTION 4160.—
This section of the Code, which provides that "when a public offense is committed on the boundary line of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county," is not invalid under that provision of the state constitution, which provides that the "right of trial by jury shall remain inviolate," said section having been the law of the state from a date prior to the adoption of the first constitution. *State v. Pugsley*, 75 Iowa, 742.

SECTION 4166.—
This section provides that an indictment for seduction must be found within eighteen months after the commission of the crime. An indictment found Nov. 17, 1888, charged the crime of seduction on or about February 1, 1886, and also charged that for two years after the act the defendant was out of the state, which fact was admitted by the defendant. The evidence on the trial showed the criminal act as on or about July 25, 1885; *held*, that the indictment was not barred by the statute, and that it was sufficient if the act charged was proved to have been committed within the period of limitation. *State v. Moore*, 77 Iowa, 449.

Defendant and prosecutrix had had illicit intercourse for more than a year, when defendant went away, and prosecutrix reformed and led a virtuous life until after defendant's return, in about a year, when, under promise of marriage, their former relations were resumed. *Held*, that defendant was guilty of seduction when the first offense was committed after their former illicit relations had been broken off. *Id.*

Under this section of the Code an indictment for seduction must be presented within eighteen months after the commission of the offense, but by section 4169 the time during which the defendant is not publicly and usually within the state is not counted. In this case the indictment was presented November 17, 1888, and it charged the commission of the offense about February 1, 1886, and alleged that the defendant was out of the state for two years next after the commission of the offense. The state was allowed to prove the commission of the offense on or about July 25, 1885, to which defendant objected on the ground of surprise. *Held*, that the objection was not good, since defendant admitted his absence from the state, and the date last named being within the statutory period, after counting out the two years, it was competent to prove the commission of the offense at that time, though it was alleged in the indictment to have occurred at a later date. 78 Id., 494.

SECTION 4189.
This section providing that one charged with a misdemeanor may give bail to the officer making the arrest, and that the magistrate shall endorse upon the warrant the amount of bail, and directions for the enlargement of the accused upon his giving it. A person charged with a misdemeanor may be admitted to bail without appearing before the magistrate. *State v. Benzoin et al.*, 44 N. W. R., 709.

SECTION 4201.—
Under this provision of the Code, a private person is authorized to make an arrest for public offense, committed or attempted in his presence. *State v. Boyington*, 75 Iowa, 756.

SECTION 4233.—
This section of the Code requires the magistrate, in preliminary examinations, to issue subpœnas for witnesses desired by either state or defendant. *Held* that until the arrest of the defendant, the magistrate has no jurisdiction over him, and cannot bind the county for the mileage and attendance fees of witnesses subpœnaed before such arrest. *Warnstaff v. Louisa County*, 76 Iowa, 685.

SECTION 4256.—
Under this section of the Code, as amended by chapter 42, laws of 1886, where twelve persons were summoned and appeared as grand jurors, and the clerk selected seven by lot to constitute the panel, but prior to the empaneling of this jury, and before the others of the twelve had been discharged, one of the seven was excused, *held* that it was proper for the sheriff to fill the panel, under the order of the court, by selecting for that purpose one of the twelve who had not been drawn by the lot of the clerk. *The State v. Gurlagh*, 76 Iowa, 141.

SECTIONS 4293, 4421.—
G. B. H. was a witness before the grand jury which found the indictment in this case, and proper minutes of his testimony were made, and he signed his true name to the minutes, but his name was indorsed upon the indictment as J. B. H. *Held* that if the variance might be urged as a ground for setting aside the indictment, it was no ground for excluding the evidence of the witness on the trial. *The State v. Story*, 76 Iowa, 262.

SECTION 4293.—
Where a witness is examined before the grand jury, and the minutes of his evidence taken down by the clerk of the grand jury, and he signed his true name to the minutes, a mistake in the indorsement of his name on the indictment is no ground of objection to him, when called as a witness on the trial. *Id.*

The state was permitted to examine a witness whose name was not indorsed upon the indictment, as required by this section of the Code, upon showing notice to the defendant, as required by section 4421, but the notice stated the residence of the witness to be in Kansas City, Kansas, whereas, it proved to be in Kansas City, Missouri; and the statement in the notice, of what the state expected to prove by the witness varied somewhat from what was actually proved by him. But it was *held* this was no ground for reversal of the judgment, since it did not appear that the defendant was in any manner prejudiced by these irregularities. *State v. Rainebarger*, 74 Iowa, 196.

SECTIONS 4298, 1543.—
Where an indictment charged the keeping of a building with intent to sell therein, contrary to law, intoxicating liquors, and also charged actual sales therein, but not as unlawful keeping for sale. It was shown that intoxicating liquors were kept on the premises, but there was no evidence of any sales. *Held* that the evidence of keeping was improperly admitted; because there was not an allegation of that fact; and that as no sales were proved, the defendant could not lawfully be convicted; because there remained nothing but the keeping of the building with an unlawful, but unexecuted intention, which is not a punishable offense. *State v. Tierney*, 74 Iowa, 237.

SECTION 4300.—
An indictment, which in one count, charged that defendant committed an abortion on the deceased with instruments, and thereby caused her death, and in another count, that he used drugs for the purpose, is not void for duplicity, since it only changes one offense in accordance with this section of the statute, which provide that an indictment shall charge but one offense, but may charge it in different forms to meet the testimony. *State v. Baldwin*, 45 N. W. R., 297.

An indictment charging that the defendant kept a house of ill-fame, resorted to by persons for the purpose of prostitution *or* lewdness, charges only one offense,—keeping a house of ill-fame. *State v. Toombs*, 45 N. W. R., 300.

An indictment, which in one count charges that the defendant committed an abortion on deceased with instruments, and thereby caused her death, and, in the other count, that he used drugs for the purpose, is not void for duplicity, since it charges only one offense, in accordance with this section of the Code, which provides that "an indictment shall charge but one offense, but it may be charged in different forms to meet the evidence." *State v. Baldwin*, 45 N. W. R., 297.

An indictment which charges that the defendant attempted to perform an abortion on a woman, thereby causing her death, but does not allege an intent to take her life, charges murder in the second degree only. *Id.*

SECTION 4306.—
Under this section of the Code defects and imperfections, in an indictment which do not tend to prejudice the substantial rights of the defendant, on the merits, are not deemed defects or imperfections affecting the validity of the indictment. *State v. Canford*, 76 Iowa, 330.

SECTION 4314.—
An indictment charging the defendant as principal may be supported by evidence showing him to have been an accessory, since the statute makes accessories principals. *The State v. Pugsley*, 75 Iowa, 742.

SECTION 4509.—
A judgment that each of defendants pay a fine of fifty dollars, and $62.75 costs, and that in default thereof they each stand commited to the cou jail for fifteen days, is not illegal as being a ju ment for imprisonment for costs; but the i prisonment clause will be held to relate only the fine, since as to that it is not in excess of statute. *State v. Boynton et al.*, 75 Iowa, 753.

SECTION 4374.—
Under this section of the Code, the supre court will interfere with the ruling of the co below, on a petition for change of venue, o when the trial court has abused its discreti *State v. Billings*, 77 Iowa, 417.

SECTION 4381.—
Where there is a change of the place of trial, t county where the trial is had is primarily lia for the costs of the case made in that county. is entitled to be reimbursed by the county in wh the cause originated. *Lockhart et al. v. Montgom Co.*, 76 Iowa, 79.

SECTION 4405.—
Under this section, requiring a challenge o juror for cause to distinctly specify the facts co stituting such cause, a challenge for cause wh does not show with reasonable certainty, t ground upon which it is based, is insufficie *State v. Munchrath*, 43 N. W. R., 211.

And the question whether an opinion formed a juror from reading the evidence upon the trial another defendant for the same offense, wou prevent his rendering a true verdict upon the e dence in the subsequent trial is for the trial co under section 4409, to determine; and in cases doubt the supreme court will not interfere w the decision. *Id.*

SECTION 4408.—
Where a notice of appeal was addressed to t attorneys of appellee and the clerk of the distr court, but does not appear to have been served the clerk as required by this section of the Co to perfect the appeal the supreme court has jurisdiction, and the appeal must be dismiss *Redhead v. Baker et al.*, 45 N. W. R., 733.

SECTION 4413.—
An assignment of error that "the court, on own motion, directed the verdict against the d fendant," is not sustained by a record whi merely recites that "at the close of the evide the court, on its own motion, instructed the ju in each case in form as directed," as that stateme refers only to the form of the verdict. *State ex. Littleton v. Harbach et al.* (two cases), 43 N. R., 272.

SECTION 4466.—
Under this section of the Code a defend charged with the third offense of selling liquors violation of law, may be convicted of the fi offense. *The State v. Gaffney*, 66 Iowa, 262.

SECTION 4421.—
Where a witness not before the grand jury is troduced by the State, upon notice on the tri under this section of the Code, stating what t State will prove by him, it is not limited in t examination of the witness to the matters stat in the notice. *State v. Craig*, 78 Iowa, 637.

SECTION 4712.—
Under this section of the Code and section article 4 of the constitution, the governor h power to remit a forfeiture upon an appearan bond, as well after judgment has been rendere thereon as before, and to remit the same in fa of the sureties on the bond as in favor of the pri cipal. *Harlin v. The State et al.*, 78 Iowa, 263.

SECTION 4489.—
Newly discovered evidence is not a ground rec nized by the Code for which a new trial will granted in criminal cases. *State v. Lee*, 45 N. R., 545.

SECTION 4522.—
An appeal from a judgment for costs against t prosecuting witnesses in an information for int

on, on the ground that there was no probable
e for the prosecution, is an appeal in a crimi-
ıction, and as such, must be taken within a
after judgment, as in this section provided.
v. *Hodgson*, 44 N. W. R., 708.

ıere the defendent on such information, is
icted before a justice of the peace, such con-
on is a bar to any inquiry in the district
t, on appeal as to whether there was probable
e for the prosecution. *Id.*

'ION 4538.—
ıere a defendant has been convicted of a
e charged in two counts, and, on appeal one
ıe counts is found to be bad, and it cannot be
on which count he was found guilty, the judg-
t must be reversed. *State v. Merkley et al.*, 74
, 695.
is section of the Code requires the supreme
t in a criminal case, to examine the record,
render such judgment thereon as the law
ands, without regard to technical errors, a
on to affirm, therefore, in such case, cannot be
rtained. *State v. Bahue* and *State v. McAtee*, 44
. R., 711.

'ION 4539.—
ıere the intoxicating liquors of a pharmacist
ing a permit to sell were seized under a search
rant, and it was proved (upon an appeal to the
rict court) that he made sales of such liquors
ersons in the habit of becoming intoxicated,
the court instructed the jury, upon such
f, to find a verdict for the defendant. *held* that
instruction was erroneous, as matter of law,
that the state had a right to appeal to the
eme court, under this section of the Code for
purpose of obtaining "a correct exposition of
law." *The State v. Ward et al.*, 75 Iowa, 637.

'ION 4550.—
the trial of an indictment for larceny of cat-
evidence that the defendant and his accom-
were seen going in the direction of the place
nce the cattle were stolen; that the defendant
the state the same day search was made for
n, and afterwards when arrested, denied his
tity; and that the cattle were found at the
se of the defendat's father, where defendant
etimes lived and worked—is sufficient to sup-
the testimony of defendant's accomplice
er this section of the Code. *The State v. Van
kle*, 45 N. W. R., 388.

'ION 4560.—
hile a conviction cannot be had on a charge for
upon the testimony of the prosecuting wit-
alone, the rule applied only to criminal pros-
ions, and not to a civil action for damages for
ssault and battery committed in an attempt
ommit rape. *Rogers v. Winch*, 76 Iowa, 546.
is section proving that in a prosecution for a
the defendant cannot be convicted upon the
imony of the person injured, unless she be cor-
rated by other evidence tending to connect
defendant with the commission of the offense,
not apply to an assault with intent to com-
a rape. *State v. Grossheim*, 44 N. W. R. 541.
female under the age of thirteen years is
lly incompetent to consent to sexual inter-
se, nor can she consent to an assault for that
pose. *Id.*

though under this section a man cannot be
ected with the crime of rape upon the un-
oborated testimony of the prosecuting wit-
, yet in a civil action for damages for an
ult and battery in an attempt to ravish the
ntiff, a verdict may be rendered upon the un-
oborated testimony of the plaintiff. *Rogers v.
ch*, 76 Iowa, 546.

ıe *rule* of evidence that a person charged with
cannot be convicted upon the testimony of
prosecuting witness unless it be corroborated
ther evidence tending to connect the defend-
with the commission of the crime, does not
y to a case of assault with intent to commit
. *State v. Hatfield*, 75 Iowa, 592.

SECTION 4662.—
Under this section of the Code, requiring in an information, a statement of the acts constituting the offense charged in ordinary and concise language, etc., an information charging that the defendant "did commit the crime of unlawfully and willfully disturbing and interrupting the school taught by," etc., is not sufficient to sustain a conviction. *State v. Butcher*, 44 N. W. R., 239.
Such defect in an information is not waived by a failure to object thereto until after verdict, under the provisions of of section 4491 of the Code. *Id.*

SECTION 4702.—
When one has been tried and convicted upon an information before a justice of the peace, and he appeals to the district court, he has power to waive trial by a jury in the appellate court, and to submit to a trial by the court; and where he does so, and is so tried and found guilty and judgment rendered against him, he cannot afterwards insist that the court could not rightly try him without a jury. *The State v.* Ill. 74 Iowa, 441; (see *State v. Carman*, 63 Id., 130; *Satte v. Larrigan*, 66 Id., 426, which were trials upon INDICTMENTS, distinguished.)

CHAPTER 71, LAWS OF 1888, SECTION 4.—
Under the provisions of this section of the statute, *held* that an action on the bond of a permit-holder might be brought by any citizen of the county. *State, ex rel, v. Maitland*, 71 Iowa, 543.

CHAPTER 71, LAWS OF 1888, SECTION 13.—
Under the provisions of section 1537 of the Code, failure to make reports and selling at illegal profit would not render the seller liable to punishment for illegal sales which were otherwise lawful. *State v. Von Haltschuher*, 72 Iowa, 541.

CHAPTER 110, 5TH GENERAL ASSEMBLY.—
This act prohibiting the conveyance of swamp lands until the title shall be perfected in this state, does not render invalid a contract made by a county with attorneys, by which, in return for services rendered by the latter in securing and perfecting the title to swamp lands, it being stipulated that a portion of the lands should be conveyed to them when the title to the whole should be acquired. *Emmet County v. Allen et al.*, 76 Iowa, 499.

CHAPTER 136, LAWS OF 1876.—
The first section of this act, making women elegible to any school office in the state, repeals by implication so much of section 697 of the Code as requires, in election contests, the technical statement that the contestant is an "elector." *Brown v. McCollum*, 76 Iowa, 479.

CHAPTER 43, LAWS OF 1878.—
The provisions of section 7 of this chapter must be construed as abolishing all trusts in land, paid for by one person, where the conveyance is to another absolutely, whether for the benefit of the person paying the money or for some other person, excepting in cases where the conveyance is so taken without the knowledge or consent of the person whose money has been used, or where the alienee, in violation of some trust, has purchased the land so conveyed with moneys belonging to another person, and excepting also the trust in favor of creditors. *Connelly v. Sheridan*, 42 N. W. R., 505.

CHAPTER 47, LAWS OF 1876, AS AMENDED BY CHAPTER 169, LAWS OF 1878.
The provisions of this chapter, as amended, authorizing municipal corporations to extend their limits, and providing that "no lands within said extended limits," which shall not have been laid off into lots, etc., shall be taxable for city purposes, does not apply to extensions made prior to the passage of the statute. *Perkins v. City of Burlington*, 77 Iowa, 553.

CHAPTER 211, LAWS OF 1880.
The second section of this chapter provides that an omission to attach to insurance policies the

application and representations upon which they are issued shall not invalidate the policies, but merely preclude the company from pleading or proving the falsity of such representations, does not conflict with, and is not superseded by chapter 65, laws of 1886, regulating mutual benefit associations, although the latter contains neither the same, nor any similar, provision. *McConnell v. Iowa Mut. Aid. Association et al.*, 43 N. W. R., 188.

Such act is applicable to the policies of mutual benefit associations. *Id.*

CHAPTER 60, LAWS OF 1880.—

The executive council cannot be compelled to enter into a contract with one who made the lowest bid for publishing the supreme court reports, and complied or offered to comply with the provisions of section 4 of this chapter, which provides the manner in which the council shall let such contract to the person making the proposal "most advantageous to the state," as the determination of the relative advantages is a matter of executive discretion, and an action to control its exercise would virtually be an action against the state, which cannot be maintained without its consent. *Mills Publishing Co. v. Larrabee et al.*, 42 N. W. R., 593.

CHAPTER 109, LAWS OF 1880.—

At the time of listing plaintiff's property for taxation, plaintiff claimed that certain bank stock he owned should not be assessed, but should be offset by a debt due the bank. The assessor refused to do this, but "consented to and did report to the board of equalization," who ordered him to place it on his books for taxation. *Held* that this was not a raising of plaintiff's assessment requiring the notice provided in section 3, of this chapter, to be given when the board decides to raise the assessment of any person. *Jackson v. Chizum*, Treas., 42 N. W. R., 650; *Kethl v. Same*, Id., 652.

CHAPTER 211, LAWS OF 1880.—

This chapter requiring actions upon policies of insurance to be commenced not sooner than 90 days after notice of loss is given, is in the nature of a statutory limitation of such actions, and is not eliminated from a policy by a provision therein that the contract of insurance is wholly embraced in the policy and application of the assured. *Vore v. Hawkeye Ins. Co.*, 76 Iowa, 548.

CHAPTER 109, LAWS OF 1880.—

Under section 3 of this act, the board of equalization, at their first meeting, having decided that an assessment should be raised, it does not render their proceedings void that the change was at once entered of record, where subsequently the proper notice, of which the raised assessment and of the adjourned meeting, at which time, no objection having been made, the assessment was simply left as raised at the first meeting. *Rockafellow v. Wilkins, et al.*, 42 N. W. R., 380.

CHAPTER 75, LAWS OF 1880, AS AMENDED.—

Under the provisions of this act, forbidding a pharmacist to sell liquors if he has reason to believe that the application for liquor as a medicine is not made in good faith, the conviction of a practicing physician and registered pharmacist, selling under a permit from the county board, cannot be upheld on the evidence of four witnesses for the state that they had bought small quantities of liquor of him in good faith, for what they supposed to be their actual need for it as a medicine, and his own testimony that he had sold in good faith, and on the same supposition, after consultation with them as to their ailments, when, moreover, the purchasers signed the certificates required by law, and there is no evidence of excessive shipments to defendant, or anything else that could raise a suspicion of an illegal course of business. *State v. Hoagland*, 77 Iowa, 135.

CHAPTER 38, LAWS OF 1882.—

Section 4 of this act, authorizing a levy of a two mill tax to pay for the cost of paving street and alley intersections, provides that "it shall be competent for any city authorized by this act to levy such tax to anticipate the collection thereof by borrowing money and pledging such tax, whether levied or not, for the payment of the money thus borrowed. *Held*, that the city is not limited by this statute in making such loan to the amount that would accrue under the levy for a single year, but it has power to pledge the tax to any extent necessary to meet any indebtedness, within the limits of the constitution, that it may incur in a single year. *Coggshall v. City of Des Moines*, 6 N. W. R., 617.

CHAPTER 143, LAWS OF 1884.—

Prior to July 4, 1884, the sale of beer was not unlawful, and instructions which authorized the conviction of defendant for a nuisance in keeping a place for the sale of beer prior to that time were erroneous. *The State v. Jacobs*, 75 Iowa, 247.

CHAPTER 159, LAWS OF 1884, SECTION 8.—

Held, in this case that the evidence did not sustain the case alleging that the *tax* voted to aid the defendant company in the construction was invalidated on the ground that the company procured the tax to be voted by promising the tax-payers to remit their taxes. *Young et al. v. The Webster City & S. W. R'y Co.*, 75 Iowa, 140.

CHAPTER 197, LAWS OF 1884.—

Where a newspaper has been selected to do the county printing under this chapter, subject, however, to a contest as provided in said chapter, no appeal can be taken until there has been final action upon the contest. *Hoxie v. Shaw*, 75 Iowa, 427.

CHAPTER 45, LAWS OF 1884.—

On the trial of an action to recover personal property the defendant cannot object to the admission in evidence of the notice provided by this chapter on the ground that it had not been properly served, where it appears that the officer received the notice and demanded an indemnifying bond, which was given. *Turner v. Younker et al.*, 75 Iowa, 258.

CHAPTER 23, LAWS OF 1884.—

The provision of this chapter providing for the exemption of pension-money or property purchased therewith *and that such exemption shall apply also to debts of such pensioners contracted prior to the purchase of the homestead*, is as to such debts a law impairing the obligation of contracts, within the meaning of the constitution of the United States, article 1, section 10, and invalid. *Foster et al. v. Byrne*, 76 Iowa, 295.

CHAPTER 167, LAWS OF 1884.—

Under this chapter, any publisher of a newspaper who is aggrieved by the action of the board of supervisors in designating the official newspapers of the county, may appeal to the district court, and the right of appeal is not limited to cases where fraud is charged, so it is *held* in view of the cardinal rule that, in the construction of statutes, it is necessary to ascertain and consider the defect in the prior statute intended to be remedied by the enactment of the later or amendatory statute. *Brown v. Lewis et al.*, 76 Iowa, 159.

CHAPTER 104, LAWS OF 1886.—

Under section 7 of this chapter, providing that the examining board may "refuse a certificate to any person who has been convicted of a felony * * * or may revoke certificates for like cause, or for palpable evidence of incompetency, despite the established fact of prior practice for the statutory time. *State v. Mosher*, 43 N. W. R., 202.

On a trial for violation of this act, by practicing medicine without a certificate, the defendant cannot avail himself of the provision excepting from the penal provisions of said act, physicians who have practiced five years, "provided such physicians shall furnish the state board * * * satisfactory evidence of such practice, and shall procure the proper certificate" even though he has practiced five years, unless he has the proper certificate of the examining board. *Id.*

CHAPTER 73, LAWS OF 1886.—
This chapter which authorizes the county attorney to employ council to assist in the prosecution of a person charged with felony, who shall be paid a reasonable compensation, to be fixed by the board of supervisors, does not render the decision of the board final as to the amount to be allowed as such compensation, but if an unreasonably small amount be fixed, proper compensation may be recovered by action against the county. *Stone et al. v. Marion County*, 42 N. W. R., 570.

CHAPTER 134, LAWS OF 1886.—
This chapter which abolished the circuit courts, and provided that the district court of the counties should be held at other places than county seats, where the circuit court was authorized to be held, and should hear and determine civil causes only as theretofore exercised at such places by the circuit court, is not repugnant to section 6, article 5 of the state constitution providing that the district court shall be a court of law and equity and shall have jurisdiction in civil and criminal matters in such manner as shall be prescribed by law, in that it creates a district court with limited jurisdiction. *Milner v. Chicago, M. & St. P. R'y Co.*, 77 Iowa, 755.

CHAPTER 185, LAWS OF 1880.—
This chapter requiring an affidavit to be filed before an attorney's fee is taxed, does not relate to contracts made before it took effect. *McCormick Harvester Machine Co. v. Jacobson*, 77 Iowa, 582.

CHAPTER 117, LAWS OF 1886.—
Where an execution creditor, under this act, desiring to levy upon personal property, deposited the amount of certain mortgage debts which were prior liens on the property and then siezed and sold the property upon his execution, it was held that the creditor could not thus subject the property to his execution, where the mortgage note was not due, although the mortgage authorized the mortgagee to take possession of the property whenever he deemed himself insecure; the latter not having availed himself of such provision. *Deering et al. v. Wheeler et al.*, 76 Iowa, 496.

CHAPTER 168, LAWS OF 1886.—
This act, which provides for letting contracts for paving and grading streets in cities, requiring such contracts "shall be made by the council, in the name of the city," and shall be made with the lowest bidder or bidders, upon sealed proposals, after public notice, which notice shall contain a description of the kind and amount of work to be done, and materials to be furnished as nearly accurate as practicable; implies a determination by the council in advance of the publication of notice of the kind of material to be used in the work, and an advertisement for bids "for all the different kinds of modern pavements now in use," regardless of the material of which it might be composed, is not a compliance with the statute, and an assessment based thereon, against abutting property, to pay the cost of the paving is invalid and cannot be enforced against the abutting property. *Cogshall et al. v. City of Des Moines et al.*, 41 N. W. R., 617.

CHAPTER 83, LAWS OF 1886.—
A pharmacist holding a permit to sell liquors as medicine under this act, and who sells for other uses, has no such permit as is referred to in section 1540 of the Code, exempting from the provisions of that act, sales by persons holding a permit, and is liable to penalties prescribed by section 1543 for such sales. *State v. Salt*, 77 Iowa, 193.

This act in providing that nothing therein contained shall shield the druggist who abuses his trust from the utmost signs of the law, does not require the highest possible penalty to be fixed on the conviction of a druggist. *State v. Hoagland*, 77 Iowa, 135.

CHAPTER 66, LAWS OF 1886.—
In an action under this act to restrain a nuisance a witness testified that the defendant paid an internal revenue tax as a retail liquor dealer. Another testified that the reputation of defendant's place was that intoxicating liquors were kept and sold there. The testimony of four others showed that defendant furnished them whisky in his place for a consideration, though they did not testify directly to payment. Two witnesses testified to the purchase of cider. Another, to the purchase of "zodone," which he supposed was whisky; that he would not say it was poor whisky, and did not know what it was; that he got it because he wanted something to stimulate him. There was testimony to the sale of "hot shot," and other drinks. Defendant testified that he never sold, or kept for sale, intoxicating liquors; that the drinks sold were not intoxicating; that he did not sell sweet apple cider, but sold champaign and peach cider; that he took a license because his neighbors were troubling him, and it was cheaper to pay $25 than to run the risk. His son-in-law testified that he was about the place a great deal, and never knew of defendant's keeping or selling intoxicating liquor, and that the drinks sold by defendant were not intoxicating. *Held*, that there should be a decree for a permanent injunction. *State v. Mathienson et ux.*, 42 N. W. R., 577.

The provisions of this chapter in actions to abate liquor nuisances, that evidence of the general reputation of the place designated shall be admissible for the purpose of proving the existence of such nuisance, and, if successful, plaintiff shall be entitled to an attorney's fee, to be taxed against the defendant, applies to an action for such a purpose brought under chapter 143 of laws of 20th General Assembly, but not tried until the act of 1886 took effect. *Garley v. O'Malley*, 77 Iowa, 531.

The allowance of the attorney fee provided for in the first section of this chapter, made to the plaintiff individually, and the acceptance thereof by his attorney, is a waiver of his right to appeal. *Root v. Heil*, 43 N. W. R., 278.

Section 5 of this chapter providing for the abatement of liquor nuisances, is not in conflict with articles 4 and 14 of the constitution of the United States, nor with the constitution of Iowa, sections 8 and 9, article 1, relating to the rights of property. *Craig v. Werthmueller et al.*, 43 N. W. R., 606.

SECTION 12, RULES OF SUPREME COURT.—
Appellants filed an abstract of the case below, and an assignment of errors. The appellee filed an additional abstract, denying the correctness of appellants abstract. section 12 of the rules of the supreme court provides that when a controversy arises as to the record, the appellee shall have a reasonable time after the necessity therefor appears to file a transcript. *Held*, that as appellants failed to file a transcript within a reasonable time, the judgment below must be affirmed. *Howorth v. Stevens Manufacturing Co. et al.*, 43 N. W. R., 532.

CHAPTER 177, LAWS OF 1886.—
Under section 1 of this chapter, providing for the punishment of persons giving away, or having or having in possession with intent to give away, instruments designed or intended to procure an abortion, evidence showing that the defendant gave to a pregnant woman, with intent that she should use it for producing an abortion, an English catheter, is not sufficient to sustain an indictment, where it appears that such instrument, though often used for that purpose, was designed and manufactured for a different purpose. *State v Forsythe*, 43 N. W. R., 548.

CHAPTER 190, LAWS OF 1884.—
Under this act, authorizing railroad companies owning a completed road to condemn lands "for necessary additional depot grounds," upon procuring a prescribed certificate from the railroad commissioners have authority to grant a certificate for the condemnation of land for depot purposes at a place where the company has no depot, and owns not land other than the right of way on its road is built. *Jager v Dey et al.*, 45 N. W. R., 391.

CHAPTER 71, LAWS OF 1888.—
Under this chapter, which provides that "no person shall sell, keep for sale, give away, exchange,

barter or dispense any intoxicating liquors for any purpose whatever," otherwise than as provided in that act; and it being therein further provided that registered pharmacists may obtain permits authorizing them to sell and dispense intoxicating liquors for pharmaceutical and medicinal purposes, etc., *held*, that physicians not holding such permits cannot dispense such liquors in putting up prescriptions for their patients. *State v. Benadone*, 44 N. W. R., 248.

CHAPTER 153, LAWS OF 1880.—
Where an indictment under this chapter alleged that the defendant, a firm engaged in banking, were, on a specified date, insolvent, and being so, that they received and accepted on deposit a certain sum of money, *Held*, that, evinence was admissible that the deposit was received by the cashier of the bank during the absence of defendants; it being immaterial whether they did the the act constituting the offense in pereon or by agent. *State v. Caldwell et al.*, 44 N. W. R., 700.

CHAPTER 113, LAWS OF 1886.—
The first section of this act provides the payment of the United States tax on the business of selling distilled and mault liquors shall be evidence that the person making such payment was engaged in keeping and selling intoxicating liquors contrary to the law of the state. On petition for an injunction against liquor nuisance, it appeared that the special tax had been paid, and defendants testified that it had been paid to protect them in the sale of a beverage known as "B. B." as to the intoxicating properties of which the testimony was conflicting, and there was evidence that they kept and sold hard and soft cider. *Held* that the evidence was sufficient to support a decree against the defendants, the payment of the tax showing that they regarded the liquor as intoxicating. *State v. Schnitz et al.*, 44 N. W. R., 713.

CHAPTER 23, LAWS OF 1884.—
Where a person pays for the services of a stallion with pension money, he has, in the colts gotten thereby, a property interest acquired directly by the payment of such pension money, and to that extent exempt under this statute. *Diamond v. Palmer*, 44 N. W. R., 819. ROTHROCK, C. J., *dissenting*.

CHAPTER 143, LAWS OF 1876, SECTION 6.—
Since in the state of the law when this case was tried there was no appeal from the superior court. *Held* that one charged in the superior court upon information, with the violation of a city ordinance is entitled to a jury trial in that court. *Preston v. Nye*, 74 Iowa, 360.

CHAPTER 136, LAWS OF 1875.—
This act makinng women eligible to any school office, has the effect to entitle a woman claiming to have been elected to any such office, but denied a certificate of election, to the right to contest the election, although she is not an elector as required by section 692 of the Code—the effect of the first named statute being to repeal to that extent the said section of the Code. *Brown v. McCollum*, 76 Iowa, 479.

CHAPTER 23, LAWS OF 1884.—
A homestead purchased with pension money is not exempt from attachment for a debt contracted prior to the purchase of the homestead, and prior to the enactment of chapter 23, laws of 1884, notwithstanding said act declares to the contrary; said act, so far as it fo declares, being in conflict with article 1, section 10 of the constitution of the United States is invalid. *Foster & Hannum v. Byrne*, 76 Iowa, 295.

CHAPTER 45, LAWS OF 1884.—
The notice of ownership required by this chapter, to be given to an officer by any person claiming property which has been seized under an attachment, is sufficient if the officer in fact receives it in due time, as no particular manner of service is required. *Twiner v. Younker, et al.*, 76 Iowa, 258.

CHAPTER 66, LAWS OF 1886, SECTION 1.—
In an action to abate liquor nuisances, the plaintiff, if successful, is entitled to recover an attorney fee. Where such fee is allowed and it is paid by the defendant to the attorney of plaintiff, the attorney acts for and on behalf of the plaintiff, and not in his own right, in receiving it, and the legal effect of the payment is payment to the plaintiff; and after such payment the plaintiff cannot maintain an appeal from the judgment, since a party cannot be allowed to accept the benefits of a judgment so far as favorable to him, and at the same time prosecute an appeal from other portions of it. *Root v. Heil*, 78 Iowa, 436.

CHAPTER 38, LAWS OF 1882.—
Section 4 of this act provides that it shall be competent for any city authorized by that act to levy a tax to pay for the paving of street and alley intersections "to anticipate the collection thereof by borrowing money, and pledging such tax, whether levied or not, for the payment of the money so borrowed." *Held* that there was no limitation upon the city as to the amount of work of the kind contemplated it might do in a year, except the limitation of the constitution as to the indebtedness it might contract, and that the statute did not limit the city, in making the loan provided for, to the amount of tax which would accrue under a levy for a single year, but that it had power to pledge the tax to any extent necessary to enable it to meet such indebtedness as it might lawfully incur in a single year, and to levy a tax for successive years for that purpose. *Coggeshall v. The City of Des Moines et al.*, 78 Iowa, 235.

CHAPTER 104, LAWS OF 1886.—
Section 8 of this act does not except physicians of five years' prior practice from the penal provisions of this act, unless they procure from the state board of medical examiners the proper certificate or license, as required by the statute. *The State v. Mosher*, 78 Iowa, 521.

CHAPTER 177, LAWS OF 1886.—
To furnish a pregnant woman a common English catheter, manufactured, designed and intended for the purpose of drawing water from the male bladder, and stating to her that she could produce an abortion by using it, and giving her directions how to use it, is not a crime under section one of this chapter because the statute contemplates only instruments designed by the manufacturer for the unlawful purpose, and not instruments designed for a lawful purpose, though given, and sometimes used for an unlawful one. *The State v. Forsythe*, 78 Iowa, 595.

CONSTITUTION U. S., AMENDMENTS 4 AND 14.—CONSTITUTION OF IOWA, SECS. 8 AND 9, BILL OF RIGHTS AND ARTICLE 3.
The statute providing for the destruction of liquors found in a place adjudged to be a nuisance, and for the removal and sale of the furniture, fixtures, etc., does not violate the 4th and 14th amendments to the constitution of the United States, nor sections 8 and 9 of article 1, nor article 3, of the constitution of Iowa, on the ground that it attempts to forfeit private property by legislative enactment; nor on the ground that it authorizes such forfeiture in a criminal action against the owner without giving him his day in court in an action against the property; because the forfeiture contemplated by the statute is determined only by the judgment of a court of competent jurisdiction, in a proper case for the abatement of the nuisance and the punishment of the offender, after due and regular notice. The action being against the place as well as against the person. *Craig v. Wertmueller & Ende et al.*, 78 Iowa, 598.

CHAPTER 55, TITLE XXV OF CODE.—
Neither the district attorney, nor the board of supervisors, has any power to remit fines directly, nor to do so indirectly by the satisfaction of the judgments therefor, for a less sum than the fines imposed, even though such compromise may be desirable from a pecuniary point of view; and such satisfaction is no bar to the arrest of the de-

fendant upon executions issued upon such judgments, even the satisfaction is not formally set aside. *McKay v. Woodruff, Sheriff*, 77 Iowa, 413.

CONSTITUTION, ARTICLE 6, SECTION 1.—
This act providing that grand juries, in counties having a population of sixteen thousand, or less, shall consist of five persons, is not in conflict with section six, article one, of the state constitution, which requires that "all laws of a general nature shall have a uniform operation," etc.; especially since the third constitutional amendment gives the legislature power to fix the number of grand jurors at from five to fifteen. *The State v. Standley*, 76 Iowa, 215.

ARTICLE 3, SECTION 29.—
Defendants were brewers, obtained a permit in November, 1885, to manufacture and sell intoxicating liquors for mechanical, medicinal, culinary and sacramental purposes only, for one year from date. *Held* that their right to sell for *medicinal* purposes was taken away on the 8th day of April, 1886, when chapter 83, Laws of 1886, went into effect, whereby the right to sell such liquors for medicinal purposes was vested exclusively in registered pharmacists; the effect of said chapter being to repeal by implication, so much of section 1526 of the Code, as allowed others than registered pharmacists to sell such liquors for medicinal purposes. And *held further* that, such construction of said chapter, entitled, "*An act to amend chapter 75, etc., relating to the practice of pharmacy*," does not make it repugnant to section 29 of article 3 of the state constitution, providing that "every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title." Although section 1526 is not referred to in the title of the act as one of the statutes to be amended thereby. *The State v. Aulman et al.*, 76 Iowa, 624. See, also, *The State v. Satts*, 77 Id., 193.

ARTICLE 1, SECTION 9.—
Chapter 3 of title 18 of the Code, providing proceedings auxilliary to execution, for the purpose of discovering the property of the execution debtor, is not repugnant to the constitution, in providing for the imprisonment for contempt of persons disobeying the order of the court, judge, or referee therein, without trial by jury. *Marriage v. Woodruff*, 77 Iowa, 291.

The provision of chapter 42, Laws of 1886, that when the grand jury is composed of five members, an indictment may be found by four, and when composed of seven by the concurrence of five, *held* not unconstitutional on the ground that it authorizes an indictment by less than the smallest number of which the grand jury could be composed, which was not allowed by the common law, and the constitution before the adoption of the amendment to the constitution relating to grand juries. *The State v. Satts*, 77 Id., 193.

PARDONING POWER.—
Neither the district attorney nor the board of supervisors has any power to remit fines directly, nor do so indirectly by the satisfaction of the judgments therefor for a less sum than the fines imposed, even though such compromise may be desirable from a pecuniary point of view; and such satisfaction is no bar to the arrest of the defendant, upon executions issued upon the judgments, even though the satisfactions are not set aside. *McKay v. Woodruff, Sheriff*, 77 Iowa, 413.

JURY TRIAL.—
The constitutional right to a trial by a jury composed of twelve persons is not violated by section 16, chap. 143, laws of 1876, as amended by section 6, chapter 24, laws of 1882, providing that the jury for the trial of causes in the superior court shall consist of six qualified jurors, unless one of the parties demands a jury of twelve; but the party making such demand, to entitle him to a trial by twelve, must deposit with the clerk an amount sufficient to pay the additional expense caused thereby. *Conners v. The. B., C. R. & N. R'y Co.*, 74 Iowa, 383. See, also, *Adae v. Zangs*, 41 Id., 536; *Steel v. Central Iowa R'y Co.*, 43 Id., 109.

Chapter 3 of title 18 of the Code, providing proceedings auxiliary to the execution, for the purpose of discovering the property of the execution defendant, is not repugnant to the constitution in that it provides for the imprisonment for contempt of persons disobeying the order of the court. *Id.*