

**THE
CODE OF IOWA**

**Passed at the Session of the
GENERAL ASSEMBLY
OF 1850-1**

And Approved 5th February, 1851

**Published by Virtue of an Act of the General Assembly
Approved 5th February, 1851**

**IOWA CITY
PALMER & PAUL, STATE PRINTERS
1851**

**Reprinted by Authority of the
Thirty-Fourth General Assembly**

**DES MOINES
EMORY H. ENGLISH, STATE PRINTER
E. D. CHASELL, STATE BINDER
1912**

CONCURRENT RESOLUTION

RELATING TO PRINTING THE EARLY IOWA LAWS.

WHEREAS, the supply has been exhausted and there is considerable demand for the laws hereinafter mentioned,

Be it resolved by the House of Representatives, the Senate concurring: That the secretary of state be and he is hereby authorized to have printed and bound in cloth one thousand each of the following:

The Iowa Code of 1851 in one volume.

The acts of the general assembly of Iowa enacted at each session, between the code of 1851 and the revision of 1860, in volumes of convenient size.

The revised statutes of the Territory of Iowa, 1843, in one volume.

The acts of the Territorial legislature of Iowa, commencing with the regular session of 1840 and ending with the last session prior to the adoption of the code of 1851, in volumes of convenient size.

That when published said volume shall be sold at cost and shall be distributed for sale in the same manner that the code is now distributed, except that none of said volumes shall be distributed free to any county, town, township or city officer.

Adopted by 34th General Assembly, April 12, 1911.

CERTIFICATE.

State of Iowa.

Office of Secretary of State.

I. W. C. HAYWARD, secretary of state of the state of Iowa, hereby certify that the acts and resolutions herein contained are copied from the authorized printed volume of "The Code of Iowa, 1851," and that the same is a full, true and complete copy thereof, except that the paging of the original volume is shown herein by inserting in brackets the number of the page on which appeared the matter immediately following.

In testimony whereof, I have hereunto subscribed my name and caused to be affixed the official seal of my office. Done at Des Moines, the capital of the state, this first day of March, A. D. 1912.

(Seal)

A handwritten signature in cursive script that reads "W. C. Hayward". The signature is written in dark ink and is positioned centrally below the text of the certificate.

Secretary of State.

ANALYSIS

PART FIRST

OF THE STATE AND ITS DIVISIONS, OFFICERS, AND POLICE, THE GENERAL
ASSEMBLY, AND THE STATUTES

TITLE I.

OF THE SOVEREIGNTY AND JURISDICTION OF THE STATE, THE GENERAL
ASSEMBLY, AND THE STATUTES.

	Sec.
Chapter 1. The sovereignty and jurisdiction of the state.....	1- 3
Chapter 2. The general assembly	4-15
Chapter 3. The statutes	16-26
Chapter 4. Repeal of the acts herein revised and consolidated.....	27-36

TITLE II.

OF CERTAIN STATE OFFICERS.

Chapter 5. Governor	37-41
Chapter 6. Secretary	42-48
Chapter 7. Auditor	49-60
Chapter 8. Treasurer	61-70
Chapter 9. Commissioners in other states.....	71-77
Chapter 10. Notaries public	78-87

TITLE III.

OF THE CIVIL AND POLITICAL DIVISIONS OF THE STATE, AND THE OFFICERS
THEREOF.

Chapter 11. Congressional districts	88
Chapter 12. Judicial districts	89
Chapter 13. Legislative districts	90
Chapter 14. Counties	91-102
Chapter 15. County judge	103-140
Chapter 16. Clerk of the district court	141-149
Chapter 17. Recorder and treasurer.....	150-162
Chapter 18. Prosecuting attorney	163-169
Chapter 19. Sheriff	170-182
Chapter 20. Coroner	183-202
Chapter 21. County surveyor	203-210
Chapter 22. Salary of certain county officers.....	211-217
Chapter 23. Townships, and township officers.....	218-236

TITLE IV.

OF ELECTIONS, QUALIFICATION FOR OFFICE, CONTESTED ELECTIONS, VA-
CANCIES, ETC.

Chapter 24. Elections, officers, and their terms.....	237-243
Chapter 25. The general election.....	244-295
Chapter 26. The election of senators and representatives by districts.....	296-300
Chapter 27. The election of electors of president and vice president.....	301-312
Chapter 28. The April election	313-318
Chapter 29. Qualification for office	319-338
Chapter 30. Contesting elections	339-396
Chapter 31. Removals from office.....	397-407
Chapter 32. Suspension of clerks and sheriffs by the judges of the district court	408-410
Chapter 33. Deputies	411-417
Chapter 34. Additional security and the discharge of sureties.....	418-428
Chapter 35. Vacancies and special elections.....	429-444

TITLE V.

OF CERTAIN PROPERTY OF THE STATE.

Chapter 36. The state library	445-453
-------------------------------------	---------

TITLE VI.

Chapter 37. Revenue	454-513
---------------------------	---------

TITLE VII.

Chapter 38. Of roads and highways	514-612
---	---------

TITLE VIII.

OF THE STATE CENSUS AND MILITIA.

Chapter 39. The census	613-620
Chapter 40. The militia	621-631

TITLE IX.

OF TOWNS AND VILLAGES.

Chapter 41. Village plats	632-648
Chapter 42. The incorporation of villages and towns.....	649-672

TITLE X.

OF CORPORATIONS.

Chapter 43. Corporations for pecuniary profit.....	673-707
Chapter 44. Corporations other than those for pecuniary profit.....	708-711

TITLE XI.

OF WORKS OF INTERNAL IMPROVEMENT.

Chapter 45. Licenses for works of internal improvement.....	712-758
Chapter 46. Taking private property for works of internal improvement..	759-779
Chapter 47. Telegraphs	780-785

TITLE XII.

OF THE POLICE OF THE STATE.

Chapter 48. The settlement and support of the poor.....	786-847
Article 1. The support of poor persons by their kindred.	
Article 2. Legal settlements.	
Article 3. Relief of the poor where there is no poor-house.	
Article 4. Relief of the poor where there is a poor-house.	
Chapter 49. Illegitimate children	848-856
Chapter 50. Insane persons	857-875
Chapter 51. Lost goods and estrays	876-894
Chapter 52. Fences	895-912

Chapter 53. Trespassing animals913-919
 Chapter 54. Marks of animals920-923
 Chapter 55. The sale of intoxicating liquors.....924-936

TITLE XIII.

REGULATIONS PERTAINING TO TRADE.

Chapter 56. Weights and measures937-942
 Chapter 57. The money of account, and interest.....943-946
 Chapter 58. Notes and bills947-965
 Chapter 59. Tender966-969
 Chapter 60. Sureties970-973
 Chapter 61. Private seals974-976
 Chapter 62. Assignments for creditors977-978
 Chapter 63. Oaths and acknowledgments979-980
 Chapter 64. Mechanics' liens981-1010

TITLE XIV.

OF EDUCATION.

Chapter 65. The state university1011-1043
 Chapter 66. School lands and fund.....1044-1075
 Chapter 67. The superintendent of public instruction.....1076-1088
 Chapter 68. School fund commissioner1089-1107
 Chapter 69. School districts1108-1118
 Chapter 70. The election, powers and duties of district officers.....1119-1151
 Chapter 71. Miscellaneous subjects1152-1178
 Chapter 72. Normal schools1179-1185
 Chapter 73. The deaf, dumb and blind1186-1189

TITLE XV.

Chapter 74. General provision relative to part first of this statute..... 1190

PART SECOND

OF THE RIGHTS OF PERSONS

TITLE XVI.

OF PROPERTY.

Chapter 75. General provisions	1191-1192
Chapter 76. The transfer of personal property.....	1193-1196
Chapter 77. Claims on the public lands.....	1197-1198
Chapter 78. Real property	1199-1210
Chapter 79. The conveyance of real property.....	1211-1232
Chapter 80. Rights of occupying claimants	1233-1244
Chapter 81. The homestead	1245-1266
Chapter 82. Landlord and tenant	1267-1271
Chapter 83. The estates of decedents	1272-1446

TITLE XVII.

OF THE DOMESTIC RELATIONS.

Chapter 84. Husband and wife	1447-1462
Chapter 85. Marriage	1463-1479
Chapter 86. Divorce and alimony	1480-1486
Chapter 87. Minors	1487-1490
Chapter 88. Guardianship of minors	1491-1515
Chapter 89. Master and apprentice	1516-1542

PART THIRD

OF COURTS AND THE PROCEDURE THEREIN

TITLE XVIII.

OF THE ORGANIZATION OF THE SUPREME AND DISTRICT COURTS.

Chapter 90. The supreme court	1543-1563
Chapter 91. The clerk of the supreme court.....	1564-1565
Chapter 92. The district court	1566-1586
Chapter 93. General provisions	1587-1597
Chapter 94. Contempts	1598-1608
Chapter 95. Attorneys and counselors	1609-1629
Chapter 96. Jurors	1630-1649
Chapter 97. Referees	1650-1655
Chapter 98. Receivers	1656-1658

TITLE XIX.

OF THE COURSE OF PROCEEDING IN THE DISTRICT AND SUPREME COURTS.

Chapter 99. Limitation of actions	1659-1674
Chapter 100. The parties to an action.....	1675-1700
Chapter 101. The place of bringing suit.....	1701-1705
Chapter 102. Change of venue	1706-1713
Chapter 103. The manner of commencing actions.....	1714-1732
Chapter 104. The pleadings	1733-1760
Chapter 105. The trial and its incidents.....	1761-1823
Chapter 106. Judgment by default	1824-1836
Chapter 107. Judgment by confession	1837-1842
Chapter 108. Submitting controversies without action.....	1843-1845
Chapter 109. Attachment and garnishment	1846-1884
Chapter 110. Execution	1885-1952
Chapter 111. Proceedings supplemental to execution.....	1953-1959
Chapter 112. Writs of error coram nobis.....	1960-1964
Chapter 113. The writ of certiorari.....	1965-1972
Chapter 114. Appeal from the district court to the supreme court.....	1973-1993

TITLE XX.

OF SPECIAL ACTIONS AND PROCEEDINGS.

Chapter 115. Replevin	1994-2001
Chapter 116. Actions for the recovery of real property.....	2002-2027
Chapter 117. Partition	2028-2070
Chapter 118. Foreclosure of mortgages	2071-2097
Chapter 119. Arbitrations	2098-2115
Chapter 120. Actions against boats	2116-2130
Chapter 121. Nuisance, waste and trespass.....	2131-2144
Chapter 122. Actions on official securities and for fines and forfeitures..	2145-2150
Chapter 123. Informations	2151-2175
Chapter 124. Scire facias	2176-2178
Chapter 125. Mandamus	2179-2188
Chapter 126. Injunctions and orders	2189-2212
Chapter 127. Habeas corpus	2213-2255
Chapter 128. Changing names	2256-2260

TITLE XXI.

Chapter 129. Of justices of the peace and their courts.....	2261-2387
---	-----------

TITLE XXII.

MISCELLANEOUS SUBJECTS.

Chapter 130. Evidence	2388-2484
Chapter 131. Judgment liens	2485-2489
Chapter 132. Deposits	2490-2492
Chapter 133. Notices, and the service of papers.....	2493-2499
Chapter 134. General provisions	2500-2517
Chapter 135. Forms	2518-2521
Chapter 136. Compensation of officers	2522-2564

PART FOURTH

OF CRIMES AND PUNISHMENTS, AND PROCEEDINGS IN CRIMINAL CASES

TITLE XXIII.

OF CRIMES AND PUNISHMENTS.

Chapter 137. Offenses against the sovereignty of the state.....	2565-2567
Chapter 138. Offenses against the lives and persons of individuals.....	2568-2597
Chapter 139. Offenses against property	2598-2611
Chapter 140. Larceny, and receiving stolen goods.....	2612-2625
Chapter 141. Forgery and counterfeiting	2626-2643
Chapter 142. Offenses against public justice.....	2644-2677
Chapter 143. Malicious mischief and trespass on property.....	2678-2690
Chapter 144. Offenses against the right of suffrage.....	2691-2704
Chapter 145. Offenses against chastity, morality and decency.....	2705-2724
Chapter 146. Offenses against public health.....	2725-2729
Chapter 147. Offenses against public policy	2730-2737
Chapter 148. Offenses against the public peace.....	2738-2743
Chapter 149. Cheating by false pretenses, gross frauds and conspiracy...	2744-2758
Chapter 150. Nuisances, and the abatement thereof.....	2759-2766
Chapter 151. Libel	2767-2772

TITLE XXIV.

OF PROCEEDINGS IN CRIMINAL CASES.

Chapter 152. The prevention of public offenses.....	2773-2775
Chapter 153. Intervention of public officers to prevent the commission of public offenses	2776-2777
Chapter 154. Security to keep the peace.. .	2778-2789

Chapter 155. Police in cities and villages and their attendance at exposed places	2790-2792
Chapter 156. Resistance of process and the suppression of riots.....	2793-2802
Chapter 157. The local jurisdiction of public offenses.....	2803-2810
Chapter 158. The time of commencing criminal actions.....	2811-2815
Chapter 159. General definitions and provisions as to crimes and offenses.	2816-2821
Chapter 160. Information and magistrates	2822-2823
Chapter 161. Warrant of arrest	2824-2836
Chapter 162. Arrests by officers under a warrant, and without a warrant.	2837-2845
Chapter 163. Arrest by a private person.....	2846-2849
Chapter 164. Arrest and retaking after escape.....	2850-2851
Chapter 165. Examination by magistrate	2852-2880
Chapter 166. Impanneling grand jury	2881-2896
Chapter 167. Powers and duty of grand jury.....	2897-2909
Chapter 168. Finding and presentment of indictments.....	2910-2914
Chapter 169. Forms and requisites of indictments.....	2915-2930
Chapter 170. Arraignment of the defendant.....	2931-2942
Chapter 171. Setting aside the indictment	2943-2949
Chapter 172. Demurrer	2950-2956
Chapter 173. Pleas to indictment	2957-2963
Chapter 174. Formation of trial jury.....	2964-2971
Chapter 175. Challenging the jury	2972-2990
Chapter 176. The trial	2991-3020
Chapter 177. Conduct of jury after the cause is submitted to it.....	3021-3028
Chapter 178. The verdict	3029-3045
Chapter 179. Bills of exceptions.....	3046-3049
Chapter 180. New trials	3050-3053
Chapter 181. Arrest of judgment	3054-3057
Chapter 182. Judgment	3058-3073
Chapter 183. The execution	3074-3087
Chapter 184. Writs of error, when allowed and how taken.....	3088-3096
Chapter 185. Judgment upon writ of error.....	3097-3102
Chapter 186. Imprisonment for public offenses and the discipline of prisons	3103-3116
Chapter 187. The penitentiary of the state, and the government and discipline thereof	3117-3155
Chapter 188. Impeachments	3156-3167

TITLE XXV.

MISCELLANEOUS PROVISIONS, RELATING TO CRIMINAL PROCEEDINGS.

Chapter 189. Compelling the attendance of witnesses	3168-3176
---	-----------

Chapter 190. Examination of witnesses conditionally	3177-3192
Chapter 191. Examination of witnesses on commission.....	3193-3208
Chapter 192. In what cases the defendant may be admitted to bail....	3209-3215
Chapter 193. Bail upon being held to answer, before indictment.....	3216-3226
Chapter 194. Bail after indictment and before conviction.....	3227-3229
Chapter 195. Bail on writ of error.....	3230-3231
Chapter 196. Deposit of money instead of bail.....	3232-3235
Chapter 197. Surrender of defendant	3236-3238
Chapter 198. Forfeiture of the undertaking of bail, or of the deposit of money	3239-3242
Chapter 199. Re-commitment of the defendant after giving bail.....	3243-3247
Chapter 200. Dismissal of criminal actions before and after indictment, for want of prosecution	3248-3252
Chapter 201. Disposal of property stolen or embezzled.....	3253-3258
Chapter 202. Inquiry into the insanity of the defendant, before trial or after conviction	3259-3267
Chapter 203. Liberation of poor convicts	3268-3269
Chapter 204. Changing venue in criminal cases.....	3270-3277
Chapter 205. Pardons and commutations of fines and punishments....	3278-3281
Chapter 206. Fugitives from justice	3282-3290
Chapter 207. Search warrants and proceedings thereon.....	3291-3309
Chapter 208. Of vagrants	3310-3221
Chapter 209. Proceedings and trial before justices of the peace for misde- meanors and public offenses within their jurisdiction...	3322-3367

ADDENDA

		Reprint Page.
Part of an act appointing commissioners to prepare a code of laws...	470	349
An act relative to printing the revised code.....	471	350
Declaration of Independence	475	353
Articles of Confederation	480	356
Ordinance of 1787	489	363
Constitution of the United States.....	496	368
Organic law of Michigan	514	382
Organic law of Wisconsin	516	383
Organic law of Iowa	524	389
An act for laying off the towns of Fort Madison, Burlington, Bellview, Dubuque, and Peru	535	397
Act for the admission of the states of Iowa and Florida into the Union.	538	400
Constitution of the state of Iowa.....	543	404
Act and ordinance accepting the propositions made by congress on the admission of Iowa into the Union as a state.....	560	417
Naturalization of aliens	562	418
An act to prescribe the mode in which public acts, records, and judicial proceedings shall be authenticated	568	422

STATE OF IOWA

IN THE

Year One Thousand Eight Hundred and Fifty One

An Act

FOR REVISING AND CONSOLIDATING THE GENERAL STATUTES

OF THE

STATE OF IOWA

WHEREAS, It is expedient that the general statutes of this state be revised, consolidated, and properly arranged: Therefore,

Be it enacted by the General Assembly of the State of Iowa, as follows:

PART FIRST

OF THE STATE AND ITS DIVISIONS, OFFICERS, AND POLICE, THE GENERAL ASSEMBLY AND THE STATUTES.

TITLE I.

OF THE SOVEREIGNTY AND JURISDICTION OF THE STATE, THE GENERAL ASSEMBLY, AND THE STATUTES.

CHAPTER 1.

THE SOVEREIGNTY AND JURISDICTION OF THE STATE.

SECTION 1. **Boundaries of the state.** The boundaries of the state of Iowa are defined in the first article of the constitution.

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

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

CHAPTER 2.

THE GENERAL ASSEMBLY.

SECTION 4. **General assembly—its sessions.** The regular sessions of the general assembly are biennial, and commence on the first Monday of the December next ensuing the election of its members, and shall take place at the seat of government unless specially convened at some other place; and the governor may so convene them in times of pestilence or of public danger.

SEC. 5. **Organization pro tem.** At two o'clock in the afternoon of the day of the sitting of the general assembly, and at the place of the sitting of the houses respectively, some person claiming to be elec-[3]-ted a member shall call the house to which he belongs, to order, and the persons present claiming to be elected to that house shall choose a secretary for the time being.

SEC. 6. **Certificates of election.** The secretaries so elected shall receive and file the certificates of election presented, each for his own house, and make a roll of the persons who appear by them to be elected members of the respective houses.

SEC. 7. The persons so appearing to be members shall then proceed to elect such other officers as may be requisite for the time being; and, when so temporarily organized, shall choose a committee of five by ballot or *viva voce*, as those present may determine, which committee shall examine and report upon the credentials of the persons claiming to be members.

SEC. 8. **Permanent organization.** When the above committee has reported, those who are reported as holding certificates of election from the proper authority shall proceed to the permanent organization of their respective houses by the election of officers.

SEC. 9. **Freedom of speech.** No member of the general assembly shall be questioned in any other place for any speech or debate in either house.

SEC. 10. **Members may administer oaths.** Any member is authorized to administer oaths in the house of which he is a member, and while acting on a committee he may administer oaths upon the business of such committee.

SEC. 11. **Compensation.** Each member is entitled to receive from the state treasury two dollars a day for the period of fifty days from the commencement of each session, and one dollar a day for the remainder of the session; and also two dollars for every twenty miles he travels in going to and returning from the place of meeting by the most usual route.

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

SEC. 13. **Imprisonment.** Imprisonment for contempt of either house shall not extend beyond the session at which it is ordered, and shall be in the jail of the county in which the general assembly may then be sitting, or, if there be no jail, then in one of the nearest county jails.

SEC. 14. **Fine.** Fines and imprisonment for contempt shall be only by virtue of an order of the proper house entered on its journals stating the grounds thereof. Imprisonment shall be effected by a warrant under the hand of the presiding officer for the time being of the house ordering it, countersigned by the secretary of the house, running in the name of the state, and directed to the sheriff or jailor of the proper county; and under such warrant the officer of the house, the sheriff and jailor will be authorized to commit and detain the person. Fines shall be collected by virtue of a similar warrant, directed to any proper officer of any county in which the offender has property, and executed in the same manner as executions for fines issued by courts of record, and the proceeds shall be paid into the state treasury.

SEC. 15. **No bar.** Punishment for contempt, as in this chapter provided, is no bar to any other proceeding, civil or criminal, for the same act.

CHAPTER 3.

THE STATUTES.

Authentication of Statutes.

SECTION 16. **Approval.** When the governor approves a bill he shall set his name thereto with the date of his approval.

SEC. 17. **Bills returned.** When a bill, which passes both houses of the general assembly, is returned by the governor without his signature and with his objections thereto, and upon a reconsideration is passed in both houses by a constitutional majority, it shall be authenticated as having become a law by a certificate endorsed thereon or attached thereto in the following form: "This bill, having been returned by the governor with his objections thereto, and having upon reconsideration been passed in both houses of the general assembly by a constitutional majority, has become a law this —— day of ——;" which certificate shall be signed by the presiding officer of each of the houses.

[5] SEC. 18. **Bill retained.** When a bill passes both houses of the general assembly and is not returned by the governor within three days after it is presented to him, and thereby becomes a law, it shall be authenticated by the governor causing that fact to be certified thereon by the secretary of state in the following manner: "This bill, having remained with the governor three days (Sunday excepted,) the general assembly being in session, has become a law this —— day of ——.

J. C., Secretary of State."

SEC. 19. **Original acts.** The original acts of the general assembly shall be deposited with, and kept by, the secretary of state, and be printed and distributed and copies deposited for sale as the general assembly directs.

When the statutes take effect.

SEC. 20. **Of private nature.** All acts of a private nature, which do not expressly prescribe the time when they are to take effect, shall take effect on the thirtieth day next after the day on which they are approved by the governor, or otherwise become law in conformity with the constitution.

SEC. 21. **Of public nature—publication.** All acts which are to take effect by publication in the newspapers shall be published in at least two papers, (one at least of them at the seat of government if there be one there,) and shall take effect on the twentieth day after the date of the last publication, and the secretary of state shall make and sign, on the original roll of each of such acts, a certificate stating in what papers it was published, and the date of the last publication in each of them, and such certificate shall be conclusive thereof, and the printing thereof at the foot of the act in the volume of printed laws shall be evidence of its own genuineness.

SEC. 22. **Public acts—when in force.** The acts of a public nature and resolutions passed at the regular sessions of the general assembly are required to be printed, bound, and deposited in the office of the secretary of state, by the first day of May following the session, and the secretary shall distribute them to all the organized counties of the state by the first day of June following, and such acts as have not taken effect before by virtue of other provisions of law, shall take effect throughout the state on the first day of July following. And every such act shall be presumed to have taken effect at that time unless the contrary appear as provided in the following two sections.

SEC. 23. **Contingency.** In case the statutes are not in fact distributed to all the organized counties by the first day of July, the secretary of state shall make, sign, and file in his office, a certificate stating on what day they were deposited in the last county, [6] and they shall take effect on the tenth day after the day on which they are so deposited.

SEC. 24. **Certificate.** The said certificate, or a copy thereof under the hand of the secretary and the seal of the state, shall be considered evidence of the fact therein stated, and, immediately after filing it in his office, the secretary shall publish a copy thereof for four weeks successively in six different newspapers, two of them being papers published at the seat [of] government (if such there be.) which publication shall be *prima facie* evidence of the existence of such a certificate.

SEC. 25. **Acts of special session.** The acts and resolutions of the special sessions shall be published at such time, and in such manner, as the general assembly direct in conformity with the constitution.

Construction of Statutes.

SEC. 26. **Construction.** In the construction of the statutes of this state the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the general assembly or repugnant to the context of the statute.

1. *Repeal.* The repeal of a statute does not revive a statute previously repealed; nor does such repeal affect any right which accrued, any duty imposed, any penalty incurred, nor any proceeding commenced, under or by virtue of the statute repealed.

2. *Words and phrases.* Words and phrases shall be construed according to the context, and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such peculiar and appropriate meaning.

3. *Number and gender.* Words importing the singular number only may be extended to several persons or things, and words importing the plural number only may be applied to one person or thing, and words importing the masculine gender only may be extended to females.

4. *Joint authority.* Words giving a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

5. *Road, etc.* The words "highway" and "road" include public bridges, and may be held equivalent to the words "county way," "county road," "common road," and "state road."

6. *Insane persons.* The words "insane person" include idiots, noncomposites, lunatics, and distracted persons.

7. *Issue.* The word "issue," as applied to the descent of [7] estates, includes all the lawful lineal descendants of the ancestor.

8. *Real estate, etc.* The word "land," and the phrases "real estate," and "real property," include lands, tenements and hereditaments, and all rights thereto, and interests therein, equitable as well as legal.

9. *Personal property.* The words "personal property" include money, goods, chattels, evidences of debt, and "things in actions."

10. *Property.* The word "property" includes personal and real property.

11. *Month, year, A. D.* The word "month" means a calendar month unless otherwise expressed, and the word "year" alone, and also the abbreviation "A. D.," is equivalent to the expression "year of our Lord."

12. *Oath and affirmation.* The word "oath" includes "affirmation" in all cases where an affirmation may be substituted for an oath, and in like cases the word "swear" includes the word "affirm."

13. *Person.* The word "person" may be extended to bodies politic and corporate.

14. *Seal.* Where the seal of a court or public office, or officer, may be required by law to be affixed to any paper, the word "seal" shall include an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto.

15. *State.* The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the said district and territories.

16. *Town.* The word "town" may include cities as well as incorporated villages.

17. *Will.* The word "will" includes codicils.

18. *In writing.* The words "written" and "in writing" may include printing, engraving, lithography and any other mode of representing words and letters; excepting those cases where the written signature, or the mark of any person is required by law.

19. *Sheriff.* The term "sheriff" may be extended to any person performing the duties of the sheriff, either generally, or in special cases.

20. *Deed, bond, indenture, undertaking.* The word "deed" is applied to an instrument conveying lands, but does not imply a sealed instrument: and the words "bond" and "indenture" do not necessarily imply a seal, but in other respects mean the same kind of instruments as heretofore; and the word "undertaking" means a promise or security in any form, where required by law.

21. *Executors.* The term "executor" includes an administrator where the subject matter applies to an administrator.

[8] 22. The Roman numerals and Arabic figures are to be taken as part of the English language.

CHAPTER 4.

REPEAL OF THE ACTS HEREIN REVISED AND CONSOLIDATED.

SECTION 27. **The code.** In the citation of the statutes of this state, this statute shall not be reckoned as one of the statutes of the present political year, but it may be designated as the "Code," adding as may be necessary the title, chapter, or section.

SEC. 28. **Repeal.** All public and general acts passed prior to the present session of the general assembly, and all public and special acts the subjects whereof are revised in this code, or which are repugnant to the provisions thereof, are hereby repealed, subject to the limitations and with the exceptions herein expressed.

SEC. 29. **Local acts.** Local acts are not repealed, unless it be herein so expressed, or unless the provisions of this code are repugnant thereto.

SEC. 30. **Existing acts.** The existing acts continue in force until the provisions of the code take effect upon them or their subjects respectively.

SEC. 31. **Existing rights and liabilities.** This repeal of existing acts shall not affect any act done, any right accruing or which has accrued or been established, nor any suit or proceeding had or commenced in any civil cause, before the time when such repeal takes effect; but the proceedings in such cases shall be conformed to the provisions of this code as far as consistent.

SEC. 32. **Same.** No offense committed and no penalty or forfeiture incurred under any act hereby repealed and before the repeal takes effect, shall be affected by the repeal; except that when a punishment, penalty, or forfeiture, is mitigated by the provisions herein contained, such provisions shall be applied to a judgment to be pronounced after the repeal.

SEC. 33. **Suits pending.** No suit or prosecution, pending when this repeal takes effect, for an offense committed, or for the recovery of a penalty or forfeiture incurred, shall be affected by the repeal, but the proceedings may be conformed to the provisions of this code as far as consistent.

SEC. 34. **Officers.** Persons holding office when this repeal takes effect may continue to hold the same until the provisions of the code are carried into effect in relation to them respectively, except those offices which are herein abolished, and those as to which a different provision is made.

[9] SEC. 35. The terms "heretofore" and "hereafter," as used in this code, have relation to the time when this statute takes effect.

SEC. 36. **Acts of present session.** Whenever any act of a general nature passed at the present session of the general assembly, separate from this code, conflicts with or contravenes any of the provisions thereof, the provisions of the code shall prevail.

TITLE II.

OF CERTAIN STATE OFFICERS.

CHAPTER 5.

GOVERNOR.

SECTION 37. **Salary.** The salary of the governor shall be one thousand dollars annually; to be audited like other claims on the state, and paid quarterly out of any money in the treasury not otherwise appropriated.

SEC. 38. **Term.** The official term of the governor, for the purpose of computing his salary, commences on the first Monday of the December following his election, except in case of a special election to fill a vacancy in that office, when the term of service commences on the day of his qualification.

SEC. 39. **Vacancy.** When during a vacancy in the office of governor, the secretary of state, the president of the senate, or the speaker of the house of representatives, performs the duties of that office, such officer may receive the compensation of governor for such period as he fills the vacancy.

SEC. 40. **Power in relation to actions.** Whenever the governor receives information of the commencement of any action or proceeding by which the rights, interests, or property of the state are liable to be affected, he may employ counsel to act in conjunction with the counsel of the proper party, to protect

the interests of the state, and when any civil action is, or is about to be, commenced by any prosecuting attorney in behalf of the state, if, in the opinion of the governor, the case be such as to render it advisable, he may employ additional counsel to assist in the cause.

SEC. 41. **Expenses.** Expenses incurred under the preceding section and in causing the laws to be executed (when not otherwise provided for) and also in recapturing fugitives from justice flee-[10]-ing from this state, may be allowed by the governor and paid from the contingent fund, or by appropriation made by the general assembly.

CHAPTER 6.

SECRETARY.

SECTION 42. **Salary.** The salary of the secretary of state shall be five hundred dollars annually, to be audited like other claims on the state, and paid quarterly out of any money in the treasury not otherwise appropriated. And he may receive such sum for distributing the laws, and for indexing them when he performs this duty, as may be allowed by the general assembly, and fees allowed by law, but no others.

SEC. 43. **Office and duties.** He shall keep his office at the seat of government and perform all duties which at any time may be required of him by law, and he shall have charge of and keep all the acts and resolutions of the territorial legislature, and those which have been or may be passed by the general assembly of the state, the enrolled copy of the constitution of the state, all official bonds of officers approved by the governor, except the bond of such secretary, and all books, records, maps, registers, and other papers, which now are or hereafter may be deposited to be kept in his office.

SEC. 44. **Commissions.** Commissions required by law to be issued by the governor shall be countersigned by the secretary, who shall register each commission in a book to be kept for that purpose, specifying the name of the officer, the office conferred, the date of the commission, and the tenure of the office.

SEC. 45. **Court seals. Expenses of office.** The secretary shall procure, at the expense of the state, for each county when organized, a seal for the district court of the same description with that heretofore adopted; and also provide the necessary stationery and fuel for his office, and that for the general assembly during its session, the accounts for which shall be audited like other claims on the state.

SEC. 46. **Printing the acts.** Immediately after the adjournment of the general assembly he shall furnish the printer authorized to print the statutes with copies of the acts and resolutions passed at the session, prepared with marginal abstracts, and cause them to be printed in a plain manner as a pamphlet. But these provisions do not apply to this statute.

SEC. 47. **Certificate.** He shall make his certificate that the acts and resolutions therein contained are truly copied from the original [11] rolls, and cause the certificate to be printed at the end of each volume, which shall be *prima facie* evidence of their correctness.

SEC. 48. **Criminal returns.** The secretary is required to report to the general assembly at each regular session, (and at such other times as required,) an abstract for each year of the criminal returns received from the clerks of the district court embracing all the facts contained in such returns.

CHAPTER 7.

AUDITOR.

SECTION 49. **Salary.** The salary of the auditor of public accounts shall be six hundred dollars annually, to be audited like other claims on the state, and paid quarterly from any money in the treasury not otherwise appropriated. He shall keep his office at the seat of government and may receive fees allowed by law, but no others.

SEC. 50. **Powers and duties.** The auditor is the general accountant of the state, and it is his duty :

1. *Keep accounts.* To keep and state all accounts between the state of Iowa and the United States or any other state, or any public officer of this state indebted thereto, or entrusted with the collection, disbursement, or other management of any funds belonging to the same, when they are derivable from, or payable into, the state treasury ;

2. To settle the accounts of all county treasurers and other collectors and receivers of state revenues, taxes, tolls, and incomes, payable into the state treasury, for each of their official terms separately ;

3. *Revenues.* To keep fair, clear, and separate, accounts of all the revenues, funds, and incomes of the state payable into the state treasury, and also of all disbursements and investments thereof, showing the particulars of the same ;

4. *Settle accounts.* To settle the accounts of all public debtors for debts due the state treasury, and require such persons, or their legal representatives, who have not accounted at the proper time, to settle their accounts ;

5. *Claims.* To settle all claims against the treasury, and when the law recognizes a claim but no appropriation has been made therefor, to settle the claim and give the claimant a certificate thereof and report the same to the general assembly ;

6. *Collection of money.* To direct and superintend the collection of all money payable into the treasury, and to cause to be instituted and [12] prosecuted the proper actions for the recovery of debts and other moneys so payable ;

7. *Fiscal concerns.* To superintend the fiscal concerns of the state and secure their management in the manner required by law, and to furnish proper instructions and forms to the assessors and treasurers of the counties, as may be found expedient ;

8. *Warrants.* To draw warrants on the treasurer for money directed by law to be paid out of the treasury as the same may become payable ; and each warrant shall bear on its face its number, date, amount, the name of the payee, and a reference to the law under which it is drawn, to be entered in a book kept for that purpose in the order of issuance, and as soon as practicable after issuing such warrant he shall certify the above particulars in relation to it, to the treasurer, who is required to enter the same in the same order ;

9. *Books, etc.* To have the custody of, and keep, all books, papers, records, documents, vouchers, and all conveyances, leases, mortgages, bonds, and other securities, appertaining to the fiscal affairs and the property of the state, which are not required by law to be kept in some other office ; and to have charge of all property of the state where no other provision is made by law for its custody ;

10. *Information to governor.* To furnish to the governor on his requisition information in writing upon any subject connected with this office ; and to

suggest to the governor, or the general assembly, plans for the improvement and management of the public revenue and property;

11. *Report to general assembly.* To report to the general assembly, at its regular sessions, and at such other times as it may require, a complete statement of the revenue, funds, income, taxable property, and other resources, of the state, and of the property of the state, known to his office, and of the public revenues and expenditures of the state since his last report, up to the first Monday of the November preceding each regular session, with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing two years, specifying each object of expenditure, and distinguishing between such as are provided for by appropriations, and such as require to be provided for, and showing the probable deficiency of any former appropriations:

12. *Other duties.* To perform all other duties which may from time to time be required of him by law.

SEC. 51. **Warrants divided.** When the amount due from the state to any person exceeds twenty dollars, the auditor is directed, if requested, to divide the sum into parcels of not less than ten dollars, and to issue warrants for the several sums.

SEC. 52. **Call for information.** The auditor may at any time require any person [13] receiving money, securities, or property, or having the management, disbursement, or other disposition, of any property, money, or securities, of the state, of which an account is kept in his office, to render statements thereof or information touching the same in his possession. And any such person refusing or neglecting to render such statement or information shall forfeit the sum of twenty-five dollars to be recovered by civil action in the name of the state.

SEC. 53. **Claims vs. state when presented.** Every claim against the state shall be presented to the auditor for settlement within two years after the claim accrues, and not thereafter; and when a claim is so presented the auditor is authorized to swear and examine the claimant, and any other persons as witnesses, touching the claim, or cause them to answer by affidavit or deposition.

SEC. 54. **Officer's accounts.** If any officer who is accountable to the treasury in respect to any money or property neglects to render his account to the auditor within the time prescribed by law, or, if no time be so prescribed, then within twenty days after being required so to do by the auditor, the auditor shall state an account against him from the books of the auditor's office, charging ten per cent. damages on the whole sum appearing due, and interest at the rate of six per cent. per annum on the aggregate from the time when the account should have been rendered; all which may be recovered by an action brought on such account stated, or on the official bond of the officer.

SEC. 55. **Officers failing to pay money.** If any such officer fails to pay into the treasury the amount received by him, within the time prescribed by law, or having settled an account with the auditor fails to pay the amount due from himself, the auditor shall charge him with twenty per cent. damages on the amount due with interest on the aggregate from the time the first sum was payable at the rate of six per cent. per annum, and the whole may be recovered by an action brought on either such account stated or the official bond of the officer, and he shall forfeit his commissions.

SEC. 56. **Defense.** The penal provisions in the preceding two sections are subject to any legal defense which the officer may have against the account as stated by the auditor, but judgment for costs shall be rendered against the

officer in the action, whatever be its result, unless he rendered an account within the time named in the above two sections.

SEC. 57. **Oath of officer settling.** When a county treasurer, or other collector or receiver of public money, seeks to obtain credit on the books of the auditor's office for payment made to the treasurer, before giving such credit the auditor shall require him to take and subscribe an oath that he has not used or appropriated any of the public money for his private benefit (further than that [14] which the law allows him), nor for the benefit of any other person.

SEC. 58. **Notice to account.** In those cases where the auditor is authorized to call upon persons or officers for information or statements, or to render accounts, he may issue his requisition therefor in writing to the person or officer called upon, allowing reasonable time, which, being served as a notice in a civil action by the sheriff or any constable of the county in which the person or officer called upon resides or exercises his office and returned to the auditor with the service endorsed thereon, shall be evidence of the making the requisition therein expressed.

SEC. 59. **Office open.** All things pertaining to the auditor's office are at all times open to the inspection of the governor, the general assembly, or either house thereof, and to any committee thereof appointed to examine into them.

SEC. 60. **Expenses.** All books, maps, stationery, furniture, fuel, and other necessaries for the use of the auditor's office, are to be furnished at the expense of the state.

CHAPTER 8.

TREASURER.

SECTION 61. **Salary.** The salary of the treasurer of the state shall be four hundred dollars annually, to be audited like other claims on the state, and paid quarterly out of any money in the treasury not otherwise appropriated. And he may receive fees allowed by law, but no others.

SEC. 62. **Duties.** He shall keep his office at the seat of government, and it is his duty to keep an accurate account of the receipts and disbursements at the treasury in books to be kept for that purpose, in which he shall specify the names of the persons from whom money is received, and on what account, and the time thereof.

SEC. 63. **Warrants.** He shall enter the memorandum of warrants issued as certified to him by the auditor, and he shall receive in payment of public dues the warrants issued by the auditor in conformity with law, and redeem such when presented if there be money in the treasury not otherwise appropriated; and on receiving any such warrant cause the person presenting it to endorse it, and the treasurer shall write on its face the word "redeemed," and enter in his book containing the auditor's memoranda in the appropriate columns, the name of the person to whom in fact paid, the date of the payment, and the amount of the interest if any.

[15] SEC. 64. **Receipts.** When any amount is paid into the treasury the treasurer is required to give the person paying, receipts in duplicate, stating the fund to which the money belongs, one of which may be kept by him, and the other must be delivered to the auditor in order to obtain the proper credit, and the amount shall be charged to the treasurer.

SEC. 65. **Paying out money.** He shall pay no money from the treasury but upon the warrant of the auditor, and shall pay such warrants in the order of their issuance, or if there be no money in the treasury from which such warrant can be paid he shall, upon request of the holder, endorse upon the warrant the date of its presentation, and sign it, from which time the warrant shall bear an interest of eight per cent. per annum until the time limited in the next section.

SEC. 66. **Record of warrants.** He shall keep a record of the number and amount of the several warrants so presented and endorsed for non-payment, and when there are funds in the treasury for their payment to an amount sufficient to render it advisable, he shall give notice thereof, and to what number of warrants the funds will extend, or the numbers of the outstanding warrants which the funds will pay, by three insertions in a newspaper printed at the seat of government; and at the expiration of thirty days from the day of the first insertion the interest on the warrants so notified of being payable shall cease.

SEC. 67. **Certify warrants canceled.** Once in each week he shall certify to the auditor the number, date, amount, and payee, of each auditor's warrant taken up by him, with the date when taken up, and the amount of interest allowed, if any; and on the first Monday of March, June, September and November annually he is directed to account with the auditor and deposit in his office all such warrants received at the treasury, and take the auditor's receipt therefor.

SEC. 68. **Report to governor.** As soon as practicable after the first Monday of November preceding the regular session of the general assembly he shall report to the governor the state of the treasury up to that date, exhibiting the amount received and paid out by the treasurer since his last report, and the balance remaining in the treasury.

SEC. 69. **Books, etc., subject to inspection.** It is his duty to submit his books, accounts, vouchers, and funds, to the inspection of the governor, the general assembly, either house thereof, or any committee of either house appointed for that purpose, when required thereby.

SEC. 70. **Expenses.** The expenses of the treasury are to be audited like other claims on the state, and paid by the state.

[16] CHAPTER 9.

COMMISSIONERS IN OTHER STATES.

SECTION 71. **Commissioners—oaths—acknowledgments.** The governor may appoint in each of the United States one or more commissioners to continue in office during the pleasure of the governor; and such commissioners are empowered to administer oaths, and to take depositions and affidavits, to be used in this state, and also to take the acknowledgments or proofs of deeds or other instruments to be recorded in this state.

SEC. 72. **Same.** Oaths administered by any such commissioner, affidavits and depositions taken by him, and acknowledgments as aforesaid, certified by him under his hand and appropriate seal, are made as effectual in law for all intents and purposes as if done and certified by a justice of the peace in this state.

SEC. 73. **Qualification—oath—seal.** Before such commissioner can perform any of the duties of his office, he is required to take and subscribe an

oath that he will faithfully perform the duties of such his office, which oath shall be taken and subscribed before some judge or clerk of a court of record in the state in which the commissioner is to exercise his appointment, and certified under the hand of the person taking it and the seal of his court; and he is also required to file the oath and certificate, together with his signature on paper, and a clear impression of his seal on wax or wafer in the office of the secretary of this state.

SEC. 74. **Signature and seal—effect of.** A signature and seal purporting to be his will be entitled to the same force, as evidence, with a signature and seal purporting to be those of a notary public.

SEC. 75. **Fees.** Such commissioner is authorized to demand for his services the same fees as may be allowed for similar services by the laws of the state in which he is to exercise his office.

SEC. 76. **Those heretofore appointed.** Those persons who have heretofore been appointed commissioners in other states in accordance with any previous law of the territory or state of Iowa, may continue to hold said offices according to the tenor of their several commissions.

SEC. 77. **Those appointed by other states in this state.** Commissioners of the like nature appointed in this state under the authority of any other of the United States are hereby invested with all the authority of a justice of the peace to issue subpoenas requiring the attendance of witnesses before them to give their testimony by deposition or affidavit in any matter in which his deposition or affidavit may [17] be taken by the law of such other state; and they are also authorized to administer oaths in any matter in relation to which they are required or permitted by the law of the other state; and false swearing in such cases is hereby made subject to the penal laws of this state relating to perjury.

CHAPTER 10.

NOTARIES PUBLIC.

SECTION 78. **Appointment.** The governor may appoint and commission one or more notaries public in each organized county of the state, who may respectively hold their offices three years unless sooner removed by the governor.

SEC. 79. **Powers and duties.** Each notary is invested with the powers and shall perform the duties which pertain to that office by the custom and law of merchants.

SEC. 80. **Qualification.** The notary before entering upon the duties of his office is required to give bond to the state of Iowa in the penal sum of five hundred dollars, conditioned for the true and faithful execution of the powers and duties of his office, with two or more sureties to be approved of by the clerk of the district court in the county where such notary resides, which bond shall be filed in the office of the said clerk, and may be sued for the use of the state or of any person injured by the acts or omissions of the notary.

SEC. 81. **Record.** Every notary public is required to keep a true record of all notices given or sent by him, with the time and manner in which the same were given or sent, and the names of all the parties to whom the same were given or sent, with a copy of the instrument in relation to which the notice is served, and of the notice itself.

SEC. 82. **Records, etc.—evidence.** Such records, and copies of them authenticated by the hand and seal of the notary, his protests, and all his official

acts as notary, and his seal, shall receive such credit and faith as they are entitled to by the law and custom of merchants.

SEC. 83. **Seal.** Each notary public is required to have a seal on which are to be engraved the words "notarial seal," and "Iowa," with his surname at length and at least the initials of his Christian name.

SEC. 84. **Take oaths, etc.** Notaries public are empowered to administer oaths, and to take the acknowledgment and proof of deeds required or permitted by the law of this state to be recorded or acknowledged.

SEC. 86. **Removal.** If a notary removes his residence from the county for removal from office of any notary, his records with all his official papers shall within three months therefrom be deposited in the office of the clerk of the district court in the county for which such notary shall have been appointed. And if any notary on his resignation or removal neglect for three months so to deposit them, he shall be held guilty of a misdemeanor and be punished accordingly and be liable in an action to any person injured by such neglect; and if an executor or administrator of a deceased notary wilfully neglects for three months after his acceptance of that appointment to deposit the records and papers of the deceased notary which came into his hands in said clerk's office, he shall be held guilty of a misdemeanor and punished accordingly.

SEC. 86. **Removal.** If a notary removes his residence from the county for which he was appointed, such removal shall be taken as a resignation.

SEC. 87. **Records with clerk.** It is the duty of each clerk aforesaid to receive, and safely keep, all such records and papers of the notary in the cases above named and to give attested copies of them under the seal of his court, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

TITLE III.

OF THE CIVIL AND POLITICAL DIVISIONS OF THE STATE, AND THE OFFICERS THEREOF.

CHAPTER 11.

CONGRESSIONAL DISTRICTS.

SECTION 88. The congressional districts of the state remain as they now are until changed by the general assembly.

[19] CHAPTER 12.

JUDICIAL DISTRICTS.

SECTION 89. The judicial districts remain as they now are until changed by the general assembly.

CHAPTER 13.

LEGISLATIVE DISTRICTS.

SECTION 90. The apportionment of senators and representatives in the general assembly is to be fixed by law from time to time for the period of eight years from the adoption of the constitution of the state, according to the thirty-first section of the fourth article thereof.

CHAPTER 14.

COUNTIES.

SECTION 91. **Boundaries.** The boundaries of the several counties remain as now established.

SEC. 92. **Rights.** The rights and liabilities of the several counties now existing remain as they are.

SEC. 93. **Body corporate—powers.** Each county now or hereafter organized is a body corporate for civil and political purposes only, and as such may sue and be sued; shall keep a seal such as provided by law; may acquire and hold property and make all contracts necessary or expedient for the management, control, and improvement, of the same, and for the better exercise of its civil and political powers; may take any order for the disposition of its property; and may do such other acts and exercise such other powers as may be allowed by law.

SEC. 94. **Seal.** The county judge of each county having a seal is required to obtain, as soon as practicable, for his county, a new seal of the same size with the present one and with the same device, but the inscription on which shall be, "Seal of the county of —, Iowa," (naming the county) in capital letters, and each new seal hereafter obtained shall be of the same description. The county seal is the seal of the county [20] court, its capacities both of county and probate court. But the seals of the board of commissioners and of the probate court remain until the new seal is obtained.

SEC. 95. **Jurisdiction.** Counties bounded by a stream or other water have concurrent jurisdiction over the whole of the waters lying between them.

SEC. 96. **Officers.** Each organized county shall elect a judge of the county court, a prosecuting attorney, a clerk of the district court, a recorder, a sheriff, a surveyor, a coroner, and a supervisor of roads, each of whom may hold his office for the term of two years, except the county judge who may hold for the term of four years.

SEC. 97. An action may be brought in the name of a county on any instrument heretofore given to the board of commissioners of the county, or to any officer thereof for the benefit of the county; and in the name of the state when the instrument was in part for the benefit of the state.

Unorganized Counties, and other country.

SEC. 98. **Annexation.** Unorganized counties and other districts now or hereafter annexed to any organized county for judicial, electoral, or revenue purposes, shall for those purposes respectively, be deemed to be within the limits of the county to which they are or may be so annexed and to form a part thereof, unless otherwise provided by law.

SEC. 99. **First election.** The first election holden in unorganized counties for the purpose of organization shall be holden at the first August or general election which takes place after the act authorizing the organization takes effect, and shall be conducted as far as practicable as directed concerning the general election. And if such first election is the general election, those officers then elected who are by law to be elected at the August election, shall hold for the term of one year, and another choice shall be made at the next ensuing August election of such officers to hold for the term of two years.

SEC. 100. **Townships.** The county judge of a county to which an unorganized county is attached for election purposes, is required to divide the attached county into townships, and to determine the place of holding elections in each and to appoint the judges of election, who shall appoint the clerks. But if such appointment of judges is not made, or if the judges or any of them do not attend, the electors may choose others in their stead.

SEC. 101. **Justices and constables.** Each township in an unorganized county may elect two justices of the peace, and two constables, whose qualifications for office shall be as directed hereafter.

[21] SEC. 102. **Voting.** The electors in unorganized counties are not entitled to vote for county and township officers for the counties to which they may respectively be attached.

CHAPTER 15.

COUNTY JUDGE.

SEC. 103. **Election.** The county judge shall be elected at the first election holden in August after this statute has been in force thirty days, and if such election does not take place in the year 1851, the county judges elected in 1852 shall hold for the term of three years, and a new election shall take place at the August election in the year 1855 and every four years thereafter.

SEC. 104. **Office.** The county judge is required to keep his office at the county seat, and it is to be kept open for business at all usual times, and he is the keeper of the county seal.

SEC. 105. **Powers.** The county judge is hereby invested with the usual powers and jurisdiction of county commissioners and of a judge of probate, and with such other powers and jurisdiction as are conferred by this statute; and his official style may be either "county judge" or "judge of" (such a county, naming it).

SEC. 106. **Duties. General agent to audit claims and accounts, etc.** He is the accounting officer and general agent of the county, and as such is authorized and required:

1. To take the management of all county business, and the care and custody of all the county property, except such as is by law placed in the custody of another officer, and he shall have the control of all books, papers, and instruments, pertaining to his office;

2. To audit all claims for money against the county, to draw and seal with the county seal all warrants on the treasurer for money to be paid out of the county treasury;

3. To audit and settle the accounts of the treasurer, and those of any other collector or receiver of county revenue, taxes, or incomes, payable into the county treasury, and those of any person entrusted to expend any money of the county, and to require them to render their accounts as directed by law;

4. To keep a distinct account with the treasurer of the county for each several term for which the treasurer may be elected, commencing from the day on which the treasurer becomes qualified, and continuing until the same or another person is qualified as treasurer, in which account he shall charge the treasurer with the county tax list, and with all sums [22] paid him and for which he is accountable to the county; and shall credit him with all orders returned and canceled, with all vouchers presented by him, with all commissions and deductions allowed him, with all money or other funds paid over to his successor, and with all other matters with which he is to be credited in account;

5. *Books.* To keep a book to be known as the "minute book," in which shall be recorded all orders and decisions made by him, except those relating to roads and to probate affairs, and in which orders for the allowance of money from the county treasury shall state on what account, and to whom, the allowance is made, dating the same and numbering them consecutively through each year from the first day of January to the thirty-first day of December, both inclusive;

6. To keep a separate book for the entry of all proceedings and adjudications relating to the establishment, change, or discontinuance of roads; and also separate books for the probate business;

7. To keep in some convenient form a book for the entry in the order of issuance of the number, date, amount, and name of the drawee, of each warrant drawn on the treasurer which may be known as the "warrant book," and to number the warrants as above directed in relation to the minute book;

8. *Actions.* To institute and prosecute civil actions brought for the benefit of the county;

9. *Fiscal affairs.* To superintend the fiscal concerns of the county and secure their management in the best manner;

10. *Receipts and expenditures.* To keep an account of the receipts and expenditures of the county, and on the first Monday of July annually, cause a minute statement of them for the preceding year to be made out, with an account of all debts payable to and by the county and the assets of the county, and have a copy of the same posted at the court house door, and at each of two other public places in the county, and cause the original to be filed;

11. *Rooms, books, etc.* To provide the necessary rooms, books, stationery, and furniture for his office, and those of the treasurer and clerk of the district court, and books for the county surveyor, and rooms and fire for the district court, at the expense of the county, and, when there is a public building, rooms for such other county officers as he may allow.

SEC. 107. **Warrants.** As the judge issues warrants from time to time, he is required to deliver to the treasurer a memorandum of the number, date, amount, and drawees name, of each.

SEC. 108. **Deeds, etc.** Deeds for the conveyance of lands, and other contracts made by the county which are to be formally executed, [23] shall be in the name of the county, executed by the county judge in his official capacity, and acknowledged by him, and have the county seal affixed.

SEC. 109. **Not act as attorney.** The county judge cannot act as attorney or counsellor in any business which has or may come before him in his capacity as a county judge.

SEC. 110. **Acknowledgments and oaths.** He has authority to administer oaths and take the acknowledgment of instruments, whenever the same is re-

quired or permitted by law, and in the performance of such acts the county seal shall be his seal of office.

SEC. 111. **Vacancy or interest.** In case of a vacancy in the office of county judge, and in case of the absence, inability, or interest, of that officer, the prosecuting attorney of the county shall supply his place; and when a party in direct interest makes his affidavit to the fact of the interest of the judge, it will be his duty to vacate his seat for the time being, and to cause the prosecuting attorney to be notified to attend, and the judge's refusal so to do will be good cause for an appeal, which may be taken either before the matter is heard, or after. When for the same causes the prosecuting attorney cannot act, the county clerk shall fill the place of the judge, and the affidavit must apply to both judge and attorney. When, for any of the above causes, the judge, or the attorney in his proper order, does not act, the record of the proceeding must show the fact and the cause.

SEC. 112. **Field notes.** The judge is required to procure for his county (where it has not been done) a copy of the field notes of the original survey of his county by the United States, and cause a map of the county to be constructed in accordance therewith on a scale of not less than one inch to a mile, and laid off into congressional townships and sections, to be kept open in the office of the judge, and the field notes to be deposited in the same.

SEC. 113. **Plats of townships.** The said judge is further required to cause a plat of each congressional township in his county to be constructed on a scale of not less than two and a half inches to a mile, and divided into sections and quarter sections and subdivisions as subsequent occasion may require, and cause the letter S. or some other suitable letter to be marked on each division and subdivision which appears to be sold according to the returns transmitted by the auditor of state as obtained from the land offices.

SEC. 114. **Submit questions to people.** The county judge may submit to the people of his county at any regular election or at a special one called for that purpose, the question whether money may be borrowed to aid in the erection of public buildings; whether the county will construct, or aid to construct, any road or bridge which [24] may call for an extraordinary expenditure; whether stock shall be permitted to run at large, or at what time it shall be prohibited; and the question of any other local or police regulation not inconsistent with the laws of the state. And when the warrants of a county are at a depreciated value, he may in like manner submit the question whether a tax of a higher rate than that provided by law shall be levied, and in all cases when an additional tax is laid in pursuance of a vote of the people of any county for the special purpose of repaying borrowed money, or of constructing or aiding to construct any road or bridge, such special tax shall be paid in money and in no other manner.

SEC. 115. **Manner.** The mode of submitting such questions to the people shall be the following: the whole question, including the sum desired to be raised, or the amount of tax desired to be levied, or the rate per annum, and the whole regulation including the time of its taking effect or having operation, if it be of a nature to be set forth, and the penalty for its violation if there be one, is to be published at least four weeks in some newspaper printed in the county. If there be no such newspaper the publication is to be made by being posted up in at least one of the most public places in each township in the county, and in all such cases in at least five among the most public places in the county including the above, and one of them in all cases at the door of the court house, during at least thirty days prior to the time of taking the vote. All such notices shall name the time when such question will be voted upon, and the form in which the question shall be taken, and a copy of the

question submitted shall be posted up at each place of voting during the day of the election.

SEC. 116. **Borrowing and expending money.** When a question so submitted involves the borrowing or the expenditure of money, the proposition of the question must be accompanied by a provision to lay a tax for the payment thereof, in addition to the usual taxes, as directed in the following section, and no vote adopting the question proposed will be of effect unless it adopt the tax also.

SEC. 117. **Rate of tax, etc.** The rate of the tax shall in no case be more than one per cent. on the county valuation in one year. When the object is to borrow money for the erection of public buildings as above provided, the rate shall be such as to pay the debt in a period not exceeding ten years. When the object is to construct, or to aid in constructing, any road or bridge, the annual rate shall be not less than one mill on a dollar of the valuation, and any of the above taxes becoming delinquent shall draw the same interest with the ordinary taxes.

SEC. 118. **Tax.** When it is supposed that the levy of one year will not pay the entire amount, the proposition and the vote must be [25] to continue the proposed rate from year to year, until the amount is paid.

SEC. 119. **Question adopted.** The county judge, on being satisfied that the above requirements have been substantially complied with and that a majority of the votes cast are in favor of the proposition submitted, shall cause the proposition and the result of the vote to be entered at large in the minute book and a notice of its adoption to be published for the same time and in the same manner as above provided for publishing the preliminary notice; and from the time of entering the result of the vote in relation to borrowing or expending money, and from the completion of the notice of its adoption in the case of a local or police regulation, the vote and the entry thereof on the county records shall have the force and effect of an act of the general assembly.

SEC. 120. **Rescission of vote.** Propositions thus adopted, and local regulations thus established, may be rescinded in like manner and upon like notice by a subsequent vote taken thereon, but neither contracts made under them, nor the taxes appointed for carrying them into effect, can be rescinded.

SEC. 121. **When put.** The judge shall submit the question of the adoption or rescission of such a measure when petitioned therefor by one-fourth of the voters of the county.

SEC. 122. **Record evidence.** The record of the adoption or rescission of any such measure shall be presumptive evidence that all the proceedings necessary to give the vote validity have been regularly conducted.

SEC. 123. **Excess of tax.** In case the amount produced by the rate of tax proposed and levied exceeds the amount sought for the specific object, it shall not therefore be held invalid, but the excess shall go into the ordinary county funds.

SEC. 124. **Money appropriated.** Money so raised for such purposes is specially appropriated and constitutes a fund distinct from all others in the hands of the treasurer, until the obligation assumed is discharged.

As a County Court.

SEC. 125. **Always open.** The county court shall be considered in law as always open, but for the transaction of business requiring notice, the judge shall hold regular sessions on the first Monday of each month except April and August, and on the Tuesday following the first Monday of those months.

SEC. 126. **Sessions.** When the district court is to sit in a county on any of the days appointed in the preceding section for the session of the county court, the latter shall be held on the Monday preceding, and when the county judge is required by [26] law to perform any duty which takes him from his county on one of the appointed days, the session of the county court shall be holden on the following Thursday, or such day as the judge may appoint.

SEC. 127. **What heard in session.** Matters requiring a notice shall be heard in session only, but the judge may continue any business from a session to an intermediate day; and any matter may be heard out of session (the judge assenting) if all parties consent in writing, or if the record show that they are present and assenting. Other matters than those requiring notice, and orders of an intermediate nature not affecting the merits of matters requiring notice, may be heard and acted upon at any time.

SEC. 128. **Books.** The "minute book," the "warrant book," the "road book," and records of probate business, constitute the records of the county court.

SEC. 129. **Powers of court.** The county court has authority to provide for the erection and reparation of court houses, jails, and other necessary buildings within and for the use of the county, and such authority in relation to roads, ferries, the poor, and cases of bastardy, as is given in the chapters relating to those subjects, and has such other powers as are or may be given it by law. It shall determine the amount of tax to be levied for county purposes, according to the provisions of law in force at the time, and cause the same to be collected.

SEC. 130. **Trials.** All questions in the county court shall be tried by the court, except when it is otherwise provided.

SEC. 131. **Appeals.** An appeal is allowed (except when otherwise expressed) from all decrees and decisions of the county court on the merits of any matter affecting the rights or interests of individuals as distinguished from the public, including an intermediate order involving the merits, and necessarily affecting the decree or decision. The appeal shall be taken within thirty days from the day on which the decision was made, and shall be taken by claiming the appeal and filing in the county office a bond with one or more sureties and a penal sum to be approved by the county judge or clerk, which approval shall be endorsed thereon, and with a condition in substance as follows: that the appellant will prosecute the appeal with effect; that if the appeal be dismissed or the judgment below affirmed, he will comply with the judgment and the orders made by the court below, and that he will pay all costs and sums of money which may be adjudged against him in the court appealed to, and will comply with the orders of that court. But the appeal shall be taken to the next term of the district court in the county if there be ten days between the day when the judgment was rendered by the county court and the day of the sitting of the district court, and the matter shall stand for hearing at that [27] time if required by the appellee, subject to the ordinary rules of practice.

SEC. 132. **Transcript.** Within twenty days from the day of the appeal, and within five days in the case mentioned in the last paragraph of the preceding section, the county clerk is required to file a transcript of the proceedings in the matter in which the appeal is taken, authenticated by the county seal, with the clerk of the district court, who shall enter the same among the causes pending in that court.

SEC. 133. **Who may appeal.** If more than one person be concerned in the matter of the decision from which the appeal is taken, any number of them may take the appeal as above provided; but, if the nature of the case admit

of it, the decision may be carried into effect as it regards those who do not join in the appeal bond.

SEC. 134. Failure to appeal, without fault. If the party entitled to an appeal fails, without fault on his part, to claim or perfect or prosecute his appeal, he may apply to the district court, which, upon being satisfied of the above matter and that the case requires revision, may authorize an appeal to be taken upon such terms as it deems reasonable and may take such order as may be requisite to give it effect. But no appeal shall be thus allowed without due notice to those adversely interested nor after one year from the act complained of.

SEC. 135. Executions—filing transcript. In all cases in which the county court is empowered to render judgment for a sum of money, or for costs, that court may issue execution against the personal property of the party; but when it is desired to issue execution against real property, or to make the judgment a lien upon it, a transcript of all the proceedings and of the judgment, shall be filed in the office of the district court, and an abstract of the judgment entered on the judgment docket, and from the time it is so filed and entered the judgment shall become as a judgment of the district court, and be a lien on the real property of the party in all respects as a judgment of the district court, and execution may issue from that court as on its own judgments.

SEC. 136. Copies. Transcripts of the records of, and copies of the papers pertaining to, the county court, may be certified and signed by either the clerk or the judge.

SEC. 137. Jury. A trial by jury in the county court is not given unless the party desiring it demand a jury, and it can be demanded in those cases only in which such trial is expressly given. When there is a jury it shall consist of six persons and the number of challenges shall be the same as in the court of a justice of the peace; and in the cases of insane persons and apprentices, provided for in the chapters relating to them, if [28] they have no property by which to pay costs when adjudged against them the jurors shall be paid by the county.

SEC. 138. As judge of probate. As the judge of probate, the county judge has jurisdiction of the probate of wills, the administration of the estates of deceased persons, and of the guardianship of minors and insane persons.

SEC. 139. Probate records. The probate records shall be kept in books separate from those of the other business of the county court.

SEC. 140. It is hereby directed that the business pending in either the probate court or the court of the board of commissioners in any county when this statute takes effect be, in its further progress, conformed to the provisions of this statute as far as practicable: but no proceeding or matter shall become void for want of such conformity if it be conducted legally according to the pre-existing statutes.

CHAPTER 16.

CLERK OF THE DISTRICT COURT.

SECTION 141. The clerk of the district court is ex officio the clerk of the county court and the register of probate.

SEC. 142. Office and duties. He shall keep his office at the county seat; shall attend the sessions of the district and county courts himself or by deputy; keep the records, papers and seal of the district court; and keep a record of the proceedings of each of those courts in separate books, as may belong to his

office and as required by law, under the direction of the judges of those courts severally.

SEC. 143. **Expenses.** The books and stationery of his office shall be procured at the expense of the county.

SEC. 144. **Records.** The records of the district court consist of the original papers constituting the causes adjudicated or pending in that court, and the books prescribed in the next section.

SEC. 145. **Books to be kept.** The clerk is required to keep the following books for the business of the district court:

1. *Record book.* A book containing the entries of the proceedings of the court, which may be known as the "record book," and which is to have an index referring to each proceeding in each cause under the name of the parties both plaintiff and defendant, and under the name of each person named in either party:

2. A book containing an abstract of the judgments, having in separate and appropriate columns the names of the parties, the date of the judgment, the damages recovered, [29] costs, the date of the issuance and return of executions, with the entry of satisfaction, and other memoranda; which book may be known as the "judgment docket" and is to have an index like that required for the record book;

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

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

5. *Complete record.* A book in which to make a complete record when required by law.

SEC. 146. **Duty as county clerk.** It is the duty of the clerk to keep a full and true record of the proceedings in the county court in session, entering distinctly each step in the progress of any proceeding. But such record shall be equally valid if made by the judge.

SEC. 147. **Confined to office.** The clerk shall not be appointed by the county court to the discharge of any other duty than such as pertains to his office.

SEC. 148. **Criminal returns.** The clerk of the district court is required to report to the secretary of state on or before the first Monday in November of each year the number of convictions for all crimes and misdemeanors in that court in his county for the year preceding; and such report shall show the character of the offense and the sentence of punishment, the occupation of the convict, whether he can read and write, and his general habits, and also the expenses of the county for criminal prosecutions during the year, including, but distinguishing, the compensation of the prosecuting attorney.

SEC. 149. **Failure.** For a failure to make such report the clerk shall forfeit the sum of ten dollars to be recovered in the name of the state by civil action. And the certificate of the secretary, under the seal of the state and sworn to by him before a competent officer, that no such report has been received at his office, shall be evidence.

[30] CHAPTER 17.

RECORDER AND TREASURER.

SECTION 150. **Office and duties.** The recorder shall keep his office at the county seat, and it is his duty to record at length, and as speedily as possible, all instruments in writing which may be delivered to him for record, in the manner directed by law.

SEC. 151. **As treasurer.** The person who is elected recorder shall be treasurer of the county, and hold his office for the same term as that of recorder, and, as treasurer, shall be the collector of taxes, and if he omit to qualify either as recorder or as treasurer, it is a refusal of both offices.

SEC. 152. **Duties.** It is the duty of the treasurer to receive all money payable to the county, and to disburse the same on warrants drawn and signed by the county judge, and sealed with the county seal, and not otherwise; and to keep a true account of all receipts and disbursements, and hold the same at all times ready for the inspection of the county judge.

SEC. 153. **Warrants.** When a warrant drawn by the judge on the treasurer is presented for payment, and not paid for want of money, the treasurer shall endorse thereon a note of that fact and the date of presentation, and sign it, and thenceforth it shall draw interest at the rate of six per cent; and when a warrant which draws interest is taken up, the treasurer is required to endorse upon it the date and the amount of interest allowed, and such warrant is to be considered as cancelled and shall not be re-issued.

SEC. 154. **Same.** When a person, wishing to make a payment into the treasury, presents a warrant of an amount greater than such payment, the treasurer shall cancel the same and give the holder a certificate of the overplus, upon the presentation of which to the county judge he shall file it, and issue a new warrant of that amount, and charge the treasurer therewith, and such certificate is transferable by delivery, and will entitle the holder to the new warrant, which, however, must be issued in the first drawee's name.

SEC. 155. **Warrant book.** The treasurer is directed to keep a book, ruled so as to contain a column for each of the following items in relation to the warrants drawn on him by the judge—the number, date, drawee's name, when paid, to whom, original amount, interest—and on receiving the memoranda of the warrants issued by the judge to enter the particulars contained in the memoranda, and on payment of the warrants to enter the remaining particulars.

[31] SEC. 156. **Accounts to be kept.** The treasurer shall keep a separate account of the several taxes for state, county, school, and road purposes, opening an account between himself and each of those funds, charging himself with the amount of the tax, and crediting himself with the amounts paid over severally and with the amount of delinquent taxes when legally authorized so to do

SEC. 157. **Present accounts.** At the regular sessions of the county court in January, March, July, and October he shall present an account of all receipts and disbursements at the treasury from the time of his preceding account to the day preceding the meeting of the court, bringing down the balances of his preceding account, if any.

SEC. 158. **Annual accounts.** At the July session of the court, or at such other period at the court may direct, annually, he is required to present a full account of the finances of the county as connected with his office from the last annual account, including the balance of taxes due on the tax list, and he shall settle his accounts, and his vouchers being allowed shall be canceled by having

the word "canceled" written on the face of them, and be filed in order, and kept in the county office, and the treasurer shall be credited their amount on the books of the county.

SEC. 159. **Canceling warrants.** The warrants returned by the treasurer shall be compared with the warrant book, and the word "canceled" be written over the minute of the proper numbers in the warrant book, and the original warrant be preserved at least two years.

SEC. 160. **Weekly returns.** The treasurer is required to make weekly returns to the county judge of the number, date, drawee's name, when paid, to whom paid, original amount, and interest, as kept in the book before directed.

SEC. 161. **New accounts each term.** A person re-elected to, or holding over, the office of treasurer, shall keep separate accounts for each term of his office.

SEC. 162. **Incapacity.** No person holding the office of judge or clerk of the supreme or district court, county judge, prosecuting attorney, or sheriff, shall hold the office of county recorder, and if any person is elected to both offices his qualification for the one shall be a refusal of the other.

[32] CHAPTER 18.

PROSECUTING ATTORNEY.

SECTION 163. **Duties.** It is the duty of the prosecuting attorney to appear for the state and county respectively in all matters in which the state or county may be a party, or interested, in the district or county courts in his county; before any judge on a writ of *habeas corpus* sued out by a person charged or convicted of a public offense, the prosecution being in his county; and in the supreme court in any of the above proceedings taken thither from his county; and in like manner to appear for the state or county in any proceedings brought to his county from another by change of venue; and he is authorized when he deems it advisable to appear before justices of the peace in the initiatory proceedings in criminal cases.

SEC. 164. **Duties.** But when any such proceeding is sent to another county by change of venue, the attorney for the county in which it originated may follow it to the other county and attend to it there, in which case it shall not be obligatory upon the prosecuting attorney of the county to which it is changed to attend to the matter, if he receives notice of such intention from the original prosecuting attorney ten days before the sitting of the court at which it is to be heard.

SEC. 165. **Duties.** It is also the duty of the prosecuting attorney to give legal advice to the state and county officers in matters pertaining to his own county.

SEC. 166. **Absence, etc., appointed.** In the absence of the prosecuting attorney, and during his inability to act in any proceeding, the court before which it is pending may appoint a person to supply his place; and the county judge may make such appointment in writing, in any county business, and also in any criminal prosecution which in his opinion requires attention before the sitting of the district court, and such appointment made before the action of the district court will be valid.

SEC. 167. The person so appointed, and performing the duty, will be entitled to his compensation as if he were the prosecuting attorney.

SEC. 168. **Assistant counsel.** The county judge may employ other counsel with the prosecuting attorney when he deems it advisable.

SEC. 169. **Compensation.** The attorney shall receive, for his whole compensation for services rendered to the county, an annual salary amounting to forty per cent. upon the salary of the county judge, and payable and graduated in the same manner, except as herein otherwise declared. For civil business in [33] the name of the state, and for proceedings in *quo warranto* and *mandamus*, when not prosecuted in behalf of an individual exclusively, the state is held to compensate him. But when the prosecuting attorney acts in the place of the county judge, he will be entitled to receive two dollars a day, to be paid from the county treasury.

CHAPTER 19.

SHERIFF.

SECTION 170. **Duties.** It is the office of the sheriff and his deputies to serve or otherwise execute according to law, and return, all writs and other legal process issued by lawful authority and to him or them directed or committed, and to perform such other duties as may be required of him by law.

SEC. 171. **Disobedience.** His disobedience of the command of any such process is a contempt of the court from which it issued and may be punished by the same accordingly, and he is, farther, liable to the action of any person injured thereby.

SEC. 172. **Jail.** He has the charge and custody of the jail or other prison of his county, and of the prisoners in the same, and is required to receive those lawfully committed, and to keep them himself or by his deputy or jailor until discharged by law.

SEC. 173. **Conservator.** The sheriff and his deputies are conservators of the peace, and to keep the same, or to prevent crime, or to arrest any person liable thereto, or to execute process of law, may call any person to their aid, and when necessary the sheriff may summon the power of the county.

SEC. 174. **Attend district court.** The sheriff shall attend upon the district court at its sessions in his county, and he is allowed the assistance of three constables, and of such further number as the court may direct, whose appointment constitutes them special constables; and he shall also attend the courts held by the county judge when required by him.

SEC. 175. **Not act as attorney.** No sheriff, deputy sheriff, coroner, or constable shall appear in any court as attorney or counsel for any party, nor make any writing or process to commence, or to be in any manner used in the same, and such writing or process made by any of them shall be rejected.

SEC. 176. **Purchase at sales.** No sheriff, deputy sheriff, coroner, or constable, shall become the purchaser, either directly or indirectly, of any property by him exposed to sale, under any process of law, and every such purchase is absolutely void.

[34] SEC. 177. **Out of office—service of process.** Sheriffs and their deputies may execute any process which may be in their hands at the expiration of their office, and in case of a vacancy occurring in the office of sheriff from any cause, his deputies shall be under the same obligation to execute legal process then in his or their hands and return the same as if the sheriff had continued in office, and he and they will remain liable under the provisions of law as in other cases.

SEC. 178. **Same—books, etc.** Where a sheriff goes out of office he shall deliver to his successor all books and papers pertaining to the office, and prop-

erty attached or levied upon, except as provided in the preceding section, and all prisoners in the jail, and take his receipt specifying the same, and such receipt shall be sufficient indemnity to the person taking it.

SEC. 179. **New sheriff—new process.** On the election or appointment of a new sheriff all new process shall issue to such new sheriff.

SEC. 180. **Assessor—bond.** The sheriff of each county shall perform the duties of assessor, and one bond and oath cover the duties of both offices. The deputies of the sheriff are not his deputies as assessor, but he may appoint an assistant assessor.

SEC. 181. **Plats of townships.** To aid in his duties as assessor he is required to make and keep a plat of each congressional township of his county, protracted on a scale to be directed by the county judge, but not less than two inches to a mile, divided into sections and quarter sections, and to be subdivided as occasion may require, on which he shall mark out each parcel of land sold, and enter the owner's name, which may be altered from time to time, as the ownership of the property changes, and such plats shall be arranged in order and put together, and the whole shall be renewed as often as occasion requires.

SEC. 182. **Stationery.** The stationery and printing requisite in the discharge of the duties of the assessor shall be paid for from the county treasury.

CHAPTER 20.

CORONER.

SECTION 183. **Duties.** It is the duty of the coroner to perform all the duties of the sheriff, except those of assessor, when there is no sheriff, and in cases where exception is taken to the sheriff as provided in the next section.

SEC. 184. **Service of process.** In all proceedings in the courts of record, where it appears from the papers that the sheriff is a party, and where in any action commenced or about to be commenced an affi-[35]-davit is filed with the clerk of the court stating a partiality, prejudice, consanguinity, or interest, on the part of the sheriff, the clerk or court shall direct process to the coroner, whose duty it is to execute it in the same manner as if he were sheriff.

SEC. 185. **Clerk appoint.** When there is no sheriff, deputy sheriff, or coroner, qualified to serve legal process, the clerk of the district court may, by writing under his hand and the seal of the court certifying the above fact, appoint any suitable person specially in each case to execute such process, who shall be sworn but he need not give bond, and his return shall be entitled to the same credit as the sheriff's, when the appointment is attached thereto.

SEC. 186. **Inquests.** The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means. When he has notice of the dead body of a person supposed to have died by unlawful means, found or being in his county, he is required to issue his warrant to a constable of his county requiring him to summon forthwith three lawful men of the county to appear before the coroner at a time and place named in the warrant.

SEC. 187. **Warrant.** The warrant may be in substance as follows:

STATE OF IOWA,)
 County,)

To any constable of the said county,—

In the name of the state of Iowa you are hereby required to summon forth-

with, three lawful men of your county, to appear before me at (name the place), at (name the day and hour or say forthwith), then and there to hold an inquest upon the dead body of _____ there lying, by what means he died.

Witness my hand this _____ day of _____ A. D. 18—

(Signed) A. B., coroner of _____ county.

SEC. 188. **Service.** The constable shall execute the warrant, and make return thereof at the time and place named.

SEC. 189. **Jurors—Oath.** If any juror fails to appear the coroner shall cause the proper number to be summoned or returned from the bystanders immediately, and proceed to empanel them and administer the following oath in substance:

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

[36] SEC. 190. **Subpoenas—contempt.** The coroner may issue subpoenas within his county for witnesses, returnable forthwith, or at such time and place as he shall therein direct, and witnesses shall be allowed the same fees as in cases before a justice of the peace, and the coroner has the same authority to enforce the attendance of witnesses, and to punish them and jurors for contempt in disobeying his process as a justice of the peace has when his process issues in behalf of the state.

SEC. 191. **Witnesses' oath.** An oath shall be administered to the witnesses in substance as follows:

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

SEC. 192. **Testimony.** The testimony shall be reduced to writing under the coroner's order, and subscribed by the witnesses.

SEC. 193. **Verdict.** The jurors having inspected the body, heard the testimony, and made all needful inquiries, shall return to the coroner their inquisition in writing, under their hands in substance as follows, and stating the matters in the following form suggested, as far as found:

STATE OF IOWA, }
 County. }

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

In testimony whereof the said jurors have hereunto set their hands the day and year aforesaid; (which shall be attested by the coroner.)

SEC. 194. **Same—secret.** If the inquisition find that a crime has been committed on the deceased, and name the person whom the jury believe has committed it, the inquest shall not be made public until after the arrest directed in the next section.

SEC. 195. **Arrest.** If the person charged be present, the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace.

SEC. 196. **Warrant.** If the person charged be not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff and constables of the county, requiring [37] them to arrest the person and take him before a justice of the peace.

SEC. 197. **Same.** The warrant of a coroner in the above cases shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice he shall be dealt with as a person held under a complaint in the usual form.

SEC. 198. **Same—stand as complaint.** The warrant of the coroner shall recite substantially the transactions before him and the verdict of the jury of inquest leading to the arrest, and such warrant shall be a sufficient foundation for the proceeding of the justice instead of a complaint.

SEC. 199. **Return.** The coroner shall then return to the district court the inquisition, the written evidence, and a list of the witnesses who testify material matter.

SEC. 200. **Burial—expense.** The coroner shall cause the body of a deceased person which he is called to view, to be delivered to his friends if any there be, but if not he shall cause him to be decently buried, and the expense to be paid from any property found with the body, or, if there be none, from the county treasury by certifying an account of the expenses, which being presented to the county judge shall be allowed by him if deemed reasonable and paid as other claims on the county.

SEC. 201. **Justice to act as coroner.** When there is no coroner, and in case of his absence or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner in relation to dead bodies, and in such case he may cause the person charged to be brought before himself, by his warrant, and may proceed with him as a justice of the peace.

SEC. 202. **Surgeon, etc.** In the above inquisition by a coroner, when he or the jury deem it requisite, he may summon one or more physicians or surgeons to make a scientific examination, and may allow in such case a reasonable compensation instead of witness fees.

CHAPTER 21.

COUNTY SURVEYOR.

SECTION 203. **Duties.** It is the duty of the county surveyor to make all surveys of land within his county which he may be called upon to make, and his surveys shall be held as *prima facie* correct.

SEC. 204. **Surveys.** The field notes and plats made by the county surveyor shall be transcribed into a well bound book under the [38] supervision of the surveyor, when desired by a person interested, and at his expense.

SEC. 205. **Field notes.** Previous to making any survey he shall furnish himself with a copy of the field notes of the original survey of the same land, if there be any in the office of the county judge, and his survey shall be made in accordance therewith.

SEC. 206. **Corners.** He is required to establish the corners by taking bearing trees and noting particularly their course and distance, but if there be no trees within reasonable distance the corners are to be marked by stones firmly placed in the earth, or by mounds.

SEC. 207. **Plat and copy—evidence.** It is his duty when requested, to furnish the person for whom the survey is made, with a copy of the field notes

and plat of the survey, and such copy certified by him, and also a copy from the record certified by the county judge or clerk with the seal, shall be *prima facie* evidence of the survey and of the facts herein required to be set forth and which are stated accordingly, between those persons who join in requesting it, and any other person then concerned who has reasonable notice that such a survey is to be made and of the time thereof.

SEC. 208. **Book.** The county judge is required to furnish a substantial, well bound book, where it is not now done, in which the field notes and plats made by the county surveyor may be recorded.

SEC. 209. **Entries.** The plat and record shall show distinctly of what piece of land it is a survey, at whose personal request it was made, the names of the chainmen, and that they were approved and sworn by the surveyor, and the date of the survey; and the courses shall be taken according to the true meridian, and the variation of the magnetic, from the true, meridian, stated.

SEC. 210. **Chainmen, etc.** The necessary chainmen and other persons must be employed by the person requiring the survey done, unless otherwise agreed; but the chainmen must be disinterested persons, and approved of by the surveyor, and sworn by him to measure justly and impartially to the best of their knowledge and ability.

CHAPTER 22.

SALARY OF CERTAIN COUNTY OFFICERS.

SECTION 211. **Rate of salary.** The county judge, the clerk of the district court and the recorder, are each entitled to receive as the only compen-[39]-sation for the performance of the several duties of their offices (unless as otherwise expressed) an annual salary, to be paid quarterly from the county treasury, and to be ascertained and graduated as follows: it shall in no case be less than fifty dollars nor more than eight hundred dollars; and if the last census taken by the state or the United States shows a population in the county of between five and seven hundred inhabitants, the salary shall be one hundred dollars; if between seven hundred and one thousand inhabitants, the salary shall be one hundred and fifty dollars; if between one thousand and fourteen hundred inhabitants, the salary shall be two hundred dollars; if between fourteen hundred and two thousand inhabitants, the salary shall be two hundred and fifty dollars; if between two and three thousand inhabitants, the salary shall be three hundred dollars; if between three and four thousand inhabitants, four hundred dollars; if between four or five thousand inhabitants, five hundred dollars; if between five and six thousand inhabitants, five hundred and fifty dollars; and when the population amounts to six thousand, the salary shall be increased twenty-five dollars for each additional thousand inhabitants until the salary reaches the sum of eight hundred dollars.

SEC. 212. **Account of fees.** Each of the above officers is required to keep an account of all the fees received by him as prescribed by law for his office, entering the date, amount, and name of the person paying them, and the book containing such account shall be open to the inspection of any person and be permanently preserved in his office.

SEC. 213. **Disposition of fees.** The said officers may receive such fees to their own use jointly, to the extent of their several salaries; and to that end shall have an accounting together as often as once in each quarter, and at the sessions of the county court in January, April, July, and October, when they shall make an exhibit of the amount of money received by each, which shall

be entered in the minute book, and the amount of money received by all shall be equally divided between them, the amount in one year not exceeding the amount of their salary for the year. If the money is less than the amount due them in any quarter, they may draw the balance due for the quarter from the county treasury or they may await the event of future accountings and draw at any future quarter. Each of them shall make a general settlement of the above accounts at the end of his term of office.

SEC. 214. When there is a balance of fees, above the amount due the above officers for the year, it shall be paid to the prosecuting attorney; and the residue, if any, after paying his salary, shall go into the county treasury.

[40] SEC. 215. **Accounts examined.** The above accounts of fees shall be examined and approved, at least once in each year, which shall be at the July session of the county court, or at such other time after that as the court directs. The judge's account shall be examined and approved by the prosecuting attorney.

SEC. 216. **Salary increased.** The judge of any county may submit to the people of the county the question whether the salary of the above officers or any of them, shall be raised, in the manner provided for submitting other questions.

SEC. 217. **Time of.** Any change in salary, as herein authorized, shall commence on the first day of August next after the taking of a vote as contemplated in the previous section, or next after the returns of the census are filed in the office of the secretary of state.

CHAPTER 23.

TOWNSHIPS, AND TOWNSHIP OFFICERS.

SECTION 218. **Townships remain.** The townships now defined and established shall remain, subject to alteration as provided in this chapter.

SEC. 219. **County divided.** The county court of each organized county shall divide the same into townships, as the convenience of the citizens may require, accurately defining the boundaries thereof, and may from time to time make such alterations in the number and boundaries of the townships as it may deem proper, but, when practicable, it is required to conform to the congressional townships.

SEC. 220. **Record.** The description of the boundaries of each township, and of all alterations in them, and of all new townships, shall be recorded in full in the records of the county court and of the township.

SEC. 221. **Officers.** There shall be in each township three trustees, one clerk, two constables, and two justices of the peace, except that where any township includes an incorporated town either two, three, or four constables and justices, as the trustees may order, may be elected in such township, two at least of whom shall reside in such town.

SEC. 222. **Trustees.** The trustees are empowered to call meetings of the township, in which one of them shall preside; to direct the place of holding elections; to order the notifying of elections, in which they shall be the judges; and to cause any matter to be inserted in the notices of the meetings or elections for action at such meeting.

[41] SEC. 223. They shall cause the clerk to keep a record of their proceedings.

SEC. 224. The township trustees are the overseers of the poor and the fence viewers.

SEC. 225. **Refusal to serve.** Any person elected to a township office and refusing to qualify and serve shall forfeit the sum of five dollars, which may be recovered by action in the name of the county to the use of the school fund in the county, but no person shall be compelled to serve as a township officer two terms in succession.

Clerk.

SEC. 226. **Duty.** It is the duty of the township clerk to keep accurate records of the proceedings and orders of the trustees, and to perform such other acts as may be required of him by law.

SEC. 227. **Oaths of officers.** He is authorized to administer the oath of office to all the township officers, and he shall make a record thereof, and also of all who file certificates of their having taken the oath before any other officer authorized to administer the same.

SEC. 228. **Justice's election.** The clerk, immediately after the election of justices of the peace in his township, shall send a written notice thereof to the county judge, stating the names of the persons elected, and the time of the election, and shall enter the time of the election of each justice in the township record.

Constables.

SEC. 229. **Duty.** The constables shall serve all warrants, notices, and other process, lawfully directed to them by the trustees or clerk of the township, or any court, and perform such other duties as are or may be required by law.

SEC. 230. Constables are ministerial officers of justices of the peace, and they shall attend upon the district court when notified therefor by the sheriff.

Organization of new Townships.

SEC. 231. **First election.** When the county court has formed a new township, it shall call the first township election, to be holden on the day of the annual township elections, and at such place as it may name; other township meetings may be holden as provided hereafter.

SEC. 232. **Warrant for.** The court shall issue its warrant for such first election, stating the time and place of the same, the officers to be elected, and any other business which is to be attended [42] to; and no other business shall be done than such as is so named.

SEC. 233. **How notified.** Such warrant may be directed to any constable of the county, or to any citizen of the same township by name, and shall be served by posting up copies thereof in three of the most public places in the township fifteen days before the day of the meeting; the original warrant shall be returned to the presiding officer of the meeting (to be returned to the clerk when elected) with a return thereon of the manner of service, verified by oath if served by any other than an officer.

SEC. 234. **Conduct of election.** The electors when assembled at the time and place appointed, shall, by nomination or by ballot, elect a chairman for the time being, and then proceed to elect by ballot three persons having the qualification of voters, as judges of the election, who shall appoint two clerks of the election, and both judges and clerks shall be sworn faithfully to discharge the duties of their respective offices.

SEC. 235. **Same.** The election shall be conducted as other township elections, and the electors shall proceed to elect the officers named in this chapter.

SEC. 236. **Future meetings.** The electors may, at this meeting, determine in what manner the future meetings of the township, other than for elections, shall be called; and such manner may be changed at any subsequent meeting regularly called.

TITLE IV.

OF ELECTIONS, QUALIFICATION FOR OFFICE, CONTESTED ELECTIONS, VACANCIES, ETC.

CHAPTER 24.

ELECTIONS, OFFICERS AND THEIR TERMS.

SECTION 237. **Definitions—general election—August election—April election.** For the purpose of this title, the term “general election” means the election at which the members of the general assembly are regularly chosen; the term “August election” means that holden on the first Monday of August in the years alternate with the years of the general election; the term [43] “April election” means that holden annually on the first Monday of April; and the term “special election” means elections by the people called at other times.

SEC. 238. **August election.** The provisions of this title in relation to the mode of conducting the general election, govern in relation to the August election so far as applicable.

What officers are to be elected, and at what elections.

SEC. 239. **What officers to be elected.** The following officers shall be chosen, and at the elections herein prescribed:

1. *At the general election.* The governor, the secretary, treasurer and auditor of state, members of the general assembly, representatives to congress, prosecuting attorneys, and clerks of the district court.

2. *At the August election.* The county judge, sheriff, coroner, recorder, surveyor and supervisor of roads.

3. *At the April election.* The judges of the district court, the superintendent of public instruction; and three township trustees, a township clerk, two justices of the peace and two constables, in each township; but one or two additional justices of the peace may be elected in each township which includes an incorporated town, if the trustees so direct, by posting up notices of the same in three of the most public places in the township, at least ten days before said election.

In what years chosen, and their term of service.

SEC. 240. **In what year and terms.** The following shall be the years of the election, and the terms of service, of the respective officers:

In the year 1851—At the August election.

August 1851. In each county, a county judge for the term of four years; and a sheriff, coroner, recorder, surveyor and supervisor of roads, for the term of two years each. But if this statute be not in force on the day of the above election, then an election shall take place for a county judge and a supervisor of roads in each county at the general election in the year 1852, the county judge to hold for three years, and the supervisor for one year, and until their respective successors are elected and qualified; and a supervisor shall be again elected in the year 1853 and each two years thereafter, and a county judge in the year 1855 and each four years thereafter. And from the [44] time of the qualification of the county judge, in the respective counties, the office of county commissioner, of judge of probate, and of county clerk, as constituted before the passage of this statute, shall cease.

In the year 1852—at the April election.

April 1852. Three township trustees, one clerk, and two constables, in each township, for the term of one year; two justices of the peace in each township for the term of two years; judges of the district court in those districts where an election was holden in the year 1847, for the term of five years, and in other judicial districts on each fifth year from the first election of a judge.

At the general election.

General election, 1852. A secretary, treasurer, and auditor of state, the prosecuting attorneys, clerks of the district court, representatives to the general assembly and to congress, each for the term of two years; and senators in the general assembly from the proper districts, for the term of four years.

In the year 1853—at the August election.

August 1853. The county officers who are before directed to be elected at the August election in the year 1851 if this statute is then in force (except the county judges), and each two years thereafter.

In the year 1854—at the April election.

April 1854. A superintendent of public instruction, for the term of three years.

At the general election.

General election 1854. A governor for the term of four years.

SEC. 241. **Hold till successor, etc.** Every civil officer, except representative officers, may continue to hold his office until his successor is elected and qualified.

SEC. 242. **Statutes continue.** The statutes existing in relation to offices and officers at the time of the passage of this statute, shall continue in force until this statute takes effect upon those offices and officers respectively.

SEC. 243. **Justices, constables, etc.** Justices of the peace and constables are county officers, for all the purposes of this title, except that of elections.

[45] CHAPTER 25.

THE GENERAL ELECTION.

Manner of conducting the general election and the canvass of the votes.

SECTION 244. **Unorganized counties.** The provisions of this title so far as applicable, and qualified by the provisions of the chapter relating to counties, are applied to unorganized counties.

SEC. 245. **Polls.** At the general elections a poll shall be opened at the place of election in each township of each county.

SEC. 246. **Trustees.** The trustees of each township are the judges of election in the same.

SEC. 247. **Vacancy.** If any one of the trustees does not attend in time, or refuses to be sworn, his place shall be filled by an elector to be appointed by the trustees who do attend; and if none of the trustees attend at the time for opening the polls the electors present shall choose three qualified persons from their number to act as judges of election.

SEC. 248. **Clerks.** There shall be two clerks of the election, one of whom shall be the township clerk, and the other some elector named by him and approved by the judges of election, and if the township clerk does not attend then the two clerks shall be appointed by the judges of election.

SEC. 249. **Oath.** Before opening the polls each of the judges and clerks

shall take the following oath: I, A. B., do solemnly swear, that I will impartially and to the best of my knowledge and ability perform the duties of (judge or clerk) of this election, and will studiously endeavor to prevent fraud, deceit, and abuse, in conducting the same.

SEC. 250. **Oath.** The township clerk may administer the oath to each of the other persons, and one of the trustees if he be present (and if not present any one of the judges) may administer it to the clerk, and the oath shall be entered in the poll books, subscribed by the persons taking it, and certified by the officer administering it.

SEC. 251. **Polls opened.** The polls shall be opened at nine o'clock in the forenoon unless vacancies have to be filled as above, in which case they are to be opened as soon thereafter as may be, and they shall be kept open until six o'clock in the afternoon; and if the judges deem it necessary for receiving the ballots of all the electors, they may keep them open until nine o'clock in the evening. Proclamation thereof shall be made [46] at or before the opening of the polls, and half an hour before closing them.

SEC. 252. **Preservation of order.** Any constable of the township who may be designated by the judges of election is directed to attend at the place of the election, and he is authorized and required to preserve order and peace at and about the same; and if no constable be in attendance the judges of the election may appoint one specially by writing, and he shall have all the powers of a regular constable.

SEC. 253. **Same.** If any person conducts in a noisy, riotous, or tumultuous, manner at or about the polls so as to disturb the election, or insults or abuses the judges or clerks of election, the constable may forthwith arrest him and bring him before the judges, and they, by a warrant under their hands, may commit him to the jail of the county for a term not exceeding twenty-four hours; but they shall permit him to vote.

SEC. 254. **Boxes.** The county judge shall provide for each township in his county and at the expense of the county, for the purpose of elections, one box with lock and key.

SEC. 255. **Poll books.** The county clerk shall prepare and furnish to the judges of election in each township in his county two poll books having each of them a sufficient column for the names of the voters, a column for the number, and sufficient blank leaves to contain the entries of the oaths, certificates, and returns.

SEC. 256. **Ballots.** The ballots shall designate the office for which the persons therein named are voted for.

SEC. 257. **Voting.** In voting, the electors shall deliver their ballots to one of the judges who shall deposit them in the ballot box, but no person is entitled to vote at any other place than in the township in which he resides at the time he offers to vote.

SEC. 258. **Challenge.** Any person offering to vote may be challenged, as unqualified, by either of the judges or by any person who is an elector in this state, and it is the duty of each of the judges to challenge any person offering to vote whom he knows or suspects not to be duly qualified.

SEC. 259. **Same—Oath.** When any person is so challenged, the judges shall explain to him the qualifications of an elector and may examine him as to his qualifications, and if the person insists that he is qualified and the challenge is not withdrawn, one of the judges shall tender to him the following oath:

“You do solemnly swear that you are a citizen of the United States, that you are a resident of —— (town or township) in this county, that you are twenty-one years of age as you verily believe, that you have been a resident

of this county twenty days, and of this state six months, next prece-[47]-ding this election, and that you have not voted at this election''—and if he takes such oath his vote shall be received.

SEC. 260. **Poll books—how kept.** The name of each person, when his ballot is received, shall be entered by each of the clerks in the poll book kept by him, so that there may be a double list of voters.

SEC. 261. **Canvass, or adjournment.** When the poll is closed the judges shall proceed to canvass and ascertain the result of the election unless they determine to adjourn the canvass to the next day—which they may do, but no longer—and if the canvass be so adjourned, the opening in the lid of the ballot box shall be closed and sealed, the box locked, and the key delivered to one of the judges, and the box and poll books to one of the clerks, to be securely kept until they meet on the next day.

The canvass by the judges of election.

SEC. 262. **Canvass—ballots double.** The canvass shall be public, and shall commence by a comparison of the poll list from the beginning and a correction of any errors which may be found therein, until they shall be found or made to agree. If two or more ballots are found so folded together as to present the appearance of a single ballot and to convince the judges that they were cast as one they shall not be counted, but they shall have the words "rejected as double" written upon them, be folded together again, and kept as herein directed.

SEC. 263. **Ballots exceeding voters.** If the ballots for any officer are found to exceed the number of the voters in the poll lists, that fact shall be certified with the number of the excess in the return, and if it be found that the vote of the township where the error occurred would change the result in relation to a county officer if the person elected were deprived of so many votes, then the election shall be set aside as to him and a new election ordered; but if the error occurs in relation to a township officer the trustees may order a new election or not, in their discretion. If the error be in relation to a district or state officer the error and the number of the excess are to be certified to the canvassers, and if it be found that the error would affect the result as above a new vote shall be ordered in the county where the error happened and the canvass be suspended until such new vote is taken and returned. When there is a tie vote and such an excess there shall be a new election as above directed.

SEC. 264. **Ballot to name office.** If, at any stage of the canvass, a ballot not stating for what office the person therein named is voted for is found in the box when officers of different kinds are to be elected, it is to be rejected.

SEC. 265. **Ballots containing too many.** If a ballot be found containing the names of more [48] persons for an office than can be elected to that office and such ballot form an excess above the number of voters, it shall be rejected as to that office (the cause of rejection being endorsed thereon) and disposed of as hereafter directed; and if it does not form such excess, so many of the names first in order as are required, shall be counted.

SEC. 266. **Tally lists.** As a check in counting, each clerk shall keep a tally list.

SEC. 267. **Return—form.** A return in writing shall be made in each poll book setting forth, in words written at length, the whole number of ballots cast for each officer (except those rejected,) the name of each person voted for, and the number of votes given to each person for each different office, which return shall be certified as correct, signed by the judges, and attested by the clerks. Such return shall be substantially as follows:

At an election at the house of —, in — township in — county, state of Iowa, on the — day of August, A. D. —, there were — ballots cast for the office of (governor) of which

A—B—, had..... .. votes.

C—D—, had..... .. votes.

(and in the same manner for any other officer.)

A true return, L— M—.	}	Judges of the election.
N— O—.		
P— Q—.		

Attest, R— S—.	}	Clerks of election.
T— U—.		

SEC. 268. **Disposition of poll books.** One of the poll books containing such return shall be delivered to the township clerk and be by him filed and preserved in his office. The other poll book with its return shall be enclosed, sealed, superscribed, and delivered to one of the judges or clerks of election who shall deliver the same within five days after the day of election to the county judge who, after the county canvass, shall file and preserve the same in his office.

SEC. 269. **Ballots preserved.** When the result of the election is ascertained the judges shall cause all the ballots, including those rejected, with the tally lists, to be placed in some convenient condition for preservation and deposited with the township clerk, who is to keep them until the time is passed which is allowed for contesting the election of any officer voted for.

The County Canvass.

SEC. 270. **Returns not made.** If the returns from all the townships are not made [49] to the county judge by the sixth day after the election, on the seventh day he shall send messengers to obtain them from those townships whose returns are wanting, the expense of which shall be paid out of the county treasury on allowance.

SEC. 271. **Abstracts.** As soon as the returns from all the townships are received, the county judge, taking to his assistance two justices of the peace of his county, shall open and examine the several returns and make abstracts, stating, in words written at length, the number of ballots cast in the county for each office, the name of each person voted for, and the number of votes given to each person for each different office.

SEC. 272. **How made.** The abstract of the votes for each of the following classes of officers shall be made on a different sheet:

1. Governor;
2. Secretary, treasurer and auditor of state, and superintendent of public instruction;
3. Representatives in congress;
4. Senators and representatives in the general assembly, from the county alone;
5. Senators and representatives in the general assembly, by districts;
6. Judges of the district court, naming the district;
7. County officers.

Two abstracts shall be made of all the votes which are to be returned to the secretary of state, one to be sent to him, and the other to be filed by the county judge.

SEC. 273. **Who elected.** The person having the greatest number of votes for any office is to be declared elected.

SEC. 274. **Abstracts signed.** Each of the abstracts shall be signed by the county judge and justices in their official capacity and as "county canvassers," and have the county seal affixed; except that when the incumbent of the office of county judge is voted for for any office, the prosecuting attorney if present, and if not present, the county clerk, shall take his place in the canvass of the votes for that office and in signing the abstracts so far as it relates to the same.

SEC. 275. **Declare who elected.** Each abstract of the votes for such officers as the county alone elects, shall contain a declaration of whom the canvassers determine is elected, except when two or more persons receive an equal and the greatest number of votes.

SEC. 276. **Election book.** The county judge shall cause each of the abstracts mentioned in the preceding section to be recorded in a book to be kept by him for recording the result of county elections and to be called the "election book."

SEC. 277. **Certificate.** When any person thus elected has appeared and given bond and taken the oath of office as directed in this [50] title, the county judge shall deliver him a certificate of election under his official seal, in substance as follows:

STATE OF IOWA, }
 _____County, }

At an election holden in the said county on the first Monday of August, A. D. —.

A. B. was elected to the office of _____ of the above county, for the term of two years from that day (or if he was elected to fill a vacancy, say, until such an election), and until his successor is elected and qualified, and he has qualified by giving bond and taking the oath of office as required by law.

C. D., county judge.

Which certificate shall be *prima facie* evidence of his election and qualification.

SEC. 278. **Of senators, etc.** The certificate of senators and representatives in the general assembly may vary from the foregoing according to the nature of the case and the requirements of this title in relation to their offices, and is to be delivered to them on request.

SEC. 279. **Of county judge.** The certificate of the county judge is to be signed by the clerk.

SEC. 280. **Vacancy.** When the person elected is chosen to fill a vacancy, the certificate shall state for what time he is elected.

SEC. 281. **Tie vote.** When two or more persons receive an equal and the highest number of votes for an office to be filled by the county alone, the judge shall issue a notice to such persons of such tie vote, and require them to appear at the county office on a day named in the precept within twenty days from the election day and determine by lot which of them is to be declared elected.

SEC. 282. **Lot.** The county judge shall notify the persons who were the canvassers with him, or, in case of their absence or inability, the prosecuting attorney, recorder, or sheriff, of such lot, and on the day fixed the parties interested shall determine, by a lot fairly arranged by the three officers, which of them is to be declared elected; and the three officers shall certify such lot and its result under their official names and the seal of the county, (to be affixed by the county judge or clerk), and the certificate shall be recorded in

the election book, and the judge shall deliver to the person elected his certificate of election on the terms prescribed in this chapter.

SEC. 283. **Returns to secretary.** Within ten days after the election day, the county judge and clerk shall envelop and seal up by itself one of the original abstracts of votes for governor, and endorse upon it [51] in substance, "abstract of votes for governor from _____ county," and address it to the speaker of the house of representatives. The abstracts of votes for other state officers, and for such district officers as are to be returned to the secretary's office, are to be enveloped, sealed, and endorsed in like manner, and directed to the secretary of state. The several packages shall then be placed in one envelope and addressed to the secretary.

SEC. 284. **Same.** The above abstracts shall be transmitted to the secretary, which may be done by mail, and in such case they shall be deposited in the post office by the twelfth day after the election day; but if there be no regular mail by which the returns may be safely sent, the county judge may send a special messenger to bear them.

The State Canvass.

SEC. 285. **Same.** If the abstracts from any county are not received at the office of the secretary of state by the fourth Monday after the day of election, the secretary is authorized to send a messenger to the judge of such county, who shall furnish such messenger with the abstracts (or, if they have been sent, with a copy of them), and he shall return them to the secretary without delay.

SEC. 286. **Same.** The abstracts, when received by the secretary, shall be kept in his office unopened until the day appointed for opening them, and shall be opened only in the presence of the board of canvassers.

SEC. 287. **Canvassers.** The governor, the secretary, and auditor of state constitute a board of canvassers for the state. In case of the absence or interest of any of them, or his inability to act, the treasurer of state or clerk of the supreme court at the seat of government shall act in his place.

SEC. 288. **When opened.** On the Thursday following the fourth Monday after the day of the election, the board of state canvassers shall open and examine the returns if they are received from all the counties, and if not all received they may adjourn to such day as they deem necessary not exceeding twenty days, for the purpose of obtaining the returns from all the counties, and when received shall proceed with the canvass.

SEC. 289. **Abstracts.** They shall make an abstract stating the number of ballots cast for each office, the names of all the persons voted for, for what office they respectively received the votes, and the number of votes each received, in words at length, and stating whom they declare to be elected to each office; which abstract shall be signed by the canvassers in their official [52] capacity and as state canvassers, and have the seal of the state affixed by the governor or secretary.

SEC. 290. **Election book.** The secretary shall record the abstract in a book to be kept by him for recording the result of state elections and to be called the election book, and also file the abstract.

SEC. 291. **Certificate.** A certificate shall be prepared for each person elected, in substance as follows:

STATE OF IOWA.

At an election holden on the first Monday of August, A. D. ——— A. B. was elected to the office of ——— of said state, for the term of ——— years, (if to fill a vacancy say, until such an election).

Given at _____ this _____ day of _____ A. D. ____.
Which certificate shall be signed by the governor if present, if not, by the secretary, with the seal of the state affixed in either case, and be attested by the other two canvassers, but in the absence of the governor the secretary's certificate shall be signed by the auditor.

SEC. 292. **When delivered.** Such certificate of election shall be delivered to the person elected when he has qualified as provided in this title.

SEC. 293. **Notice to persons elected.** The governor is required to cause the persons elected to any of the proper state offices to be notified thereof immediately by a sheriff or constable, who shall return his doings to the secretary's office.

SEC. 294. **Representative in congress.** The certificate of the election of a representative in congress shall be signed by the governor, with the seal of the state affixed, and be countersigned by the secretary of state, and the governor shall cause it to be delivered to the person elected.

SEC. 295. **Messenger's pay.** Sheriffs or messengers sent for or with the returns of elections under the provisions of this title will be entitled to eight cents a mile going and returning, to be audited and paid from the state or county treasury respectively.

CHAPTER 26.

THE ELECTION OF SENATORS AND REPRESENTATIVES BY DISTRICTS.

SECTION 296. **Proceedings.** When a senator or representative in the general assembly is to be elected by a district formed of more than one county, the abstract of votes in each county for such office shall be made as directed in relation to the general election, and delivered to the county judge; and on the Wed-[53]-nesday following the second Monday after the day of the election the judges of the several counties constituting the district shall meet at the county seat of the oldest county.

SEC. 297. **Oldest county.** That is held to be the oldest county which was first organized. If two or more were organized on the same day, that is to be held the oldest which had the largest population at the taking of the last preceding census.

SEC. 298. **Canvass.** When the judges of the several counties of the district are assembled they shall canvass the returns of the several counties, and make as many abstracts as there are counties in the district, in manner as similar to that directed in relation to the general election as the case requires, sign them in their official capacity and as "district canvassers," and seal them with the seal of the county where the canvass is held.

SEC. 299. **Abstracts.** Each of the judges shall take one of the abstracts and cause it to be filed in the office of his county and preserved.

SEC. 300. **Certificate.** The canvassers shall also make a certificate of election similar to that directed in relation to the general election, so far as the case requires, stating the district for which the person is elected, which shall be delivered to him in such manner as they direct.

CHAPTER 27.

THE ELECTION OF ELECTORS OF PRESIDENT AND VICE PRESIDENT.

SEC. 301. **Time.** On the Tuesday next after the first Monday in the month of November in the year eighteen hundred and fifty-two, and every four years thereafter, (or on such day as the congress of the United States may direct.) a poll shall be opened in each of the townships of the state for the election of electors of president and vice-president of the United States, the number of whom is to be equal to the number of senators and representatives in congress to which this state may be entitled.

SEC. 302. **Ballots.** The names of all the electors to be chosen shall be written on each ballot, and each ballot shall contain the name of at least one inhabitant of each congressional district into which the state may be divided, and against the name of each person shall be designated the number of the congressional district to which he belongs.

SEC. 303. **Proceedings.** This election shall be conducted, and the returns made, as nearly as may be as directed in relation to the elec-[54]-tion of state officers and representatives in congress, except as herein otherwise expressed.

SEC. 304. **Returns.** The returns from the township judges of election to the county judge shall be made within three days after the day of election, and on the fourth day after the day of election the county canvassers shall meet, examine the returns, make the abstract, and sign and seal it with the county seal.

SEC. 305. **Same.** The judge shall envelop and seal up the abstracts and endorse and direct them as provided in other cases, and before ten o'clock a. m. of the sixth day after the day of the election shall deliver the same to the sheriff of his county, whose duty it is to deliver the abstract to the secretary of state within ten days including the day he receives it.

SEC. 306. **State canvass.** On the twentieth day after the day of election (or if that day be Sunday, then on the following day), or before that time if the returns are received from all the counties, the board of state canvassers named in this title shall open and examine the returns and make an abstract as directed in regard to the general elections, which shall be recorded by the secretary in the election book.

SEC. 307. **Same.** The canvass shall be public, and in canvassing the returns the persons having the greatest number of votes are to be declared elected; and if more than the requisite number of persons are found to have the greatest and an equal number of votes, the election of one of them shall be determined by lot to be drawn by the governor in the presence of the canvassers.

SEC. 308. **Certificate.** The governor, or in his absence the secretary, shall issue a certificate of election under his hand and the seal of the state and cause it to be served on each person elected, notifying him to attend at the seat of government at noon of the Tuesday preceding the first Wednesday of December next after his election and report himself to the governor as in attendance.

SEC. 309. **Vacancies.** The electors so attending shall meet at the earliest convenient hour after the noon of the said Tuesday, and the governor shall provide them a list of all the electors elected, and in case of the absence of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present shall forthwith elect from the citizens of the state so many persons as will supply the deficiency.

SEC. 310. **Notice.** Such choice being certified to the governor he shall cause the person chosen to be notified immediately.

SEC. 311. **Election.** The college of electors being full shall meet at the capitol at noon of the said first Wednesday of December and proceed to the election in conformity with the constitution of the United States.

[55] SEC. 312. The electors shall receive the same compensation for their travel and attendance as the members of the general assembly.

CHAPTER 28.

THE APRIL ELECTION.

SECTION 313. **Poll books.** When the judges of the district court or a superintendent of public instruction are to be elected, the county clerk shall furnish poll books as directed in relation to the general election.

SEC. 314. **Proceedings.** The provisions relating to the general election shall govern in the April election according to their intent, except that a return of the ballots for township officers need not be made to the county judge.

SEC. 315. **Duty of officers.** After the return of the judges of election is made to the county judge, the duties of the secretary of state and other officers shall be the same as those required in relation to officers of a similar grade at the general election, but the canvassers shall make the abstracts of votes for judges and for superintendent on separate sheets.

SEC. 316. **Tie.** When there is a tie between two persons for a township office, the clerk shall notify them to appear at his office at a given time to determine the same by lot before one of the trustees and the clerk, and the certificate of election is to be given accordingly. If either party fail to appear or to take part in the lot one of the trustees shall draw for him.

SEC. 317. **Notice to persons elected.** The ballots for township officers having been canvassed, the clerk shall, through a constable, immediately notify the persons chosen of their election, and require them (except justices of the peace and constables) to appear and qualify within nineteen days from the election day; and when qualified they are entitled to their certificates of election, which are to be signed by the clerk.

SEC. 318. **Abstracts.** The abstracts of votes for judges of the district court and for superintendent are to be transmitted to the secretary of state, and canvassed by the state canvassers as provided in relation to state officers.

[56] CHAPTER 29.

QUALIFICATION FOR OFFICE.

SECTION 319. **General provision.** No civil officer, elected by the people, is empowered to enter on the duties of the office to which he is elected until he has qualified himself as required in this chapter.

SEC. 320. **Governor.** The governor, by taking an oath in the presence of both houses of the general assembly administered by the presiding officer of such convention, to the effect that he will support the constitution of the United States and the constitution of the state of Iowa, and will faithfully, impartially, and to the best of his knowledge and ability discharge the duties incumbent upon him as the governor of this state.

SEC. 321. **Members of general assembly.** Members of the general assembly, by taking the oath prescribed for them in the fourth article of the constitution.

SEC. 322. **Judges.** The judges of the supreme and district courts, by taking and subscribing an oath in writing to the effect that they will support the constitution of the United States and that of the state of Iowa, and that, without fear, favor, affection, or hope of reward, they will to the best of their knowledge and ability administer justice according to the law equally to the rich and the poor; and they shall likewise be commissioned by the governor.

SEC. 323. **County judge.** County judges and township officers are not required to give bond.

SEC. 324. **General provision—bond.** Every civil officer not before mentioned in this chapter (except the members of congress) is required to give bond with surety and in a penal sum as hereafter required, with a condition in substance as follows:

That as ——— (naming the office) in ——— county (or state of Iowa) he will render a true account of his office and of his doings therein to the proper authority when required thereby or by law; that he will promptly pay over to the person or officer entitled thereto all money which may come into his hands by virtue of his office; that he will promptly account for all balances of money remaining in his hands at the termination of his office; that he will hereafter exercise all reasonable diligence and care in the preservation and lawful disposal of all money, books, papers, securities, or other property appertaining to his said office, and deliver them to his successor or to any other person authorized to receive the same; and that he will faithfully and impartially, without fear, favor, fraud, or oppression, discharge all other the duties now or hereafter required of his office by law.

[57] SEC. 325. The bonds of state and district officers shall be given to the state, those of county officers to the county.

SEC. 326. **Penal sum.** The bond of the treasurer of state shall be in the penal sum of fifty thousand dollars;

That of the auditor of public accounts, in the sum of ten thousand dollars;

That of the superintendent of public instruction, in the sum of twenty-five thousand dollars;

Those of the secretary of state and the clerks of the district court, in the sum of five thousand dollars each;

Those of prosecuting attorneys and recorders of counties, in the sum of two thousand dollars each;

Those of coroners and surveyors, in the sum of one thousand dollars each.

SEC. 327. **County treasurer, sheriff, etc.** County recorders shall give separate bonds as treasurers; and the bonds of such treasurers, and of the sheriffs, justices of the peace, and constables, shall each be in a penal sum to be fixed by the county judge by an order of record, but those of the treasurers and sheriffs shall not be in a less sum than five thousand dollars each, nor those of justices of the peace and constables in a less sum than five hundred dollars each.

SEC. 328. **Sureties.** The bond of the superintendent of public instruction, of the treasurer of state, and of each county treasurer, shall be given with at least four sureties; and every other official bond shall be given with at least two sureties.

SEC. 329. **Same.** The sureties in all official bonds shall be freeholders, except in those counties where lands of the United States have not been sold.

SEC. 330. **Approval of bonds.** The bonds of the state officers are required

to be approved by the governor before they can be filed, and those of the county officers by the county judge; which approval shall be endorsed upon the bond and signed by the approving officer.

SEC. 331. **Oath of office.** Every civil officer who is required to give bond shall take, and subscribe on the back of his bond or on a paper attached thereto, to be certified by the officer administering it, an oath that he will support the constitution of the United States and that of the state of Iowa, and that to the best of his knowledge and ability he will perform all the duties of the office of (naming it) as provided by the condition of his bond within written.

SEC. 332. **Same.** Those civil officers who are not required to give bond (except the governor, members of the general assembly and of congress, and judges of the supreme and district courts) are required to take and subscribe in like manner an [58] oath, the same in substance with the condition of the official bond before provided for.

SEC. 333. **Bonds, where filed.** The bonds and oaths of the state officers shall be filed and kept in the office of the secretary of state, except those of the secretary which shall be filed and kept in the office of the auditor; those of the county officers in the county judge's office, except those of the clerk of the district court and of the county judge which shall be kept in the county treasurer's office; and those of the township officers in the township clerk's office.

SEC. 334. **Time to qualify.** The several officers shall qualify within the times herein mentioned; the secretary, treasurer and auditor of state, by the first Monday of the December following their election, and their term of service shall commence on that day; the judges of the supreme and district courts, the superintendent of public instruction, and all other state officers except the governor, within ninety days from the day of their election; persons elected to county offices, within thirty days from the day of their election; and those elected to township offices, within nineteen days from the day of their election. And any person elected to any of the above offices who does not qualify within the time above prescribed shall be regarded as declining the office.

SEC. 335. **Same.** When any election is contested, the person elected shall have twenty days in which to qualify after the day of the decision.

SEC. 336. **Effect.** The bonds of officers shall be construed to cover duties required by law subsequent to giving them.

SEC. 337. **None void.** No official bond shall be void for want of compliance with the statute, but it shall be valid in law for the matter contained therein.

SEC. 338. **Re-election.** When the incumbent of an office is re-elected he shall qualify as above directed, and when it is ascertained that the incumbent holds over another term by reason of the non-election of a successor or for the neglect or refusal of the successor to qualify, he shall qualify anew within a time to be fixed by the officer who approves of the bonds of such officers.

[59] CHAPTER 30.

CONTESTING ELECTIONS.

Contesting the Election of County Officers.

SECTION 339. **By whom.** The election of any person declared duly elected to a county office may be contested by any elector of the county:

1. *Causes, Mal-conduct.* For mal-conduct, fraud, or corruption, on the part of the judges of election in any township, or of any of the boards of canvassers, or on the part of any member of either of those boards;

2. *Ineligibility.* When the incumbent was not eligible to the office at the time of the election;

3. *Conviction.* When the incumbent has been duly convicted of an infamous crime before the election, and the judgment has not been reversed, annulled, or set aside, nor the incumbent pardoned, at the time of the election;

4. *Bribery.* When the incumbent has given or offered any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money, property, or thing of value, for the purpose of procuring his election;

5. *Illegal votes.* When illegal votes have been received, or legal votes rejected, at the polls, sufficient to change the result;

6. *Errors.* For any error or mistake in any of the boards of canvassers in counting the votes, or in declaring the result of the election, if the error or mistake would affect the result;

7. *Other causes.* For any other cause (though not enumerated above) which shows that another was the person legally elected.

SEC. 340. **Incumbent.** The term "incumbent," in this chapter, means the person whom the canvassers declare elected.

SEC. 341. **Qualification.** The matter contained in the first ground of contest above named shall not be held sufficient to set aside an election, unless the mal-conduct, fraud, or corruption, be such as to procure or cause the incumbent to be declared duly elected when he has not received the highest number of legal votes.

SEC. 342. **Same.** When the misconduct complained of is on the part of the judges of election in a township, it shall not be held sufficient to set aside the election, unless the rejection of the vote of that township would change the result as to that office.

SEC. 343. **Court for trial.** The court for the trial of contested county elections shall be thus constituted: The county judge shall be the presiding officer, and the contestant and incumbent may each name a person who shall be associated with him. But when [60] the county judge is one of the parties the prosecuting attorney shall preside.

SEC. 344. **Clerk.** The county clerk shall be the clerk of this court, and keep all papers, and record the proceedings in the election book, in manner similar to the record of the proceedings of the district court. But when the person who holds the offices of clerk of the district court and of county clerk is one of the parties in either of those capacities, the county judge shall appoint a suitable person as clerk for the time being, whose appointment shall be recorded.

SEC. 345. **Statement.** The contestant shall file in the county office, within twenty days after the day when the votes are canvassed, a written statement of his intention to contest the election, setting forth the name of the contestant and that he is an elector of the county, the name of the incumbent, the office contested, the time of the election, and the particular causes of contest; which statement shall be verified by the affidavit of the contestant, or some other elector of the county, that the causes set forth are true as he verily believes; but before the county judge, or in case of his interest the prosecuting attorney, is required to take jurisdiction of the contest, the contestant must file with such judge or attorney a bond, with security to be approved by said judge or attorney, and conditioned to pay all costs in case

the election be confirmed, or the statement be dismissed, or the prosecution fails.

SEC. 346. **Same.** When the reception of illegal, or the rejection of legal votes, is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, with the township where they voted or offered to vote, shall be set forth in the statement.

SEC. 347. **Nomination.** The judge shall then issue a precept containing a copy of the statement, with a requisition that the incumbent file in the county office a written nomination of one of the judges of the election within five days after service of the statement upon him.

SEC. 348. **Same.** If either the contestant or the incumbent fail to nominate, the county judge shall appoint for him.

SEC. 349. **Time.** As soon as the judges are nominated, the county judge shall fix a day for the trial not more than thirty, nor less than twenty, days from the notice contemplated in this section, which notice, addressed to the usual officers of the law, shall contain the names of the contestant and the incumbent, and of the judges named by each party, a brief statement of the causes of contest, and the day set for trial.

SEC. 350. **Notice.** The notice shall be served on the incumbent within five days, and on the two nominated judges within fifteen days, from the day it is issued.

[61] SEC. 351. **Testimony.** The testimony may be oral or by depositions, and depositions may be taken on four days notice in the same manner, and for the same causes, as in an action in the district court.

SEC. 352. **Subpoenas.** The county judge and clerk, as well when interested as otherwise, may issue subpoenas for witnesses under the county seal.

SEC. 353. **Postponement.** The trial shall proceed at the time appointed unless postponed for good cause shown by affidavit, the terms of which postponement are in the discretion of the court.

SEC. 354. **Proceedings.** The proceedings shall be under the control and direction of the court, but shall be assimilated to the proceedings in an action as far as practicable.

SEC. 355. **Want of form.** The statement shall not be dismissed for want of form if the particular causes of contest are alleged with such certainty as will sufficiently advise the incumbent of the real ground of contest. If any part of the causes are held insufficient they may be amended, but the incumbent will be entitled to an adjournment if he state on oath that he has matter of answer to the amended causes for the preparation of which he needs further time. Such adjournment shall be upon such terms as the court deem reasonable; but if all the causes are held insufficient and an amendment is asked, the adjournment shall be granted on motion and at the cost of the contestant.

SEC. 356. **Process.** The style and form of process, the officers by whom served, and the manner of service of process and papers, and the fees of officers and witnesses, shall be the same as in the district court so far as the nature of the case permits. The command to a witness may be, to appear at _____ on _____ to testify in relation to a contested election wherein A. B. is contestant and C. D. is incumbent.

SEC. 357. **Where tried.** The trial of contested county elections shall take place at the county seat, unless adjourned to some other place within the county by the concurrence of the court and the parties, which may be done before the commencement of the trial.

SEC. 358. **Powers of court.** This court shall have all the powers incident to the district court which may be necessary to the right hearing, conduct, and determination, of the matter; to compel the attendance of witnesses, to swear them and direct their examination, to punish for contempt in its presence, to adjourn from day to day, and to make any order concerning intermediate costs and enforce it by attachment.

SEC. 359. **Sheriff.** The court or the county judge may direct the attendance of the sheriff or a constable when deemed necessary.

SEC. 360. **Compelling answer.** It shall be lawful to require any person called as a [62] witness, who voted at such election, to answer touching his qualifications as a voter; and if he was not a qualified voter in the county where he voted, then to require him to answer for whom he voted; and if the witness answer such questions, no part of his testimony on that trial shall be used against him in any criminal action.

SEC. 361. **Rules of law to govern.** The court shall be governed, in the trial and determination of contested elections, by the usual rules of law and evidence so far as applicable, except as herein otherwise expressed, and may dismiss the proceedings if all the causes of contest are insufficient and not amended, or for want of prosecution.

SEC. 362. **Judgment.** The court shall pronounce judgment whether the incumbent or any other person was duly elected, and the person so declared elected will be entitled to his certificate upon qualification. If the judgment be against the incumbent and he has already received the certificate, the judgment annuls it. If the court find that no person was duly elected, the judgment shall be that the election be set aside.

SEC. 363. **Pay.** The nominated judges shall be entitled to receive two dollars a day for the time occupied by the trial.

SEC. 364. **Costs.** The contestant and the incumbent are liable to the officers and witnesses for the costs made by them respectively. But if the election be confirmed, or the statement be dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, it shall be against him for costs also.

SEC. 365. **Execution—transcript.** The county judge is authorized to issue execution for costs to run against personal property, and a transcript filed and recorded in the office of the district court, as provided in relation to transcripts from the county court, shall have the same effect as there provided, and execution may issue thereon against real or personal estate.

SEC. 366. **Power of judge.** The county judge shall have authority to carry into effect any order of the court, after the adjournment thereof, by attachment or otherwise.

SEC. 367. **Certificate of election.** If notice of contesting the election of an officer is filed before the certificate of election is delivered to him, it shall be withheld until the determination of the contest.

Contesting the election of certain state officers

SEC. 368. **Secretary, judges, etc.** The election of any person declared duly elected to the office of secretary, treasurer, or auditor of state, judge of the district court, or superintendent of public instruction, may be contested by any eligible person who received votes [63] for the office contested, for any of the causes before contemplated.

SEC. 369. **Court.** The court for the trial of contested state elections shall

consist of three judges, not interested, of either the supreme or district court, or part from the one and part from the other, as may be convenient.

SEC. 370. **Clerk.** The secretary of state shall be the clerk of this court. But if the person holding that office is a party to the contest, the clerk of the supreme court at the seat of government, or in case of his absence or inability a person appointed by the auditor or treasurer of state, shall be clerk.

SEC. 371. **Statement.** The statement must be filed with the secretary of state within thirty days from the day when the votes are canvassed. If the secretary be a party it must be filed with the clerk of the supreme court, and if he be absent or unable to act then with the auditor or treasurer, who shall immediately appoint, in writing, some suitable person as clerk and file the statement with him.

SEC. 372. **Time.** The clerk shall, as soon as practicable, ascertain which three of the judges residing nearest the seat of government can attend the trial, fix a time therefor and notify the judges, and issue a notice of the time to the sheriff of the county where the contestant resides who shall serve it upon the contestant within three days after it is received; and the clerk shall issue a precept, containing a copy of the statement and a notice of the time fixed for trial, to the sheriff of the county where the incumbent resides which the sheriff shall serve upon the incumbent within three days after receiving it. The sheriffs in these cases shall return their doings to the officer or person who issues the precept. When convenient, the service of any of the above papers may be made by the clerk of this court. The time for the trial shall not be set beyond the last Monday of November following the election.

SEC. 373. **Subpoenas.** The secretary of state, the several clerks of the supreme and district courts, and any county judge, under their respective seals of office, and either of the judges of the supreme or district courts under their hands, may issue subpoenas for witnesses to attend this court; and disobedience to such process may be treated as a contempt as if it had been issued by the court itself. This section does not diminish the power of any officer to summon witnesses before him to give his testimony by deposition.

SEC. 374. **Process.** Process and papers may be issued to, and served by, the sheriff of any county.

SEC. 375. **Trial where.** The trial shall take place at the seat of government [64] unless in a case such as provided for in relation to county elections.

SEC. 376. **Pay.** The judges shall be entitled to receive, for their travel and attendance, the highest compensation allowed to members of the general assembly, to be paid from the state treasury.

SEC. 377. **Transcript and lien.** A transcript filed in the office of the clerk of the supreme court, as provided in relation to the district court, shall have the like force and effect of a judgment of the supreme court, and executions may issue therefrom in the first instance, and against the party's property generally.

SEC. 378. **Powers of judge.** The presiding judge of this court shall have authority to carry into effect any order of the court, after the adjournment thereof, by attachment or otherwise.

SEC. 379. The provisions of this chapter in relation to contested county elections are applied to contested state elections when applicable, except as herein otherwise directed.

Contesting elections for members of the General Assembly.

SEC. 380. **By whom.** The election of any person declared duly elected to a seat in the senate or house of representatives of the general assembly may

be contested by any qualified voter of the county or district to be represented by such senator or representative.

SEC. 381. **Statement.** The contestant shall, within thirty days after the declaration of the canvassers, serve on the incumbent a statement as required in relation to county officers, except the list of illegal votes which shall be served with the notice of taking depositions relative to them, and if no such deposition is taken then twenty days before the day of hearing.

SEC. 382. **Subpoenas.** The county judge and clerk may issue subpoenas in the above cases as in those before provided, and when a witness is summoned to give his deposition before the judge or clerk the judge shall have the power to compel his attendance.

SEC. 383. **Depositions.** The previous provisions of this chapter shall be applicable to, and govern, similar cases in taking depositions in the cases now contemplated, except that the causes of taking depositions do not apply.

SEC. 384. **Depositions, etc.** A copy of the statement and of the notice for taking depositions with the service endorsed, and verified by affidavit if not served by an officer, shall be returned to the officer taking the depositions, and then with the depositions shall be sealed up and transmitted by mail or otherwise to the secretary of state with an endorsement thereon showing the nature of the papers, the names of the contesting parties, [65] and the branch of the general assembly before which the contest is to be tried.

SEC. 385. **Same.** The secretary shall deliver the same unopened to the presiding officer of the house in which the contest is to be tried, on or before the second day of the session (regular or special) of the general assembly next after taking the depositions, and the presiding officer shall immediately give notice to his house that such papers are in his possession.

SEC. 386. Nothing herein contained shall be construed to abridge the right of either branch of the general assembly to grant commissions to take depositions, or to send for and examine any witnesses it may desire to hear on such trial.

Contesting the election of Governor.

SEC. 387. **By whom.** Any eligible person who received votes for the office of governor may contest the election of any person declared duly elected to that office.

SEC. 388. **Notice, etc.** The contestant shall, within thirty days after the proclamation of the election, deliver to the presiding officer of each house of the general assembly a notice of his intent to contest and a specification of the grounds of such contest as before directed.

SEC. 389. **Notice to incumbent.** As soon as the presiding officers have received the notice and specifications, they shall make out a notice directed to the incumbent and including a copy of the specifications, which shall be served by the sergeant-at-arms.

SEC. 390. The presiding officers shall also immediately make known to their respective houses that such notice and specifications have been received.

SEC. 391. **Court.** Each house shall forthwith proceed separately to choose seven members of its own body in the following manner:

1. The names of the members of each house, except the presiding officer, written on similar paper tickets shall be placed in a box, the names of the senators in their presence by their secretary, and the names of the representatives in their presence by their secretary.

2. The secretary of the senate in the presence of the senate, and the secre-

tary of the house of representatives in the presence of the house, shall draw from their respective boxes the names of seven members each;

3. As soon as the names are thus drawn the names of the members drawn by each house shall be communicated to the other, and the fourteen names thus drawn shall be entered on the journal of each house.

SEC. 392. **Authority of committee.** The members thus drawn shall constitute a com-[66]-mittee to try and determine the contested election, and for that purpose shall hold their meetings publicly at the place where the general assembly is sitting at such time as they may designate; and may adjourn from day to day or to a day certain not more than four days distant, until such trial is determined; shall have power to send for persons and papers and to take all necessary means to procure testimony, extending like privileges to the contestant and the incumbent; and shall report their judgment to both branches of the general assembly, which report shall be entered on the journals of both houses.

SEC. 393. **Testimony.** The testimony shall be confined to the matters contained in the specifications.

SEC. 394. **Judgment.** The judgment of the committee pronounced in the final decision on the election shall be conclusive.

SEC. 395. **Same.** If the decision be that no person was duly elected, the office of governor will be filled in the mode required by the constitution until the general election next preceding the next regular session of the general assembly, at which election there shall be an election holden for governor to fill the vacancy during the remainder of the term of that office.

SEC. 396. **Previous provisions.** The provisions of this chapter in relation to contested county elections are applied to a contested election for governor when applicable, except as herein otherwise directed.

CHAPTER 31.

REMOVAL FROM OFFICE.

SEC. 397. **Causes.** All county officers, including justices of the peace, may be charged, tried, and removed from office for official misdemeanors in the manner and for the causing [causes] following:

1. For habitual or wilful neglect of duty;
2. For gross partiality;
3. For oppression;
4. For extortion;
5. For corruption;
6. For wilful mal-administration in office;
7. Conviction of a felony.

SEC. 398. **By whom.** Any person may make such charge, and the district court shall have exclusive original jurisdiction thereof by a summons.

SEC. 399. **Proceedings.** The proceedings shall be as nearly like those in other actions as the nature of the case admits excepting where otherwise provided in this chapter.

[67] SEC. 400. **Complaint.** The complain shall be by an accuser against the accused, and shall contain the charges with the necessary specifications under them, and be verified by the affidavit of any elector of the state that he believes the charges to be true.

SEC. 401. **Summons.** It will be sufficient that the summons require the accused to appear and answer the complaint of A. B., (naming the accuser) for "official misdemeanors;" but a copy of the complaint must be served with the summons.

SEC. 402. **Pleadings.** No answer or other pleading after the complaint is necessary, but the defendant may move to reject the complaint or demur thereto upon any ground rendering such motion or demurrer proper, and he may answer if he desires, and if he answer the accuser may reply or not, but if there be an answer and reply the provisions of this statute relating to the pleadings in actions shall apply except that the pleadings after the complaint need not be sworn to.

SEC. 403. **County clerk.** If the person who holds the offices of clerk of the district court and of county clerk is the accused in either of those capacities, the complaint may be filed with the county judge, and he may issue the summons and copy under the county seal, and both he and the clerk may issue subpoenas for witnesses, and the county judge shall deliver the papers to the judge of the district court on its sitting.

SEC. 404. **Suspension.** If a continuance of the action take place beyond the return term the court may suspend the accused from the functions of his office until the determination of the matter, if sufficient cause appear from testimony or affidavits then presented; and if such suspension takes place in any office other than that of county judge that officer shall temporarily fill the office by appointment similar to appointments provided for hereafter in this title.

SEC. 405. **Trial.** The questions of fact shall be tried as in other actions, and if the accused is found guilty judgment shall be entered removing the officer from his office and declaring the latter vacant; and the clerk shall enter a copy of the judgment in the election book, or, if he be the accused, a copy of the judgment shall be certified to the county judge whose duty it will be to cause it to be entered as above directed.

SEC. 406. **Costs.** The accuser and the accused are liable to costs as in other actions.

SEC. 407. **Appointment.** When the accused is an officer of the court and is suspended, the court may supply his place by appointment for the term.

[68] CHAPTER 32.

SUSPENSION OF CLERKS AND SHERIFFS BY THE JUDGES OF THE DISTRICT COURT.

SEC. 408. **Causes.** The judges of the district court in their respective districts shall have authority, on their own motion, to suspend from office any clerk of that court or sheriff of a county for any of the causes mentioned in the chapter relating to removals from office coming to their own knowledge, or manifestly appearing from the papers or testimony in any proceeding in court.

SEC. 409. **Complaint.** Upon such suspension the court may direct the prosecuting attorney to file a complaint, which shall be in the name of the county upon the relation of the attorney, but it need not be verified by affidavit.

SEC. 410. **Order.** Such order of suspension shall be entered in the election book by the clerk, or if he be the accused it shall be certified to the county judge and be by him entered.

CHAPTER 33.

DEPUTIES.

SEC. 411. **By whom, manner, etc.** The secretary, auditor, and treasurer of state, each clerk of the district court, sheriff, and recorder shall appoint a deputy for whose acts he shall be responsible and from whom he shall require bond; which appointment must be in writing and be approved by the officer who has the approval of the principal's bond, and shall be revocable by writing under the principal's hand; and both the appointment and the revocation shall be filed and kept in the office of the secretary of state, and county judge, respectively.

SEC. 412. **Duties.** In the absence or disability of the principal, and in the cases provided for in the chapter relating to vacancies, the deputy shall perform the duties of his principal pertaining to his own office, but when any officer is required to act in conjunction with, or in the place of, another officer his deputy cannot supply his place.

SEC. 413. **Disqualification.** The secretary, treasurer, and auditor, of state can neither of them appoint either of the others, his deputy; nor can either the clerk of the district court, recorder, or sheriff, of a county appoint either of the others.

[69] SEC. 414. The deputy recorder shall be deputy treasurer also; and the deputy of the clerk of the district court shall be his deputy as county clerk.

SEC. 415. **Sheriff.** The sheriff may appoint such number of deputies as he sees fit, but none of his deputies shall be deputy assessor.

SEC. 416. **Oath.** Each deputy shall take the same oath as his principal (reciting the condition of his principal's bond) which shall be endorsed upon and filed with the certificate of his appointment.

SEC. 417. **Allowance.** When a county officer receiving a salary is compelled by the pressure of the business of his office to employ a deputy, the county court may make a reasonable allowance to such deputy.

CHAPTER 34.

ADDITIONAL SECURITY AND THE DISCHARGE OF SURETIES.

SEC. 418. **When required.** The officer who has the approval of another officer's bond, when he is of opinion that the public security requires it and upon giving the officer ten days notice to show cause to the contrary, may require such officer to give such additional security as may be deemed requisite within a reasonable time to be prescribed.

SEC. 419. **How.** Such additional security shall be by giving a new bond.

SEC. 420. **Effect.** If such requisition be complied with both the old and new security shall be in force; and if not complied with the office shall become, and be declared, vacant, and the proceeding be certified to the proper officer to be recorded in the election book or township record.

SEC. 421. **Sureties petition.** When any of the sureties on the bond of a civil officer conceives himself in danger of suffering by remaining surety and desires to be relieved of his obligation, he may petition the approving officer above referred to for relief stating the ground of his apprehension.

SEC. 422. **Notice.** The surety shall give the principal at least twenty-four hours notice of the presenting and filing of the petition with a copy of the

grounds of his apprehension. At the expiration of twenty-four hours from the notice the approving officer may hear the matter or may postpone the hearing, as the case permits or requires.

SEC. 423. **Testimony.** The testimony of both parties as well as that of witnesses may be heard in proceedings under this chapter.

SEC. 424. **Order—effect.** If, upon the hearing, there appears substantial [70] ground for apprehension the approving officer may order the principal to give a new bond and to supply the place of the petitioning surety within a reasonable time to be prescribed, and on such new bond being given the petitioning surety upon the former bond shall be declared discharged from liability on the same for future acts, which order of discharge shall be entered in the proper election book, but the bond will continue binding upon those who do not petition for relief.

SEC. 425. **Failure to give.** If the new bond is not given as required, the office of the principal shall be declared vacant and the order to that effect entered as directed in the preceding section.

SEC. 426. **Justice.** If the proceeding relate to a justice of the peace and he is removed from office the county judge shall notify the proper township trustees or clerk of the removal.

SEC. 427. **Powers.** The approving officer herein contemplated shall possess all the powers of a justice of the peace to issue subpoenas in his official name for witnesses, to compel their attendance, and to swear them.

SEC. 428. **Consent.** Where an officer consents to give new security in the above cases it may be taken without farther proceeding and with the same effect as above provided.

CHAPTER 35.

VACANCIES AND SPECIAL ELECTIONS.

SEC. 429. **Vacancy when.** Every civil office shall be vacant upon the happening of either of the following events at any time before the expiration of the term of such office, to wit:

1. The resignation of the incumbent;
2. His death;
3. His removal from office;
4. His refusal or neglect to take the oath of office, and also to give bond (when a bond is necessary) in the time prescribed by law;
5. The decision of a competent tribunal declaring his election or appointment void or his office vacant;
6. His ceasing to be a resident of the state, district, county, or township, in which the duties of his office are to be exercised, or for which he may have been elected;
7. A failure to elect at the proper election, there being no provision for the incumbent to continue in office until his successor is elected and qualified nor other provision relating thereto;

[71] 8. A forfeiture of office as provided by any law of the state;

9. Conviction of an infamous crime or of any public offense involving the violation of his oath of office;

SEC. 430. **Resignations tendered.** Resignations shall be tendered as follows:

1. By the governor to the general assembly if in session, if not, to the secretary of state;

2. By senators and representatives in congress, and secretary, treasurer, and auditor of state, the judges of the supreme and district court, and superintendent of public instruction, to the governor who shall communicate the same to the proper body or officer and cause an election to be holden at the time directed by law;

3. By senators and representatives in the general assembly, to the presiding officer of their respective houses if in session, who shall immediately transmit information of the same to the governor; if not in session, to the governor who shall take the proper measures for an election according to law;

4. By the county judge, to the clerk, and by all other county officers to the judge; and when a justice of the peace resigns the county judge shall notify the proper township trustees.

SEC. 431. Vacancies—when and how filled. Vacancies occurring in the offices of secretary, treasurer, or auditor of state, or representative in congress, shall be filled at the first election which takes place in August after the expiration of thirty days from the occurrence; in that of governor, as provided heretofore in this title.

SEC. 432. Judge, etc. Vacancies in the office of judge of the district court and of superintendent of public instruction shall be filled at the first April election which occurs after the expiration of thirty days from the occurrence of the vacancy.

SEC. 433. Election. In such cases the governor shall issue his warrant to the county judges requiring such an election to be held.

SEC. 434. County and township officers. Vacancies occurring in county or township offices shall be filled at the first election which takes place in April or August after the expiration of fifteen days from the occurrence; and when a justice of the peace is elected to fill a vacancy he is entitled to hold for the term of two years from the time of his election if that was at an April election, and if it was (as to his office) at a special election, then for the term of two years from the April election next preceding such special election.

SEC. 435. Special elections. Special elections, except for township officers, shall be holden if practicable at the times of holding general elections, and in all cases notice of the same shall be given by posting up two notices in each township in the county at least [72] ten days before said election; said notice to be issued by the county judge and posted up by the sheriff.

SEC. 436. Appointments—how made. Until such election, vacancies, except in the offices of governor and county judge, shall be filled by appointment as follows:

In state offices by the governor;

In county offices by the county judge;

In township offices by the trustees; but when the offices of the three trustees are vacant the clerk shall appoint.

SEC. 437. Vacation of office. When a civil officer who is authorized or required to appoint a deputy vacates, or is about to vacate, his office by resignation or by removal he shall remain responsible for the performance of the duties, and may receive the emoluments, of his office until his successor by election or by appointment has qualified; but he shall not be so responsible beyond the day when the result of an election to fill his office is declared.

SEC. 438. Same. In the case contemplated in the preceding section, if the vacancy occurs within thirty days previous to an election day at which it may be filled, no appointment shall be made.

SEC. 439. **Appointments.** Appointments under the provisions of this chapter shall be made in writing and made to continue until the next election at which the vacancy can be filled and until a successor is elected and qualified, and be filed with the secretary, or proper township clerk, or in the proper county office, respectively.

SEC. 440. **Qualifications.** Persons appointed to office as herein provided shall qualify in the same manner as is required of those elected, the time for which shall be prescribed in their appointment; and the provisions of the chapter relating to qualifications for office are extended to them.

SEC. 441. **Removal.** A person appointed as herein contemplated may be removed by the officer appointing; and no person can be appointed who has been removed from office within one year.

SEC. 442. **Senators in congress.** A vacancy in the office of senator in congress shall be filled whenever the general assembly is in session after the vacancy occurs.

SEC. 443. **Representatives and senators.** When a vacancy occurs in the office of representative in congress, or of senator or representative in the general assembly, by any means other than a resignation the judge of the county in which the last incumbent resided shall inform the governor thereof; and on a vacancy, by any means, in such office the governor may issue his warrant for filling such office either by a special election or at an April election, if a regular session of the body in which the vacancy exists will take place, or if, in his judgment, a special session of that [73] body will take place before the time provided for the regular election of the officer or for filling such vacancy.

SEC. 444. **Possession of office.** When a vacancy occurs in a public office (except by the resignation or removal from the territory of his office of an officer who is authorized or required to appoint a deputy) possession shall be taken of the office-room and of the books, papers, and all things pertaining to the office, as follows, to be held until the election or appointment and qualification of a successor:

Of the office of the county judge, by the county clerk;

Of that of the county clerk or treasurer, by the county judge;

Of any of the state officers, by the governor; or in his absence or inability at the time of the occurrence, as follows:

Of the secretary, by the treasurer;

Of the auditor and superintendent of public instruction, by the secretary;

Of the treasurer, by the secretary and auditor; who shall make an inventory of the money and warrants therein, sign the same and transmit it to the governor if he be in the state, and the secretary shall take the keys of the safes and desks after depositing the books, papers, money, and warrants therein, and the auditor shall take the key of the office-room.

TITLE V.

OF CERTAIN PROPERTY OF THE STATE.

CHAPTER 36.

THE STATE LIBRARY.

SEC. 445. **Librarian.** The library of the state shall be in the care and custody of a librarian biennially appointed by the governor by and with the consent of the senate.

SEC. 446. **Bond.** The librarian shall give bond to the state in the sum of three thousand dollars for the faithful performance of his duties, with at least two sureties, which bond and sureties are to be approved by the governor, or in his absence from [74] the seat of government or other disability, by the secretary of state, and the bond filed in the secretary's office.

SEC. 447. **Custody.** The librarian is to have the custody and charge of all books, papers, maps, charts, engravings, paintings, and all other things properly belonging to the library, or directed to be deposited therein.

SEC. 448. **Room.** He is directed to provide, at the seat of government and as near as possible to the house occupied by the general assembly, a room for the library with fuel and other conveniences therefor, the expenses of which shall be paid from the state treasury.

SEC. 449. **Open.** The library shall be kept open during the session of the general assembly, and of the supreme court at the seat of government, from nine to twelve o'clock in the forenoon and from two to nine o'clock in the afternoon, and, at other times, during the afternoon of each Wednesday and Saturday.

SEC. 450. **Salary.** The compensation of the librarian will be an annual salary of one hundred and fifty dollars, payable quarterly from the state treasury.

SEC. 451. **Of taking books.** No person shall be permitted to remove from the library any book or other property belonging thereto without giving a receipt therefor, and no one, except the governor, the judges of the supreme and district courts, the judge of the district court of the United States, and the United States district attorney, shall take a book or other property of the library from the seat of government or retain it more than ten days.

SEC. 452. **Farther rules.** The governor and librarian may adopt such farther regulations, consistent with the provisions of this chapter, as they see fit for the preservation and management of the library, and may prescribe forfeitures for the breach of such regulations and also for the breach of those herein provided; which regulations and forfeitures, being posted one week on the door of the library room, shall have the force and effect of law, and such forfeitures may be recovered by action in the name of the state and shall be for the use of the library.

SEC. 453. **Report.** The librarian is required to report to the general assembly at the commencement of each session a list of books and other property missing from the library, and an account of forfeitures imposed and those paid, with such other information in relation to the library as he deems expedient; and before the close of the session, to render an account of the expenses incurred since rendering the last preceding account.

[75] TITLE VI.

CHAPTER 37.

REVENUE.

SEC. 454. **Taxes to be levied.** Each county court shall hold a session on the fourth Monday of July annually, at which time it shall levy the following taxes upon the assessed value of the taxable property in the county:

For state revenue three mills on a dollar, when no rate is directed by the census board;

For ordinary county revenue, including the support of the poor, not more than six mills on a dollar, and a poll tax of fifty cents;

For the support of schools not less than one-half mill nor more than one mill and a half on a dollar;

For roads as directed in the chapter relating to roads.

SEC. 455. **Property exempt.** The following classes of property are not to be taxed and they may be omitted from the lists herein required:

1. The property of the United States and that of this state, including the university and school lands;

2. The property of a county, township, incorporated town, and school district, when devoted to the public use and not held for pecuniary profit;

3. Public grounds, by whomsoever devoted to the public, including all places for the burial of the dead;

4. Fire engines and implements used for extinguishing fires with the ground used exclusively for their buildings and for the meetings of fire companies;

5. The grounds and buildings of library, scientific, benevolent, and religious institutions or societies devoted solely to the appropriate objects of those institutions, not exceeding three acres in extent and not leased or otherwise used with a view to pecuniary profit;

6. The books, papers, furniture, and apparatus pertaining to the above institutions and used solely for the purposes above contemplated, and the like property of students in any such institutions, used for their education;

7. Money and credits belonging exclusively to such institutions and devoted solely to sustaining them, but not exceeding in amount or income the sum prescribed by their charter;

[76] 8. Animals not specified in the next section; the wool shorn from the sheep of the person giving the list, and his crop harvested within one year previous to the listing; private libraries not exceeding one hundred dollars in value, and family pictures; the kitchen furniture of each family, the beds and bedding requisite for the family, one bed and the bedding thereof for each single person not a member of another's family, the apparel of every family and person actually used for wearing, with all food provided for each family; but no person from whom a compensation for board or lodging is received or expected is to be considered a member of a family within the intent of this clause;

9. The polls or estates, or both, of persons who by reason of age or infirmity

may in the judgment of the assessor be unable to contribute to the public charges; such opinion being subject to reversal by the county court;

10. Mutual insurance companies.

SEC. 456. **Property liable.** All other property, real and personal, within this state is subject to taxation in the manner herein directed; and this section is intended to embrace

Lands, and lots in towns, including lands bought from the United States and from this state, and whether bought on a credit or otherwise;

Ferry franchises, which for the purposes of this chapter are to be considered as real property;

Horses and neat cattle;

Mules and asses;

Sheep and swine;

Money, whether in possession or on deposit and including bank bills;

Money, property, or labor due from solvent debtors on contract or on judgment, and whether within this state or not;

Mortgages and other like securities, and accounts bearing interest;

Stock or shares in any bank or company incorporated or otherwise, and whether incorporated by this or any other state, and whether situate in this state or not;

Public stock, or loans;

Household furniture, including gold and silver plate, musical instruments, watches, and jewelry;

Private libraries, for their value over one hundred dollars;

Pleasure carriages, stages, hacks, and other vehicles for transporting passengers, wagons, carts, drays, sleds, and every other description of vehicle or carriage;

Boats and vessels of every description wherever registered or licensed and whether navigating the waters of this [77] state or not, if owned either wholly or in part by persons who are inhabitants of this state;

Annuities, but not including pensions from the United States or any of them, nor salaries or payments expected for services to be rendered. And all other property not above exempted although not herein specified.

SEC. 457. "**Credit.**" The term "credit" as used in this title includes every claim and demand for money, labor or other valuable thing, and every annuity or sum of money receivable at stated periods, and all money in property of any kind and secured by deed, mortgage, or otherwise; but pensions from the United States or any of them and salaries or payments expected for services to be rendered are not included in the above term.

By whom, where, and in what manner, property is to be listed.

SEC. 458. **Guardians, trustees, etc.** Every inhabitant of this state of full age and sound mind shall list all property subject to taxation in this state of which he is the owner or has the control or management, in the manner hereafter directed; but the property

Of a ward is to be listed by his guardian;

Of a minor having no other guardian by his father if living, if not then by his mother if living, and if not then by the person having the property in charge;

Of a married woman by her husband, but if he be unable or refuses, by herself;

Of a beneficiary for whom property is held in trust, by the trustee, and the personal property of a decedent by the executor;

Of a body corporate, company, society, or partnership, by its principal accounting officer, agent, or a partner;

Property under mortgage or lease is to be listed by, and taxed to, the mortgagor or lessor unless it be listed by the mortgagee or lessee.

SEC. 459. **Who owner.** Commission merchants and all persons trading and dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in this state, are for the purposes of taxation to be deemed the owners of the property in their possession.

SEC. 460. **Where listed.** All personal property is to be listed, assessed, and taxed in the county where the owner resides on the first day of March of the then current year; but if the owner resides out of the state it is to be listed and taxed where it may then be, and if the agent or person having charge of such property neglect to list it he will be subject to the penalty hereafter provided.

SEC. 461. **By trustees, etc.** A person required to list property in behalf of [78] another shall list it in the same county in which he would be required to if it were his own (except as herein otherwise directed), but he must list it separately from his own naming the person or estate to whom it belongs; but the undivided property of a person deceased belonging to his heirs may be listed as belonging to such heirs without enumerating them.

SEC. 462. **Corporations.** The property of corporations or companies constructing canals, railways, plank roads, graded roads, turnpike roads, and similar improvements, is taxed through the shares of the stockholders; and when any such stockholders are non-resident their interests are to be taxed in this state in the county in which is either terminus of the structure in the state, and to that end the assessor is directed to require the secretary or clerk (or whatever officer of corresponding duties there may be) to render under oath a list of the names and residences of such non-resident stockholders with the number of the shares of each and both the par value and the market value of such stock, but if such secretary or other corresponding officer do not reside in this state the assessor may require the same of any officer residing in the state; and if such officer refuses the shares of non-residents shall be assessed to the company or corporation, and may be ascertained in the best manner within the power of the assessor. In such case the county first listing or assessing is to levy and collect the tax.

SEC. 463. **In different counties.** When a person is doing business in more than one county the property and credits existing in any one of the counties are to be listed and taxed in that county, and credits not existing in, nor pertaining especially to the business, in any one county are to be listed and taxed in that where the principal place of business may be. Each individual of a partnership is liable for the taxes due from the firm.

SEC. 464. **Insurance companies.** Insurance companies of every description, except mutual insurance companies, existing in other states and operating in this, shall be taxed one per cent. for county purposes and one per cent. for state purposes upon the amount of the premiums taken by them during the year previous to the listing, in the county where the agent conducts that business; and the agent shall render the list and shall be personally liable for the tax, and if he refuses to render the list or to swear as herein required the amount may be assessed according to the best knowledge and the discretion of the assessor.

Manner of listing and assessing property.

SEC. 465. **When.** All taxable property is to be listed and valued each year, and real property is to be assessed at its true value in [79] money at private

sale having regard to its quality, locality, natural advantages, the general improvement in the vicinity, and all other elements of its value.

SEC. 466. **Credits, etc.** Depreciated bank notes and depreciated stock or shares in corporations or companies may be listed at their current value and rate; credits shall be listed at such sum as the person listing them believes will be received or can be collected; and annuities, at the value which the person listing believes them to be worth in money.

SEC. 467. **Deduction.** In making up the amount of money and credits which any person is required to list, he will be entitled to deduct from their gross amount the amount of all *bona fide* debts owing by him; but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the intent of this section; and so much only of any liability of such person as security for another shall be deducted as the person making the list believes he is legally or equitably bound to pay, and so much only as he believes he will be compelled to pay on account of the inability of the principal debtor, and if there are other sureties able to contribute then so much only as he in whose behalf the list is made will be bound to contribute; but no person will be entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of an unpaid subscription to any institution or society, nor on account of a subscription to, or installment payable on, the capital stock of any company or corporation.

SEC. 468. **Merchant.** Any person owning or having in his possession or control within this state with authority to sell the same any personal property, purchased either in or out of this state with a view of being sold at an advanced price or profit, or which has been consigned to him from any place out of this state for the purpose of being sold within the same, shall be held to be a merchant for the purpose of this chapter. Such property shall be listed for taxation, and in estimating the value thereof the merchant shall take the average value of such property in his possession or control during the year next previous to the time of the listing, and if he have not been engaged in that business so long then he shall take the average during such time as he may have been so engaged, and if he be commencing he shall take the value of the property at the time of the listing.

SEC. 469. **Manufacturer.** Any person who purchases, receives, or holds personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, [80] purifying, or by the combination of different materials, with a view of making gain or profit by so doing and by selling the same, shall be held to be a manufacturer for the purposes of this chapter, and he shall list for taxation the average value of such property in his hands estimated as directed in the preceding section; but the value shall be estimated upon the materials only entering into the combination or manufacture.

SEC. 470. **Assessor to leave notices.** The assessor of each county shall, on or before the first day of March in each year, leave with each person resident in his county of full age and of sound mind, or at the usual place of residence, or at the office or other place of business, of such person, a written notice requiring him to make out and return to the assessor by the twentieth day of the same month of March a statement, or list, of his property which by law is subject to taxation; and the assessor shall leave a blank form upon which such list may be made. If the statement be not returned to the assessor in due time he is to call for the same, but if the person is prepared to render his

list at the time the notice is left it is the duty of the assessor to receive it at that time.

SEC. 471. **List to contain.** The list shall contain:

1. His lands, by township, range, section, and any division or part of a section, and where such part is not a congressional division or subdivision some other description sufficient to identify it; and his town lots, naming the town in which they are situated and their proper description by number and block, or otherwise according to the system of numbering in the town.

2. His personal property by the following particulars:

Amount of capital employed in merchandise;
 Amount of capital employed in manufactures;
 Number of horses;
 Number of mules;
 Number of neat cattle;
 Number of sheep;
 Number of swine;
 Number of carriages and vehicles of every description;
 Amount of money and credits;
 Amount of taxable household furniture;
 Amount in stock or shares in any corporation or company;
 Amount of all other personal property not enumerated;
 The number of polls.

SEC. 472. **Census board.** The above list of items may be diminished, or varied, or enlarged by the census board so as to obtain such facts as they deem advisable.

[81] SEC. 473. **Forms.** Before the first of March on [of] each year the census board is required to furnish the assessor with suitable blank forms for the assessments and such instructions as to secure full and uniform assessments and returns.

SEC. 474. **List sworn to, etc.** The list shall be signed and sworn to by the person making it, and the oath may be administered either by the assessor or by any other officer authorized to administer oaths and shall be certified by him, and the oath may be printed upon the blank forms and shall be in substance as follows:

“I, (A. B.), solemnly swear that I have listed above (or within) all the land and all the personal property, money, and credits, subject to taxation owned or held by me and which I am required by law to list [in the proper cases insert “as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent, or factor”] according to the best of my knowledge.”

SEC. 475. **Neglect to list.** When any person required to render the above statement fails so to do from absence or sickness, and when any such person refuses so to do or to take or subscribe the oath required, the assessor shall ascertain, according to the best information he can obtain, the number and value of the several species of property required; and to that end he is hereby authorized to examine on oath any person whom he supposes to have knowledge in relation thereto, and if any person refuses so to testify he shall forfeit the sum of five dollars to be recovered by civil action in the name and to the use of the county.

SEC. 476. **Lists filed.** The said statements shall be endorsed with the name of the person whose property is therein listed, and the assessor shall file them in alphabetical order and return them to the county office when he returns his assessment-roll, to be there preserved.

SEC. 477. **Who values.** All property is to be valued by the assessor except such as herein required to be valued by the owner.

The assessment roll, the correction thereof, and the tax list.

SEC. 478. **Assessment roll.** On or before the first day of June annually the assessor shall make out, and deliver to the county judge, an assessment-roll containing, in tabular form and alphabetical order, the names of the persons and bodies in whose names property has been listed in his county, with the several species of property and the value as hereinbefore indicated with the columns of numbers and values footed; and in a column to be provided for that purpose he shall write the words "by the assessor" when the list was made by himself together with the word "absent" or "sick" or the words "refused to list" or [82] "refused to swear" or such other words as will express the cause why the person required to make the list did not make it; and a neglect shall be taken as a refusal.

SEC. 479. **Assessor's oath.** The assessor shall take and subscribe an oath to be certified by the officer administering it and attached to the assessment roll, which oath is to be in substance as follows:

I, (C. D.), assessor of ——— county solemnly swear that the value of all property, money, and credits, of which a statement has been made and verified by the oath of the person required to list the same is herein truly returned as set forth in such statement; that in every case where I have been required to ascertain the amount or value of the property of any person or body I have diligently and by the best means in my power endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the annexed return; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it a statement of the amount and value of his property which he was required by law to list, nor in any way connived at any violation or evasion of any of the requirements of the law in relation to the assessment of property for taxation.

SEC. 480. **Abstract for auditor.** As soon as practicable after the assessment roll is filed the county clerk is required to make out an abstract thereof containing:

- The whole number of acres of land listed in the county,
- The total valuation of the town lots,
- The whole number of horses and their total value,
- The whole number of mules and asses and their total value,
- The whole number of neat cattle and their total value,
- The whole number of sheep and their total value,
- The whole number of swine and their total value,

The gross amount of all other personal property with money and credits; which abstract the clerk is directed to transmit forthwith to the auditor of state; but the census board is authorized to diminish, or add to, the above list and to require such different or further matters to be returned as it deems advisable.

SEC. 481. **Census board.** The census board constitutes a board for the equalization of taxes for the state, and is authorized and required to examine the various assessments so far as regards the state tax and equalize the rate of assessment on real estate in the different counties whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different assessors.

SEC. 482. **Equalization.** Such equalization may be made either by changing [83] any of the assessments or by varying the rate of taxation in any of the counties as may be found most convenient, but in either case the board is directed

to preserve unchanged as far as practicable what would have been the aggregate amount of valuation had no such equalization been made.

SEC. 483. **Changes.** Before the fourth Monday in July the auditor is required to transmit to the judge of each county a statement of the change (if any) which has been made in the assessment and the rate of state tax which is to be levied and collected within his county, which however shall not exceed three mills on a dollar of the valuation, and when the board fixes no different rate the rate first mentioned in this chapter shall be levied.

SEC. 484. **County board.** The county judge, clerk, and treasurer constitute a board for the correction of the assessment roll, and between the first day of June and the second Monday of July any person feeling aggrieved by any thing in the assessment roll may apply to this board for the correction of any supposed error, and if any person returned as refusing to render a list or to be sworn thereto can show good cause the penalty herein provided may be remitted.

SEC. 485. **Taxes—when levied.** On the fourth Monday of July the county court shall levy the requisite taxes for the then current year; and they may be levied at any time after the second Monday of July if the statement has been received from the census board.

SEC. 486. **Tax list.** As soon as practicable after the taxes are levied the clerk shall make out a tax list in tabular form and in alphabetical order having distinct columns for lands and for town lots and carrying out in a column by itself the amount of each different tax, and having one or more columns for delinquent taxes; but instead of a column for the amount of personal property the word "personalty" may be written across the columns after the name and the amount carried into the column of value.

[84] Such list may be in the following form:

Owner's Name	Part of the Section	Section	Township	Range	Acres	Name of Town	Lot	Block	Value	County Tax	State Tax	School Tax	Road Tax				
A. B.	Personalty								300	1 20	75	15					
"	N. E. $\frac{1}{4}$	6	77	2 W	160				480	1 92	1 20	24					
"	W $\frac{1}{2}$ N. E. $\frac{1}{4}$	8	77	1 E	80				300	1 20	75	15					
"							8	16	200	80	50	10					
"							10	30	500	2 00	1 25	25					
"							8	50	100	40	25	05					

REVENUE

[85] SEC. 487. **Same.** An entry is required to be made upon the tax list showing what it is, and for what county and year it is, and the county judge shall attach to the list his warrant under his hand and official seal, in general terms, requiring the treasurer to collect the taxes therein levied according to law; and no informality in the above requirements shall render any proceeding for the collection of the taxes illegal. The judge is required to cause the list to be delivered to the treasurer of the county by the fifteenth day of September and his receipt taken therefor, and such list is a full and sufficient authority for the collector to collect all taxes contained therein.

The collection of taxes.

SEC. 488. **Treasurer's duty.** The treasurer on receiving the tax list and warrant shall proceed to collect the taxes therein levied, and the list and warrant shall be his authority and justification against any illegality in the proceedings prior to receiving the list; and he is required to attend at his office during the month of September after receiving the list and the months of October, November and December, to receive the taxes; and he is also authorized and required to collect as far as practicable the taxes remaining unpaid on the list of former years.

SEC. 489. **Warrants receivable.** Auditor's warrants are receivable for three-fourths of the amount payable into the state treasury, and county warrants are receivable at the treasury of the proper county for the ordinary county tax and any poor tax or poor house tax, but money only is receivable for the school tax. Road taxes may be discharged, and road warrants received, as provided in the chapter relating to roads.

SEC. 490. **Same.** When a state, or county, or road warrant is received by the treasurer he is directed to endorse on it the amount for which it was received and the date thereof, and from that date the warrant is to be regarded as canceled and cannot be reissued, but when the warrant amounts to more than is to be paid by the person presenting it the treasurer will give him a certificate of the balance due him as directed in the chapter relating to the treasurer.

SEC. 491. **Error.** If, on the assessment roll or in the tax list, there be any error in the name of a person taxed the name may be changed and the tax collected from the person intended if he be taxable and can be identified by the treasurer or the assessor. And when the treasurer, after the tax list is committed to him, ascertains that any land or other property is omitted he will report the fact to the assessor, who upon being satisfied thereof will enter it upon his assessment roll and [86] assess the value, and the treasurer will enter it upon the tax list and collect the tax as in other cases.

SEC. 492. **No demand.** No demand of taxes shall be necessary, but it is the duty of every person subject to taxation to attend at the office of the treasurer at some time during the four months named and after the fifteenth day of September and pay his taxes; and if any one neglects to pay it before the first day of January following the levy of the tax the treasurer is directed to make the same by distress and sale of his personal property excepting such as is exempt from taxation, and the tax list alone will be a sufficient warrant for such distress.

SEC. 493. **Distress.** When the treasurer distrains goods he may keep them at the expense of the owner and shall give notice of the time of their sale within five days after the day of the taking in the manner constables are required to give notice of the sale of personal property on executions, and the time of the sale shall not be more than ten days from the day of the taking; but he may adjourn the sale from time to time for a period not exceeding three days, and

shall adjourn once at least when there are no bidders, and in case of an adjournment he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of keeping, and fees for sale shall be returned to the owner and the treasurer shall on demand render an account in writing of the sale and charges.

SEC. 494. **Resistance.** If the treasurer be resisted or impeded in the execution of his office he may require any suitable person to aid him therein, and if such person refuse the aid he shall forfeit a sum not exceeding ten dollars to be recovered by civil action in the name and to the use of the county; and the person resisting shall be liable as in the case of resisting the sheriff in the execution of civil process.

SEC. 495. **Delinquency.** On the first day of January the unpaid taxes of the preceding year become delinquent and shall draw interest at the rate of twenty-five per centum per annum; and taxes upon real property are hereby made a perpetual lien thereupon against all persons except the United States and this state.

SEC. 496. **Sale.** Before the first day of June in each year the treasurer is directed to offer at public sale at the court house in his county all lands on which the taxes levied the preceding year still remain unpaid, but such sale shall not be void if not made till after the day above named.

SEC. 497. **Payment.** The treasurer shall continue to receive payment of all taxes after the first day of January upon the above terms until paid by distress and sale.

[87] SEC. 498. **Notice.** The treasurer shall give notice of the sale of real property by publication thereof once a week for four weeks in a newspaper in his county, if there be one, the first of which shall be at least four weeks before the sale, and by a written notice posted on the door of the court house or building commonly used therefor for four weeks before the sale. And if there be no newspaper published in the county the like notice shall be given by posting one written notice the above length of time in each civil township in which any land to be sold is situate and one on the court house door. Such notice shall contain a notification that all lands on which the taxes of the preceding year (naming it) have not been paid will be sold, and the time and place thereof; but it need not contain a list of the lands. The publication in the newspapers will be at the expense of the county.

SEC. 499. **Adjournment.** Such sale is directed to take place between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, and may be adjourned from day to day (Sunday excepted) until all the lands are sold.

SEC. 500. **Return.** At the July session of the county court the treasurer is required to file in the county office a return of his sale of lands (retaining a copy in his own office) showing the lands sold, the names of the owners so far as known, the names of the purchasers and the sums paid by them, and also a copy of the notice of the sale with a certificate of the service verified by an affidavit, and such certificate shall be evidence.

SEC. 501. **Purchaser.** The person who offers to pay the amount due on any parcel of land for the smallest portion of the same is to be considered the highest bidder, and when such portion constitutes a half or more of the parcel it is to be taken from the east side thereof dividing it by a line running north and south, except that town lots are to be divided in such case lengthwise by a line parallel with the proper lines of the lots. If the portion taken be less than one-half of the tract it is to be taken from the southeast corner in a square form as nearly as the form of the land will conveniently

permit. The preceding provisions of this section are subject to the following qualifications: the homestead is liable to be sold for no tax save that which is due on itself exclusively and the above directions concerning the division of a tract of land shall be modified so as to meet this requirement, and to that end the quantity of land bid may be obtained by drawing the division line in any direction or form so as to avoid the homestead; and when the homestead constitutes part of the tract sold and is not yet ascertained the court may in the action hereafter authorized, at the suggestion of either party, cause a proceeding to be had similar to that required in relation to mechanic's liens for the ascertainment of the homestead; and in all other cases of such sales it may take the requisite order and proceedings to ascertain the land sold and to set it apart from the homestead.

SEC. 502. **Non-payment.** Should any person so bidding fail to pay the amount due, the treasurer may again offer the land for sale if the sale has not closed, and if it has closed he may again advertise it specifically and by description by one written notice posted for two weeks in the civil township in which the land lies and one such notice on the court house; or the treasurer may recover the amount bid by civil action brought in the name of the county in the township where the county seat is situated.

SEC. 503. **Deed.** The purchaser will be entitled to a deed for the land so purchased by him upon the payment of the proper amount, which deed shall run in the name of the state of Iowa and be signed by the treasurer in his official name and will convey the title to the land and shall be presumptive evidence of the regularity of all prior proceedings. The purchaser acquires the lien of the tax on the land, and if he subsequently pays any taxes levied on the same he shall have the same lien for those and may add them to the amount paid by him in the purchase.

SEC. 504. **Same.** The treasurer is required to demand fifty cents for each deed made by him on such sales, but any number of parcels of land bought by one person may be included in one deed, as may be desired by the purchaser.

SEC. 505. **Redemption.** Land so sold will be subject to redemption as follows: if redeemed before a suit be commenced as hereafter provided, by paying the amount paid by the purchaser, including the fee for the deed and any taxes on the land paid by the purchaser, with twenty-five per centum per annum thereon; and if redeemed after a suit is commenced, by paying in addition to the foregoing the sum of ten dollars and the costs of suit to be taxed by the clerk of the district court. Such payment may be made to the purchaser, his agent or attorney, or to the treasurer who is to enter a memorandum of the redemption in the list of sales and give a certificate thereof to the redeemer and hold the money paid (except the costs of a suit) to the use of the purchaser.

SEC. 506. **Action.** The purchaser may at any time after six months from the day of sale file his petition in the district court as in case of a foreclosure of a mortgage (except that no sale shall be decreed,) in which action the notice to the party and the service are to be the same as in the case of a mortgage: but the owner shall not be entitled to defend unless he has paid [89] or tendered the amounts above directed or shows that no tax was levied on the land or that he had paid the taxes.

SEC. 507. **Same.** When the owner of the land is not known the action may be brought against the land itself, but in such case the service must be as in the case of a non-resident. And when such action is commenced against a person who disclaims the land, the land itself may be substituted for the defendant and the action continued for publication.

SEC. 508. **Decree.** The court shall have jurisdiction of such actions as in chancery and the decree therein shall be conclusive in the same degree as in other actions.

SEC. 509. **Wrong sale.** When, by the mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time the county is to hold the purchaser harmless by paying him the amount of principal and interest to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties will be liable for the amount to the county on his bond; or the purchaser may recover directly of the treasurer.

SEC. 510. **Pedlers.** A tax for state purposes shall be levied upon pedlers of watches, jewelry, and clocks, for a license to peddle throughout the state for one year, as follows:

Upon each pedler of watches and jewelry or either of them, ten dollars,

Upon each pedler of clocks, twenty dollars.

SEC. 511. **License.** Such license may be obtained from the judge of any county upon paying the proper tax to the treasurer thereof.

SEC. 512. **Same.** Any person so peddling without a license is guilty of a misdemeanor. And the person actually peddling is liable whether he be the owner or not.

SEC. 513. **Treasurer's payments.** The treasurer of each county shall pay into the state treasury all funds in his hands belonging thereto on the fifteenth day of December, January, and July annually, and will be entitled to receive ten cents a mile for travel each way by the nearest route, in making his returns, which he may receive either by a credit on his account or on separate allowance by the auditor.

[90] TITLE VII.

CHAPTER 38.

OF ROADS AND HIGHWAYS.

General provisions.

SEC. 514. **County court.** The county court has the general supervision over the highways in the county with power to establish and change them as herein provided and to see that the laws in relation to them are carried into effect.

SEC. 515. **Width.** County and state roads hereafter established must be sixty-six feet in width unless otherwise specially directed, but the court may for good reasons fix a different width not less than thirty-three feet.

SEC. 516. **Changes.** A county road may within the limits aforesaid be increased or diminished in width or it may be altered in direction or discontinued, by pursuing substantially the steps herein prescribed for opening a new road.

SEC. 517. **Bridges.** Bridges are parts of the public highways and must be not less than sixteen feet in breadth.

SEC. 518. **Penalties.** The county court may prohibit any person from riding or driving faster than a walk across any bridge maintained at the public charge and whose entire length is twenty-five feet or upwards, under the penalty of one dollar for each offense. Notices thereof must be conspicuously

posted at each end of such bridge. The penalty may be recovered by civil action before any justice of the peace in the name and for the use of the county.

Manner of establishing county roads.

SEC. 519. **Notice.** Previous to the presentation of a petition for the establishment of a county road four weeks' notice thereof must be given by being posted up at the court house door and in three public places in each township through which it is to pass and in the neighborhood of the proposed road.

SEC. 520. **Same.** Such notice must state the principal points through which it will pass if any such are contemplated, and state the time at which application will be made to the county court for the appointment of a commissioner to examine and report upon the same.

[91] SEC. 521. **Security.** Security must be given to the satisfaction of the court conditioned that all the expenses growing out of the application will be paid by the obligors in case the contemplated road is not finally established.

SEC. 522. **Same.** If the road is less than five miles in length the security given shall be for the absolute payment of such expenses.

SEC. 523. **Hearing.** The court, at the time of the application specified in the notices aforesaid (which must be on some of its regular days of session) or at some other time to be then fixed, shall proceed to the consideration of the case, and if satisfied that the above mentioned prerequisites have been complied with shall appoint some suitable and disinterested inhabitant of the county a commissioner to examine into the expediency of the proposed road and to report accordingly.

SEC. 524. **View.** The time for the commencement of such examination shall be fixed by the court, and should the commissioner for any cause fail to commence on the day, the court may fix another for that purpose.

SEC. 525. **Same.** The commissioner is not confined to the precise matter of the petition but may inquire and determine whether that or any road in the vicinity answering the same purpose and in substance the same be required, but such road must not be laid out through any burying ground which is by law exempt from execution.

SEC. 526. **Same.** In forming his judgment he must take into consideration both the public and private convenience and inconvenience and also the expense of the proposed road.

SEC. 527. **Report.** After a general examination, if he should not be in favor of establishing the proposed road he will so report and no further proceedings shall be had thereon.

SEC. 528. **Proceedings of viewer.** If he deems such establishment expedient he may proceed at once to lay out the road as hereinafter directed and may report accordingly if the circumstances of the case are such as to enable him to do so without pursuing the course pointed out in the next section.

SEC. 529. **Same.** But if the precise location of the road cannot be otherwise given he must call to his aid a competent surveyor and the necessary assistants and cause the line of the road to be accurately surveyed and plainly marked out.

SEC. 530. **Same.** The surveyor and assistants must be sworn by the commissioner to the faithful and impartial discharge of their several duties, except that where the county surveyor is employed he need not be sworn.

SEC. 531. **Same—marks.** Mile posts must be set up at the end of every mile and the distance marked thereon, and stakes must be set at each change of direction on which shall be marked the bearing-[92]-ing of the new course. Stakes must also be set at the crossing of fences and streams, and at intervals in the

prairie not exceeding a quarter of a mile each; in the timber the course must be indicated by trees suitably blazed.

SEC. 532. **Bearings.** Bearing trees must when convenient be established at each angle and mile post, and the position of the road relative to the corners of sections, the junction of streams, or any other natural or artificial monument or conspicuous object, must as far as convenient be stated in the field notes and shown on the plat.

SEC. 533. **Plat.** A correct plat of the road together with a copy of the field notes of the surveyor (if one has been employed) must be filed as a part of the commissioner's report.

SEC. 534. **Pay.** The commissioner shall receive one dollar and fifty cents a day for his services, and the surveyor and assistants such compensation as is agreed upon, being the lowest price for which competent persons can be employed and not exceeding three dollars a day for the surveyor and one dollar and twenty-five cents for the assistants.

SEC. 535. **Hearing.** Upon the filing of the report in favor of the proposed road the court must appoint a day when the matter will be acted upon, which shall not be less than sixty nor more than ninety days distant.

SEC. 536. **Damages.** Within thirty days after the appointment of the day all claims for damages in consequence of the establishment of the road must be made if at all, but where a sufficient excuse for not filing such claim within the time aforesaid is shown by affidavit the claim may be considered if made at any time before final action upon the road, and the time for such final action may thereupon be postponed to a future day if necessary.

SEC. 537. **Same.** Such claims must be in writing and filed in the county office.

SEC. 538. **Appraisers.** Upon the filing of such claim the court must appoint three suitable and disinterested voters of the county as appraisers to view the ground on a day fixed by the court and report upon the amount of damages sustained by the claimant after deducting therefrom the benefit he will receive from said road.

SEC. 539. **Same.** The court shall cause notice of their appointment to be given to each of these appraisers, fixing the hour at which they are to meet at the office of the clerk of the court or of some justice of the peace therein named.

SEC. 540. **Same.** If the appraisers are not all present within one hour of the time thus fixed the court or the justice, as the case may be, may fill the vacancy by the appointment of others.

[93] SEC. 541. The number being completed they must be sworn to discharge their duty faithfully and impartially.

SEC. 542. **Report.** They must file their report before the day appointed as aforesaid for final action upon the establishment of the road.

SEC. 543. **Same.** Should the report not be filed in time or should any other good cause for delay exist, the court may postpone the time for final action on the subject and may if expedient appoint other appraisers.

SEC. 544. **Pay.** The appraisers shall each receive one dollar and fifty cents a day for the time actually employed in the performance of their duties.

SEC. 545. **Costs.** Should no damages be awarded to the applicant the whole of the costs growing out of the application for damages shall be paid by him.

SEC. 546. **Hearing.** When the time for final action in relation to the road arrives, whether application for damages has been made or not, the court may hear testimony and receive petitions for and against the establishment of such

road. It may establish or reject the road absolutely or it may make such establishment conditional upon the payment in whole or in part of the damages awarded or the expenses incurred in relation thereto, as the public good may seem to require.

SEC. 547. **Condition.** In the latter case, if the condition is not performed by the time appointed the subject shall come up for a rehearing and new action thereon.

SEC. 548. **Damages refunded.** If money is thus advanced to secure the opening of a road a memorandum thereof must be made in the record and the person so advancing it shall receive from the clerk a certificate of such fact. The road shall not thereafter be discontinued without refunding to him or his legal representatives the amount so advanced, without interest.

SEC. 549. **Same.** When damages have been paid by the county or by an individual for injury to land in consequence of the establishment of a road the amount must be refunded whenever the road is discontinued, and the claim for such refunding is a lien upon the land for the taking of which damages were given, which may if necessary be sold to liquidate such claim.

SEC. 550. **Record—opening.** After the road has been finally established the plat and field notes must be recorded by the clerk, and the supervisor of roads shall be directed to have the same opened and worked according to law.

SEC. 551. **Opening.** A reasonable time must be allowed to enable the owners of land to erect the necessary fences adjoining the new road.

SEC. 552. **Crops.** Where crops have been sowed or planted before the [94] road is finally established the opening thereof shall be delayed until the crop is harvested.

SEC. 553. **Consent.** Roads may be established without the appointment of a commissioner, provided the written consent of all the proprietors of the land to be used for that purpose be first filed and recorded.

SEC. 554. **Survey.** If a survey be necessary to give the road a precise location the expense thereof shall be born by the county if the road be more than three miles in length.

SEC. 555. **Minors, etc.** The rights of married women and the interests of minors and insane persons are in such cases and for such purposes under the control of their husbands or guardians.

SEC. 556. **County line.** The establishment of a road either along or across a county line may be effected by the concurrent action of the respective county courts in the mode above prescribed, the commissioners in such cases must act in concert and the road will not be deemed established in either county until it is so in both.

Establishment and alteration of state roads.

SEC. 557. **Rules.** Where not otherwise expressed, the following rules must be observed in the establishment of state roads.

SEC. 558. **Surveyor, etc.** The commissioners appointed must employ a competent surveyor and the necessary assistants, whose compensation will be the same as in cases of county roads; the compensation of the commissioners will be two dollars a day each.

SEC. 559. **Marks.** They must observe the same rules as to marking out the road and fixing the posts and stakes as are required in cases of county roads.

SEC. 560. **Report.** Within six months from the time the law authorizing the road takes effect the report of the commissioners must be filed in the office of the secretary of state, or the law authorizing the road will be null.

SEC. 561. **Plat, etc.** Appended to the report must also be a plat of the road, a copy of the field notes, and a statement of the expenses mentioning the items.

SEC. 562. **Rules.** The rules in relation to referees shall as far as applicable be applied to the commissioners herein contemplated.

SEC. 563. **Expense.** They must state what length of road lies in each county through which the road passes, and the expenses must be paid by the different counties in proportion to the portions of the road lying therein respectively.

SEC. 564. **Copies in the counties.** The secretary of state must cause a copy of the plat of so much of the road as lies in each county, with the field notes pertaining thereto, to be transmitted to the proper [95] counties which must be there filed and recorded as in the case of county roads.

SEC. 565. **County road.** The portion of a state road lying within any county shall from the time the same is established be regarded and treated in all respects as a county road, except that it cannot be discontinued, nor its breadth diminished, nor can any point specifically fixed by the statute be changed by the county court.

SEC. 566. **Damages.** Applications for damages, if made at all, must be filed in the office of the judge of the proper county court within thirty days after the copy of the plat and field notes are filed therein, and the damages shall be assessed as in the case of county roads and paid out of the county treasury.

Road taxes.

SEC. 567. **Poll tax.** Every person liable to pay a county poll tax must pay a road tax of such an amount as is fixed by the county court, which shall not be less than one nor more than two dollars annually.

SEC. 568. **Property tax.** At the time of fixing the rate of county taxes the court must also determine upon the amount of property tax to be levied for roads and bridges, which shall not be less than one nor more than three mills on the dollar on the amount of the county assessment, unless a higher rate is established by a vote of the people of the county upon the question being submitted to them in the usual manner.

SEC. 569. **Special tax.** A special property tax not exceeding one mill on the dollar in any one year may be levied by the county court for building a bridge which may be found too expensive to be constructed from the ordinary road fund.

SEC. 570. **How considered.** Except as otherwise provided, these taxes are to be deemed a portion of the county tax and shall be collected in the same manner and with the same consequences in case of delinquency, but ordinary county warrants are not receivable in payment of any road tax.

SEC. 571. **Exemption.** If the delinquent be an able bodied man and the head of a family, in addition to the wearing apparel, the homestead, the household furniture, provisions and necessaries for his family which are exempted from execution are also exempt in this case but nothing else.

SEC. 572. **Able-bodied.** Every man between the ages of twenty-one and fifty years shall be deemed able bodied except those who can satisfy the court that they are otherwise and can obtain an order exempting them temporarily or permanently from the effect of the above provisions.

[96] *Making and repairing roads.*

SEC. 573. **Map of roads.** As soon as the first supervisor is elected and qualified under this act he must provide himself with a map of his county on a scale of not less than one inch and a half to the mile, which shall be carefully kept and transmitted to his successor in office.

SEC. 574. **Same.** On this map must be laid down as accurately as practicable all the established roads in the county, and whenever a new road is established that must be marked down also.

SEC. 575. **County line.** Where any portion of a road is established along a county line the supervisors of those counties must apportion that part of the road which is upon the county line between them either by mutual agreement or by lot, and from thence forth the portion of such road which falls to either county shall belong to and be kept in repair by it.

SEC. 576. **Material.** The supervisor shall with the approbation of the county court procure (by hiring or purchase) the necessary implements and horses or oxen, if deemed expedient by him, and may keep them in proper condition and replace them when necessary.

SEC. 577. **Supervisor's duty.** It is his duty to place and preserve the roads in as good a condition for being used as the funds at his disposal will permit, and to place guide boards at such points as he may think expedient or as the court may direct.

SEC. 578. **Money—how expended.** He must annually expend within each surveyed township or fractional township containing any portion of an established road at least one half of the ordinary road tax levied on real estate within such township.

SEC. 579. **Same.** Subject to the approval of the county court, he may expend the remainder in the construction of bridges and the improvement of thoroughfares or of any important and difficult portion of the road in any part of the county, and unless applied in that manner the whole amount accruing in any one surveyed township must as nearly as practicable be expended therein.

SEC. 580. **Accounts.** He must keep an accurate account of the amount of labor expended and the amount of money paid, showing how much has been paid to each individual and for what services or other consideration, how much on each road or bridge and how much within each township, which account must be verified by his oath and returned annually to the county court on the first Monday in July.

SEC. 581. **Duty—roads.** He must see that none of the public roads of his county are impassable or unsafe, he must travel over them all at least once between the first of April and the first of [97] July in each year, and he shall on the first Monday in July annually report to the county court the condition of such roads respectively and the amount of improvement necessary thereon.

SEC. 582. **Roads injured.** When notified in writing that any bridge or other portion of the public road is unsafe or impassable he will be liable for all damages resulting from the unsafe or impassable condition of the road or bridge after allowing a reasonable time for repairing the same.

SEC. 583. **Authority.** For making such extraordinary repairs he may if necessary call out any or all the able bodied men of the township in which they are to be made, for not more than two days at any one time without their consent.

SEC. 584. **Same.** Should such force prove inadequate he may in like manner call on any or all the adjoining townships in his county for the necessary aid.

SEC. 585. **Persons failing.** If any able bodied man when duly summoned for any such purpose fails to appear and labor diligently by himself or his substitute he is liable to a fine of ten dollars, to be recovered by suit before any justice of the peace in the name of the county and added to the road fund.

SEC. 586. **Wages.** Every person thus called upon for labor is entitled to receive at the rate of one dollar per day for his labor, he furnishing his own board.

SEC. 587. **Material.** The supervisor is authorized to take timber or other material for the use of the road from any unenclosed lands in the neighborhood of which the road passes, and is liable to pay therefor only the fair value of the property so taken, but he is not permitted to cut down or injure any tree growing by the wayside which does not obstruct the road and which stands in front of any town lot or enclosure or cultivated field or on any ground reserved for public use, where such tree is intended to be preserved for shade or ornament by the proprietor of the land on or adjacent to which the tree is so standing.

SEC. 588. **Tax—how paid.** Every person is permitted to pay the whole or any part of his poll or personal property road tax in labor at the rate of one dollar per day, provided that on or before the first day of September of the year in which the tax is to be paid he gives the supervisor written notice of his desire to pay his tax in that manner, stating in the notice his place of residence. He must afterwards perform the labor at such time and place as is directed by the supervisor, which shall when practicable be within two miles of his place of residence.

SEC. 589. **Labor.** Whenever the public interest will permit the supervisor must allow any able bodied person who presents him-[98]-self for that purpose to labor on any of the public roads, and in all cases where a person voluntarily labors in pursuance of this or the preceding section the supervisor must give him a certificate stating the amount of labor thus done by him.

SEC. 590. **Deputies.** He must appoint one deputy in each organized township in his county, for whose acts he shall be responsible and whom he may remove at pleasure and from whom he may take security for the faithful discharge of his duty.

SEC. 591. **Duty of.** Such deputy must perform such of the duties of the principal as he may be directed to do by such principal, and a notice served upon him is equivalent to such notice served upon the supervisor himself.

SEC. 592. **Same.** Each of said deputies must regard himself as an actual laboring hand, and he shall receive such compensation as will be necessary to secure the service of a suitable person for that station, which compensation must be approved by the county judge and shall not exceed one dollar and fifty cents for each day actually employed.

SEC. 593. **Day's work.** A day's work upon the roads as contemplated in the preceding sections is in all cases to be considered eight hours constant and diligent labor, and a suitable deduction must be made for what the time of labor falls short of this number of hours either from absence or idleness.

SEC. 594. **Obstruction.** It is the duty of the supervisor to remove obstructions in the public highways caused by fences or otherwise, but he must not throw down or remove fences which do not directly obstruct the travel upon the highway until after reasonable notice to the owner of the land enclosed in part by such fence.

Manner of conducting the fiscal operations connected with the road tax.

SEC. 595. **Books.** The supervisor must provide himself with certificate books arranged in the same manner as the order books of the county judge, each certificate having a like margin or tally.

SEC. 596. **Certificates.** These certificates shall be of two classes which must be numbered and kept separate, and the supervisor shall preserve on the tally

of each certificate a memorandum stating its number, date, amount and to whom issued.

SEC. 597. **Classes of.** One of the classes shall be for those issued to persons who have either done voluntary labor or labor in payment of their poll or personal property road tax as above contemplated. These shall be known as special certificates.

SEC. 598. **Same.** The other class shall be known as general certificates, and they shall be issued to persons who are entitled [99] to payment from the county for labor or materials furnished at the request of the supervisor or growing out of contracts with him, and they must state the amount to which the holders are thus entitled.

SEC. 599. **Book.** The supervisor must provide himself with a book in which he shall make for each certificate issued an entry similar to the memorandum above required to be kept upon the tally of such certificate, preserving the two classes separate, and shall keep the whole closely posted up so as readily to show the amount of certificates issued.

SEC. 600. **Entries.** Where there has been an extraordinary tax levied for the purpose of building a bridge or other similar purpose as above authorized, the certificates entitling the holder to payment out of that fund must state that fact, and the entry above required must be kept separate from the others above contemplated.

SEC. 601. **Books open.** The books and papers of the supervisor are at all times subject to the inspection of the judge of the county court.

SEC. 602. **Special certificates.** Special certificates are always receivable at the treasury of the county in payment of any poll or personal property road tax for the year on which they are issued, but for no other purpose.

SEC. 603. **Entry.** In relation to each certificate thus paid in, the treasurer must make an entry stating the number, date, and amount thereof, and the person to whom it was given, and he must file the certificate itself and have the same present together with his book of entries at his next settlement with the county court.

SEC. 604. **General certificates.** General certificates when presented to the judge of the county court entitle the person to whom they were respectively given to a warrant for a like amount upon the treasurer payable from the proper road fund.

SEC. 605. **Warrants.** Such warrants shall be provided in blank by the clerk in a separate order book, and shall show conspicuously on their face from what fund they are made payable.

SEC. 606. **Receivable.** They are receivable generally at the treasury in payment of road taxes and redeemable out of any money belonging to the road fund, but when drawn upon the fund created by the extraordinary tax for building a bridge, or for other similar purpose, they are only receivable in payment of that tax and redeemable out of that fund.

SEC. 607. **Other provisions.** In other respects the rules prescribed in relation to other county warrants are applicable to these; they will draw the same interest after presentation, and the like memoranda and entries must be made throughout by the judge and treasurer; but all accounts relative to the road fund must be kept separately.

SEC. 608. **Treasurer's account.** The treasurer must open a distinct account with the whole road tax and whatever else is transferred to that fund charging it with the amount of warrants paid in and canceled.

SEC. 609. **Census board.** The census board may make any supplemental regulations of the like character with those above prescribed which may be found necessary to carry out the full spirit and intent of this chapter, and which regulations shall be obligatory throughout the state.

SEC. 610. **And regulations.** The county court of any county may also make such regulations as are contemplated in the last section, subject to any regulation made by the statute or by the census board as above provided.

SEC. 611. **Office, etc., to cease.** From the time of the election and qualification of the supervisor of roads that office as heretofore constituted, as also the existing road districts, is discontinued.

SEC. 612. **Towns.** This chapter shall not be so construed as to interfere with or in any way affect the rights of towns or cities incorporated by act of the general assembly, and in cases where such towns or cities now constitute one road district and are authorized by law to elect or appoint the supervisor thereof, he and not the supervisor of roads shall perform within said district the duties and exercise the powers herein conferred upon the supervisor of roads so far as any portion of the road tax levied in such district may be payable in labor.

TITLE VIII.

OF THE STATE CENSUS AND THE MILITIA.

CHAPTER 39.

THE CENSUS.

SECTION 613. **When taken.** A state census shall be taken in the year 1852, 1854, and 1856 and every ten years after the year 1856 which shall [101] be taken by the respective county assessors, each taking that of his own county.

SEC. 614. **Census board.** The governor, and the secretary, auditor, and treasurer of state or any three of them constitute a census board for the state.

SEC. 615. **Returns.** Each census return must show:

1. The total number of males in the state;
2. The total number of females;
3. The number of persons entitled to vote;
4. The number of the militia; and
5. The number of foreigners not naturalized.

SEC. 616. **Additional.** In addition to the above, the census board may require such other facts to be ascertained and returned as they may deem expedient.

SEC. 617. **Forms and instructions.** The census board must prepare and cause to be printed blank forms suitable for the purpose which, together with such printed directions as will be calculated to secure uniformity in the returns, must be furnished to the respective assessors on or before the first Monday in March of the year in which the census is to be taken.

SEC. 618. **Completed.** The assessor must complete the census by the first

Monday in July and within thirty days thereafter must furnish the secretary of state with a duplicate thereof.

SEC. 619. **Secretary's duty.** The secretary must file the same in his office for preservation and cause an abstract thereof to be recorded in a book to be by him prepared for that purpose and published in such manner as the census board directs.

SEC. 620. The secretary of state must keep a journal of the acts of the census board.

CHAPTER 40.

THE MILITIA.

SECTION 621. **Who constitute.** All the able-bodied white male citizens of the state between the ages of eighteen and forty-five years who are not exempt from military duty agreeably to the laws of the United States constitute the effective military force of this state.

SEC. 622. **Secretary's report.** The secretary of state on or before the first Monday in January after the taking of each state census must report to the president of the United States the aggregate number of such military force.

SEC. 623. **Calling out.** Whenever the governor deems it expedient to call into service any portion of the said military force he must [102] prescribe the number, and the manner in which they are to be called out.

SEC. 624. **Officers.** He may make temporary appointments of such officers as he thinks proper for calling the troops into service and may appoint the time and place of rendezvous.

SEC. 625. **Volunteers and number.** No troops can be called into service in any other manner than as volunteers except in cases of insurrection or invasion, and the governor may prescribe the number to be received from the counties respectively, and may fix the amount of their compensation which must not exceed that allowed to soldiers in the army of the United States.

SEC. 626. **Officers elected.** At the time and place of rendezvous each company may proceed to elect the number of commissioned and non-commissioned officers that has been previously prescribed by the governor.

SEC. 627. **Same.** In like manner each regiment, brigade, or division shall at the same time and place elect the number of its officers which has been previously designated by the governor, except that each chief of brigade or division has power to appoint his own staff.

SEC. 628. **Election ordered.** The particular place and hour for opening the polls at any such election, as well as the judges and clerks thereof, shall be fixed and appointed by the officer in temporary command at such place of rendezvous.

SEC. 629. **Arms and supplies.** The governor may cause any arms owned by the state to be distributed to the troops thus called into service and may direct all necessary supplies to be procured and furnished at the expense of the state.

SEC. 630. **Command.** He may, if he thinks proper, take command in person of any troops thus called into actual service.

SEC. 631. **Other regulations.** Subject to the foregoing provisions he may make all farther rules and regulations necessary to carry out the general spirit and intent of this chapter.

[103] TITLE IX.

OF TOWNS AND VILLAGES.

CHAPTER 41.

VILLAGE PLATS.

SECTION 632. The proprietor of a tract of land may lay out a village plat thereon in the manner herein prescribed.

SEC. 633. **Manner.** He must cause a survey to be made marking the lots by a stake placed in at least one corner of each which corner shall be uniform throughout the plat so far as practicable, and fixing a stone of not less than one-fourth of a cubic foot in dimension in a permanent manner at some point in every street.

SEC. 634. **Map.** An accurate map shall then be made of such plat designating the corners where the stakes are placed and the points where the stones are fixed and marking and describing the length and breadth of the lots as well as the breadth and courses of the streets and alleys, and the breadth shall be designated by feet and inches when practicable.

SEC. 635. **Acknowledged.** All the owners of the land shall then acknowledge, before some officer authorized to take the acknowledgment of deeds, that the disposition of the land as shown by the map is with their free consent and in accordance with their desire, and such acknowledgment shall be certified upon the map.

SEC. 636. **Recorded.** The plat and acknowledgment shall then be presented to the county judge, who if satisfied that the above requirements have been fully complied with shall enter thereon an order that the whole be recorded.

SEC. 637. **Dedication to public.** The acknowledgment and recording of such plat is equivalent to a deed in fee simple of such portion of the land as is therein set apart for public use or is dedicated to charitable, religious, or educational purposes.

SEC. 638. **Additions.** Ground subsequently laid out, platted, and recorded as above prescribed may be added to any town plat adjacent thereto with the consent of all the proprietors of the part to be so attached and of the people of the town to which it is to be attached.

SEC. 639. **Vote taken.** Whenever the county court of the county in which the town lies is satisfied that all the proprietors of the part [104] sought to be attached have given their consent thereto, and that a sum of money sufficient in the estimation of the court to defray the expenses of an election has been deposited with the clerk, it shall cause an order to be entered that the question be submitted to a vote of the people of the town at a time therein fixed, which may be on the day of any other election if thought expedient.

SEC. 640. **Notice.** Notice that such question will be submitted to the voters at such election must be published in the same manner and at the same time as is prescribed for the general notice of such elections.

SEC. 641. **Returns—order.** Returns of the election shall be made to the county court, and if the result has been in favor of incorporating the addition into the town an order to that effect describing such addition shall be entered upon the records of the court, a transcript of which order shall also be recorded in the town records, and thenceforth such addition shall be

deemed a part of said town and the judge of the county court shall issue his proclamation accordingly.

SEC. 642. **Incorporated town—consent.** When the town to which the addition is proposed to be made is an incorporated town or a city, the consent of the people thereof to such addition may be given by the local legislature thereof whatever may be its name or character instead of submitting the question to a vote of the people, as may be determined by the local legislature.

SEC. 643. **Vacation.** Any town plat may be wholly or in part vacated whenever the consent of all the property holders of the part to be so vacated and that of the people of said town can be obtained to that effect.

SEC. 644. **Petition.** For this purpose a petition must be presented to the judge of the county court asking for such vacation and accompanied by a written consent of all the property holders in the part to be so vacated.

SEC. 645. **Vote.** When this has been done the question shall be submitted to a vote of the people of the town in the manner above prescribed for submitting the question of an addition to a town plat, upon the terms therein required.

SEC. 646. **Objections.** If the result be in favor of vacating the portion of the town plat in question the court shall appoint a day for hearing objections to the granting an order to that effect and cause such notice thereof to be given as it may deem reasonable.

SEC. 647. **Order.** If no sufficient objection be then made an order directing the vacation sought shall be entered upon the records of the court, and from thenceforth the vacation of the plat to the extent contemplated shall be deemed complete, and the portions set apart or reserved for public, charitable, [105] religious or educational purposes shall revert to the original proprietor, his heirs or assigns, and the judge of the county court shall issue his proclamation accordingly.

SEC. 648. **Vacancy.** In any of the elections above contemplated the judge of the county court may appoint the judges and clerks thereof where provision for such officers is not otherwise made, and may make any other regulations found to be necessary to enable the election to be held pursuant to the intent and purpose of this chapter.

CHAPTER 42.

THE INCORPORATION OF VILLAGES AND TOWNS.

SECTION 649. **Into towns and cities.** Any village containing three hundred inhabitants may become incorporated as a town, and any town or village containing two thousand inhabitants may become incorporated as a city, in the manner herein prescribed.

SEC. 650. **Who inhabitants.** In making the enumeration for the purpose above contemplated those persons only shall be included who are permanent residents within the limits of the plat of the village or town.

SEC. 651. **Village, petition.** Where the inhabitants of a village having no previous organization desire to be incorporated they must by petition apply for that purpose to the county court stating whether they desire a town or city organization, and must satisfy the court that their village contains the requisite number of inhabitants.

SEC. 652. **Vote.** Such proof being made and the petition being signed by at least one-fourth of the legal voters of the village the court shall direct the question to be submitted to a vote of the people.

SEC. 653. **Vote.** The vote shall be "for incorporation" or "against incorporation," and returns shall forthwith be made to the county court.

SEC. 654. **Charter.** If the majority of the votes cast by the legal voters is in favor of incorporation the court must fix upon the time and place of an election to choose persons to prepare a charter, or articles of incorporation, for the village.

SEC. 655. **Same.** The number of persons thus to be chosen must be fixed upon by the court.

SEC. 656. **Election returns.** Returns of the election shall be made to the county court which shall cause notice of their election to be given to the persons elected.

SEC. 657. **Charter.** The charter shall provide, among other things:

[106] 1. For the time when it shall take effect;

2. For the manner in which it may be altered;

3. It shall specify the powers to be given to the corporate authorities within the limits hereinafter prescribed.

SEC. 658. **Vote.** The charter thus formed must be submitted to a vote of the people of the village, and if it receive the sanction of a majority of the legal votes for and against it it shall be considered as adopted, and an entry thereof shall be made on the county records.

SEC. 659. **Court to appoint, etc.** In the election herein contemplated, unless provision is otherwise made, the county court must fix upon the time and prescribe the notice to be given thereof, appoint the judges and clerks of the election, and in general prescribe all the means necessary to carry the intent of this chapter into effect.

SEC. 660. **Vacancies.** Vacancies in the number of the judges and clerks are to be supplied in the same manner as at the general election.

SEC. 661. **Returns.** Returns in each of the above cases must be made to the county court which shall give certificates of election and have power to try and decide any case of contested election where notice of such contest is given before the granting of such certificate.

SEC. 662. **Town incorporated as city.** When an incorporated town desires to be organized as a city such steps must be taken to obtain an expression of the will of the people on the subject, to draft a charter, to obtain its adoption, and to fix the time of its taking effect, as the board of trustees or other local legislature may direct, but no charter shall be adopted without the sanction of a majority of the voters at a public election held for that purpose.

SEC. 663. **Town charter.** A town charter may provide for a local legislature under such name as may be selected and such other officers as may be deemed expedient, may prescribe and limit the powers and duties of each, and may fix the mode of their election and removal, their term of service, and their compensation.

SEC. 664. **Powers.** The charter may confer upon the corporation the power of dividing the town into wards, enable it to acquire and hold whatever real or personal property may be necessary and proper to carry out the objects of the corporation and to sell and convey the same, to adopt a common seal and to alter the same, and to appear as a party in any civil action.

SEC. 665. **Powers.** It may also give power to establish such by-laws and ordinances as are necessary and proper for the good regulation, safety, health,

and cleanliness of the town and the citi-[107]-zens thereof; to levy and collect taxes on all property within the limits of the corporation which by the laws of the state is not for all purposes exempt from taxation, which tax must not exceed one per cent. per annum on the assessed value thereof, and its collection may be enforced by such measures as may be deemed expedient, provided those measures be not more stringent and summary than those used for the collection of state or county taxes; to establish a grade and regulate and improve the side walks, alleys and streets, and to change the grade, making compensation to any person injured thereby; to provide drains, sewers, public wells, wharves, and landing places and keep them in repair; to regulate markets but not in such a manner as to prevent any person from selling the produce of his own farm in such manner and quantity as he may deem proper; to license and regulate or prohibit all shows or public exhibitions if the laws of the state are not thereby interfered with; to license porters, draymen, and others who transport freight from one part of the town to another, and to limit their compensation; to provide against fires, breaches of the peace, gambling, disorderly and indecent houses and conduct; and to make any other ordinary, suitable, and proper police regulations and impose penalties for the violation of any such regulations, which penalties may be collected by civil action in the name of the town.

SEC. 666. **Powers.** The charter may farther authorize the legislative power of the town to require the property holders of any street or part of a street to pave the same or the side walk thereof, each in front of his own property, whenever the owners of two-thirds of the lots in such street or part of a street petition therefor.

SEC. 667. **Ordinances promulgated.** None of the ordinances or regulations of any town can take effect until they have been duly promulgated so as to be within the knowledge of the inhabitants of such town, the manner of doing which shall be prescribed in the charter.

SEC. 668. **Change name.** The local legislature may change the name of the town, but not until such change has been sanctioned by the people at a public election, nor can any name be thus given to a town which is not clearly distinguishable from that of any other place within the state.

SEC. 669. **City charter.** The preceding provisions are applicable to a town desiring to become organized as a city, and in addition thereto a city charter may authorize the establishment of a mayor's court for the enforcement of the city regulations, but the jurisdiction of that court must not be greater than that [108] of a justice of the peace and appeals shall lie the same in all respects as from justice's courts.

SEC. 670. **Powers conferred.** The city charter may also confer power upon the city authorities to open new streets and discontinue old ones and to dispose of the ground thus rendered unnecessary to the public; to compel the owners of land within the city limits to drain or fill up ponds or stagnant places thereon and prescribe the manner of doing the same; to borrow money on the credit of the city but not without a direct vote of the people in favor of such loan; and on the application of the owners of three-fourths of any square to prohibit the erection of any except brick or stone buildings within that square; and generally to make any regulations of a like nature with those above authorized, for the order and good government of the city and the welfare of the inhabitants not in conflict with the laws of the state.

SEC. 671. **Same.** The above provisions are intended only to fix limits to the power of a town or city corporation, leaving the people, if they choose, the privilege of narrowing those limits as much as may be thought desirable or to fix other conditions in addition to those above required.

SEC. 672. **Licenses.** The authority to confer upon a town or city the power to license and regulate or prohibit shows or public exhibitions, when exercised, will be exclusive; but when no provision is made on that subject in the charter the county court has the same authority within such town or city as it has in other portions of the county.

TITLE X.

OF CORPORATIONS.

CHAPTER 43.

CORPORATIONS FOR PECUNIARY PROFIT.

SECTION 673. **Who incorporated.** Any number of persons may associate themselves and become incorporated for the transaction of any lawful business including the establishment of ferries, the construction of canals, railways, bridges, or other works of internal [109] improvement; but such incorporation confers no power or privilege not possessed by natural persons except as hereinafter provided.

SEC. 674. **Powers assumed.** Among the powers of such body corporate are the following:

1. To have perpetual succession;
2. To sue and be sued by its corporate name;
3. To have a common seal which it may alter at pleasure;
4. To render the interests of the stockholders transferable;
5. To exempt the private property of its members from liability for corporate debts except as herein otherwise declared.
6. To make contracts, acquire and transfer property, possessing the same powers in such respects as private individuals now enjoy;
7. To establish by-laws and make all rules and regulations deemed expedient for the management of their affairs, in accordance with law and not incompatible with an honest purpose.

SEC. 675. **Pre-requisites.** Previous to commencing any business except that of their own organization they must adopt articles of incorporation which must be recorded in the office of the recorder of deeds of the county where the principal place of business is to be, in a book kept therefor.

SEC. 676. **Same.** Corporations for the construction of any work of internal improvement must, in addition, also file a copy of such articles in the office of secretary of state and have the same recorded by him in a book kept for such purposes. Such articles of incorporation must fix the highest amount of indebtedness or liability to which the corporation is at any one time to be subject, which must in no case except in that of the risks of insurance companies exceed two-thirds of its capital stock.

SEC. 677. **Notices.** A notice must also be published for four weeks in succession in some newspaper as convenient as practicable to the principal place of business.

SEC. 678. **What to contain.** Such notice must contain:

1. The name of the corporation and its principal place of transacting business;

2. The general nature of the business to be transacted;
3. The amount of capital stock authorized, and the times and conditions on which it is to be paid in;
4. The time of the commencement and termination of the corporation;
- [110] 5. By what officers or persons the affairs of the company are to be conducted and the times at which they will be elected;
6. The highest amount of indebtedness or liability to which the corporation is at any time to subject itself;
7. Whether private property is to be exempt from the corporate debts.

SEC. 679. **When may commence.** The corporation may commence business as soon as the articles are filed in the office of the recorder of deeds, and their doings shall be valid if the publication in a newspaper is made and the copy filed in the office of secretary of state, when such filing is necessary, within three months from such filing in the recorder's office.

SEC. 680. **Change.** No change in any of the above matters shall be valid unless recorded and published as the original articles are required to be.

SEC. 681. **Duration.** Corporations for the construction of any work of internal improvement may be formed to endure fifty years; those formed for other purposes cannot exceed twenty years in duration; but in either case they may be renewed from time to time for periods not greater respectively than was at first permissible, provided three-fourths of the votes cast at any regular election for that purpose be in favor of such renewal, and provided also that those thus wishing a renewal will purchase the stock of those opposed to the renewal at its fair current value.

SEC. 682. **Dissolution.** The corporation cannot be dissolved prior to the period fixed upon in the articles of incorporation except by unanimous consent, unless a different rule has been adopted in their articles.

SEC. 683. **Notice of.** The same period of newspaper publication must precede any such premature dissolution of a corporation as is required at its creation.

SEC. 684. **By-laws posted.** A copy of the by-laws of the corporation with the names of all its officers appended thereto must be posted in the principal place of business and be subject to public inspection.

SEC. 685. **Statement posted.** A statement of the amount of the capital stock subscribed, the amount of capital actually paid in, and the amount of indebtedness of the company in a general way, must also be kept posted up in like manner, which statement must be corrected as often as any material change takes place in relation to any part of the subject matter of such statement.

SEC. 686. **Fraud.** Intentional fraud in failing to comply substantially with the articles of incorporation or in deceiving the public or individuals in relation to their means or their liabilities [111] shall subject those guilty thereof to fine and imprisonment or both at the discretion of the court. Any person who has sustained injury from such fraud may also recover damages therefor against those guilty of participating in such fraud.

SEC. 687. **What constitutes.** The diversion of the funds of the corporation to other objects than those mentioned in their articles and in the notices published as aforesaid (provided any person be thereby injured), and the payment of dividends which leave insufficient funds to meet the liabilities of the corporation, shall be deemed such frauds as will subject those therein concerned to the penalties of the preceding section, and such dividends or their equivalent in the hands of individual stockholders shall be subject to said liabilities.

SEC. 688. **Insurance companies.** Dividends by insurance companies, made in good faith before their knowledge of the happening of actual losses, are not intended to be prevented or punished by the provisions of the preceding section.

SEC. 689. **Individual liability.** A failure to comply substantially with the foregoing requisitions in relation to organization and publicity renders the individual property of all the stockholders liable for the corporate debts.

SEC. 690. **Forfeiture.** Either such failure or the practice of fraud in the manner hereinbefore mentioned shall cause a forfeiture of all the privileges hereby conferred, and the courts may proceed to wind up the business of the corporation by an information in the manner prescribed by law.

SEC. 691. **False books.** The intentional keeping of false books or accounts by any corporation whereby any one is injured is a misdemeanor on the part of those concerned therein, and any person shall be presumed to be concerned therein whose duty it was to see that the books and accounts were correctly kept.

SEC. 692. **Transfers—liability.** The transfer of shares is not valid except as between the parties thereto until it is regularly entered on the books of the company so far as to show the name of the persons by and to whom transferred, the numbers or other designation of the shares, and the date of the transfer: but such transfer shall not in any way exempt the person or persons making such transfer from any liability or liabilities of said corporation which were created prior to such transfer. The books of the company must be so kept as to show intelligibly the original stockholders, their respective interests, the amount which has been paid in on their shares, and all transfers thereof; and such books, or a correct copy thereof so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same.

SEC. 693. **Non-user.** Any corporation organized or attempted to be organized in accordance with the provisions of this chapter [112] shall cease to exist by the non-user of its franchises for two years at any one time, but such body shall not forfeit its franchises by reason of its omission to elect officers or to hold meetings at any time prescribed by the by-laws, provided such act be done within two years of the time appointed therefor.

SEC. 694. **Powers continued.** Corporations whose charters expire by their own limitation or by the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their concerns, but for no other purpose.

SEC. 695. **Individual liability.** Nothing herein contained exempts the stockholders of any corporation from individual liability to the amount of the unpaid instalments on the stock owned by them or transferred by them for the purpose of defrauding creditors, and an execution against the company may to that extent be levied upon such private property of any individual.

SEC. 696. **Individual liability.** In none of the cases contemplated in this chapter can the private property of the stockholders be levied upon for the payment of corporate debts while corporate property can be found with which to satisfy the same, but it will be sufficient proof that no property can be found if an execution has issued on a judgment against the corporation and a demand thereon made of some one of the last acting officers of the body for property on which to levy, and if he neglects to point out any such property.

SEC. 697. **Same.** The defendant in any stage of a cause may point out corporate property subject to levy, and upon his satisfying the court of the existence of such property by affidavit or otherwise the cause may be continued

or execution against the defendant stayed until the property can be levied upon and sold, and the court may subsequently render judgment and order execution for any balance which there may be after disposing of the corporate property, according to the stage of the cause; but if a demand of property has been made as contemplated in the preceding section the costs of such proceedings shall in any event be paid by the company or by the defendant.

SEC. 698. **Indemnity.** When the private property of a stockholder is taken for a corporate debt he may maintain an action against the corporation for indemnity and against any of the other stockholders for contribution.

SEC. 699. **Sinking fund.** For the purpose of repairs, rebuilding, or enlarging, or to meet contingencies, or for the purpose of a sinking-fund, the corporation may establish a fund which they may loan and in relation to which they may take the proper securities.

SEC. 700. **Judgment sale of franchise.** When the franchise of a corporation has been levied upon under an execution and sold the corporators shall [113] not have power to dissolve the corporation so as to destroy the franchise, and if they neglect to keep up an organization sufficient to enable the business to proceed the purchaser thereupon becomes vested with all the powers of the corporation requisite therefor; and when it becomes impracticable for an individual so to conduct them and in cases where doubts or difficulties not herein provided for arise, the purchaser may apply by petition to the district court which is hereby vested with authority to make any orders requisite for carrying into effect the intent of this chapter in this respect.

SEC. 701. **Production of books.** In any proceedings by or against a corporation or against a stockholder to charge his private property or the dividends received by him the court is invested with power to compel the officers to produce the books of the corporation on the motion of either party upon a proper cause being shown for that purpose.

SEC. 702. **Individuals.** A single individual may entitle himself to all the advantages of this chapter provided he complies substantially with all its requirements, omitting those which from the nature of the case are inapplicable.

SEC. 703. **Presumption in favor of.** Persons acting as a corporation under the provisions of this chapter will be presumed to be legally incorporated until the contrary is shown; and no such franchise shall be declared actually null or forfeited except in a regular proceeding brought for that purpose.

SEC. 704. **Want of legal organization.** No body of men acting as a corporation under the provisions of this chapter shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with such a corporation or sued for an injury to its property or a wrong done to its interests be permitted to set up a want of such legal organization in his defense.

SEC. 705. **Existing corporations.** Corporations regularly organized under the general law heretofore in force, by adapting their articles of association to the provisions of this chapter and by making the required publication of the change as well as of their intention to act under the foregoing provisions, will be entitled to all the advantages and subjected to all the liabilities above provided for, but the change in their articles of association must be made in accordance with those articles or by the unanimous consent of the stockholders.

SEC. 706. **Mutual insurance companies.** Mutual insurance companies organized under the provisions of this chapter may render their premium notes a lien upon the whole or any part of the real estate upon which the property insured is situate, whether such real estate is or is not exempt from other lia-

bilities as a homestead, but [114] such lien will not attach until the premium note stating the property on which it is a lien is filed for record and treated in the same manner as though it were a mortgage from the maker thereof to the company except that it need not be acknowledged.

SEC. 707. **Existing corporations.** Nothing herein contained is intended to affect the interests of companies already organized farther than is above expressed.

CHAPTER 44.

CORPORATIONS OTHER THAN THOSE FOR PECUNIARY PROFIT.

SECTION 708. **How created.** Corporations for the establishment of seminaries of learning, churches, lyceums, libraries, agricultural societies, and for other lawful purposes unconnected with motives of pecuniary profit, may be formed in the manner directed in the preceding chapter so far as applicable, and the provisions of that chapter are extended to them except as herein modified.

SEC. 709. **Recording.** Their articles of incorporation shall be recorded, but a newspaper publication is not requisite.

SEC. 710. **Dividend.** No dividend nor distribution of property among the stockholders shall be made until the dissolution of the corporation.

SEC. 711. **Degrees.** Corporations of an academical character are invested with authority to confer the degrees usually conferred by such institutions.

TITLE XI.

OF WORKS OF INTERNAL IMPROVEMENT.

CHAPTER 45.

LICENSES FOR WORKS OF INTERNAL IMPROVEMENT.

SECTION 712. **County court.** The several county courts have power to grant such ferry licenses as may be needed within their respective counties, for a period not less than three nor more than ten years.

[115] SEC. 713. **Rates of ferriage.** The court may prescribe the rates of ferriage as well as the hours of the day or night during which the ferry must be attended, both of which may from time to time be changed at the discretion of the court.

SEC. 714. **Exclusive.** In granting a ferry license the court has power to make the privilege granted exclusive for a distance not exceeding one mile in either direction from said ferry, in which case no person shall keep a public ferry within the prescribed distance unless after twenty days notice to the person who has obtained such privilege it is made to appear to the court that the public good requires both ferries and a new license is issued for the second ferry accordingly. The notice herein required must be served personally on the owner or on the person in charge of the ferry boat.

SEC. 715. **Preference.** In granting a ferry license preference must be given to the keeper of a previous ferry at the same point, and if it be a new ferry

preference shall be given to the owner of the land, but if there is none such, or if after giving the same notice as is required by the last section he fails to make application for such license, or if in the opinion of the court he is an improper person to receive the same, it may be conferred on any other proper applicant.

SEC. 716. **What court.** Where the opposite shores of the stream are in different counties a license from either is sufficient, and the court which first exercises jurisdiction by granting a license retains that jurisdiction during the life-time of such license.

SEC. 717. **Notice.** Where but one side of a river is within this state the county court possesses the same powers so far as the shore of this state is concerned as though the river lay wholly within the jurisdiction of this state.

SEC. 718. **Over common waters.** Before a license can be granted notice of the intended application therefor must be posted up in at least three public places on each side of the river (if both sides of the river are within this state) in the township and neighborhood in which the ferry is proposed to be kept, at least twenty days next prior to the making of such application.

SEC. 719. **Order and conditions.** The court upon being satisfied that the above requirements have been complied with, that a ferry is needed at such place, and that the applicant is a suitable person to keep it, must grant the license, which however shall not issue until the applicant files a bond with sureties to be approved by the court in a penalty not less than one hundred dollars with a condition that he will keep the ferry in proper condition for ferrying and attend the same at all times fixed by the court for running the same, that he will neither demand nor take any illegal tolls and that he will perform all other duties [116] which are or may be enjoined on him by law, which bond shall be filed in the county office.

SEC. 720. **Record.** The license together with the rates of toll established must be entered upon the records of the county court, and the certificate of license shall contain the rates of toll allowed.

SEC. 721. **Duty.** Every ferryman must transport the public expresses of the United States and of this state and also the United States mail at any hour of the day or night.

SEC. 722. **Same.** He must keep a list of the rates of toll allowed him posted up on his boat, or on the door of his ferry house, or at some other conspicuous place near the ferry.

SEC. 723. **Penalty.** The failure to have such list posted up as aforesaid justifies any person in refusing the payment of tolls, and where such failure is habitual the proprietor of the ferry is liable to pay twenty-five dollars in a suit brought on his bond, and the proceeds shall be paid into the county treasury.

SEC. 724. **Revocation.** When it is made to appear to the county court after ten days notice to the person licensed that such person fails substantially to perform his duties according to law the court may revoke his license.

SEC. 725. **Existing licenses.** Existing licenses and charters are not to be affected by the provisions of this chapter.

SEC. 726. **Bridge licenses.** The county court is also authorized to grant licenses for the erection of toll bridges across any stream or other obstruction which justifies the establishment of such bridge and which calls for an expenditure greater than can be met without serious inconvenience by the revenues of the county, but the navigation of no navigable river must be thereby materially obstructed. And in all cases of granting a license to build such bridge preference shall be given to the owner of the land on which

said bridge is proposed to be located, provided he be in other respects a competent person to erect such bridge.

SEC. 727. **Same.** Subject to the provisions of the last section bridges may be thus authorized to be constructed across navigable streams provided they do not prove substantially a nuisance.

SEC. 728. **From what county.** Where the extremities of the bridge lie in different counties a license must be procured from each of such counties, and if different rates of toll are fixed by the different county courts each has power to fix the rates of travel which is going from its own county. A similar principle shall be observed where only one of the extremities of the bridge is within this state.

SEC. 729. **Duration.** Such licenses may be granted to continue for any period not exceeding fifty years, and the rate of toll may be fixed in the first instance in such a manner as to be unalterable within any stipulated period not exceeding ten years; [117] after that time the rate of toll will be under the control of the county court in the same manner as is provided in the case of ferries.

SEC. 730. **Exclusive.** The court is also authorized to stipulate in the license to the effect that no other toll bridge or ferry shall be permitted across the same obstruction within any distance not exceeding two miles of such bridge and for a period not exceeding ten years; any violation of the terms of such stipulation is a nuisance and he who causes it is guilty of a misdemeanor.

SEC. 731. **Notice.** Before granting a license to build a toll bridge the court must be satisfied that the same general notice has been given as is required in the case of an application for a ferry.

SEC. 732. **Rates of toll.** The rates of toll must be conspicuously posted up at each extremity of the bridge under the same penalty as is provided in the case of ferries.

SEC. 733. **Regulations.** Any proprietor of a toll bridge established and kept up according to law may make and enforce a regulation prohibiting any person, under a penalty not exceeding two dollars, from traveling across such bridge faster than on a walk, but such regulation must be conspicuously posted up at each end of the bridge; and suit may be brought for the penalty before a justice of the peace in the name of the proprietor and for his benefit.

SEC. 734. **Hours.** All toll bridges must be so regulated as to allow persons to pass at any hour of the night or day, but the county court may in its discretion in fixing the rates of toll permit a greater amount to be collected during certain hours of the night time.

SEC. 735. **Road licenses.** The county court may also grant licenses for the construction of any canal or railroad or any macadamized or plank road or any other improvement of a similar character or any telegraph line, to keep the same up for a period not exceeding fifty years and to use for this purpose any portion of the public highway or other property public or private if necessary, provided such use shall not obstruct the highway; and where a road thus authorized is of such a character as to admit of its being used for the same purposes as an ordinary highway the court in its discretion may discontinue a highway thus rendered unnecessary.

SEC. 736. **Rates of tolls.** The court in its discretion may at the time of granting the license fix the maximum rates of toll to be charged on any such work and may render the same unalterable for a period not exceeding twenty years from the time tolls are begun to be charged thereon, after the expiration of which time the rate of tolls shall be under the direction of the county court in the same manner as those of ferries and bridges.

[118] SEC. 737. **Tolls.** The time for the commencement of taking tolls as contemplated in the preceding section must be notified to the court and entered on its records before any such tolls are collectible.

SEC. 738. **Posting rates.** The rates of toll established as above contemplated must be conspicuously posted up at every gate or other place where tolls are required to be paid, under the same penalty as is hereinbefore fixed in the case of ferries.

SEC. 739. **Appeal.** From the decision of the county court in refusing or granting any of the licenses authorized in this chapter an appeal lies to the people of the county as hereinafter regulated at any time within thirty days after the making of such decision, which appeal may be taken by any white male citizen of the county.

SEC. 740. **Question put to vote.** The county court may also in the first instance cause any question, growing out of an application for any of the licenses authorized herein, to be submitted at once to the popular vote of the county.

SEC. 741. **Deposit.** Neither the appeal nor the vote contemplated by the preceding two sections shall be allowed until money is deposited or security given sufficient to indemnify the county against the payment of any of the expenses growing out of the taking of such vote or appeal.

SEC. 742. **Publication.** Where the license has been granted, and the appeal above authorized is for the purpose of setting aside such grant, the license as granted must be published in the ordinary manner provided for publishing questions thus to be submitted to vote.

SEC. 743. **Same.** If the appeal be from the order refusing the license the appellant shall draw up and cause to be thus published, a license such as he desires to have submitted.

SEC. 744. **Same.** If, where a license has been granted, the appellant is dissatisfied with the terms thereof he must cause to be published both the license granted and that which he desires to obtain.

SEC. 745. **Power of court.** The county court must make the necessary arrangements for carrying the above regulations in relation to taking a vote of the people into full effect, and it shall grant or withhold the license in accordance with the result of such vote.

SEC. 746. **Bond.** In none of the above cases shall the license issue until a bond be filed such as is required in the case of ferry licenses and in such increased penalty as the court directs.

SEC. 747. **Bonus.** The county court, as a consideration or bonus for any of the licenses herein contemplated, may require the licensee to pay money or do acts for the purpose of promoting the public convenience in connection with the subject of his license, but for no other purpose.

[119] SEC. 748. **Unlawful toll.** The taking illegal toll by the grantees of any of the licenses herein contemplated subjects the offender to the penalty of twenty-five dollars for every such offense to be recovered by suit on the bond of such licensee by the person who paid the illegal toll and for his own benefit, or he may bring suit in the name of the county in which latter case he is a competent witness but the proceeds shall go into the county treasury.

SEC. 749. **Forfeiture.** A failure in other respects to comply substantially with the terms fixed by the court in accordance with the above provision works a forfeiture of any of the licenses herein authorized and also subjects the party guilty of such failure to damages for all the injury resulting therefrom, for which he is also liable on his bond.

SEC. 750. **Evading toll.** Any person who refuses to pay the regular tolls established and posted up in accordance with the provisions of this chapter or who shall run through or pass around their toll gates with a view of avoiding the payment of just tolls or dues forfeits the sum of five dollars for every such offense, which together with costs of suit may be recovered by the person entitled to such toll by civil action before the proper justice of the peace; but nothing herein contained shall prevent a person from fording a stream across which a toll bridge has been constructed.

SEC. 751. **Regulation of travel.** The proprietor of any canal, road, bridge, or ferry authorized by this act may establish rules for the regulation of passengers, travelers, teams, and freight passing or traveling thereon and may enforce those rules by penalties not exceeding five dollars for any one offense; which penalties may be recovered by civil action before a justice of the peace in the name of the proprietor aforesaid, but such rules must be published by being conspicuously posted up before they can be thus enforced.

SEC. 752. **Sale on execution.** Any of the franchises contemplated in this chapter is subject to execution, and shall be sold as real property and be subject to the same rights and consequences except that the purchaser may take immediate possession of the property.

SEC. 753. **Effect of.** The sale of any such franchise carries with it all the material, implements, and works of whatever kind necessary for or ordinarily used in the exercise of such franchise.

SEC. 754. **Highest bidder.** In the sale of such franchise he who will satisfy the execution and costs thereon and take the franchise for the shortest period of time to receive during that time all the tolls to which the defendant in execution was entitled, keeping the same in ordinary reasonable repair, is the highest bidder.

[120] SEC. 755. **Officer's deed.** The officer's deed transfers to the purchaser all the privileges and immunities of the corporation necessary for demanding and receiving tolls during the time therein specified, and the officer must immediately after the sale deliver to the purchaser possession of the toll houses and gates of the defendant, and the purchaser may thereupon demand and receive all tolls accruing during the time limited by the terms of the purchase in the same manner and under the same regulations as the defendant might.

SEC. 756. **Injury—liability for.** In case of destruction or extraordinary injury happening to the works thus temporarily in possession of the purchaser without any fault or negligence on his part he shall not be compelled to repair the injury, provided he will abandon his interest in the franchise so held by him and yield possession thereof to the owner without delay.

SEC. 757. **Free ferries.** Nothing in this chapter contained shall be so construed as to prevent any person, incorporated city, town, or village from establishing a free ferry at any point where a license to keep a ferry has been granted under the provisions of this chapter, provided that where said free ferry is established said person or company shall pay a reasonable compensation to the persons owning said ferry for all boats, ropes, and other material, if the same be fit for use, and when said free ferry is established at a point at or near where a license has been granted to an individual, such individual shall be exonerated from any farther obligation in relation to the ferry. Bond and security shall be given in like manner by the person or company establishing the free ferry as required in this chapter.

SEC. 758. Nothing in this chapter shall be so construed as to prevent owners of mills from crossing themselves or customers free of charge, nor so as to prevent footmen from passing through toll gates on incorporated roads free of charge.

CHAPTER 46.

TAKING PRIVATE PROPERTY FOR WORKS OF INTERNAL IMPROVEMENT.

SECTION 759. **Who may take.** When any corporation or other person designs to construct a canal or a railroad, or a turnpike, graded, macadamized, or plank road, or a bridge, as a work of public utility although for private profit, it may take such reasonable amount of private real property as may be requisite for a right of way not exceeding one hundred feet in width upon [121] paying therefor such sum as may be assessed, in the manner herein provided.

SEC. 760. **Manner of proceeding.** The company shall file its petition in the district court in the county where the land lies setting forth in substance:

The name of the owner;

The parcel of land a portion of which is wanted;

The object for which it is wanted;

A prayer that a suitable portion of land may be decreed to the petitioner and may be set apart to them by metes and bounds.

SEC. 761. **Same.** The owners of distinct parcels of real estate may be made defendants to one petition.

SEC. 762. **Service—owner unknown.** A service upon the owner must be made as in civil actions except as herein qualified:

Service upon and notice to an agent entrusted with the supervision of a non-resident's land will be sufficient; a service by publication in a newspaper may be made the prescribed length of time before the return term; and when the owner of a tract of land is unknown the court, upon being satisfied that diligent and unsuccessful efforts have been made to ascertain the ownership, may either before or after a publication authorize proceedings against him by the description of the unknown owner of that tract of land, (describing it).

SEC. 763. **Inquiry of damages—jurors.** When the requisite service has been made if no sufficient cause to the contrary is shown the court shall issue a writ of inquiry of damages to the sheriff commanding him to summon a jury to inquire into and assess the damages. The jurors are required to possess the ordinary qualifications of jurors and to be persons not interested in the same or a similar question.

SEC. 764. **Same.** Twelve jurors shall be summoned unless the parties otherwise agree in writing, and each party will have the right of challenge both for cause and peremptorily as in the district court.

SEC. 765. **Striking a jury.** Or, if the parties assent, the jury may be thus constituted: the sheriff may set down in writing the names of eighteen jurors and the parties shall alternately strike off one, beginning with the defendant, until but six remain who shall be competent to act and be summoned accordingly.

SEC. 766. **Juror failing.** If a juror summoned fail to attend his place may be supplied by one summoned to attend forthwith.

SEC. 767. **Oath.** The jury shall be sworn to examine impartially and report truly upon the subject submitted to their consideration, and the sheriff is authorized to administer such oath.

SEC. 768. **Inquest.** The jury shall then proceed to examine the ground [122] and may hear testimony, but no argument of counsel, and shall set apart by metes and bounds a quantity of land convenient and suitable for the purpose intended and assess the damage occasioned to the owner thereby.

SEC. 769. **Same.** In estimating the damages no deduction shall be made

for any benefit that may be supposed to result to the owner from the contemplated work.

SEC. 770. Inquiry before court. When the petitioning body desires earlier action than is contemplated in the preceding provisions and is proceeding against one person only it may file its petition in the office of the district court and cause a service as before provided, and seven days after service is effected the clerk may in vacation issue a writ of inquiry of damages to the sheriff as before directed and the sheriff shall then proceed as above provided and make his return as hereinafter directed.

SEC. 771. Notice to party. Before proceeding with the jury the sheriff is directed to give the defendant if he is known and resides in the county, and if not then to his agent if he have one known or to his tenant, three days' notice of the time and place of the meeting of the jury.

SEC. 772. Report of jury. The report of the jury shall be reduced to writing, signed by each of the jurors, and delivered to the sheriff and be by him returned together with the writ and his doings thereon to the district court without delay.

SEC. 773. Objections. Upon the return of the inquest and writ the owner of the land may file objections to the proceedings and show cause why they should be set aside, and the court may direct issues other than those upon the facts found by the jury to be made up and tried as in other civil actions, and if good cause be shown may set aside the proceedings.

SEC. 774. Damages. The damages assessed by the jury shall be paid into court for the defendant or to the defendant before a decree for the conveyance of the land can be made, unless the parties otherwise agree.

SEC. 775. Decree. If no sufficient objection is made and the damages are paid the court shall decree a conveyance to the plaintiff of the land reported by the jury, and such decree shall have the same effect and be enforced in the same manner as an ordinary decree for the conveyance of land.

SEC. 776. Non-user. If the contemplated work be not commenced within one year after obtaining land under these provisions, or if after being commenced it cease for two years to be prosecuted, or if after being completed it ceases for two years to be used for its original purpose, the former owner may file his petition in the district court to have the land restored to him upon his refunding the purchase money without interest.

SEC. 777. Costs. The costs of the foregoing proceedings shall be paid [123] by the petitioner, except that costs occasioned by litigation by the defendant shall be governed by the common rule in relation thereto.

SEC. 778. Entering on land and suit. A company or person actually intending to make application for the privileges herein contemplated and entering upon the land of another for the purpose of making the requisite examination and surveys and doing no unnecessary injury, shall be liable only for the actual damage done, and if sued in such case the plaintiff shall recover only as much cost as damage.

SEC. 779. Limitation. The provisions of this chapter do not apply to any corporation or person who has not obtained a license from the proper county court in accordance with the provisions of the chapter relating to granting licenses for works of internal improvement.

CHAPTER 47.

TELEGRAPHS.

SECTION 780. **Privilege granted.** Any person or company may construct a telegraph line along the public highways of this state, or across the rivers or over any lands belonging to the state or to any private individual, and may erect the necessary fixtures therefor.

SEC. 781. **Restrictions.** Such fixtures must not be so constructed as to incommode the public in the use of any highway or the navigation of any stream, nor shall they be set up on the private grounds of any individual without paying him a just equivalent for the damages he thereby sustains.

SEC. 782. **Damages.** If the person over whose lands such telegraph line passes claims more damages therefor than the proprietor of the telegraph is willing to pay the amount of damages may be determined in the same manner as is provided in cases of railroads and other works of internal improvement.

SEC. 783. **Duty and liability.** If the proprietor of any telegraph within this state, or the person having the control and management thereof, refuses to receive dispatches from any other telegraph line or to transmit the same with fidelity and without unreasonable delay all the laws of the state in relation to limited partnerships, to corporations, and to obtaining private property for the use of such telegraph shall cease to operate in favor of the proprietor thereof, and if private property has been taken for the use of such telegraph without the consent of the owner he may reclaim and recover the same.

SEC. 784. **Same.** Any person employed in transmitting messages by [124] telegraph must do so without unreasonable delay, and any one who wilfully fails thus to transmit them, or who intentionally transmits a message erroneously, or makes known the contents of any message sent or received to any person except him to whom it is addressed or to his agent or attorney, is guilty of a misdemeanor.

SEC. 785. **Same.** The proprietor of a telegraph is liable for all mistakes in transmitting messages made by any person in his employment as well as for all damages resulting from a failure to perform any other duties required by law.

 TITLE XII.

OF THE POLICE OF THE STATE.

 CHAPTER 48.

THE SETTLEMENT AND SUPPORT OF THE POOR.

ARTICLE 1.

The support of poor persons by their kindred.

SECTION 786. **Definitions.** For the purposes of this title the word "court" means county court, the word "judge" means the judge of the same court, the word "clerk" means the county clerk, unless it be otherwise expressed; and the word "directors" means the directors of the poor house in counties where there is one.

SEC. 787. **Who to support.** The father, mother, children, grandfather if of ability without his personal labor, and the male grandchildren who are of ability, of any poor person who is blind, old, lame, or otherwise impotent so as to be unable to maintain himself by work shall jointly or severally relieve or maintain such poor person in such manner as may be approved by the trustees of the township where such poor person may be or by the directors, but these officers shall have no control unless the poor person has applied for aid.

SEC. 788. **“Father.”** The word “father” in the preceding section includes the putative father of an illegitimate child, and the question of his being the father may be tried in any action or proceed-[125]-ing to recover for or to compel the support of an illegitimate child. But there shall be no obligation to proceed against the putative father before proceeding against the mother.

SEC. 789. **Proceeding to compel.** Upon the failure of such relative so to relieve or maintain a poor person who has made application for relief the township trustees or the directors may apply to the court of the county where such poor person resides for an order to compel the same.

SEC. 790. **Notice.** At least fourteen days written notice of the application shall be given by summons which shall be served as original process in an action may be served and in any county by any officer thereof or by any other person.

SEC. 791. **Notice.** The court shall make no order affecting a person not served but may notify him at any stage of the proceedings.

SEC. 792. **Hearing and order.** The court may proceed in a summary manner to hear the allegations and proofs of the parties and order any one or more of the relatives of such poor person who appear to be able, to relieve and maintain him charging them as far as practicable in the order above named and for that purpose making new parties to the proceedings when necessary.

SEC. 793. **Order.** Such order may be for the entire or partial support of the poor person and it may be for support either by money or by taking the poor person to the relative's house, or the order may assign the poor person for a certain time to one and for another period to another relative as may be adjudged just and convenient, taking into view the means of the several relatives.

SEC. 794. **Value.** If the court order the relief in any other manner than in money it shall fix a just weekly value upon it.

SEC. 795. **Manner.** The order may be specific in point of time or it may be indefinite until the further order of the court and may be varied from time to time when the circumstances require it on the application of the trustees of the poor person, or of any relative affected by it, upon fourteen days' notice being given.

SEC. 796. **Money.** When money is ordered to be paid it shall be paid to such officer as the court may direct.

SEC. 797. **On failure.** If any person fails to render the support ordered, on the affidavit of one of the proper trustees or directors showing that fact the court may order execution for the amount due rating any support ordered in kind as before assessed. In such proceeding the county is plaintiff and the person sought to be charged defendant.

SEC. 798. **Appeal.** An appeal may be taken from such judgment as provided in the chapter relating to the county judge.

SEC. 799. **Abandonment.** Whenever a father, or a mother being a widow or [126] living separate from her husband, abandons their children, or a husband

his wife, leaving them chargeable or likely to become chargeable upon the public for their support the trustees of the township where such wife or children may be, or the directors, upon application being made to them may apply to the court of any county in which any estate of such father, mother, or husband may be for a warrant to seize the same, and upon due proof of the above facts the court may issue its warrant authorizing the trustees or directors to take into their possession the goods, chattels, effects, things in action, and the lands of the person absconding.

SEC. 800. **Process.** By virtue of such warrant the trustees or directors may take the property wherever the same may be found in the same county and shall be vested with all the right and title to the personal property and to the rents of the real property which the person absconding had at the time of his departure.

SEC. 801. **Sales.** All sales and transfers of any such property real or personal and leases made by the person after the issuing of the warrant shall be absolutely void.

SEC. 802. **Inventory.** The said trustees or directors shall immediately make an inventory of the property so seized by them and return the same together with the proceedings to the court, there to be filed.

SEC. 803. **Orders of sale, etc.** The court upon inquiring into the facts and circumstances of the case may discharge the order of seizure, but if it be not discharged the court shall have power to direct from time to time what part of the personal property shall be sold and how, and how much of the proceeds of such sale and of the rents and profits of the real estate shall be applied to the maintenance of the children or wife of the person so absconding.

SEC. 804. **Party's return.** If the party against whom such warrant issued return and support the wife or children so abandoned or give security to the county satisfactory to the judge that such wife or children shall not become chargeable to the county the warrant shall be discharged by an order of the court, and the property taken and remaining restored.

SEC. 805. **Jury trial.** The defendant may demand a jury in the trial contemplated on the question of his ability and of his obligation to support a poor relative; and also on the questions of abandonment and of liability to become a public charge as provided above, which demand may be made upon the inquiry contemplated above, and such inquiry shall take place on the request of the defendant unless it be ordered on the motion of the court itself with notice to the defendant.

SEC. 806. **Action by county.** Any county having expended any money for the [127] relief of a poor person under the provisions of this chapter may recover the same from any of his kindred mentioned in the second section of this chapter, by an action brought in any court having jurisdiction within two years from the payment of such expenses.

SEC. 807. **By kindred.** A more distant relative who may have been compelled to aid a poor person may recover from any one or more of the nearer relatives, and one so compelled to aid may recover contribution from others of the same degree.

ARTICLE 2.

Legal settlements.

SEC. 808. **How acquired.** Legal settlements may be acquired in the counties as follows:

1. Any white person having attained the age of majority and residing in

this state one year without being warned as hereafter provided gains a settlement in such county;

2. A married woman follows and has the settlement of her husband if he have any within the state, and if she had a settlement at the time of marriage it is not lost by the marriage;

3. A married woman abandoned by her husband and having obtained authority to act as a single person may acquire a settlement as if she were unmarried;

4. Legitimate children follow and have the settlement of their father if he have one, but if he has none then that of their mother;

5. Illegitimate minor children follow and have the settlement of their mother, or if she have none then that of the putative father;

6. A minor whose parent has no settlement in this state, and a married woman living apart from her husband and having no settlement and whose husband has no settlement in this state, residing one year in any county gains a settlement in such county;

7. A minor bound as an apprentice or servant immediately upon such binding, if done in good faith, gains a settlement where his master has one.

SEC. 809. **When lost.** A settlement once acquired continues until it is lost by acquiring a new one.

SEC. 810. **Past cases.** The provisions of the preceding sections apply to cases of settlement begun to be acquired or lost as well before as after the provisions of this chapter go into effect.

SEC. 811. **Foreign paupers.** A person coming from another state and not having become a citizen of nor having a settlement in this state, falling into want and applying for relief, may be sent to the [128] state whence he came at the expense of the county under a warrant of the county court, otherwise he is to be relieved in the county where he applies.

SEC. 812. **Warning.** Persons coming from other states or counties who are, or of whom it is apprehended that they will become, county charges may be prevented from obtaining a settlement in a county by warning them to depart, and thereafter they shall not acquire a settlement except by the requisite residence for one year uninterrupted by another warning.

SEC. 813. **How given.** Such warning shall be in writing and may be served upon the order of the trustees of the township or of the directors or of the court or judge. The service may be made by any person and the person making it shall make a return of his doings thereon to the officer issuing the order, and if not made by a sworn officer it must be verified by affidavit.

SEC. 814. **Settlement in another county.** When a poor person applying for relief in one county has a settlement in another he may be removed to the county of his settlement, if he be able to be removed, upon the order of the judge of the county where he applied for relief and delivered to any trustee of a township in the county where his settlement is or to a director, giving written notice of the fact to the county judge or clerk; or the judge of the county where the poor person applied for relief may in his discretion cause the judge of the county where the poor person has a settlement to be notified of his being a county charge in the first county, and thereafter it will become the duty of the judge of the county of the settlement to order the removal of the poor person if he is able to be removed, and if not able then to provide for his relief.

SEC. 815. **Counties liable.** The county where the settlement is shall be liable to the county rendering relief for all reasonable charges and expenses incurred in the relief and care of a poor person if notice of relief being rendered is

given to the county of the settlement within a reasonable time after the county of the settlement is ascertained; and for the charges of removal and expenses of support incurred after notice given, in all cases.

SEC. 816. **Removal and appeal.** When an order of removal is made the county to which the removal is made may appeal from the order to the district court of the county where the order is made, by the judge of the county to which the removal is made causing a notice of such appeal signed and sealed by him to be filed in the office of the other county within thirty days after the service of the notice of the order. No other proceeding than the above shall be necessary to effect the appeal and the notice of appeal and a transcript of whatever other proceedings or papers there may be relative to the matter shall be filed in [129] the office of the district court, and the cause may be entitled as of the county issuing the order as plaintiff against the county appealing as defendant and appellant.

SEC. 817. **Trial.** The cause may be tried as other actions, but there need be no pleading, the only issue being whether the poor person had a settlement in the county to which he was removed at the time of such order of removal.

SEC. 818. **Venue.** Upon the application of the county appellant the district court may in its discretion change the venue of such cause to some convenient disinterested county.

ARTICLE 3.

Relief of the poor where there is no poor house.

SEC. 819. **Trustees.** The trustees in each township in counties where there is no poor house have the oversight and care of all poor persons in their township so long as they remain a county charge and shall see that they are properly relieved and taken care of.

SEC. 820. **Application for relief.** The poor must make application for relief to the trustees of the township where they may be, and if the trustees are satisfied that the applicant is in such a state of want as requires relief at the public expense, they may for the time being afford such relief as the necessities of the person may require and shall report the case forthwith to the judge, who is authorized to deny further relief to such person if he find cause.

SEC. 821. **Expenses paid.** All claims and bills for the care and support of the poor shall be certified to be correct by the proper trustees and presented to the judge, and if he is satisfied that they are reasonable and proper they are to be paid out of the county treasury.

SEC. 822. **Allowance.** The court may in its discretion allow and pay to poor persons who may become chargeable as paupers and who are of mature years and sound mind and who will probably be benefited thereby such sums or such annual allowance as will not exceed the charge of their maintenance in the ordinary mode.

SEC. 823. **Appeal to judge.** If any poor person on application to the trustees is refused the required relief he may apply to the county judge, who on examination into the matter may direct the trustees to afford relief or the judge may direct specific relief.

SEC. 824. **Removal.** A person who is a resident of but having no settlement in this state falling into want and making application in one county but having his usual residence in another, may at his request be removed to such other county by the over-[130]-seers where he applied, and he shall then be at the charge of such other county.

SEC. 825. **Contract to support.** The judge is invested with authority to enter into contract, when he considers the same expedient, with the lowest bidder through proposals opened and examined at a regular session of the county court, for the support of all the poor at the time being of the county for one year only at a time and to make all requisite orders to that effect.

SEC. 826. **Supervision.** When such a contract is made the judge shall from time to time appoint some person to examine and report upon the manner the poor are kept and treated, which shall be done without notice to the person contracting for their support, and if upon due notice and inquiry the judge find that the poor are not reasonably and properly supported, treated, or cared for, he has power at a regular session to set aside the contract making proper allowances for the time it has been in operation.

SEC. 827. **Employment.** Such contractor and every contractor under the overseers of a township may employ a poor person in any work for which his age, health, and strength is competent, but this shall be subject to the supervision and orders of the trustees, and in the last resort of the county judge.

ARTICLE 4.

Relief of the poor where there is a poor house.

SEC. 828. **Poor house—vote.** The county court of each county is hereby authorized to order the erection and establishment of a poor house in such county whenever that measure is deemed advisable, and also the purchase of such land as may be deemed necessary for the use of the same, and the judge is invested with full authority to make the requisite contracts and to carry such order into effect, provided the cost of said poor house and land shall be first estimated by said court and approved by a vote of the people at some regular election.

SEC. 829. **Expenses.** The expense of such erection and purchase shall be defrayed by a tax levied on the general assessment roll for that express purpose, which shall constitute a separate and special fund to be collected and paid over in manner as other taxes are, but to be paid in money only.

SEC. 830. **Directors.** When a poor house is established the court has discretionary authority to appoint directors or not, and when it deems it expedient so to do may appoint one or three in accordance with the provisions of the following sections; and until the court so appoint directors the judge is invested with all the authority and powers in relation to the poor and the [131] poor house which are given to the directors when they have been appointed.

SEC. 831. **Same.** The directors when so appointed are to take charge of and manage the affairs of the poor and of the poor house, and shall be a body corporate under the name of "The directors (or director) of the poor house of ——— county" (naming the county).

SEC. 832. **Qualification and duty.** They are required to take an oath faithfully to discharge the duties of their office previous to acting therein. They continue in office one year and until their successors are appointed and qualified. They shall keep a record of their doings. And if a vacancy occur in their body the judge may fill it by appointment to continue until the end of the year.

SEC. 833. **Powers.** They may make all contracts and purchases requisite for the poor house, and may prescribe rules or regulations for the management and good government of the same and for the introducing sobriety, morality, and industry among its occupants.

SEC. 834. **Steward.** The directors may appoint a steward of the poor house who shall be governed in all respects by the rules and regulations of

the board and may be removed by them at pleasure, and who shall receive such compensation, perform such duties, and give such security for their faithful performance as the board may appoint.

SEC. 835. **Receiving poor.** The steward shall receive into the poor house any person producing an order as hereafter provided and enter in a book to be kept for that purpose the name and age and the date of the reception of such person.

SEC. 836. **Employment.** He may require of persons admitted to the poor house to perform such reasonable and moderate labor as may be suited to their ages and bodily strength, the proceeds of which shall be appropriated to the use of the poor house in such manner as the directors may determine.

SEC. 837. **Admission.** No person shall be admitted to the poor house unless upon the written order of a township trustee, a director, or the county judge, and relief is to be furnished in the poor house only, when the person is able to be taken there, unless the judge order otherwise.

SEC. 838. **Other relief.** When a trustee furnishes relief out of the poor house to any person or gives an order of admission thereto such trustee is required to notify one of the directors forthwith of the fact with the sex, age, health, and property of the poor person, and the date when relief was first furnished, and the directors have authority to countermand such order or supply and to make any other provision in relation to him.

SEC. 839. **Binding out.** The directors are empowered to bind out such poor [132] children of the poor house as they believe are likely to remain a permanent charge on the public, males until twenty-one and females until the age of eighteen unless sooner married, on such terms and conditions as prescribed in the chapter concerning master and apprentices. And they may bind for shorter periods on such conditions as they may adopt.

SEC. 840. **Discharge.** When any inmate of the poor house becomes able to support himself the directors may order his discharge.

SEC. 841. **Other relief.** When a poor person applying for relief is in a condition that will not admit of his removal to the poor house the directors may provide for his relief out of the county treasury until his condition will admit of his removal.

SEC. 842. **Visitation.** The directors shall cause the poor house to be visited at least once a month by one of their body who shall carefully examine the condition of the inmates and the manner in which they are fed and clothed and otherwise provided for and treated, ascertain what labor they are required to perform, inspect the books and accounts of the steward, and look into all matters pertaining to the poor house and its inmates and report to the board. When there is no board of directors the county judge may perform the above duty or appoint a person therefor who shall report to him.

SEC. 843. **Report.** The directors shall annually report to the county court the state of the poor house with a full account of their contracts, disbursements, and proceedings.

SEC. 844. **Expenses.** The expenses of supporting the poor house shall be paid out of the county treasury by order of the judge on certificates signed by the directors; and in case the ordinary revenue of the county prove insufficient for the support of the poor the court may levy a poor tax not exceeding one mill on the dollar to be entered on the county list and collected as the ordinary county tax.

SEC. 845. **Directors' pay.** The judge may allow the directors out of the county treasury such sum as it deems reasonable for their services not ex-

ceeding one dollar and a half for each day employed in the duties of their appointment.

SEC. 846. **Powers.** The directors are also invested with all powers before given to the trustees of townships in relation to the poor.

SEC. 847. **Contract to support.** The county court is also invested with authority to let out the support of the poor with the use and occupancy of the poor house and farm for a period not exceeding three years.

[133] CHAPTER 49.

ILLEGITIMATE CHILDREN.

SECTION 848. **Complaint.** When any woman residing in any county of the state is delivered of a bastard child or is pregnant with a child which if born alive will be a bastard, complaint may be made in writing by any person to the county court of the county where she resides stating that fact and charging the proper person with being the father thereof.

SEC. 849. **Summons—service.** Upon the complaint being filed the county judge shall issue a summons requiring the person charged to appear at a time named, but not less than seven days distant, and answer to the county on the complaint of —— (the complainant), which with a copy of the complaint shall be served at least five days before the return day, and be served and returned in the manner required in other actions. If the accused be not found notice shall be given as in actions before justices of the peace when the defendant is not found.

SEC. 850. **Lien.** From the time of the issuing of the summons in such case the action shall be a perpetual lien and security upon the real property of the accused in the county where the action is pending, for the payment of any money and the performance of any order adjudged by the proper court.

SEC. 851. **Hearing.** Upon the return day of the summons if the legal service has been made the court shall proceed to hear the cause, examining the woman and other witnesses and permitting the accused to put interrogatories also; but continuances may be granted for good cause, and the accused may demand a jury.

SEC. 852. **Judgment.** If on such examination the accused appear in the opinion of the court or the jury to be the father of the child he shall be adjudged to give security as directed by the court, to the county, conditioned to save the county and also every other county in the state from all charges toward the maintenance of the child.

SEC. 853. **On appeal.** If upon appeal the judgment below (being against the accused) be sustained it shall be rendered and entered as a judgment of the district court.

SEC. 854. **Issue.** The issue in such case shall be whether the party is guilty or not and shall be tried as other issues.

SEC. 855. **Judgment and execution.** If the accused be found guilty or confess the accusation in the court above, he shall be charged with the maintenance of the child in such sum or sums and in such manner as the district court direct and with the costs of the suit, [134] and shall be required to enter into bond to the county with surety approved by the county judge, or in his absence by the clerk, to save the county and all other counties of the state

from all charges for the maintenance of the child and for the performance of the orders of the said court, and execution may issue for costs and for any sum ordered to be paid immediately.

SEC. 856. **Scire facias.** When money has been ordered to be paid from time to time or by installments and when a bond has been ordered to be given with a condition for the performance of any act and the accused neglects to perform such order, a *scire facias* may issue from the county or district court (as the case may be) to the accused or to his executor, and from the district court to any heir or devisee holding under him any land subject to the lien, to show cause why judgment should not be rendered and execution issue for the sum due or for the breach of the condition ordered by the proper court.

CHAPTER 50.

INSANE PERSONS.

SECTION 857. **Jurisdiction.** Jurisdiction over insane persons for the ends prescribed in this chapter is hereby conferred upon the county court sitting as a court of probate.

SEC. 858. **Guardians.** The court is hereby invested with authority to appoint guardians to take the care, custody, and management of insane persons residing in their county who are incapable of conducting their own affairs and of their estate real and personal, and to provide for the safe keeping of such persons, the maintenance of themselves and families, and the education of their children.

SEC. 859. **Inquiry.** When the court is informed that any person in the county is insane, and is satisfied there is sufficient cause for an inquiry it may cause the person to be brought before it and inquire into the facts by testimony and may summon witnesses therefor, and a jury may be demanded by or on behalf of the defendant.

SEC. 860. **Guardian.** If it be found that the person before the court is insane and incapable of managing his own affairs the court shall appoint a guardian of his person and property.

SEC. 861. **Costs.** When the person is found to be insane the cost of this proceeding shall be paid out of his property, or if that be insufficient by the county. If he be discharged and it be found by the court or jury that there was no ground for the [135] impression of insanity the costs shall be paid by the person at whose instance the proceeding was had.

SEC. 862. **Confinement.** The guardian has charge of the person as well as the property of the insane, and if it be necessary for his own safety or for that of the persons or property of others he may confine or guard him, and may commit him to jail on an order of the county judge who may also release him.

SEC. 863. **Bond.** Before entering upon the duties of his appointment the guardian shall give bond to the county in such sum and with such surety as the court approve, with a condition that he will take proper care of such insane person and manage and minister his effects to the best advantage according to law, and that he will faithfully discharge all duties which by law or by the order of a court of proper jurisdiction may devolve upon him, which bond shall be filed in the county office.

SEC. 864. **Notice.** Every such guardian shall within twenty days after his appointment publish a notice thereof in such manner as the court directs.

SEC. 865. **Effects.** It is the duty of the guardian to collect and take into his possession the goods, chattels, money, effects, securities, and writings touching the estate real and personal belonging to the insane.

SEC. 866. **Inventory.** Within ten days after his appointment the guardian shall file in the county office a true inventory under oath of all the real and personal estate of his ward and the income thereof if any and the debts due him as they have come to the knowledge of said guardian, and if the court is satisfied that said real estate and personal property amounts to twenty dollars the judge shall appoint three disinterested persons, who after being duly sworn shall proceed to appraise the real and personal estate of said insane person and make return thereof to the county court within ten days from the date of their appointment. The guardian shall also file an additional inventory when any farther property comes to his knowledge, which the court may order to be appraised in the manner aforesaid.

SEC. 867. **Settlements.** The guardian is authorized to collect all debts owing to his ward, settle his accounts and pay the demands owing by him so far as his estate will extend.

SEC. 868. **Court's authority—accounts.** The court has authority to make order for the restraint, support, and safekeeping of the ward, the management of his property, and the maintenance of his family out of his property, to set apart any of the property for the use of the family, and to sell or mortgage any of the property real or personal when necessary for the payment of debts or the support of the ward or his family. When it is found that the [136] personal estate of the ward is insufficient to meet the foregoing requisitions it is the duty of the guardian to lay before the court an account of the property, his sales, his payments, the debts unpaid, and all his doings, and the court if it find it necessary may order a mortgage, lease, or sale of the whole or such part of the real estate as may be necessary.

SEC. 869. **Court to direct sales.** The court shall direct the time and terms of such sale, mortgage, or lease and the manner in which the proceeds shall be paid and cause due notice of the property and of the disposal thereof to be given. The guardian shall execute the order of the court and make report of his doings under oath and shall be required to state in the same whether he is directly or indirectly the purchaser at the sale, or if otherwise disposed of whether he is directly or indirectly interested in the agreement.

SEC. 870. **And confirm.** When the proceeding is approved of by the court as having been conducted according to law and not under such circumstances as to operate prejudicially to the interests of the ward, the judge is authorized to execute any requisite instrument in writing, which shall be as valid as if executed by the ward when of sound mind.

SEC. 871. **Or set aside.** If the report be disapproved by the court as not doing justice to the ward it may set aside the proceedings and proceed as if they had not taken place.

SEC. 872. **Recovery.** When the court has reason to believe that the ward has recovered his reason it shall immediately inquire into the fact and if it finds the ward restored to sound mind shall discharge him from the care and custody of the guardian and revoke the letters of guardianship; and thereupon the guardian shall immediately settle his accounts and restore all things remaining in his hands belonging to his former ward.

SEC. 873. **Death.** In the event of the death of the ward the power of the guardian shall cease and the estate descend and be disposed of as if the ward had been of sound mind, and the guardian shall settle his accounts and deliver the estate and effects of his ward to his legal representatives.

SEC. 874. **Removal.** The court is empowered to remove any such guardian at any time after notice and hearing, for neglect of duty, mismanagement, or disobedience to any lawful order of the court, to hold him to account, and to appoint another in his place.

SEC. 875. **Compensation.** The compensation of the guardian of an insane person is in the discretion of the county court, but subject to an appeal.

[137] CHAPTER 51.

LOST GOODS AND ESTRAYS.

SECTION 876. **What are.** Any person stopping or taking up any kind of water craft, or timber, logs, or lumber adrift upon any water course within or upon the borders of this state or lodged upon the shore or bank thereof, or any stray beast, or finding any money or other personal property, shall proceed therewith as follows.

SEC. 877. **Of \$10 value.** If the property do not exceed ten dollars in value he shall put up two written advertisements containing a notice of the finding and description of the property in two public places in the township where it was found and file one such notice in the county office, and if no owner appears within six months from advertisement and proves his property and pays the reasonable charges the property shall vest in the finder.

SEC. 878. **Over \$10 and under \$30.** If the property exceed ten dollars and does not exceed thirty dollars in value the finder shall within five days after the finding appear before a justice of the peace of the county or the county judge or clerk and make a written statement setting forth the time and place of the finding and general description of the property, and the officer shall issue his warrant appointing two disinterested persons to examine the property and to report under their hands an appraisement with an accurate description of the property setting forth all marks which may assist to identify it. The report shall be sworn to by the appraisers, and by the finder also so far as to state that the property named in it is all which he has found and that neither the property nor any mark on the same has been altered or defaced by him or by any other person with his knowledge.

SEC. 879. **Proceedings.** If the property is appraised at more than ten dollars value the justice shall return the statement of the finder, his warrant, and the report of the appraisers with the affidavit, to the county office and the clerk shall enter them at large in a book to be kept for that purpose and shall post a notice containing the finder's statement and the appraisers' report on the door of the court house, and the finder shall also give such notice as before directed. If the property is appraised at more than ten and not more than thirty dollars and no owner appears and proves his property and pays the charges within nine months from the filing of the papers with [138] the clerk, the property shall vest in the finder on his paying the costs of the above proceedings and not before.

SEC. 880. **Same, additional.** If the appraisement of the property exceed thirty dollars, in addition to the notices above directed the county clerk shall publish for four weeks in some newspaper in his county, or if there be none then in some other county, a notice of the time and place of finding with the finder's name and a general description of the property; and if no owner appear and prove his property within twelve months from the time the notices above directed were first published, the finder may take the property and the

right thereto shall be vested in him if he will pay the expenses and pay one-half the appraised value deducting the charges into the county treasury.

SEC. 881. **Sale.** If the finder does not take the property upon the above terms the county judge shall issue a warrant under his hand to the sheriff or a constable to sell the property in the same manner as on execution and having deducted the whole charges to pay one-half the remainder into the county treasury and the other half to the finder. But if the owner appear before the sale takes place he may still prove his property and pay the charges as above provided and the sale may be adjourned therefor.

SEC. 882. **Over \$100.** If the appraisement of the property exceed one hundred dollars and the property does not consist of domestic animals it shall be kept one year for the owner's appearance and the sale provided for in the preceding two sections shall not take place within that time.

SEC. 883. **Domestic animals.** But if the property in any of the cases above contemplated consist of domestic animals and the notice is given or the papers filed in the county office after the first of December and before the first day of April, nine months shall be required to pass before the proceedings to vest the property in the finder or for a sale to take place shall be had.

SEC. 884. **Where and when.** No person is authorized to take up straying animals (save stallions, jacks, and trespassing animals), except in the civil township in which he resides, nor shall the property in them vest in the finder before the first day of December if taken up after the last day of March.

SEC. 885. **Owner claiming money.** When money other than cost is paid into the county treasury under any of the preceding provisions the owner of the property will be entitled to the money on making claim thereof within six months from the time it was paid in and proving his right to the satisfaction of the county judge.

SEC. 886. **Evidence of notices.** The certificate of the county clerk, the return of a sheriff or constable, or the affidavit of an indifferent person of the giving the notices above required accompanied by one [139] of the notices or a copy thereof and filed with the clerk shall be *prima facie* evidence of the facts stated in the certificate, return, or affidavit.

SEC. 887. **Property vesting.** No property such as above intended shall vest in the finder unless he has substantially pursued the directions of this chapter.

SEC. 888. **Charges settled.** If the charges of the finder cannot be agreed upon by him and the county clerk, or when a claimant appears by him and the finder, they shall be settled by the county judge or a justice of the peace upon a case made by the above parties, and if the finder refuse to make a case he shall receive no charges, and if the owner refuse the judge or justice shall decide without it.

SEC. 889. **Costs.** If such a case be made between the finder and the county clerk the costs of the case shall be taken from the proceeds of the property, if between the finder and the owner each shall pay one-half the cost which the judge or justice may demand before adjudication.

SEC. 890. **Ownership settled.** If the ownership of the property cannot be agreed upon by the finder and the claimant they may make a case before the county judge or any justice of the peace, who may hear and adjudicate it, and if either of them refuses to make such case the other may make an affidavit of the facts which have previously occurred (and the claimant shall also verify his claim in his affidavit) and the judge or justice may take cognizance of and try the matter on the other party having one day's notice, but there shall be no appeal from the decision. This section does not bar any other remedy given by law.

SEC. 891. **Value found.** When the property found consists of more than one item or individual the value above spoken of as governing the proceedings means their aggregate value.

SEC. 892. **Reward.** As a reward for stopping, taking up and securing any property as aforesaid the finder shall be entitled to one dollar at least, and ten per cent on the appraised value above ten dollars, and his expenses in securing and keeping it. But there shall be no compensation allowed for keeping working animals taken up under this act.

SEC. 893. **Fees, etc.** The following charges shall be allowed, viz: to the justice for the initiatory proceedings fifty cents; to the county clerk one dollar, and where there is an advertisement in a newspaper one dollar additional; the fee for printing; to the sheriff or constables the same fees as for similar services in actions before justices; to each appraiser fifty cents; to the justice for deciding the case concerning the charges seventy-five cents; which charges except sheriffs' and constables' [140] compensation shall be paid by the finder and allowed him out of the property, or be paid by the owner.

SEC. 894. **Stallions, etc.** Any stallion or jack, bull, boar, or ram running at large shall be accounted an estray.

CHAPTER 52.

FENCES.

SECTION 895. **Partition fences.** The respective owners of lands inclosed with fences shall keep up and maintain partition fences between their own and the next adjoining inclosure so long as they improve them in equal shares unless otherwise agreed between them.

SEC. 896. **Neglect.** If any party neglect to repair or rebuild a partition fence or a portion thereof which he ought to maintain the aggrieved party may complain to the fence viewers, who after due notice to each party shall examine the same and if they determine the fence is insufficient shall signify it in writing to the delinquent occupant of the land and direct him to repair or rebuild the same within such time as they judge reasonable.

SEC. 897. **Penalty.** If such fence be not repaired or rebuilt accordingly the complainant may repair or rebuild it, and the same being adjudged sufficient by the fence viewers, and the value thereof with their fees being ascertained by them and certified under their hands, the complainant may demand of the owner of the land where the fence was deficient the sum so ascertained, and in case of neglect to pay the same for one month after demand, may recover it with one per cent. a month by action.

SEC. 898. **Dispute.** When a controversy arises between the respective owners about the obligation to erect or maintain partition fences either party may apply to the fence viewers, who after due notice to each party may inquire into the matter and assign to each his share thereof and direct the time within which each shall erect or repair his share, in the manner provided above.

SEC. 899. **Neglect.** If a party neglect to erect or maintain the part of fence assigned him by the fence viewers it may be erected and maintained by the aggrieved party in the manner before provided, and he shall be entitled to double the value thereof to be recovered as directed above.

SEC. 900. **When kept up.** All partition fences shall be kept in good repair throughout the year unless the owners on both sides otherwise agree.

[141] SEC. 901. **Who required.** No person, not wishing his land inclosed and not occupying or using it otherwise than in common, shall be compelled to con-

tribute to erect or maintain any fence dividing between him and an adjacent owner, but when he incloses or uses his land otherwise than in common he shall contribute to the partition fences as in this chapter is provided.

SEC. 902. **Enclosed common made severalty.** When lands owned in severalty have been inclosed in common without a partition fence and one of the owners is desirous to occupy his in severalty and the other refuses or neglects to divide the line where the fence should be built or to build a sufficient fence on his part of the line when divided, the party desiring it may have the same divided and assigned by the fence viewers who may in writing assign a reasonable time, having regard to the season of the year, for making the fence, and if either party neglect to comply with the decision of the viewers the other after making his own part may make the other part and recover as directed above.

SEC. 903. **Throwing open.** In the case mentioned in the preceding section, when one of the owners desires to throw his field open and leave it uninclosed he shall first give the other party six months notice of such intention, or such shorter notice as may be directed by the fence viewers on notice to the other party.

SEC. 904. **Enclosing common.** When land which has lain uninclosed is inclosed, the owner thereof shall pay for one-half of each partition fence between his land and the adjoining lands, the value to be ascertained by the fence viewers, and if he neglect for thirty days after notice and demand to pay the same, the other party may recover as before provided; or he may at his election rebuild and make half the fence, and if he neglect so to do for two months after making such election he shall be liable as before provided.

SEC. 905. **Division recorded.** When a division of fence between the owners of improved lands may have been made, either by fence viewers or by agreement in writing and recorded in the office of the clerk of the township where the lands are, the owners and their heirs and assigns shall be bound thereby and shall support them accordingly, but if any desire to lay his lands in common and not improve them adjoining the fence divided as above the proceedings shall be as directed in the case where lands owned in severalty have been inclosed in common without a partition fence.

SEC. 906. **Definitions.** In the provisions of this chapter the term "owner" shall apply to the occupant or tenant when the owner does not reside in the county, but these proceedings will not bind the owner unless notified. The "fence viewers" means the fence viewers of the township in which the division line in controversy is, and if that line is between two townships and [142] both parties live in the same, then it means the viewers of that township, but if the parties live in different townships one viewer at least shall be taken from that of the party complained against.

SEC. 907. **On another's land.** When a person has made a fence or other improvement on an inclosure which on afterward making division lines is found to be on land of another, and the same has occurred through mistake, such first person may enter upon the land of the other and remove his fence or other improvement and material within six months after such line has been run, upon his first paying or offering to pay the other party for any damage to the soil which may be occasioned thereby, and when the parties cannot agree as to the damage the fence viewers may determine them as in other cases.

SEC. 908. **Same.** But such fence or other improvement (except substantial buildings) shall not be removed if they were made or taken from the land on which they lie, until the party pays the owner the value of the timber to be ascertained by the fence viewers, nor shall a fence be removed at a time

when the removal will throw open or expose the crop of the other party, but it shall be removed in a reasonable time after the crop is secured although the above six months have passed.

SEC. 909. **Future questions.** When any question arises between parties, other than those above stated, concerning their rights in fences, or their duties in relation to building or supporting or removing them, such question may be determined by the fence viewers upon the principles of this chapter.

SEC. 910. **Lines.** A person building a fence may lay the same upon the line between him and the adjacent owner so that the fence may be partly on one side and partly on the other, and the owner shall have the same right to remove it as if it were wholly on his own land.

SEC. 911. **Same.** The foregoing provisions concerning partition fences shall apply to a fence standing wholly upon one side of the division line.

SEC. 912. **Other proceedings.** The foregoing provisions of this chapter do not bar any other legal proceedings for the determination of the title to land or the dividing line between contending owners, nor do they preclude agreements by the parties.

[143] CHAPTER 53.

TRESPASSING ANIMALS.

SEC. 913. **Action or distress.** When any person is injured in his land by any kind of domestic animal he may recover his damages by an action against the owner of the beasts or by distraining the beasts doing the damage, provided that if the beasts were lawfully on the adjoining land and escaped therefrom in consequence of the neglect of the person suffering the damage to maintain his part of the division fence, the owner of the beasts shall not be liable for such damage.

SEC. 914. **Adjoining owner liable.** And if the beasts are not lawfully upon the adjoining close and came thereupon, or if they escaped therefrom into the injured inclosure, in consequence of the neglect of the adjoining owner to maintain any partition fence or any part thereof which it was his duty to maintain, then the owner of the adjoining land shall be liable as well as the owner of the beasts.

SEC. 915. **Distress.** If the person injured elect to distress the beasts he shall proceed as directed in the chapter concerning stray beasts except as herein otherwise provided.

SEC. 916. **Appraisers.** The fence viewers shall in all cases be the appraisers and shall find and certify the amount of damage done by the beasts.

SEC. 917. **No property vests.** The property in the beasts shall in no case vest in the distrainer but he shall receive his damages, the cost paid by him, and the expense of keeping the beasts.

SEC. 918. **Proceedings.** The proceeding shall in all cases be as directed in relation to property appraised at a sum above ten and not more than thirty dollars, but the proceeds of the sale (after deducting the costs, charges for keeping, and damages) shall be paid into the county treasury for the use of the owner if claimed within twelve months from the sale.

SEC. 919. **Statement.** The distrainer shall in his statement show that the beasts were taken doing damage on his land, describing it, and the same shall appear in the advertisements, and he shall within forty-eight hours after distraining the beasts notify the owner if known and living in the same township or within five miles of the injured inclosure in another township.

[144] CHAPTER 54.

MARKS OF ANIMALS.

SECTION 920. **Books.** The county judge of each county shall procure at the expense of the county a book for each civil township in which to record the marks and brands of horses, sheep, hogs, and other animals.

SEC. 921. **Marks.** Any person wishing to mark or brand his domestic animals with any distinguishing mark may adopt his own mark and have a description thereof recorded by the clerk of the township in which the owner lives.

SEC. 922. **Another's mark.** No person shall adopt a mark or brand previously recorded to another person residing in the same township, nor shall the clerk record the same one to two persons.

SEC. 923. **Fee.** The clerk will be entitled to twenty-five cents for recording each mark or brand and making a certificate thereof.

CHAPTER 55.

THE SALE OF INTOXICATING LIQUORS.

SECTION 924. **As merchandise.** The people of this state will hereafter take no share in the profits of retailing intoxicating liquors, but the traffic in those commodities as articles of merchandise is not prohibited.

SEC. 925. **What prohibited.** The retail of intoxicating liquors in the manner which is commonly denominated "by the glass" or "by the dram" is hereby prohibited, and the sale of liquors in any quantity with a view to their being drunk on or about the premises is a selling by the dram within the meaning of this section.

SEC. 926. **Places.** The places commonly known as "dram shops" are hereby prohibited and declared public nuisances, and their establishment shall be held presumptive evidence of the violation of the provision contained in the preceding section.

SEC. 927. **Construction.** The establishment or the keeping of a place of any description whatever, and whether within or without a building, coming within the spirit and intent of this chapter, and the establishment or the keeping a place of any description where other persons are accustomed to resort, providing their own liquors of the prohibited character purchased elsewhere [145]-where and drinking them there shall be taken to be within the meaning of this chapter.

SEC. 928. **Who liable.** Every person engaged in any of the acts above prohibited or in any way aiding or assisting in such illegal traffic, whether as principal or clerk, bar keeper, or otherwise shall be subject to the penalties herein provided.

SEC. 929. **Evasions.** Courts and juries are required to construe this chapter so as to prevent evasions and subterfuges and so as to cover the act of giving as well as of selling in the places above prohibited.

SEC. 930. **Penalty.** Whoever is guilty of violating any of the provisions of this chapter, on conviction thereof shall be fined in a sum of not less than ten dollars nor more than one hundred dollars or be imprisoned in the county jail not more than ninety days or both in the discretion of the court, and may be prosecuted therefor either by indictment, or by information be-

fore a justice of the peace; but if by information before a justice of the peace the punishment shall be by fine only.

SEC. 931. **Proceedings.** An information or indictment under this chapter may allege any number of violations of its provisions by the same party and he may be found guilty of and punished for each act as under separate indictments or informations, but a separate judgment must be entered in each instance in which a verdict of guilty is found. And the proceedings may be the same when they are against the building or other property itself as herein provided.

SEC. 932. **Against building.** The information and indictment herein authorized may be made or found against the shop or building or ground itself in or upon which the prohibited traffic is carried on, under a description of ordinary certainty, alleging that the prohibited liquor has been there retailed in the manner forbidden; and proof of such retail by any person will be sufficient, and the building and ground and the liquors and furniture shall be liable to the penalties herein prescribed, and when an information is filed supported by an affidavit they shall be held in the same manner as if under an attachment and shall be dealt with as when an indictment is found.

SEC. 933. **Building liable.** The building in which a shop or other establishment herein prohibited is set up, whether permanently or temporarily, and the lot or other ground (not exceeding forty acres) on which the same stands, if owned by any person engaged in the prohibited business or if owned and leased by a person who demised it knowing that such establishment was to be set up or such traffic carried on therein, shall be subject to a lien, although not proceeded against directly, for the purpose hereafter directed; and when an indictment is found it is made the duty of the court to command the sheriff by proper [146] process to seize the establishment and close it and keep it closed and keep possession of the goods therein until the final determination of the prosecution. But nothing herein contained shall be so construed as to subject the homestead to execution or lien in any case whatever.

SEC. 934. **Release of.** In the cases mentioned in the preceding two sections the property may be released by any person filing a bond in a penal sum not less than five hundred dollars with one or more sufficient freehold sureties, which bond and sureties must be approved by the clerk or justice and the condition of which must recite that the principal therein assumes to be the owner or keeper of the said establishment and takes upon himself the liabilities arising therefrom, and the condition shall be that the parties thereto undertake to pay any fine and costs which may be adjudged against the person or property informed against or indicted.

SEC. 935. **Nuisance.** Upon the conviction of any person engaged in any establishment prohibited in this chapter, the proper matter being found, and also upon the conviction of the property the court is required to declare such establishment a nuisance and the proper officer shall be commanded to abate the nuisance by taking possession of the establishment and selling the vessels, furniture, and other goods found therewith for the payment of the fine and costs.

SEC. 936. **Licenses.** The authority to grant licenses to retail the liquors herein prohibited contained in the charter of any incorporated town or city is hereby repealed; but existing licenses whether granted by towns or counties are not affected by these provisions, and these provisions are not to extend to boats or vessels, other than ferry boats, usually navigating waters which are not exclusively the waters of this state unless the laws of the other states having concurrent jurisdiction over such waters contain substantially similar provisions.

[147] TITLE XIII.

REGULATIONS PERTAINING TO TRADE.

CHAPTER 56.

WEIGHTS AND MEASURES.

SECTION 937. Length—dry measure—liquid measure—weights—material.

The treasurer of state is hereby required to procure at the expense of the state a set of the following weights and measures:

One yard of three feet, divided by marks into halves, quarters, eighths, and sixteenths;

One one foot measure of twelve inches;

One half bushel for dry measure not heaped, containing one thousand and seventy-five and one-fifth cubic inches;

One peck, or a fourth of a bushel;

One half peck, or one-eighth of a bushel;

One gallon measure, containing two hundred and thirty-one cubic inches;

One quart, or a fourth of a gallon;

One pint, or half of a quart;

One gill, or a fourth of a pint;

One set of avoirdupois weights consisting of a pound, a half pound, a quarter of a pound, and an ounce, and also a ten pound weight;

All which shall be of the most approved material for the preservation of uniformity and shall be kept in the treasurer's office and be the standard weights and measures of this state.

SEC. 938. Hundred weight. The "hundred weight" is hereby declared to consist of one hundred pounds avoirdupois weight, and the ton to consist of twenty such hundreds.

SEC. 939. Perch. The "perch" of mason work or stone is hereby declared to consist of twenty-five feet cubic measure.

SEC. 940. Contracts—except bushel. Contracts in which no other scale or standard of weight or measures is expressed shall be taken to mean the above, excepting the following in relation to the bushel:

A bushel of the respective articles hereafter mentioned will mean the amount of weight in this section specified: that is to say,

Of wheat, sixty pounds;

Of shelled corn, fifty-six pounds;

[148] Of corn in the cob, seventy pounds;

Of rye, fifty-six pounds;

Of oats, thirty-five pounds;

Of barley, forty-eight pounds;

Of potatoes, sixty pounds;

Of beans, sixty pounds;

Of bran, twenty pounds;

Of clover seed, sixty pounds;

Of timothy seed, forty-five pounds;

Of flax seed, fifty-six pounds;

Of hemp seed, forty-four pounds;

Of buckwheat, fifty-two pounds;

Of blue grass seed, fourteen pounds;

Of castor beans, forty-six pounds;
Of dried peaches, thirty-three pounds;
Of dried apples, twenty-four pounds;
Of onions, fifty-seven pounds;
Of salt, fifty pounds.

SEC. 941. **County standard.** When the treasurer has so procured the above standards he shall give notice in some newspaper, and thereafter it shall be the duty of the county judge of each county to obtain a set of weights and measures accurately corresponding in weight and measure with the above standards and deposit them in the office of the county treasurer to be there kept, and these shall constitute the county standards and the county treasurer shall from time to time cause them to be tested by the state standards and made to agree therewith.

SEC. 942. **Inspection of weights, etc.** Any person desiring his weights and measures inspected may apply to the county treasurer at his office whose duty it shall be to test them, and he may demand and receive therefor twenty-five cents for each weight and measure inspected to the number of six and fifteen cents each for all above that number, and he shall destroy all such weights and measures as cannot be made to conform to the standard.

CHAPTER 57.

THE MONEY OF ACCOUNT, AND INTEREST.

SEC. 943. **Public accounts, etc.** The money of account of this state is the dollar, cent, and mill, and all public accounts and the proceedings of all courts in relation to money shall be kept and expressed in money of the above denomination.

SEC. 944. **Other denominations.** The above provisions shall not in any manner affect any demand expressed in money of another denomination but [149] such demand in any suit or proceeding affecting the same shall be reduced to the above denomination.

SEC. 945. **Interest.** The rate of interest shall be six cents on the hundred by the year:

1. On money becoming due by express contract unless a different rate be expressed in writing;
2. On judgments and decrees for the payment of money when no other rate is expressed;
3. On money received to the use of another and retained beyond a reasonable time without the owner's consent expressed or implied;
4. On money due upon the settlement of matured accounts from the day the balance is ascertained;
5. On money due upon open account after six months from the date of the last item.

SEC. 946. **Judgments.** Judgments and decrees for the payment of money shall draw the same rate of interest with the contract on which they are rendered, and such rate if it exceed six per cent. shall be expressed in the judgment or decree; but no judgment or decree shall draw more than ten per cent. interest.

CHAPTER 58.

NOTES AND BILLS.

SECTION 947. **For money.** Notes in writing made and signed by any person promising to pay to another person or his order or bearer, or to bearer only, any sum of money are negotiable by indorsement or delivery in the same manner as inland bills of exchange according to the custom of merchants.

SEC. 948. **Action.** The person to whom such sum of money is made payable may maintain an action against the maker, and any person to whom such note is so indorsed or delivered may maintain his action in his own name against the maker or the indorser or both of them.

SEC. 949. **For property or labor.** Bonds, due bills, and all instruments in writing by which the maker promises to pay to another without words of negotiability a sum of money, or by which he promises to pay a sum of money in property or labor, or to pay or deliver any property or labor, or acknowledges any money or labor or property to be due, are assignable by indorsement thereon or by other writing, and the assignee shall have a right of action in his own name subject to any defense or set off legal or [150] equitable which the maker or debtor had against any assignor thereof before notice of his assignment.

SEC. 950. **May be made negotiable.** Instruments by which the maker promises to pay a sum of money in property or labor, or to pay or deliver property or labor, or acknowledges property or labor or money to be due to another, are negotiable instruments with all the incidents of negotiability whenever it is manifest from their terms that such was the intent of the maker, but the use of the technical words "order," or "bearer" alone will not manifest such intent.

SEC. 951. **Assignment prohibited.** When by the terms of an instrument its assignment is prohibited an assignment of it shall nevertheless be valid, but the maker may avail himself of any defense or set off legal or equitable against the assignee which he may have against any assignor thereof before suit is commenced thereon.

SEC. 952. **Open account.** An open account of sums of money due on contract may be assigned, and the assignee will have the right of action in his own name, but subject to the same defenses and set-offs as the instruments mentioned in the preceding section.

SEC. 953. **Guarantor.** The blank indorsement of an instrument for the payment of money, property, or labor, by a person not a payee, indorsee or assignee thereof, shall be deemed a guaranty of the performance of the contract.

SEC. 954. **How chargeable.** To charge such guarantor notice of non-payment by the principal must be given within a reasonable time, but the guarantor is chargeable without notice if the holder show affirmatively that the guarantor has received no detriment from the want of notice.

SEC. 955. **Notice.** An indorser of a negotiable instrument, and a guarantor as contemplated in the preceding section, is liable to the action of an indorsee, assignee, or payee, without notice if the indorsee, assignee, or payee have used due diligence in the institution and prosecution of a suit against the maker or his representative.

SEC. 956. **Notice.** The assignor of any of the above instruments not negotiable shall be liable to the action of his assignee without notice.

SEC. 957. **Grace.** Three days of grace are allowed on bills of exchange according to the custom of merchants, but not on any other instruments; and a demand at any time during the three days of grace will be sufficient for the purpose of charging the indorser.

SEC. 958. **Holder absent.** When the holder of an instrument for the payment of money is absent from the state when it becomes due, and when the indorsee or assignee of such an instrument has not notified the maker of such indorsement or assignment, the [151] maker may tender payment at the last residence or place of business of the payee before the instrument became due, and if there be no person authorized to receive payment and give the proper credit therefor the maker may deposit the amount due with the clerk of the district court in the county where the payee resided at the time it became due (paying the clerk one per cent. on the amount deposited), and the maker shall be liable for no interest from that time.

SEC. 959. **Demand.** No contract for labor or for the payment or delivery of property (other than money) in which the time of performance is not fixed can be converted into a money demand until a demand of performance has been made and the maker refuses or a reasonable time is allowed for performance.

SEC. 960. **Place of payment.** When a contract for labor or for the payment or delivery of property (other than money) does not fix a place of payment the maker may tender the labor or property at the place where the payee resided at the time of making the contract, or at the residence of the payee at the performance of the contract, or where the assignee of the contract resides when it becomes due.

SEC. 961. **Exception.** But if the property in such case be too ponderous to be conveniently transported, or if the payee had no known place of residence within the state at the making of the contract, or if the assignee of a written contract have no known place of residence within the state at the time of performance, the maker may tender the property at the place where he resided at the time of making the contract.

SEC. 962. **When assigned.** When the contract is contained in a written instrument which is assigned before due and the maker has notice thereof he shall make the tender at the residence of the holder if he reside in the state and no farther from the maker than did the payee at the making thereof.

SEC. 963. **Effect.** A tender of the property as above provided discharges the maker from the contract, and the property becomes vested in the payee or his assignee and he may maintain an action in relation thereto as in other cases.

SEC. 964. **Lien.** But if the property tendered be perishable, or require feeding or other care, and no person be found to receive it when tendered it is the duty of the person making the tender to preserve, feed, or otherwise take care of the same, and he has a lien on the property for his reasonable expenses and trouble in so doing.

SEC. 965. **Damages on bills.** The rate of damage to be allowed and paid upon the non-acceptance or non-payment of bills of exchange drawn or indorsed in this state, when damage is recoverable, shall be as follows:

If the bill be drawn upon a person at a place out of the [152] United States or in California or the territory of Oregon, Utah, or New Mexico, ten per cent upon the principal specified in the bill with interest on the same from the time of the protest; if drawn upon a person at a place in the state of Iowa, Missouri, Illinois, Wisconsin, or Minnesota, three per cent. with interest; if drawn upon a person at a place in the state of Arkansas, Louisiana, Mississippi,

Tennessee, Kentucky, Indiana, Ohio, Virginia, District of Columbia, Pennsylvania, Maryland, New Jersey, New York, Massachusetts, Rhode Island, or Connecticut, five per cent. with interest; if drawn upon a person at a place in any other state in the United States, eight per cent. with interest.

CHAPTER 59.

TENDER.

SEC. 966. **Not accepted.** When a tender of money or property is not accepted by the party to whom it is made the party making it may if he sees fit retain in his own possession the money or property tendered, but if afterwards the party to whom the tender was made see proper to accept it and give notice thereof to the other party and the subject of tender be not delivered to him within a reasonable time the tender shall be of no effect.

SEC. 967. **Offer in writing.** An offer in writing to pay a particular sum of money or to deliver a written instrument or specific personal property, if not accepted is equivalent to the actual tender of the money, instrument, or property, subject however to the condition contained in the preceding section, but if the party to whom the tender is made desire an inspection of the instrument or property tendered (other than money) before making his determination it shall be given him on request.

SEC. 968. **Receipt.** The person making a tender may demand a receipt in writing duly signed for the money or article tendered as a condition precedent to the delivery thereof.

SEC. 969. **Objection.** The person to whom a tender is made must at the time make any objection which he may have to the money, instrument, or property tendered, or he will be deemed to have waived it. And if the objection be to the amount of money, the terms of the instrument, or the amount or kind of property, he must specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards. But an offer of bank notes is not a tender though not objected to.

[153] CHAPTER 60.

SURETIES.

SECTION 970. **Requiring creditor to sue.** When any person bound as surety for another for the payment of money or the performance of any other contract in writing apprehends that his principal is about to become insolvent or to remove permanently from the state without discharging the contract, if a right of action has accrued on the contract he may by writing require the creditor to sue upon the same or to permit the surety to commence suit in such creditor's name and at the surety's cost.

SEC. 971. **Creditor refusing.** If the creditor refuse to bring suit, or neglect so to do for ten days after the request, and does not permit the surety so to do and furnish him with a true copy of the contract or other writing therefor and enable him to have the use of the original when requisite in such suit, the surety shall be discharged.

SEC. 972. **Suit by surety.** When the surety commences such suit he shall file his undertaking to pay such costs as may be adjudged against the creditor,

and the suit shall be brought against all the obligors, but those joining in the request to the creditor shall make no defense to the action but may be heard on the assessment of the damages.

SEC. 973. **Provisions limited.** The provisions of this chapter extend to the executor of a deceased surety and to the executor, indorsee, and assignee of the creditor; but they do not extend to the official bonds of public officers, executors, or guardians.

CHAPTER 61.

PRIVATE SEALS

SECTION 974. **Abolished.** The use of private seals in written contracts (except the seals of corporations) is hereby abolished, and the addition of a private seal to an instrument of writing hereafter made shall not affect its character in any respect.

SEC. 975. **Consideration implied.** All contracts in writing hereafter made and signed by the party to be bound or his authorized agent or attorney shall import a consideration in the same manner as sealed instruments now do.

SEC. 976. **Failure of consideration.** The want or the failure, in the whole or in part, of the consideration of a written contract may be shown as a [154] defense, total or partial as the case may be, in an action on such contract brought by one who is not an innocent and *bona fide* holder.

CHAPTER 62.

ASSIGNMENTS FOR CREDITORS.

SECTION 977. **General assignment.** No general assignment of property by an insolvent or in contemplation of insolvency for the benefit of creditors of the assignor shall be valid unless it be made for the benefit of all his creditors in proportion to the amount of their respective claims.

SEC. 978. **Assent.** In the case of an unconditional assignment of property for the benefit of all the creditors of the assignor the assent of the creditors shall be presumed.

CHAPTER 63.

OATHS AND ACKNOWLEDGMENTS.

SEC. 979. **By whom taken.** The following officers are authorized to administer oaths and take and certify the acknowledgment of instruments in writing; each judge of the supreme court, each judge of the district court, each judge of a county court and the prosecuting attorney when acting in his stead, each clerk of the supreme court, each clerk of the district court both as clerk of the district court and as clerk of the county court, each justice of the peace within his county, and each notary public within his county.

SEC. 980. **Affirmations.** Persons conscientiously opposed to swearing may affirm, and shall be subject to the pains and penalties of perjury as in case of swearing.

CHAPTER 64.

MECHANICS' LIENS.

SECTION 981. **When lien exists.** Every person who by virtue of a contract with the owner of a piece of land performs work or furnishes material especially for any building and which material is used in the [155] erection or reparation thereof, has a lien upon the land including the building with its appurtenances for the amount due him for work or material, against all persons except incumbrancers by judgment rendered, and by instrument recorded, before the commencement of the work or the furnishing of the material.

SEC. 982. **"Owner"—"building."** The word "owner" in this chapter includes any person who has any estate or interest in the land, and the lien hereby given extends to the whole of his estate and interest in the land and no farther. And the word "building" includes permanent machinery substantially connected with a building and the lien applies to both building and machinery.

SEC. 983. **Sub-contractor.** A sub-contractor has no lien on such building but may proceed as hereafter authorized.

SEC. 984. **Action.** The person wishing to avail himself of such lien shall commence his action within one year from the time payment should have been made by virtue of the contract under which the lien is claimed.

SEC. 985. **Manner.** The action may be commenced as in ordinary cases upon such an account, but the complaint shall farther set forth sufficient of the contract to show the foundation of the plaintiff's claim to a lien stating any terms which were specially agreed upon in the contract, and shall describe the tract of land (not exceeding a quarter of a section) or the town lot on which he claims his lien, and pray an enforcement thereof.

SEC. 986. **Copies and pleading.** When the contract is in writing that as well as the account or their copies shall be filed, and the rules of pleading and proceeding in other actions are applicable to this according to the nature of the case.

SEC. 987. **Judgment.** A judgment for the plaintiff shall be that he recover the amount found due and that his lien on the tract of land and building is established (describing the tract) to be limited by the ascertainment (as herein directed) of two acres of the tract if it exceed that quantity, and the judgment shall order a special execution to issue against the given tract of land or lot, and the judgment shall not be a lien on any other property of the defendant.

SEC. 988. **Town lot.** If the given land be a town lot the lien shall be limited to the lot and shall extend to the whole thereof, provided it do not exceed half an acre, subject to the qualifications hereafter expressed.

SEC. 989. **Execution.** If the given tract of land be supposed to contain more than two acres, or more than half an acre in the case of a town lot, the sheriff having the execution shall proceed as follows:

SEC. 990. **Parties agreeing.** If the owner and creditor can agree in fixing the [156] locality and bounds of the proper quantity of land their agreement shall be reduced to writing, accurately describing the land by metes and bounds, be signed by the parties and attested by the sheriff, and it shall stand as the ascertainment of the proper land to which the lien and subsequent proceedings are to be limited and be returned by the sheriff with his doings.

SEC. 991. **Proceeding.** If the parties do not so agree the sheriff is required to proceed as follows for the ascertainment of the proper quantity of land.

He is to take a person competent to survey and a disinterested householder of the vicinity and administer to them the following oath in substance which must be in writing, signed by them, and certified by him:

We, (A. and B.) do solemnly swear that we will with faithfulness and impartiality perform our duty in ascertaining and setting out the proper portion of the land of (C) subject to the mechanic's lien of (D) by virtue of an action of the said (D) against the said (C) in the district court of —— county, wherein judgment was recovered on —— (or before (E) a justice of the peace on —— and filed in the district court of —— county, as the case may be.)

SEC. 992. **Directions.** The sheriff and the two persons appointed by him shall then proceed to ascertain and set out by metes and bounds two acres of the land fairly consulting the interests of both parties, subject to the following directions:

1. The two acres must include the building on which the lien arose;
2. They are not to be restricted by inclosures nor by congressional lines, but are restricted to contiguous lands;
3. They should be set out in a rectangular form and as nearly in a square as practicable;
4. When the lien arises on a dwelling-house the two acres shall inclose such out-houses as are usually occupied with a dwelling and as are requisite to its convenient use in the given case;
5. But in such case if there be two dwelling-houses only one shall be taken although this direction reduces the quantity of land below that before prescribed;
6. If the lien does not arise on a dwelling-house such house shall not be taken although the quantity be thereby reduced as in the preceding direction;
7. Any building any part of which had commonly been used as a dwelling before the commencement of the work out of which the lien arose is to be accounted a dwelling-house; and any shed or out-house contiguous to the dwelling is to be accounted a part thereof;
8. The two acres should reach a highway if there be [157] one touching the land, and to effect this object the third direction may be modified;
9. But if a road cannot be thus reached without essentially conflicting with other more material directions, then a roadway of such width as the plaintiff desires to the highway may be set out as a part of the two acres.

SEC. 993. **Same waived.** The above directions are intended as guides to the parties when they ascertain the land by agreement unless they waive them by their agreement, as well as for the viewers.

SEC. 994. **Return.** The doings of the viewers shall be reduced to writing accurately describing the land set out and be signed by the three or a majority of them and returned by the sheriff when the execution is returned.

SEC. 995. **Restriction of lien.** The two acres being ascertained in either of the above methods the lien of the plaintiff and the levy of the execution shall be restricted thereto, and the sheriff may proceed to advertise and sell the same as he sells real property in other cases.

SEC. 996. **Several petitioners.** Any number of persons claiming a lien on the same building may join in one action but stating their several accounts and contracts distinctly as in a separate action, and the judgment shall show the amounts they severally recover but the execution shall be joint and the sale shall be for the benefit of all such recoverors ratably. Each of such recoverors may nevertheless have his separate action subsequently on the judgment for the amount recovered by him.

SEC. 997. **Other like liens.** The ascertainment of the two acres under any one execution shall stand for all other mechanic's liens established on the same building for labor or materials expended on it within two years from the first establishment of a lien.

SEC. 998. **Town lot.** The words "two acres" used in this chapter shall be limited to half an acre when the land in question is a town lot.

SEC. 999. **A creditor redeeming.** A creditor who claims a mechanic's lien on the same building and who has commenced an action for the establishment thereof, may redeem the property by paying the amount for which it sold with ten per cent. per annum thereon to the clerk of the district court within the time allowed to the defendant to redeem; and if the property was sold to a plaintiff in any such action for lien, the new creditor may redeem within six months after the recovery of a judgment on which he can proceed.

SEC. 1000. **Defendant redeeming.** If the defendant has redeemed the new creditor may levy as if no levy and sale had been made except that the assignment of the two acres under the former execution shall stand

[158] SEC. 1001. **Redeeming creditor's lien.** When such creditor redeems from a prior sale he has a lien on the property as a purchaser for both his own judgment and the redemption money paid by him, and to effect such lien shall cause a levy and sale under his own execution of the same property, but if he has not obtained a judgment and does not ultimately obtain one he shall still have his lien on the property for the money paid by him in redemption with interest thereon at six per cent. per annum and shall be entitled to the sheriff's deed unless the property be redeemed, and the defendant in this case may redeem it within six months after the final determination of such claimant's action; and if the sheriff's deed has been given to a former lien creditor and purchaser the party so redeeming shall be entitled to a release from such former creditor and purchaser.

SEC. 1002. **Redemptions entered.** All redemptions shall be certified by the clerk in the sale book and the money received therefor shall be paid by him to those entitled to the proceeds of the former sale and in the same proportion.

SEC. 1003. **General execution.** When such judgment is not fully satisfied by the above proceedings the creditor may have a general execution on the judgment and proceed against other property as on a general judgment.

SEC. 1004. **Surplus.** The surplus of the proceeds of a sale not belonging to the above creditors is to be paid to the defendant saving however the rights arising under any levy on, or garnishment of, the same.

SEC. 1005. **Sub-contractor.** A sub-contractor may obtain a lien against his principal contractor in like cases with those in which the contractor may obtain a lien on the building, and in the following manner.

SEC. 1006. **Action—garnishment.** He shall commence an action against his principal within six months from the time payment should have been made under his contract, and upon filing with the clerk or justice an affidavit of himself or his agent or attorney of his belief of the truth of his claim and his belief that the said owner is indebted to the contractor (whether it be on the given building or otherwise), a writ of garnishment may issue to the owner returnable at the same term with the action, and from the service thereof all indebtedness of the owner to the contractor and any property of the contractor in the hands of the owner shall be stayed in the hands of the owner and the proceedings shall have the qualities of, and be conducted as, an ordinary garnishment.

SEC. 1007. **Sub-contractor's rights.** When a judgment is rendered in favor of a sub-contractor against the owner as such garnishee the record shall show

the relation of the parties, and the sub-contractor [159] may have the benefit of the lien of the principal contractor and shall take precedence thereof, and the sub-contractor is invested with all the rights in relation to levy, sale, and redemption, in this chapter given to the contractor.

SEC. 1008. **Release of property.** In the cases above contemplated the owner or contractor so sued may release his property or demands from lien by filing with the proper clerk or justice a written undertaking with two or more sureties approved by the clerk or justice, to pay the plaintiff the amount which may be recovered with costs, and acknowledged by the undertakers: and a general judgment may be rendered against both principal and sureties.

SEC. 1009. **Collateral security.** No person is entitled to a mechanic's lien who takes collateral security on the same contract.

SEC. 1010. **Bridges, railroads, etc.** The benefits of this chapter are extended to persons furnishing labor or materials for the construction of any bridge, railroad, or other work of internal improvement in the same manner as though such work were a "building" within the meaning of this chapter: and the lien extends to the whole work and its appurtenances together with all the real or personal property connected therewith.

TITLE XIV.

OF EDUCATION.

CHAPTER 65.

THE STATE UNIVERSITY.

SECTION 1011. **Established.** There shall be established at Iowa City, the present seat of government of the state of Iowa, an institution to be called the "State University of Iowa," with such branches as, in the opinion of the general assembly, the public convenience may hereafter require.

SEC. 1012. **Buildings.** The public buildings at Iowa City together with the ten acres of land on which the same are situated, are hereby granted for the use of said university; provided, that the sessions of the general assembly and the offices of the [160] officers of the state, shall be held in the present capitol until otherwise provided for by law.

SEC. 1013. **Lands.** The two townships of land granted by act of congress of July 20th, 1840, for the support of a university, be, and the same are hereby, donated to the said state university, to be and constitute a permanent fund, the interest of which shall be applied exclusively to the support of said university and such branches as the general assembly shall establish.

SEC. 1014. **Trustees.** For the control of said university and for the better management of the same, there shall be appointed by the general assembly of the state, fifteen trustees, five of whom shall be chosen biennially, who may make such by-laws, rules, and regulations under the general laws of this state authorizing incorporations for educational purposes, as may be necessary to organize and regulate said university. The superintendent of public instruction shall be president of the board of trustees, and shall have power to call special meetings of the trustees whenever in his opinion it is necessary.

SEC. 1015. **Same.** James P. Carleton, H. D. Downey, Thomas Snyder, Samuel McCrory, Curtis Bates, Silas Foster, E. C. Lyons, James H. Gower,

George G. Vincent, William G. Woodward, Theodore S. Parvin, George Achison, S. G. Matson, H. W. Starr and Ansel Briggs, be, and they are hereby appointed the first board of trustees, five of whom shall hold their offices two years, five four years, and five six years; their several terms of office to be determined by lot.

SEC. 1016. **Teachers' professorship.** Whenever, in the opinion of the superintendent of public instruction, it is necessary, a professorship for the education of teachers of common schools may be instituted, in such manner as in the opinion of said superintendent will best promote the interests of common schools throughout the state.

SEC. 1017. **Land.** The two townships of land herein donated to said university, when selected, shall be disposed of by the board of trustees of said university in the same manner, and under the same regulations as may be provided by law for the disposition and regulation of the sixteenth sections in the different townships.

SEC. 1018. **Fund.** When said lands shall be disposed of as provided for in this act, the fund arising therefrom shall be paid into the state treasury; and it is hereby made the duty of the treasurer to loan the same out for a space not less than five years, upon real estate security (the interest thereon payable annually) and the interest thereof to be subject to the order of the board of trustees of said university and by them applied to the uses intended by this act.

SEC. 1019. **Meetings.** The said trustees shall meet at such times as shall [161] be fixed by their own appointment, and eight members shall constitute a quorum to transact business.

SEC. 1020. **Religion.** Said university shall never be under the exclusive control of any religious denomination whatever.

SEC. 1021. **Condition of grant.** The grants and donations herein made are upon the express condition that the said university shall, so soon as it shall be in the enjoyment of revenue from the said grant and donations at the rate of two thousand dollars per annum, commence and continue the instruction, free of charge, of fifty students annually in the theory and practice of teaching, as well as in such branches of learning as shall be deemed best calculated for the preparation of said students for the business of common school teaching. Said students to be selected from the different parts of the state in such manner and under such regulations as the governor, the superintendent of public instruction, and the judges of the several judicial districts shall determine—said regulations to be subject to the supervision of the general assembly.

SEC. 1022. **Supervision.** Nothing herein contained shall be construed to prevent the general assembly of this state from exercising full supervision over the said university, its officers, and the grants and donations made or to be made by the state.

SEC. 1023. **Record of trustees.** The board of trustees shall keep a set of books, in which they shall keep an accurate account of all transactions relative to the sale and disposition of the land and the management of the fund arising therefrom, and a complete record of all their proceedings in the control and management of the affairs of the university, which shall at all times be open to the inspection of the general assembly, to whom they shall report whenever required.

Approved February 25th, 1847.

SEC. 1024. **Vacancies filled.** Robert Lucas, A. H. Palmer, Curtis Bates, Dexter P. Smith, Charles Burnham and Silas Foster are hereby appointed

trustees to fill the vacancies which have occurred in the board of trustees of the state university. The governor of the state of Iowa is hereby appointed ex officio trustee of said university.

Approved January 15, 1849.

SEC. 1025. **Vacancies filled.** George W. M'Cleary, E. C. Lyon, Anson Hart, James H. Gower and G. D. Palmer are hereby appointed trustees to fill the vacancies which have occurred in the board of trustees of the university of Iowa by the expiration of the terms of certain members thereof, and the vacancy occasioned by the resignation of A. H. Palmer, formerly a member of the above board.

Approved February 5th, 1851.

[162] *Medical Department.*

SEC. 1026. **College at Keokuk.** The college of physicians and surgeons located at Keokuk, Lee county, Iowa, is hereby recognized and established as the medical department of the Iowa state university.

SEC. 1027. The said medical department shall have power to grant diplomas for the degree of doctor of medicine, to such persons as they deem qualified for such degree, and power to make such regulations and adopt such rules as may be necessary for the good of said department.

SEC. 1028. All persons having obtained such degree of doctor of medicine from said institution, are permitted to practice physic, surgery, and obstetrics with this state.

Approved January 28th, 1851.

Branch at Fairfield.

SEC. 1029. There is hereby established at Fairfield in the county of Jefferson, a branch of the state university to be placed upon the same footing, in respect to funds and all other matters, as the university located by the act of February 25, 1847, at Iowa City.

SEC. 1030. **Directors.** Barnet Ristine, Christian W. Slagle, Daniel Rider, Horace Gaylord, Bernhart Henn, and Samuel J. Bayard, of the county of Jefferson, are hereby constituted and appointed a board of directors, whose duty it shall be to manage and direct the entire business and affairs of the branch of the state university directed to be located in said county of Jefferson.

SEC. 1031. **Organization.** The above named directors shall meet in the town of Fairfield on the first Monday of May next, and organize by taking the necessary oath of office, and shall proceed to elect one of their number as president, also a secretary and treasurer, who shall hold their offices for two years and until their successors are elected and qualified.

SEC. 1032. **Treasurer.** The treasurer thus elected shall give bond in such sum as a majority of the board may direct, payable to the superintendent of public instruction of this state and filed with him in his office.

SEC. 1033. **President.** The president shall preside at all meetings of the board, and shall cause the secretary to keep and preserve a regular record of all their proceedings, and shall, at least once in each year, at such time as the state superintendent shall direct, make a full and complete statement of the entire condition of the institution.

SEC. 1034. **Term of office.** The above named directors shall continue in office as follows, to-wit: two shall continue in office for the term of [163] two years, two for four years, and two for six years, which shall be determined by lot at the first regular session, and the vacancies occasioned by the expiration of the offices shall be filled by joint resolution of the general assembly of the

state, and the persons thus chosen by the general assembly shall continue in office for six years.

SEC. 1035. **Powers.** The board of directors and their successors in office are hereby clothed with the same power and authority to make and enforce contracts, that school districts now have, under the general laws of the state.

SEC. 1036. **Site.** The board of directors as soon as practicable after they are organized shall proceed to select a site of sufficient size in or near the town of Fairfield in Jefferson county, upon which to erect suitable buildings for said university, and shall procure a valid title to the same for the special benefit of the said institution.

SEC. 1037. **Donations.** The board of directors is hereby authorized to receive any gifts, grants, or donations of money, lands, or other property, and to sell and convey the same, and to apply the proceeds thereof to the erection of suitable buildings for said university, or furnishing the same with books, maps, charts, and other necessary apparatus.

SEC. 1038. **Funds.** The board of directors is hereby authorized to use any or all of the funds which accrue from the proceeds of the sale of the public lands granted, or that may hereafter be granted by the general government to this state for a university, and which are set apart by the superintendent of public instruction as the rightful share of the branch university in Jefferson county, in the erection of buildings and the payment of professors or teachers of said institution.

SEC. 1039. **Quorum.** At all meetings of the board a majority of the directors shall be a quorum for transacting business; and no money shall be drawn from the treasury but by the order of the board, signed by the president and countersigned by the secretary.

Approved January 15, 1849.

SEC. 1040. **Vacancies filed.** Barnet Ristine, Christian W. Slagle and Charles Negus are hereby appointed trustees to fill the vacancies occasioned by the expiration of the terms of the trustees of the branch of the state university at Fairfield in Jefferson county.

Approved, February 5, 1851.

Branch at Dubuque.

SEC. 1041. There is hereby established a branch of the state [164] university in or near the city of Dubuque, to be placed upon the same footing in respect to funds and all other matters as the university located by the act of the general assembly of the state of Iowa, approved February 25th, 1847.

SEC. 1042. **Control—powers.** The said branch shall be under the control of the superintendent of public instruction and the board of trustees hereinafter provided for, who shall on the first Monday of May next, hold a meeting in the city of Dubuque, and select a site for buildings and grounds in or adjoining the said city of Dubuque, and secure the title for the same by deed of gift or otherwise, and take the necessary measures for the speedy erection of buildings with a view to their future enlargement, and appoint professors and tutors when their services shall be required, and remove the same at pleasure, and provide such books and such other facilities as may be proper, and as the funds for that purpose will admit; and it shall be their duty to put the said branch into operation as soon as practicable, not later than fifteen months from the passage of this act if the means at their disposal will admit.

SEC. 1043. **Trustees.** John King, Caleb H. Booth, James M. Emerson, M. J. Sullivan and Richard Bonson, are hereby appointed members of the board of trustees; and the governor of the state for the time being shall be a member of said board. But no moneys shall be appropriated to the support of any

branch of the university until the revenues to the parent institution shall exceed three thousand dollars per annum from the grant made by congress.

Approved, January 16, 1849.

CHAPTER 66.

SCHOOL LANDS AND FUND.

SEC. 1044. **Sixteenth section allotted.** It shall be the duty of the trustees of the several townships in this state, at as early a day as may be convenient after the next township elections, to proceed to an examination of the sixteenth section or sections in their townships respectively, or lands granted in lieu thereof, and allot the same into such parcels as, in their opinion may be best to suit purchasers and advance the interest of the school fund; in such allotment conforming, as far as may be consistent with the interest of said fund, to the legal subdivisions by the United States surveys, and place a true value on each parcel, which value shall not be less than at the rate of one dollar and twenty-five cents per acre; provided, that upon [165] lands settled upon and improved previous to the survey, the valuation shall be made as prescribed in the next succeeding section.

SEC. 1045. **Settler's privileges.** When any person shall have settled and made improvements on the sixteenth section previous to the survey, he shall give the fund commissioner notice thereof accompanied by an affidavit of the truth of his statement. He shall then select one appraiser, and the fund commissioner shall appoint another, and in case of a disagreement the two shall choose a third. The appraisers thus chosen shall appraise the land thus occupied, independent of the improvements, and the improvements by themselves. The occupant shall then be permitted to purchase the land at the appraised value on the conditions hereinafter provided. In case he shall fail to do so within ten days after the appraisement, the land shall then be sold to the highest bidder; but in that case the purchaser, in addition to the price of the land, shall pay the occupant the appraised value of the improvements in cash. In case the land shall be offered to the highest bidder as aforesaid and not sold, the occupant shall pay annually to the fund commissioner of the proper county to the use of the school fund interest at the rate of ten per cent. per annum on the appraised value of the land and improvements, from the day the state of Iowa was admitted into the Union until the land be sold as hereinbefore provided, anything in the said second section to the contrary notwithstanding.*

SEC. 1046. **New allotment.** For good cause the fund commissioner may direct a new assessment or allotment, or either, as the case may seem to require.

SEC. 1047. **Record.** The fund commissioner shall keep a faithful record of his acts and doings by virtue of his office, and of all papers filed in the same.†

SEC. 1048. **Sale of land—terms—payment.** The fund commissioners of the respective counties, having received the allotment and appraisement of any or all of the sections sixteen, or lands granted in lieu thereof, shall, after giving thirty days' notice by written or printed advertisements in three of the most public places in the county, and one in the township wherein the land is situated, proceed to sell such land to the highest and best bidder, upon the following terms, to-wit: one-fourth of the purchase money in advance and the balance on a credit not exceeding ten years,

*As amended January 25, 1848.

†As amended February 5, 1851.

bearing interest at the rate of ten per cent. per annum from the day of sale until paid, payable annually at the office of said fund commissioner. Lands assessed as aforesaid shall not sell for less than their appraised value. The fund com-[166]-missioner shall receive, when desired by the purchaser, the whole of the purchase money in advance.

SEC. 1049. **Same.** If the purchaser pay the money in hand, the fund commissioner shall give him upon the receipt thereof, a certificate of purchase which shall entitle him to a patent, which patent shall be issued by the governor.

SEC. 1050. **Credit.** If the lands be purchased upon a partial credit as hereinbefore mentioned, the contract shall be forthwith reduced to writing, signed by the parties, and filed and recorded in the office of said commissioner, and thence, during the continuance of such contract, it shall be lawful for such purchaser or his assignee at any time to pay the principal and interest due upon such contract and receive a certificate of purchase as mentioned in the preceding section.

SEC. 1051. **Pay day.** In order that the day of paying interest may be uniform, all contracts therefor shall make the first day of January following the date of the contract the day of the first payment, and annually thereafter upon the same day.

SEC. 1052. **Forfeiture.** If any person fail to pay the interest due upon any contract as hereinbefore mentioned, it shall be lawful for the fund commissioner in his discretion, either to consider the contract as forfeited and proceed to sell the land anew upon the terms prescribed in the fifth section of this act, or to collect the same by suit.

SEC. 1053. **Waste.** All contracts for the purchase of lands under the provisions of this act shall be subject to such regulations to prevent waste as may, from time to time, be prescribed by law.

SEC. 1054. **Credit.** When it appears to the satisfaction of the fund commissioner that any lands by him about to be offered for sale are of such a description that a sale thereof upon a partial credit would be wholly incompatible with the interest of the school fund, and the preservation thereof from waste, and especially in the case of timbered lands the value whereof consists chiefly in the timber growing thereon, the fund commissioner may, in his discretion, exact the whole of the purchase money in advance, or if he sell such lands upon a partial credit as hereinbefore prescribed, it shall be his duty to require good collateral security for the payment of the residue of the purchase money upon the terms agreed upon.

SEC. 1055. **Waste.** When the fund commissioner is satisfied that waste is being committed upon school lands, sold or unsold, it shall be lawful for him to apply by petition to the district court, or any judge thereof, for an injunction to stay waste, and the same if granted shall be without bond and shall stand for trial first in order upon the court docket. The said bill shall be tried in a summary way, upon which the fund commis-[167]-sioner shall be a competent witness; the court may make such order in the premises as may be equitable and calculated to secure the school lands from waste or destruction, and may adjudge damages to the fund commissioner, against the party, for the injury done; the costs shall abide the event of the injunction.

SEC. 1056. **Five per cent.** The five per centum upon the net proceeds of the sales of the public lands granted by the United States to this state shall be paid into the hands of the superintendent of public instruction to be disposed of according to law.

SEC. 1057. **Escheats.** The proceeds of the sales of intestate estates, to which there may be no heir, shall be paid into the general school fund and be disposed of according to law.

SEC. 1058. **Additional security.** When, in the opinion of the judge of any county, the security of the fund commissioner of the county may be insufficient, the said judge may cite the said fund commissioner to appear before him at some specified time, to show cause why he shall not enlarge his bond, or give additional security, or both, as the case may be; and upon the return of the process served the judge may make such order in the premises as he may think proper. If the fund commissioner neglect or refuse to comply therewith, the judge may remove him from office.

SEC. 1059. **Taxes.** All lands contracted for under the provisions of this act shall be subject to taxation from the day of making the contract of purchase, to be paid by the person contracting therefor or by the occupant.

Approved February 25th, 1847.

SEC. 1060. **Settler's privileges.** All the rights and privileges conferred by the second section of the above act of February 25, 1847, upon the settlers on the sixteenth sections of public lands, shall also be enjoyed by the assignees or legal representatives of such settler.

SEC. 1061. **Same.** All persons who have settled or may hereafter settle upon such sixteenth sections, after they may have been surveyed, shall enjoy the same rights which are by law conferred upon those who may have settled prior to such survey, except that such latter settler claiming the right of pre-emption shall pay an advance of fifty per cent. over and above the appraised value of the land in its unimproved state, and the same course shall be pursued in regard to its valuation and sale as is provided by the act above referred to in relation to sixteenth sections which may have been settled upon prior to the public surveys.

Approved January 24, 1848.

SEC. 1062. **Selection rejected.** In all cases where lands have been selected under [168] the provisions of the aforesaid act of February 28th, 1847, where such selections have been, or may hereafter be rejected by the general government, it is hereby made the duty of the proper officer to cancel the bonds given, and also to refund back all moneys which may have been paid by purchasers of land under the provisions of said act, upon request being made by the proper person at his office.

Approved, January 25, 1848.

SEC. 1063. **Agents to select.** John M. Whitaker of the county of Van Buren, William H. Morrison of the county of Dubuque, and Robert Brown of the county of Jefferson, are hereby appointed agents to select the remainder of the five hundred thousand acres of land granted to the state of Iowa upon the admission of said state into the union, under the 8th section of the act of congress of September 4th, 1841, entitled, "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights." The said Whitaker shall confine the selections made by him to the Fairfield land district, said Morrison to the Dubuque land district, and the said Brown to the Iowa City land district.

SEC. 1064. **Oath.** Said agents shall take and subscribe an oath before some clerk of the district court in this state, for the faithful discharge of the duties required of them by this act, and shall file an authenticated copy of the same with the register of each land office in this state.

SEC. 1065. **Duty.** They shall then proceed to select the land in accordance with the instructions of the commissioner of the general land office of August

6th, 1847, and report the same to the register of the land office in whose land district the selection is made.

SEC. 1066. **Compensation.** They shall each be allowed the sum of three dollars for every day they may be necessarily employed in the discharge of their duties, and shall present their respective accounts verified by oath to the auditor of state, who shall audit and allow the same and shall draw a warrant in their favor for the amount thus verified on the treasurer of state, to be paid out of any money in the treasury not otherwise appropriated.

SEC. 1067. **Record.** It shall be the duty of each of the aforesaid agents to keep a correct record of the selections of land made by himself as herein provided, to estimate the value per acre of each quarter section, and to make a full report of the same on the first day of December next.

SEC. 1068. **Copy.** The secretary of state shall file a duly authenticated copy of this act as soon as the same shall have been published, with the register of each land office in the state.

[169] SEC. 1069. **Blank forms.** The superintendent of public instruction shall prepare and have printed suitable blank forms for reporting the selections of land as herein contemplated, and shall transmit the same, together with a copy of the instructions of the commissioner of the general land office aforesaid, to each of the aforesaid agents.

SEC. 1070. **Sale of lands.** The superintendent of public instruction may authorize the sale of any lands selected under the provisions of this act in any organized county, by the school fund commissioner, at any rate per acre which the said superintendent of public instruction may determine, not less than the minimum fixed thereon by the selecting agent, upon the terms prescribed in the act of February 25th, 1847, entitled, "An act to provide for the management and disposition of the school fund."

SEC. 1071. **Reservation.** When it appears to the fund commissioner that the school fund is liable to be injured by bringing into market any portion of the sixteenth section, they may reserve the same from sale. But this shall not be applicable to pre-emptions granted under former laws.

SEC. 1072. **Superintendent's duty.** The superintendent of public instruction shall visit the several counties of the state and examine the books and accounts of the fund commissioners, and shall make such adjustment of the funds under their control as may be necessary to carry into effect any of the provisions of the general assembly relative to the same, according to their spirit and intent. But the said superintendent shall not have control of the funds in the hands of any school fund commissioner, unless by express enactment of the general assembly.

SEC. 1073. **Surveys.** When in the opinion of the school fund commissioner it may be necessary to have any portion of the school lands within his county surveyed, he may employ a surveyor for the purpose who shall be paid out of the interest of the school fund, and the commissioner aforesaid shall render an account of the expense thus incurred together with all other contingent expenses of his office in his annual report to the superintendent of public instruction. But in all cases where a survey is not actually necessary the allotment shall be made by the township trustees, as provided in the act of February 25th, 1847, above referred to.

SEC. 1074. **Pre-emptions.** No person who may avail himself of the right of pre-emption, under the provisions of the act of January 24th, 1848, entitled, "An act to amend an act entitled 'An act to provide for the management and disposition of the school fund,'" approved February 25th, 1847, shall be permitted to pre-empt more than one hundred and sixty acres.

SEC. 1075. **Failure to pay interest.** When any person to whom a portion of the school fund has been loaned fails to pay the interest thereon as pre-[170]-scribed in the ninth section of the act to which this is supplemental, it shall be the duty of the school fund commissioner to report the name of said delinquent to the prosecuting attorney of the county within five days thereafter, who shall immediately commence suit against said delinquent for the collection of said interest.

Approved, January 15th, 1849.

CHAPTER 67.

THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

SECTION 1076. **Election.** At the township election on the first Monday in April, A. D., 1851, and triennially thereafter, there shall be elected a superintendent of public instruction, who shall hold his office for three years and until his successor is duly elected and qualified.

SEC. 1077. **Qualification.** Before entering upon his duties he shall take and subscribe the usual oath of office, and shall also execute a bond in the penalty of twenty-five thousand dollars, payable to the state of Iowa, with sureties to be approved by the governor, conditioned for the prompt discharge of his duties as superintendent of public instruction, and for the faithful application and disposition, according to law, of all school moneys which may come into his hands by virtue of his office. Said bond and oath shall be deposited with the secretary of state, and an action may be maintained thereon by the state, at any time, for a breach of the conditions thereof.

SEC. 1078. **Office.** It shall be his duty to keep an office at the seat of government, and to file all papers, reports and public documents transmitted to him by the school officers of the several counties, each year separately, and hold the same in readiness to be exhibited to the governor or to any committees of either house of the general assembly, and shall keep a fair record of all matters pertaining to the business of his office.

SEC. 1079. **Duty.** He shall, without delay, pay over all sums of money which may come into his hands, by virtue of his office, to the officer or officers authorized to receive the same, in such manner as may be prescribed by law.

SEC. 1080. **Apportion funds.** On the twenty-fifth day of January of each year he shall apportion among the several counties of the state, the interest of the permanent school fund which shall have accrued up to the first day of January aforesaid, and shall immediately transmit to the school fund commissioner a [171] statement of the amount thus apportioned to their respective counties, accompanied with his warrant for the same on the officer in whose hands it may be deposited.

SEC. 1081. **General supervision.** He shall have a general supervision of all the district schools of the state, and shall see that the school system is as early as practicable put into uniform operation: shall visit every county at least once during his term of office, confer freely with the several school officers, and give such advice relative to schools as he may deem necessary; he shall deliver a public lecture to the teachers and people of each school district, on the subject of education, if deemed practicable, and perform generally such duties as may tend to advance the interests of education.

SEC. 1082. **Text Books.** He shall examine and recommend to the several school districts a uniform series of text books, to be used in the schools thereof.

SEC. 1083. **Instructions.** He shall prepare and have printed suitable forms for all reports required by this act, and shall transmit the same with such instructions as he may deem proper for the organization and government of the public schools, and with such directions in reference to the course of studies as he may judge advisable, to the several officers entrusted with their management and care.

SEC. 1084. **Establish rules.** He shall make all farther rules and regulations that may be necessary to carry the law into full effect, according to its spirit and intent, which shall have the same force and effect as though contained herein.

SEC. 1085. **Print laws.** He shall cause so many copies of this act, with the forms, regulations, and instructions herein contemplated, thereto annexed, to be from time to time printed and distributed among the several school districts of the state, as he shall deem expedient.

SEC. 1086. **Report.** He shall make a report to the general assembly at each regular session thereof, exhibiting the condition of the state university and public schools, and of the funds appropriated to each, and all such other matters relating to the affairs of his office as he may think proper to communicate.

SEC. 1087. **Compensation.** He shall receive annually the sum of twelve hundred dollars as a salary for the services required under the provisions of this act, and also all necessary contingent expenses for postage, books and stationery pertaining to his office, to be audited and paid as the salaries and contingent expenses of other state officers are.

Approved, January 15, 1849.

SEC. 1088. **Report.** The superintendent of public instruction shall re-[172]-port biennially to the general assembly of this state on the first day of the session thereof.

Joint Resolution, approved February 5, 1851.

CHAPTER 68.

SCHOOL FUND COMMISSIONER.

SECTION 1089. **Election.** At the annual township election on the first Monday in April, A. D. 1850, and biennially thereafter, in each organized county in this state, there shall be elected one school fund commissioner for the county, who shall hold his office for two years and until his successor is elected and qualified.

SEC. 1090. **Qualification.** Within twenty days after his election he shall take and subscribe an oath that he will faithfully discharge the duties of his office, and shall also execute a bond to the state of Iowa, in the penalty of ten thousand dollars, with sureties to be approved by the clerk of the district court and the sheriff of the county, conditioned for the faithful application of all school money that shall come into his hands. Said bond and oath shall be deposited with the clerk of the district court, and suit shall be brought thereon at any time in case of mal-practice in office, by the prosecuting attorney.

SEC. 1091. **Vacancy.** Should he fail to qualify as above required, or if for any other reason there be a vacancy in the office, the clerk of the district court, prosecuting attorney, and sheriff of the county shall appoint a substitute, who shall qualify in like manner.

SEC. 1092. **Report.** He shall on the fifteenth day of October of each year, transmit to the superintendent of public instruction a report containing an

abstract of the several particulars set forth in the reports of the district secretaries, together with a statement of the financial affairs of his office, and such suggestions as he may think proper to make relative to the schools of his county.

SEC. 1093. **Failure.** Should he fail to make his report as required in the foregoing section he shall forfeit the sum of twenty dollars, and suit shall be brought on his official bond for the collection of the same with damages, by the prosecuting attorney.

SEC. 1094. **Accounts.** He shall keep an accurate account of the receipts and expenditures of his office, and shall render account current thereof at any time when required by the superintendent of public instruction.

[173] SEC. 1095. **Receipts, etc.** He shall take receipts for all moneys paid out, in a book provided for that purpose, file all warrants and orders drawn on him by the respective presidents of the district boards, and all other papers transmitted to him pertaining to the business of his office, and shall hold the same subject to the inspection of the superintendent of public instruction or any of the school officers of his county.

SEC. 1096. **Accounts.** He shall keep a correct account of all moneys received from the township and county officers, specifying the particular source from which the same accrued.

SEC. 1097. **Forms, etc.** He shall distribute to the district officers within his county such blank forms, circulars, and other communications as may be transmitted to him for that purpose by the superintendent of public instruction.

SEC. 1098. **Apportion money.** On the first day of March annually, he shall apportion the interest of the permanent school fund to which his county is entitled, the county school tax, and all money in his hands appropriated for the support of schools, among the several school districts of his county, in proportion to the number of persons reported to him by the respective district secretaries, and shall record a statement thereof in his office.

SEC. 1099. **Same.** He shall immediately notify the president of each school district of the amount to which his district may be entitled by said apportionment, and shall pay the same over to the district treasurer upon the warrant of the president countersigned by the secretary.

SEC. 1100. **Loans.** He shall loan out the principal of the permanent school fund as the same may come into his hands, at the rate of ten per cent. interest per annum; said interest to be made payable at his office on the first day of January in each year.

SEC. 1101. **Security.** The payment of the money thus loaned and the interest thereon, shall be secured by promissory note to be executed by the loanee with two good sureties, and by mortgage on real estate of the clear unincumbered value of double the amount of money loaned.

SEC. 1102. **Same.** The value of real estate proposed to be given in security for money loaned as herein provided, shall be fixed by three appraisers under oath, to be appointed by the fund commissioner, who shall be allowed therefor the sum of fifty cents each to be paid by the loanee.

SEC. 1103. **Same.** No loan to any one person or company shall exceed the sum of five hundred dollars, nor shall any loan be made for a less term than one year or more than five years.

SEC. 1104. **Oaths, etc.** In all cases where it shall be necessary to administer any oath or affirmation under the provisions of this act or any other act pertaining to the duties of the school fund commissioner, he is hereby authorized to administer the same.

[174] SEC. 1105. **School districts.** He shall divide into school districts and number the same, each township or election precinct in his county or any part thereof, where the same has not heretofore been districted, and may alter and change the boundaries of districts thus formed, or those formed under other acts, from time to time as the convenience of the inhabitants of the aforesaid townships and election precincts may require and shall proceed to make such change at any time when petitioned by two-thirds of the legal voters of any district.

SEC. 1106. **Same.** He may form a district from parts of two or more adjoining townships, and shall number said district as belonging to one of the several townships from which it is formed; a district may also be formed from parts of two or more adjoining counties by the concurrence of the respective fund commissioners. But the persons in said district between the ages of five and twenty-one years shall be reported by the secretary of the district to the fund commissioner of the county within which they reside, and the school money to which they may be entitled by virtue of said reports shall be paid to the treasurer of said district.

Approved January 15th, 1849.

SEC. 1107. **Report.** The several school fund commissioners in this state shall report annually on the first day of November in each and every year, to the superintendent of public instruction, in such manner as he may direct.

Joint Resolution, approved February 5th, 1851.

CHAPTER 69.

SCHOOL DISTRICTS.

SEC. 1108. **Body corporate.** Each school district formed and organized under any former law or under the provisions of this act, is hereby declared to be a body corporate by the name and style of School District No. — of the township of — in the county of — and state of Iowa, and in that name it may hold property and be a party to suits and contracts.

SEC. 1109. **New districts.** Upon the formation of a new school district, the fund commissioner shall notify some qualified voter thereof, by written notice, describing the boundaries of the district, and also the time and place of the first meeting.

SEC. 1110. **Notice.** Such qualified voter shall notify each elector in the district of the same, by personal service as far as convenient, and shall post a notice at the place of meeting and also in [175] three other public places in the district, stating the boundaries of the district and the time and place of meeting, at least six days before the time of said meeting.

SEC. 1111. **Organization.** The qualified electors of the district when assembled in accordance with the notice required in the foregoing section, shall organize by appointing a president and secretary who shall act as judges of the election, and the name of each elector shall be recorded by the secretary.

SEC. 1112. **Officers.** They shall then by ballot elect one president, one secretary, and one treasurer, who shall constitute a board of directors for the district, and shall hold their offices until the next succeeding annual district election, and until their successors are elected and qualified.

SEC. 1113. **Qualification.** Said directors shall, within ten days after their election, appear before some justice of the peace and take an oath for the faithful performance of their duties; and in case they fail so to do, they shall each forfeit the sum of five dollars for the use of the district.

SEC. 1114. District meetings. The regular meetings of each school district shall be held on the first Monday in May and October in each year.

SEC. 1115. Powers of districts. The qualified electors of the district, when assembled, shall have power:

1. To appoint a chairman and secretary, in the absence of the regular officers;

2. To adjourn from time to time as occasion may require;

3. To determine the number of schools which shall be established in the district and the length of time that each shall be taught;

4. To fix the site for each school house, taking into consideration in doing so the wants and necessities of the people of each portion of the district;

5. To lay such tax on the taxable property of the district as the meeting shall deem sufficient to purchase or lease a suitable site for a school house or school houses, and to build, rent or purchase a school house or school houses, and to keep in repair and furnish the same with the necessary fuel and appendages, and for procuring libraries for the schools, books and stationery for the use of the board and the district meetings, and to defray all other contingent expenses of the district: provided, however, that said tax shall not exceed one and one-half per cent. on the taxable property aforesaid in any one year.

6. To direct the sale or other disposition to be made of any school house or the site thereof, and of such other property real or personal as may belong to the district, and to [176] direct the manner in which the proceeds arising therefrom shall be applied;

7. To determine what branches of learning shall be taught in the schools of their districts;

8. To delegate any or all of the powers contained in the foregoing specifications to the district board;

9. To fix the compensation of the secretary and treasurer of the district, and to transact generally such business as may tend to promote the cause of education in accordance with the provisions of this act.

SEC. 1116. Taxes. In levying a tax the district meeting shall designate the respective objects for which the same is raised, and the amount to be raised for each object; and the aggregate amount shall be assessed and collected by the secretary as herein provided.

SEC. 1117. Powers—schools. They may determine whether a school of a higher grade shall be established in the district, the number of teachers to be employed, and the course of instruction to be pursued therein; and may erect for the purpose one or more permanent school houses, and shall cause the district board to make such classification of the pupils thereof as they may deem necessary; but in selecting the site for such school house or school houses the permanent interest and future welfare of the people of the entire district shall be consulted. The extra compensation required for teachers' salaries in such school or schools shall be paid by private subscription in such proportionate parts as the board of directors may determine.

SEC. 1118. Rules. They may adopt such rules of order, not incompatible with the provisions of this act and instructions of the superintendent of public instruction, for the government of district meetings, and may alter and change the same from time to time as occasion may require, and may prescribe the manner of taking the sense of the meeting upon any question: provided, that the last specification shall not apply to the election of officers.

Approved, January 15, 1847.

CHAPTER 70.

THE ELECTION, POWERS AND DUTIES OF DISTRICT OFFICERS.

SECTION 1119. **When and what.** There shall be elected in each organized school district, at the regular district meeting on the first Monday in May of each year, one president, one secretary, and one treasurer of the district, who together shall constitute a board of directors for the district, and shall hold their offices for one year and until their successors are elected and qualified.

SEC. 1120. **Qualification.** Said directors shall qualify in the manner prescribed in the preceding chapter for directors elected upon the formation of a new school district, and in case they neglect or refuse so to do they shall be subject to the same penalty.

SEC. 1121. **Meetings.** The board of directors may hold such regular, special or adjourned meetings as they may from time to time determine.

SEC. 1122. **President.** The president, when present, shall preside at all meetings of the board and of the district, sign all warrants for the collection of taxes, all orders on the treasurer for the payment of money, and shall draw all drafts upon the school fund commissioner for money apportioned to his district.

SEC. 1123. **His drafts.** All drafts and orders drawn on the district treasurer as required in the foregoing section shall specify the fund on which they are drawn and the use for which the money is designed.

SEC. 1124. **Board employ teachers.** The district board shall employ all teachers necessary for the schools of the district and pay them by draft on the treasurer; but they must not overdraw the amount due from the teachers' fund; and when there are not sufficient funds in the hands of the treasurer for the payment of such teachers, the balance shall be paid by the persons sending pupils, in such manner as may be agreed upon by the teachers and the district board.

SEC. 1125. **President.** The president shall appear in behalf of his district in all suits brought by or against the same. But when he is individually a party this duty shall be performed by the secretary.

SEC. 1126. **Secretary.** The secretary shall record all the proceedings of the board and of the district meetings in separate books to be kept for that purpose, and shall preserve copies of all reports made to the school fund commissioner, and shall file all papers transmitted to him by other school officers pertaining to the business of the district, and shall countersign all drafts, warrants, and orders drawn by the president.

SEC. 1127. **List.** He shall, between the first and fifteenth day of September of each year, take, and keep on record a list of the names of all the white persons in the district between the ages of five and twenty-one years, and shall deliver a copy of the same to the principal teacher of each school in the district.

SEC. 1128. **Accounts.** He shall keep an accurate account of all the expenses incurred by the district, and shall present the same [178] to the district board to be audited, and paid as herein provided out of the school house fund.

SEC. 1129. **Notice of meetings.** He shall give ten days previous notice of all regular and special meetings of the district as herein authorized, by posting up a written notice in five different places therein, and shall furnish a copy of the same to the teacher of each school in the district to be read once in the presence of the pupils thereof.

SEC. 1130. **Duty as to taxes.** Whenever a tax has been voted by the district, the secretary shall obtain a transcript of the last assessment roll of the county, and shall add thereto any taxable property therein omitted having himself assessed the value thereof, and shall post up a list of the names of the persons taxed at three or more places in the district, with the amount due from each set opposite their respective names so far as their names may be known, at least thirty days previous to his proceeding to collect the tax.

SEC. 1131. **Same.** During the said thirty days should any person file a complaint of being taxed beyond his due portion with the secretary, he shall call a meeting of the district board, who shall correct said assessment if they deem it erroneous.

SEC. 1132. **Warrant.** At the expiration of the said thirty days the president of the board shall issue his warrant to the secretary who shall proceed to collect the tax and pay it over on the order of the president to the treasurer.

SEC. 1133. **Sale.** Should any one when called on neglect or refuse to pay such tax, the secretary shall proceed to collect the same by distress and sale of goods and chattels found within the district, having first posted up at least ten days previous notice of such sale in three of the most public places in the district.

SEC. 1134. **Delinquent tax on land.** When the owner of lands fails to pay the tax thereon, such failure shall be reported by the secretary to the county collector of taxes in time for the same steps to be taken by such collector as are prescribed for the sale of lands for delinquent county taxes for the same year; the lands shall be sold in like manner and with the same consequences as though sold for delinquent county taxes. And if for any cause they are not thus sold at the proper time, they may be sold the following or any subsequent year in the same manner and with the same consequences as above contemplated.

SEC. 1135. **County collector.** The amount of tax collected by the county collector in accordance with the provisions of the foregoing section shall be held by him subject to the order of the president of the proper district, and shall be paid over accordingly.

SEC. 1136. **Secretary's report.** On the first day of October of each year, he shall [179] make out and file in the office of the school fund commissioner a report of the affairs of the district containing:

1. The number of white persons between the age of five and twenty-one years;
2. The number of schools, and the branches taught in each;
3. The number of pupils in each school;
4. The number of teachers employed in each school, and the average compensation of each per month;
5. The number of days each school has been taught, and by whom;
6. The average cost of tuition for a pupil per month in each school;
7. The books used in each school;
8. The number of volumes in the library of each school;
9. The aggregate amount paid teachers during the year, the source from which the same was received, and the amount of the teachers' fund in the hand of the treasurer;
10. The number of district school houses, and the cost of each;
11. The amount raised in the district by tax for the erection of school houses and for all other purposes authorized in this act, and such other information as he may deem useful.

SEC. 1137. **Failure to make.** Should the secretary fail to file his report as above directed he shall forfeit the sum of ten dollars, and shall be liable to make good all loss resulting to the district from such failure. Suit is to be brought in both cases by the president in the name of the district on his official bond.

SEC. 1138. **Treasurer.** The treasurer shall have the custody of all moneys belonging to the district and shall pay out the same upon the order of the president, and shall keep an account of the receipts and expenditures thereof in a book provided for the purpose.

SEC. 1139. **The two funds.** The moneys for the payment of teachers shall be called the "teachers' fund," and those for school houses and district expenses, the "school house fund," and the treasurer shall keep the same distinct and keep separate accounts with them, and no warrant for money shall be paid by the treasurer which does not specify the fund on which it is drawn and the specific use to which it is to be applied; the school house fund shall consist only of taxes collected in the district, and all other school moneys belonging to the district shall go to the teachers' fund, and shall be applied to no other use except to pay the wages of school teachers in the district.

SEC. 1140. **Receive money.** The treasurer shall apply for and receive all money [180] apportioned to the district by the school fund commissioner, when notified of said apportionment.

SEC. 1141. **Statement.** He shall render a statement of the finances of the district as shown by the records of his office, at any time when required by the district board.

SEC. 1142. **Board make contracts, etc.** The district board shall make all contracts, purchases, payments and sales, necessary to carry out any vote of the district for procuring any site for a school house, renting, repairing, or furnishing the same, or disposing thereof, or for keeping a school therein, and perform such other duties as may be delegated to them by the district meeting.

SEC. 1143. **Admit pupils from other districts.** They may, with the concurrence of the board of directors of an adjoining district or districts, admit pupils from either of said districts to a school within their own district, but said pupils shall be enumerated in their respective districts, and the portion of the school money to which they may be entitled by said enumeration shall be applied to the support of said school. The parents or guardians of said pupils shall pay such portion of the contingent expenses and of the amount to be contributed by voluntary subscription for the support of said school, as the respective boards may deem equitable.

SEC. 1144. **Bonds of officers.** The district board shall require the secretary and treasurer each to give bond to the district in such penalty and with such sureties, as in their opinion will secure the district against any loss, conditioned for the faithful application of all moneys that may come into their hands by virtue of their respective offices. Said penalty may be increased from time to time as the interest of the district may require. The bond shall be filed with the president of the board, and in case of a breach of the condition thereof, he shall bring suit thereon in the name of the district.

SEC. 1145. **Judges of elections.** In each organized district they shall act as judges of all district elections.

SEC. 1146. **Examine treasurer's accounts.** They shall from time to time examine the books and accounts of the treasurer and make settlement with him, and shall at each regular meeting of the district present to the same a

full statement of the receipts and expenditures of the district, and such other matters as may be deemed important.

SEC. 1147. **To visit schools.** They shall appoint a committee from their own body to visit the respective schools of the district monthly, and to aid the teachers in establishing and enforcing rules for the government of schools, and to see that the teachers keep a correct list of the pupils, the time during which they attend school, the branches of learning which each pupil is [181] studying, and such other matters as may in the opinion of the board tend to promote the welfare of the school.

SEC. 1148. **Examination of teachers.** Before employing any person to act as teacher, the board of directors shall examine or cause to be examined all such applicants in the following branches of an English education, to-wit: spelling, reading, writing, arithmetic, geography, history of the United States, and English grammar; and if the applicant is found qualified, the board may employ him.

SEC. 1149. **Audit claims.** They shall audit and allow all just claims against the district, and the president shall draw an order for all demands thus audited on the district treasurer.

SEC. 1150. **Special meetings.** They shall, upon the written request of five legal voters of the district, or whenever they deem it expedient, call special meetings thereof; but in all such cases, the notice for such meeting shall clearly state the precise object for which it is called, and the time and place at which it is to be held.

SEC. 1151. **Vacancies.** Should a vacancy occur in the board, they may fill the same by appointment unless it is deemed expedient to call a special meeting of the district for the purpose.

Approved January 15, 1849.

CHAPTER 71.

MISCELLANEOUS SUBJECTS.

SECTION 1152. **County tax.** The county judge of each county shall at the time of levying the tax for county purposes levy a tax for the support of schools within the county, of not less than one-half mill nor more than one mill and a half on the dollar, on the assessed value of all real and personal property within the county, which shall be collected by the county collector at the same time and in the same manner as state and county taxes are collected, except that it shall be receivable only in cash.

SEC. 1153. **Collection of same.** The collector shall on the tenth day of February of each year pay over the amount of said tax which shall have been collected, to the school fund commissioner, and shall render him a statement of the amount uncollected; the amount unpaid shall be collected at any subsequent time as delinquent county taxes are collected, and shall be paid over when collected to the school fund commissioner aforesaid.

SEC. 1154. **Allowance.** The collector shall be allowed one per cent. by the fund commissioner for collecting said tax, and should he fail at any time to pay over the same as herein provided he shall [182] forfeit the sum of fifty dollars and double damages to be collected on his official bond.

SEC. 1155. **Disputes about districts.** In all cases where the alteration of school districts as provided in this act, gives rise to controversy respecting the adjustment of the rights and liabilities of the district or districts affected,

upon which they cannot amicably agree, the matter shall be settled by arbitrators, appointed by the school fund commissioner, as justice and equity may require. All awards made under this act shall be returned to the said fund commissioner who shall, at the request of either party who may wish to except thereto, file the same in the district court to be dealt with as other awards under the statute on that subject.

SEC. 1156. Suits. In all cases where suits may be instituted by or against any of the school officers contemplated or created by this act, to enforce any of the provisions herein contained, counsel may be employed if necessary by the officer instituting the suit, and the expense of suit shall be borne by the district, county, or state, in whose name or against whom the same may be instituted.

SEC. 1157. Forfeitures. All forfeitures provided for in this act shall, when they accrue, belong to the respective districts or counties in which the same may be incurred, and the district treasurers for their districts and the school fund commissioners of their counties are hereby authorized to receive and apply the proceeds of such forfeitures as the interest of the permanent fund is now or may hereafter be applied.

SEC. 1158. Fines appropriated. The clear proceeds of all fines collected within the several counties of this state for breaches of the penal laws, and all fines paid for exemption from, or as an equivalent for, military duty, and all funds arising from the sale of water crafts, lost goods, and estrays shall be paid over in cash by the persons collecting the same, within twenty days after collection, to the school fund commissioner of the county in which the same have accrued and shall be by him apportioned to school districts as provided in this act.

SEC. 1159. Funds separate. All funds arising from a breach of the penal laws, and paid for exemption from, or as an equivalent for, military duty, shall be kept and apportioned separate and apart from all other school funds.

SEC. 1160. Colored persons. All real and personal property of blacks and mulattoes in this state shall be exempt from taxation for school purposes.

SEC. 1161. Transfer of books, etc. Each and every officer created by the provisions of this act, who shall receive by virtue of his office any books or papers and shall refuse to deliver the same to his successor in office, or shall wilfully mutilate or destroy the same or any [183] part thereof, shall be liable to a fine of not less than fifty nor more than one hundred dollars, to be recovered with damages on their respective official bonds.

Approved, January 15, 1849.

SEC. 1162. Fund commissioner elected. In each newly organized county where a school fund commissioner has not been elected, said officer shall be elected at the township election in April, 1851, and shall hold his office till his successor is elected and qualified at the regular election provided for in chapter sixty-eight by the act of January 15th, 1849.

SEC. 1163. New counties to elect—term. In every county that may hereafter be organized a school fund commissioner shall be elected at the time of electing other county officers, and shall hold his office till the regular election for said officer then next ensuing and until his successor is elected and qualified.

SEC. 1164. Books, papers, etc. When any school officer is superseded by election or otherwise, he shall immediately deliver to his successor all books, papers, and moneys, pertaining to his office, taking a receipt therefor which shall specify the particular class of books, papers, and moneys, thus transferred.

SEC. 1165. **Unite districts.** The fund commissioner is authorized to unite two or more districts under one corporate name, with the consent of the districts concerned.

SEC. 1166. **Consent by vote.** The consent of each district thus united must be given by a vote taken at a meeting convened for that purpose, of which due notice must be given.

SEC. 1167. **Powers of new district.** The new district thus formed becomes responsible for the liabilities, and shall assume the control of the property and assets of the districts of which it is constituted.

SEC. 1168. **Vacancies.** Should any emergency arise by which a district may be left without officers the fund commissioner shall appoint a president, secretary, and treasurer for said district, who shall continue in office till the next regular district election thereafter.

SEC. 1169. **Failure—vacancy.** A failure of any district officer to qualify within the time specified by law creates a vacancy.

SEC. 1170. **Effect of change.** No person shall be released from the payment of a district tax by virtue of the alteration of the boundaries of school districts authorized in the act to which this is supplemental, where such alteration was made after the tax was voted, except by a vote of the district from which he is detached.

SEC. 1171. **Same.** Whenever the boundaries of a school district are changed, the fund commissioner shall immediately notify the respective secretaries of the districts affected, of the fact in writing.

[184] SEC. 1172. **Defaulter—punishment.** Any officer charged with the sale of school lands or management of school moneys, who wilfully keeps false books, or who uses the public money which comes into his hands in such a way as to fail in paying the same over to the proper person when legally required, is guilty of felony, and shall upon conviction be punished by imprisonment at hard labor in the penitentiary for a term not exceeding ten years.

SEC. 1173. **Lands entered, taxed.** When a tax has been voted in any school district, no lands entered prior to the said vote shall be exempt from the tax thus voted.

SEC. 1174. **Pay of commissioners—from school fund.** The fund commissioners from and after the first day of April, 1851, shall receive such annual compensation for their services and contingent expenses for books, postage, and stationery as may be allowed by the clerk of the district court, sheriff, and prosecuting attorney and approved by the superintendent of public instruction, to be paid out of the school fund.

SEC. 1175. **Allowance.** Such allowances shall be made in writing by the first day of October of each year, and shall be transmitted by the fund commissioner with his annual report to the superintendent.

SEC. 1176. **Fiscal year.** Said compensation shall be in full for services rendered for the year commencing April first and ending March thirty-first.

SEC. 1177. **Limitation of taxing.** No property shall be subject to taxation for district purposes more than once in any one year.

SEC. 1178. **To take effect.** This act shall take effect and be in force from and after its publication in the Iowa Capital Reporter and Iowa Republican: provided, that nothing herein contained in reference to school districts shall become binding till the first day of April, 1851.

Approved February 5th, 1851.

CHAPTER 72.

NORMAL SCHOOLS.

SECTION 1179. **Three districts.** The state is divided into three districts, in each of which there shall be established a normal school for the education of common school teachers and others. Each school shall educate eight teachers free of charge of tuition, who shall teach, for the term of three years, common schools within the state. Said schools shall be established at Andrew, Oskaloosa and Mount Pleasant. Religious sectarianism shall [185] under no circumstances be incorporated into the system of instruction contemplated in this act. The superintendent of public instruction shall proceed, as soon after the passage of this act as practicable, to divide the state into three districts.

SEC. 1180. **Trustees.** Each normal school shall be governed by a board of seven trustees, to be appointed by the board of trustees of the university, two of whom shall hold their office two years, two for three years, one for four years, one for five years, and one for six years, and until their successors are appointed and qualified: their respective terms of service to be determined by lot at the first regular meeting of the board after their organization.

SEC. 1181. **Officers and duties.** The board of trustees shall meet on the first Wednesday of April next, and appoint a president, vice president and secretary who shall also be librarian and treasurer, and prepare a code of by-laws for the government of their body, and rules and regulations for the government of the school.

SEC. 1182. **Appropriation.** The sum of five hundred dollars is hereby appropriated annually to each school, to be drawn quarterly out of the university fund by the several treasurers, to be expended in payment of teacher's wages, purchasing books, maps, charts, globes, chemical and philosophical apparatus, and mathematical instruments: provided always, that the friends of education shall furnish funds to the amount of not less than five hundred dollars to erect such buildings for the use of said normal schools as the board of trustees may deem necessary.

SEC. 1183. **Report.** The board of trustees shall annually, or oftener if required, report to the superintendent of public instruction the condition of their school, progress of improvement of pupils, and state of the finances, in such a manner as prescribed by the aforesaid officers.

SEC. 1184. **Annual meeting.** The annual meeting of the board shall be on the first Wednesday of October, in each year, at which time they shall report the names of pupils qualified to teach common schools.

Approved, January 15, 1849.

SEC. 1185. That the boards of trustees of the normal schools not yet organized, shall be appointed by the superintendent of public instruction, and shall meet on the first Monday of April next, or as soon thereafter as practicable and perform the duties required by the third section of the above act of January 15, 1849.*

Approved, February 5, 1851.

*The preceding eight chapters, relating to the subject of education, are a compilation of the existing acts upon that subject, made by the superintendent of public instruction, by virtue of a resolution of the general assembly approved February 5, 1851, which requires them to be printed in the code.

[186] CHAPTER 73.

THE DEAF, DUMB AND BLIND.

SECTION 1186. Upon satisfactory evidence being adduced to the county court of any county in the state that there is a deaf, dumb, or blind person between the ages of ten and thirty years residing in such county, it shall be the duty of the court to cause the clerk to certify that fact, together with the name and age of the unfortunate and the names of his parents or guardian to the superintendent of public instruction.

SEC. 1187. The superintendent is authorized, upon the receipt of such certificate and the application of the unfortunate or his parent or guardian, to certify the matter to the auditor of state who shall draw his warrant upon the treasurer of state for the sum of one hundred dollars each year in favor of such person, his parent or guardian, to be applied to the education of the unfortunate person.

SEC. 1188. No such beneficiary will be entitled to draw more than one hundred dollars in one year; nor shall a second draft be made until a receipt be presented from the principal of some deaf and dumb, or blind, asylum, showing that the money previously drawn has been appropriated according to the intention of this chapter.

SEC. 1189. The superintendent shall report to the general assembly at each regular session the number of such unfortunate persons in whose favor money has been so drawn, with their names and residences and the amount drawn for each.

[187] TITLE XV.

CHAPTER 74.

GENERAL PROVISION RELATIVE TO PART FIRST OF THIS STATUTE.

SEC. 1190. Whenever it is found that any of the provisions of the first part of this statute cannot be carried into full effect on account of the absence of some necessary regulation or on account of a conflict of existing regulations, the census board is authorized to establish any rules that may be necessary to supply the defect or reconcile the discrepancy in order to carry out the spirit and intent of the statute, which rules must be published in two or more newspapers of the state, and shall have the force of law until changed by the general assembly.

PART SECOND

[189] OF THE RIGHTS OF PERSONS

TITLE XVI.

OF PROPERTY.

CHAPTER 75.

GENERAL PROVISIONS.

SECTION 1191. **What dispositions void.** Every disposition of property is void which suspends the absolute power of controlling the same for a longer period than during the lives of persons then in being and for twenty-one years thereafter.

SEC. 1192. **Married women.** Married women may receive grants or gifts of property from their husbands without the intervention of trustees, but this provision applies only to form and manner and leaves the substantial rights of all parties unchanged.

CHAPTER 76.

THE TRANSFER OF PERSONAL PROPERTY.

SECTION 1193. **Mortgages, etc., to be recorded.** No sale or mortgage of personal property where the vendor, or mortgagor retains actual possession thereof is valid against existing creditors or subsequent purchasers without notice, unless a written instrument conveying the same is executed, acknowledged like conveyances of real estate, and filed for record with the recorder of deeds of the county where the holder of the property resides.

SEC. 1194. **Book and index.** The recorder of deeds must keep an entry book or index for instruments of the above description, having the pages thereof ruled so as to show in parallel columns, to be alphabetically arranged in double entry in the manner hereinafter provided in case of deeds for real property;

1. The mortgagors or vendors;
- [190] 2. The mortgagees or vendees;
3. The date of the filing of the instrument;
4. The date of the instrument itself;
5. Its nature;
6. The page and book where the record is to be found.

SEC. 1195. **Recorder's note.** Whenever any written instrument of the character above contemplated is filed for record as aforesaid the recorder shall note thereon the day and hour of filing the same, and forthwith enter in his entry book all the particulars required in the preceding section except the sixth item therein, and from the time of said entry and not before shall the sale or

mortgage be deemed complete as to third persons and shall have the same effect as though it had been accompanied by the actual delivery of the property so sold or mortgaged.

SEC. 1196. **Deed recorded.** The recorder shall as soon as practicable record such instrument and enter in his entry book in its proper place the page and book where the record may be found.

CHAPTER 77.

CLAIMS ON THE PUBLIC LANDS.

SECTION 1197. **Claims on public lands.** The owner of what is known as a valid claim or improvement on the public lands has a transferable interest therein which may be sold on execution or otherwise; and any sale of such improvement is a sufficient consideration to sustain a promise.

SEC. 1198. **Constructive possession.** The occupant of such claim will be deemed to have constructive possession thereof to the extent of three hundred and twenty acres, provided it be so marked out and designated that the boundaries can be readily traced and determined, and he may protect and defend his possession by the proper civil action.

CHAPTER 78.

REAL PROPERTY.

SECTION 1199. **Who seized.** All persons owning lands not held by an adverse possession, shall be deemed to be seized and possessed of the same.

[191] SEC. 1200. **“Heirs” not necessary.** The term “heirs” or other technical words of inheritance are not necessary to create and convey an estate in fee simple.

SEC. 1201. **What conveyance passes.** Every conveyance of real estate passes all the interest of the grantor therein unless a contrary intent can be reasonably inferred from the terms used.

SEC. 1202. **After acquired interests.** Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after acquired interest of such grantor to the extent of that which the deed purports to convey enures to the benefit of the grantee.

SEC. 1203. **Adverse possession.** Adverse possession of real property does not prevent any person from selling his interest in the same.

SEC. 1204. **Estates in futuro.** Estates may be created to commence at a future day.

SEC. 1205. **Trust estates.** Declarations or creations of trusts or powers in relation to real estate must be executed in the same manner as deeds of conveyance, but this provision does not apply to trusts resulting from the operation or construction of law.

SEC. 1206. **Tenancy in common.** Conveyances to two or more in their own right create a tenancy in common unless a contrary intent is expressed.

SEC. 1207. **Wives may convey.** A married woman may convey her interest in real estate in the same manner as other persons.

SEC. 1208. **Tenant at will.** 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.

SEC. 1209. **Notice to quit.** Three months notice in writing is necessary to be given by either party before he can terminate a tenancy at will. But where in any case rent is reserved, payable at intervals of less than three months, the length of notice need not be greater than such interval between the days of payment. In case of tenants occupying and cultivating farms, the notice must fix the termination of the tenancy to take place on the first day of April.

SEC. 1210. **Possession under mortgage.** In the absence of stipulations to the contrary, the mortgagor of real estate retains the legal title and right of possession thereof; but in case of personal property the mortgagee holds that title and right.

[192] CHAPTER 79.

THE CONVEYANCE OF REAL PROPERTY.

SECTION 1211. **To be recorded.** No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration without notice, unless recorded in the office of the recorder of deeds of the county in which the land lies, as hereinafter provided.

SEC. 1212. **Same.** It shall not be deemed lawfully recorded unless it has been previously acknowledged or proved in the manner herein prescribed.

SEC. 1213. **Index of records.** The recorder of deeds must keep an entry book or index, the pages of which are so divided as to show in parallel columns:

1. The grantors;
2. The grantees;
3. The time when the instrument was filed;
4. The date of the instrument;
5. The nature of the instrument;
6. The book and page where the record thereof may be found;
7. The description of the lands conveyed, in the manner following:

Grantors	Grantees	Date of filing	Date of instrument	Character of instrument	Book	Page	Description
A. B.	C. D.	1848 Jan. 1	1848 Jan. 1	Deed			E. ½ N. E. ¼ Sec. 14, T. 7. R. 2. W.
M. N.	P. Q.	Oct. 6	June 4	Deed			Lot 429, in Burlington
R. S.	T. V.	Nov. 3	Sept. 19	Mortgage			S. ½ Sec. 10, T. 67 R. 3 W.

SEC. 1214. **Constructive notice.** The recorder must indorse upon every instrument [193] properly filed in his office for record the time when it was so filed, and shall forthwith make the entries provided for in the last preceding section except that of the book and page where the record of the instrument may be found, and from that time such entries shall furnish constructive notice to all the world of the rights of the grantee conferred by such instrument.

SEC. 1215. **Manner of entries.** The entries in such entry book shall be double, the one showing the names of the respective grantors arranged in alphabetical order, the other those of the grantees in like order. Where there are

two or more grantors having different surnames there must be as many distinct entries among the grantors as there are different names, being alphabetically arranged in regard to each of such names. The same rule shall be followed in case of several grantees.

SEC. 1216. **To be recorded.** Every such instrument shall be recorded as soon as practicable in a suitable book to be kept by the recorder for that purpose. After which he shall complete the entries aforesaid so as to show the book and page where the record is to be found.

Manner of acknowledging and proving deeds.

SEC. 1217. **Before whom.** If acknowledged within the state, it must be before some court having a seal or some judge, justice, or clerk thereof, or some justice of the peace, or notary public.

SEC. 1218. **Out of the state.** If acknowledged out of the state, it must be before some court of record or clerk or officer holding the seal thereof, or before some commissioner to take the acknowledgment of deeds appointed by the governor of this state, or before some notary public.

SEC. 1219. **Certificate.** The court or person taking the acknowledgment must indorse upon the deed a certificate setting forth the following particulars:

1. The title of the court or person before whom the acknowledgment was taken;
2. That the person making the acknowledgement was personally known to at least one of the judges of the court or to the officer taking the acknowledgment to be the identical person whose name is affixed to the deed as grantor, or that such identity was proved by at least one credible witness (naming him);
3. That such person acknowledged the instrument to be his voluntary act and deed.

SEC. 1220. **Proof—how and when.** If the grantor die before acknowledging the deed, or if for any other reason his attendance cannot be procured in order to make the acknowledgment, or if having appeared [194] he refuses to acknowledge it, proof of the due execution and delivery of the deed may be made by any competent testimony.

SEC. 1221. **Before whom.** Such proof may be made before the same court or officers as are authorized to take acknowledgment as aforesaid.

SEC. 1222. **Certificate.** The certificate indorsed by them upon the deeds thus proved must state:

1. The title of the court or officer taking the proof;
2. That it was satisfactorily proved that the grantor was dead, or that for some other reason his attendance could not be procured in order to make the acknowledgment, or that having appeared he refused to acknowledge the deed;
3. The names of the witnesses by whom the proof was made and that it was proved by them that the instrument was executed by the person whose name is thereunto subscribed as a party.

SEC. 1223. **Same.** The certificate of proof or acknowledgment as aforesaid may be given under seal or otherwise, according to the mode by which the courts or officers granting the same usually authenticate their most solemn and formal official acts.

SEC. 1224. **Penalty.** Any officer who knowingly states a material untruth in either of the certificates above contemplated, may be indicted and fined any sum not exceeding the value of the property conveyed or otherwise affected by the instrument on which such certificate is indorsed.

SEC. 1225. **Subpoenas.** Any court or officer having power to take the proof above contemplated may issue the necessary subpoenas, and compel the attendance of witnesses residing within the county by attachment if necessary.

SEC. 1226. **Revocation of power.** No instrument containing a power to convey or in any manner affect real estate, certified and recorded as above prescribed, can be revoked by any act of the parties by whom it was executed until the instrument containing such revocation is acknowledged and deposited for record and entered on the entry book in the same office in which the instrument conferring the power is recorded.

SEC. 1227. **Instrument—when evidence.** Every instrument in writing affecting real estate, which is acknowledged or proved and certified as hereinbefore directed, may be read in evidence without farther proof.

SEC. 1228. **Record—when.** The record of such instrument or a duly authenticated copy thereof is competent evidence whenever by the party's own oath or otherwise the original is shown to be lost, or not belonging to the party wishing to use the same nor within his control. And in such case it is no objection to the record that no official seal is appended to the recorded acknowledgment thereof, if, when the acknowledgment purports [195] to have been taken by an officer having an official seal, there be a statement in the certificate of acknowledgment that the same is made under his hand and seal of office and the record show by a scroll or otherwise that there was such a seal, which will be presumptive evidence that the official seal was attached to the original certificate.

SEC. 1229. **Retrospective.** The provisions of the preceding section are intended to apply to all instruments heretofore recorded as well as those hereafter to be recorded.

SEC. 1230. **Not conclusive.** Neither the certificate nor the record nor the transcript thereof is conclusive evidence of the facts therein stated.

SEC. 1231. **Past acts.** Nothing herein contained shall invalidate any act already done.

SEC. 1232. **Forms.** The following or other equivalent forms, varied to suit circumstances, are sufficient for the purposes therein contemplated:

For a quit claim deed.

Quit claim. For the consideration of —— dollars, I hereby quit claim to A. B. all my interest in the following tract of land [describing it].

For a deed in fee simple without warranty.

Grant. For the consideration of —— dollars, I hereby convey to A. B. the following tract of land [describing it].

For a deed in fee with warranty.

With warranty. The same as the last preceding form adding the words, "and I warrant the title against all persons whomsoever," [or other warranty as the parties may desire].

For a mortgage.

Mortgage. The same as a deed of conveyance, adding the following, "to be void upon condition that I pay," etc.

For a deed of trust.

Deed of trust. For the purpose of securing A. B. the sum of —— dollars, with interest from date at the rate of —— per cent. per annum, [or as the case may be], I hereby convey to C. D. [describe the property conveyed].

And if the sum so secured to A. B. is not paid him by the [196] stating the

time of payment], I hereby authorize the said C. D. to sell the property herein conveyed [stating the manner, place of sale, notice to be given, etc.], to execute a deed to the purchaser, to pay off the amount herein secured with interest and costs, and to hold the remainder subject to my order.

CHAPTER 80.

RIGHTS OF OCCUPYING CLAIMANTS.

SECTION 1233. Provision concerning. Where an occupant of land has color of title thereto, and in good faith has made any valuable improvement thereon, and is afterwards in the proper action found not to be the rightful owner thereof, no execution shall issue to put the plaintiff in possession of the property, after the filing of the petition hereinafter mentioned, until the provisions of this chapter have been complied with.

SEC. 1234. Petition. Such petition must set forth the grounds on which the defendant seeks relief, stating with other things as accurately as practicable the value of the improvements upon the lands as well as the value of the lands aside from the improvements.

SEC. 1235. Issues. All issues joined thereon must be tried as in ordinary cases, and if the value of the land or of the improvements is in controversy such value must be ascertained on the trial.

SEC. 1236. Election. The plaintiff in the main action may thereupon pay the appraised value of the improvements and take the property.

SEC. 1237. Same. Should he fail to do this after a reasonable time to be fixed by the court, the defendant may take the property upon paying the appraised value of the land aside from the improvements.

SEC. 1238. Or tenants in common. If this be not done within a reasonable time to be fixed by the court, the parties will be held to be tenants in common of all the land including the improvements, each holding an interest proportionate to the value of his property as ascertained by the appraisal above contemplated.

SEC. 1239. Who claimant. The purchaser in good faith at any judicial or tax sale made by the proper person or officer has color of title within the meaning of this chapter, whether such person or officer had sufficient authority to sell or not, unless such want of authority was known to such purchaser at the time [197] of the sale. And the rights of such purchaser pass to his assignees or representatives.

SEC. 1240. Same. Any person has also such color of title who has occupied a tract of land by himself or by those under whom he claims for the term of five years, or who has thus occupied the land for a less term than five years if he or those under whom he claims have at any time during such occupancy paid the ordinary county taxes thereon for any one year and if two years afterwards elapsed without a repayment or proffer of repayment of the same by the owner of the land, provided such occupancy is continued up to the time at which the suit is brought by which the recovery of the land is obtained as above contemplated.

SEC. 1241. Waste. In the cases above provided for, if the occupying claimant has committed any injury to the land by cutting timber or otherwise the plaintiff may set the same off against any claim for improvements made by such claimant.

SEC. 1242. Challenge of juror. It is a sufficient cause of challenge to any juror selected to appraise the value of the land or the improvements, that he is interested in a like question.

SEC. 1243. **Plaintiff restricted.** The plaintiff is entitled to an execution to put himself in possession of his property in accordance with the provisions of this chapter, but not otherwise.

SEC. 1244. **Retrospective.** The regulations contained in this chapter are intended to be retrospective.

CHAPTER 81.

THE HOMESTEAD.

SECTION 1245. **Homestead exempt.** When there is no special declaration of the statute to the contrary, the homestead of every head of a family is exempt from judicial sale.

SEC. 1246. **Who head of a family.** A widow or widower, though without children, shall be deemed the head of a family while continuing to occupy the house used as such at the time of the death of the husband or wife.

SEC. 1247. **Conveyance of.** A conveyance by such owner is of no validity unless the husband and wife (if the owner is married) concur in and sign such conveyance.

SEC. 1248. **Exceptions.** But the homestead is liable for taxes accruing exclusively thereon, and the whole or a sufficient portion thereof may be sold to pay the same. It is also subject to mechanic's liens in the cases provided by law.

SEC. 1249. **When sold on execution.** It may also be sold on execution for debts contracted prior to the passage of this law or prior to the purchase of such homestead (except where otherwise declared), or for those created by written contract executed by the persons having the power to convey and expressly stipulating that the homestead is liable therefor. But it shall not in such cases be sold except to supply the deficiency remaining after exhausting the other property of the debtor which is liable to execution.

SEC. 1250. **What constitutes it.** The homestead must embrace the house used as a home by the owner thereof, and if he has two or more houses thus used by him at different times and places he may select which he will retain as his homestead.

SEC. 1251. **Same.** It may contain one or more lots or tracts of land with the buildings thereon and other appurtenances, subject to the limitations contained in the next section, but must in no case embrace different lots and tracts unless they are contiguous, or unless they are habitually and in good faith used as part of the same homestead.

SEC. 1252. **Same.** If within a town plat it must not exceed one-half an acre in extent, and if not within a town plat it must not embrace in the aggregate more than forty acres. But if when thus limited in either case its value is less than five hundred dollars it may be enlarged till its value reaches that amount.

SEC. 1253. **Same.** It must not embrace more than one dwelling house nor any other buildings except such as are properly appurtenant to the homestead as such, but a shop or other building situated thereon and really used and occupied by the owner in the prosecution of his own ordinary business and not exceeding three hundred dollars in value may be deemed appurtenant to such homestead.

SEC. 1254. **How selected and defined.** The owner may select his own homestead and cause it to be marked out, platted, and recorded as provided in the next section. If he neglect this the privilege of doing the same devolves upon his wife. A failure in this respect by both does not leave the homestead liable, but the officer having an execution against the property of such a

defendant may cause the homestead to be marked off, platted, and recorded, and may add the expenses thence arising to the amount embraced in his execution.

SEC. 1255. **Same.** The homestead shall be marked off by fixed and visible monuments, and in giving the description thereof the direction and distance of the starting point from some corner of the dwelling house shall be stated. The description and plat shall then be recorded by the recorder of deeds in a book to be called the "homestead book," which shall be provided with a proper index.

[199] SEC. 1256. **May be changed.** The owner may from time to time at his pleasure change the limits of his homestead by changing the metes and bounds as well as the record of the plat and description, or he may change the homestead entirely; but such changes shall not prejudice conveyances or liens made or created previously thereto.

SEC. 1257. **Liability of new.** The new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former homestead would have been exempt, but in no other, nor in any greater degree.

SEC. 1258. **How disagreement settled.** Where a disagreement takes place between the owner and any person adversely interested as to whether any land or buildings are properly a part of the homestead, the sheriff shall at the request of either party summon nine disinterested persons having the qualification of jurors. The parties then, commencing with the owner of the homestead, shall in turn strike off one juror each and shall continue to do so until only three of the number remain. These shall then proceed as referees to examine and ascertain all the facts of the case and shall report the same with their opinion thereon to the next term of the district court.

SEC. 1259. **Same.** If either party fail to strike off jurors in the manner directed in the last section the sheriff may strike off such jurors.

SEC. 1260. **Same.** The court may also in its discretion refer the whole matter or any part of it back to the same referees, or to others to be selected in the same manner or as the parties otherwise agree, giving them directions as to the report that is required of them.

SEC. 1261. **Decision of court.** When the court is sufficiently possessed of the facts of the case it shall make its decision, and may, if expedient, direct the homestead to be marked off anew or a new plat and description to be made and recorded, and may take any farther step in the premises which in its discretion it may deem proper for attaining the objects of this statute. It shall also award costs as nearly as may be in accordance with the practice observed in other cases.

SEC. 1262. **Change of circumstances.** The extent or appurtenances of the homestead, as thus established, are liable to be called in question in like manner whenever a change in value or circumstances will justify such new proceeding.

SEC. 1263. **Death.** Upon the death of either husband or wife the survivor may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law.

SEC. 1264. **Descent.** If there is no such survivor, the homestead descends to the issue of either husband or wife according to the general rules of descent unless otherwise directed by will, and is [200] to be held by such issue exempt from any antecedent debts of their parents or their own.

SEC. 1265. **When to be sold.** If there is no such survivor or issue, the homestead is liable to be sold for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead.

SEC. 1266. **Devise of.** Subject to the rights of the surviving husband or wife as declared by law, the homestead may be devised like other real estate of the testator.

CHAPTER 82.

LANDLORD AND TENANT.

SECTION 1267. **Rent apportioned.** The executor of a tenant for life who demises real property so held and dies on or before the day on which the rent is payable, and a person entitled to rent dependent on the life of another, may recover the proportion of rent which had accrued at the time of the death.

SEC. 1268. **Holding over.** A tenant giving notice of his intention to quit the demised premises at a time named and afterwards holding over, and a tenant or his assignee wilfully holding over the premises after the term and after notice to quit, shall pay to the person entitled thereto double the yearly value of the premises during the time he holds over.

SEC. 1269. **Attornment—when void.** The attornment of a tenant to a stranger is void unless made with the consent of the landlord, or pursuant to, or in consequence of, a judgment at law or in equity, or to a mortgagee after the mortgage has been forfeited.

SEC. 1270. **Landlord's lien.** A landlord shall have a lien for his rent upon all crops grown upon the demised premises, and upon any other personal property of the tenant which has been used on the premises during the term and not exempt from execution, for the period of one year after a year's rent, or the rent of a shorter period claimed, falls due; but such lien shall not in any case continue more than six months after the expiration of the term.

SEC. 1271. **How effected.** The lien may be effected by the commencement of an action within the period above prescribed, for the rent due, in which action the landlord will be entitled to a writ of attachment upon filing with the proper clerk or the justice an affidavit that the action is commenced to recover rent accrued within one year previous thereto upon premises described in the affidavit.

[201] CHAPTER 83.

THE ESTATES OF DECEDENTS.

SECTION 1272. **Jurisdiction.** The county court has power to take probate of wills, to grant administration of the estates of all persons who at the time of their death were residents of the county, or who die non-residents of the state having property to be administered upon within the county, or where such property is afterwards brought into the county, and it has jurisdiction in all matters relating to the settlement of such estates.

SEC. 1273. **Guardianship.** It may also appoint guardians for minors and others requiring guardians, residing within the county, in cases prescribed by law, and may exercise a general supervision over their property, persons, and interests.

SEC. 1274. **First county.** When a case is originally within the jurisdiction of the courts of either of two or more counties, that court which first takes cognizance thereof by the commencement of proceedings can retain the same throughout.

SEC. 1275. **May revoke.** Any process or authority emanating from the court in probate matters may for good cause be revoked and a new one issued.

SEC. 1276. **Bonds approved.** No bond relating to probate matters, required by law to be given and filed in the county office, shall be deemed sufficient until examined by the judge and his approval is indorsed thereon.

Wills.

SEC. 1277. **Who may make.** Any person of full age and sound mind may dispose, by will, of all his property except what is sufficient to pay his debts, or what is allowed as a homestead, or otherwise given by law as privileged property to his wife and family.

SEC. 1278. Property to be subsequently acquired may also be devised when the intention is clear and explicit.

SEC. 1279. **Verbal wills.** Personal property to the value of three hundred dollars may be bequeathed by a verbal will if witnessed by two competent witnesses.

SEC. 1280. A soldier in actual service, or a mariner at sea, may dispose of all his personal estate by a will so made and witnessed.

SEC. 1281. **In writing.** All other wills, to be valid, must be in writing witnessed by two competent witnesses, and signed by the testa-[202]-tor or by some person in his presence and by his express direction.

SEC. 1282. **Witnesses.** No subscribing witness to any will can derive any benefit therefrom unless there be two disinterested and competent witnesses to the same.

SEC. 1283. **Exception.** But if, without a will, he would be entitled to any portion of the testator's estate, he may still receive such portion to the extent in value of the amount devised.

SEC. 1284. **Posthumous.** Posthumous children unprovided for by the father's will shall inherit the same interest as though no will had been made.

SEC. 1285. **Children.** The amount thus allowed to a posthumous child, as well as that of any other claim which it becomes necessary to satisfy in disregard of or in opposition to the contemplation of the will, must be taken ratably from the interests of heirs, devisees, and legatees.

SEC. 1286. **Definitions.** The word "devisee" as used in this title shall when applicable be construed to embrace "legatees," and the word "devised" shall in like cases be understood as comprising the force of the word "bequeathed."

SEC. 1287. **Devisee.** If a devisee die before the testator, his heirs shall inherit the amount so devised to him unless from the terms of the will a contrary intent is manifest.

SEC. 1288. **Revocation.** Wills can be revoked, in whole or in part, only by being cancelled or destroyed by the act or direction of the testator with the intention of so revoking them or by the execution of subsequent wills.

SEC. 1289. **Cancellation.** When done by cancellation the revocation requires to be witnessed in the same manner as the making of a new will.

SEC. 1290. **Deposit.** Wills duly sealed up and endorsed may be deposited with the clerk of the court, whose duty it is to file and preserve the same until the death of the testator, unless they themselves sooner demand them.

SEC. 1291. **Of will.** Any person having the custody of a will shall, at the first stated term of the court after being informed of the death of the testator, bring the same into open court when it shall be publicly read.

SEC. 1292. **Same.** If he fail to do so after receiving reasonable notice he may be brought in by rule and attachment and committed to jail until he complies, and shall be farther liable to any person aggrieved for all the damages sustained by such failure.

SEC. 1293. **Probate.** After being thus produced and read, a day shall be fixed by the court for proving the same, which may be postponed from time to time at the discretion of the court.

[203] SEC. 1294. Such notice thereof as the court directs shall be immediately given to all persons interested in the matter.

SEC. 1295. **Recorded.** After being proved and allowed by the county court, the will together with the certificate hereinafter required shall be recorded in a book kept for that purpose.

SEC. 1296. **Foreign wills.** Wills proved and allowed in any other state or country shall be allowed and recorded in any county in this state in which it may be desired to use them, upon the production of a copy thereof to the proper county court duly authenticated by the attestation of the clerk of the court in which such will was proved, together with the certificate of the judge or presiding officer that such attestation is in due form of law. If there be no clerk such attestation may be made by the judge or presiding officer, and in all cases if the clerk or officer making such attestation have a seal of office such seal shall be annexed to the attestation.

SEC. 1297. **Probate conclusive.** Wills shall not be carried into effect unless thus allowed, and such allowance is conclusive as to the due execution of the will unless set aside by an original or appellate proceeding in the district court.

SEC. 1298. **Copy to executor.** When proved and recorded, the court shall direct the will or an authenticated copy thereof to be placed in the hands of the executor therein named or otherwise duly appointed.

SEC. 1299. **If no executors.** If no executors are named therein or if the executors named failed to qualify and act, it shall be retained on file until an executor is appointed and qualified in the manner herein prescribed.

SEC. 1300. **Certificate.** Wills, when proved and allowed, shall have a certificate thereof indorsed or annexed thereto signed by the clerk and attested by the seal of the court; and every will so certified, or the record thereof, or a transcript of such record duly authenticated, may be read in evidence in all courts within this state without farther proof.

Executors.

SEC. 1301. **“Executor.”** The word “executor,” as used in this title, is intended to be applied to the persons who administer upon the estate of one deceased, whether appointed by the will or otherwise.

SEC. 1302. **Appointment.** They may in each case consist of one or more, and if not designated by will they may be appointed by the proper county court as hereinafter directed.

SEC. 1303. **Vacancies.** If a person appointed executor refuse to accept the trust, or if when duly notified of his appointment he neglects [204] to appear within thirty days and give bond as hereinafter prescribed, a vacancy will be deemed to have occurred.

SEC. 1304. **Married woman.** A married woman may act as executor independent of her husband. Her marriage subsequent to the appointment does not render it invalid.

SEC. 1305. **Minors.** If a minor under eighteen years of age is appointed an executor, there is a temporary vacancy as to him until he becomes of that age.

SEC. 1306. **Removal.** The court for good cause may remove an executor.

SEC. 1307. **Vacancy.** In case of vacancy the court may appoint a substitute, or it may allow the other executor (if there is another) to proceed by himself in administering the estate.

SEC. 1308. **Substitution.** The substitution of other executors shall occasion no delay in the administration of the estate. The periods hereinafter mentioned within which acts are to be performed after the appointment of executors, shall all, unless otherwise declared, be reckoned from the issuing of the commission to the first general executor.

SEC. 1309. **Non-resident executors.** If administration of the estate of a deceased non-resident has been granted in accordance with the laws of the state or country where he resided at the time of his death, the person to whom it has been committed may upon his application and upon qualifying himself in the same manner as is required of other executors, be appointed an executor to administer upon the property of the deceased in this state unless another executor has previously been appointed in this state.

SEC. 1310. **Proceedings.** The original letters testamentary or of administration or other authority conferring his power upon such executor, or an attested copy thereof together with a copy of the will if there be one attested as hereinbefore directed, must be filed in the office of the judge of the proper county court before such appointment can be made.

SEC. 1311. **Who entitled.** In other cases where an executor is not appointed by will administration shall be granted:

1. To the wife of the deceased;
2. To his next of kin;
3. To his creditors;
4. To any other person whom the court may select.

SEC. 1312. The court may unite individuals belonging to the same or different classes as executors whenever it deems such a course expedient.

SEC. 1313. **Classes united.** To each of the above classes in succession a period of twenty days (commencing with the burial of the deceased) is allowed, within which to apply for administration upon the estate.

[205] SEC. 1314. **Restriction.** The court must appoint no person an executor who is manifestly unsuitable for the discharge of the trust, nor who is a minor except as herein otherwise provided.

SEC. 1315. **Failing to apply.** If the persons of each class as above ordered respectively fail to apply for such administration within the twenty days above allotted to his class, without sufficient cause being shown for such failure; or if for any reason all those who apply are improper persons to receive the appointment, the right of administration descends to the next following class.

SEC. 1316. **Bond.** Every executor, except as is herein otherwise declared, before entering upon the discharge of his duty must give bond in such penalty as the judge of the court approves, conditioned for the faithful discharge of the duties imposed on him by law according to the best of his abilities.

SEC. 1317. **Oath.** He must also take and subscribe an oath the same in substance as the condition of the bond aforesaid, which oath and bond must be filed with the judge of the court.

SEC. 1318. **New bonds.** New bonds may be required by the court to be given, and in a new penalty and with new sureties, whenever the same is deemed expedient.

SEC. 1319. **Commission.** After the filing of the bond and oath aforesaid the court shall issue a commission under its seal giving the executor the powers authorized by law.

SEC. 1320. **Special executor.** When for any cause there is a necessary delay in granting such commission, the court in its discretion may appoint one or

more special executors to collect and preserve the property of the deceased, who shall qualify as above required.

SEC. 1321. **Appeals.** No appeal from the decision appointing such special executors shall prevent their proceeding in the discharge of their duties.

SEC. 1322. **Inventory.** Such special executors shall make and file an inventory of the property of the deceased in the same manner in all respects as is required of general executors, and shall preserve said property from injury.

SEC. 1323. **Duties, etc.** For this purpose they may do all needful acts under the direction of the court, but shall take no steps in relation to the allowance of claims against the estate.

SEC. 1324. **When powers cease.** Upon the granting of full administration the powers of the special executors shall cease and all the business shall be transferred to the general executor.

SEC. 1325. **Limitation.** Administration shall not be originally granted after the lapse of five years from the death of the decedent, or from the time his death was known in case he died out of the state.

SEC. 1326. **Provisions may be modified by will.** The preceding provisions are in some respects subject to be changed and modified by the will of a testator. Thus, when the interests of creditors will not be thereby prejudiced, he may prescribe the entire manner in which his estate shall be administered upon, he may exempt the executor from the necessity of giving bond, may constitute him in substance his attorney in fact for the settlement of the estate, may direct that no material and immediate change be made in conducting his business affairs in consequence of his death, and may prescribe the manner in which his affairs shall be conducted until his estate is finally settled, or until his minor children become of age.

SEC. 1327. **Authority of court.** The county court in its discretion may also authorize the executor to continue the prosecution of any business in which the deceased was engaged at the time of his death, in order to wind up his affairs with greater advantage to the interest of the estate, but such permission does not exempt the executor from the necessity of returning a full inventory and appraisalment of the effects of the deceased as accurately as practicable in the manner prescribed in other cases, and as may be farther directed by the court.

The inventory and collection of the effects of deceased persons.

SEC. 1328. **Inventory.** Within thirty days after their appointment, unless for good cause an extension of that time is specially given by the court, the executors shall make and return into the court an inventory of all the personal effects of the deceased of every description which have come within their knowledge, embracing all book accounts which do not appear by the books or papers of the deceased to have been settled.

SEC. 1329. **What not assets.** When the deceased leaves a widow, no property which in her hands as the head of a family would be exempt from execution shall be deemed assets or administered upon as such, but the same, after being inventoried without appraisalment, shall remain with her and the family until disposed of according to law.

SEC. 1330. **Life insurance.** The avails of any life insurance are not subject to the debts of the deceased except by special contract or arrangement, but shall in other respects be disposed of like other property left by the deceased.

SEC. 1331. **Appraisement.** All personal property (except as aforesaid) found in the county must be appraised by appraisers, who shall be appointed by the court and shall each receive one dollar per day for his services.

SEC. 1332. **In another county.** If any portion of such property be in another county, the same appraisers may serve or others may be appointed [207] by the court or by a disinterested justice of the peace of such county, whose duties and compensation shall be as aforesaid.

SEC. 1333. **Supplemental inventory.** A supplemental inventory must be made out in like manner whenever the existence of other property is discovered.

SEC. 1334. **Discovery of assets.** The court may summon before it any person suspected of having taken wrongful possession of any of the effects of the deceased, or of having had such effects under his control, and may subject him to an examination under oath, and if upon such examination it appear to the court that such suspected person has the wrongful possession of any property or effects of the deceased, the court shall order such property or effects to be delivered to the executor of the estate.

SEC. 1335. If he disobey such order or summons, or refuse to answer the interrogatories propounded, he may be committed to the jail of the county until a compliance be yielded.

SEC. 1336. **May compound.** The executor, with the approbation of the court, may compound with any debtor of the estate who may be thought unable to pay his whole debt, or in order to avoid doubtful litigation.

SEC. 1337. **Mortgage assets.** The interest of a deceased mortgagee shall be included among his personal assets, and upon its being paid off satisfaction shall be entered by the executor.

The disposition to be made of the property of the deceased.

SEC. 1338. **Minor orphans.** Upon the death of a sole surviving parent leaving a minor child, the court may make such order and allowance for its temporary support as may be suitable and proper.

SEC. 1339. **Exception to will.** When a person by his will makes such a disposition of his effects as to prejudice the rights of creditors, the will may still be sustained by the giving of security to the satisfaction of the court for the payment of the claims of the creditors to the extent of the value of the property thus devised.

SEC. 1340. **First fund.** When no different direction is given in the will, debts due the estate shall as far as practicable be collected and the debts owing by the estate paid off therewith, to the extent of the means thus obtained.

SEC. 1341. **Personal property sold.** The court, on the application of the executor, shall from time to time direct the sale of such portions of the personal effects as are of a perishable nature or which from any cause would otherwise be likely to depreciate in value, and also such portions as are necessary to pay off the debts and [208] charges upon the estate, in addition to the means above provided.

SEC. 1342. **Real estate.** If the personal effects are found inadequate to satisfy such charges, a sufficient portion of the real estate may be ordered to be sold for that purpose.

SEC. 1343. **Application.** Application for that purpose can be made only after a full statement of all the claims against the estate, and after rendering a full account of the disposition made of the personal estate.

SEC. 1344. **Notice.** Before any order to that effect can be made, such notice as the court may prescribe must be given to all the persons interested in such real estate.

SEC. 1345. **Real estate divided.** If convenient, the real estate must be divided into parcels and each appraised in the manner above provided for personal property, and the appraisalment filed in like manner.

SEC. 1346. **Exception.** When a part cannot be sold without material prejudice to the general interests of the estate, the court may order the sale of the whole, or of such part as can be sold advantageously.

SEC. 1347. **Private sale.** Property may be permitted to be sold at private sale whenever the court is satisfied that the interests of the estate will be thereby promoted.

SEC. 1348. **Public sale.** In other cases sales must be made at public auction after giving the same notice as would have been necessary for the sale of such property on execution.

SEC. 1349. **Direction.** No property can be sold at private sale for less than the appraisalment price without the express approbation of the judge of the county court.

SEC. 1350. **Credit.** Property may be ordered to be sold on a partial credit of not more than twelve months.

SEC. 1351. **Sale prevented.** Any heir or other person interested in the estate, who may wish to prevent a sale of the whole or any part thereof, may accomplish that purpose by giving bond to the satisfaction of the court, conditioned that he will pay all demands against the estate to the extent of the value of the property thus kept from sale as soon as called upon by the county court for that purpose.

SEC. 1352. **Same.** If the conditions of such bond are broken the property is still liable for those debts unless it has passed into the hands of a *bona fide* purchaser, and the executors may take possession thereof and sell the same under the direction of the court or they may prosecute the bond, or both at once if the court so direct.

SEC. 1353. If the conditions of the bond are complied with the property passes by devise, distribution, or descent in the [209] same manner as though there had been no debts against the estate.

SEC. 1354. **Conveyances.** Where real estate is sold, conveyances thereof executed by the executors pass to the purchaser all the interest of the decedent therein. But such conveyance shall not be valid until approved by the judge of the county court.

SEC. 1355. **Presumption.** Such approval shall be entered of record. A brief memorandum thereof must be indorsed upon the deed with the signature and seal affixed thereto, and the deed so indorsed shall be presumptive evidence of the validity of the sale and of the regularity of all the proceedings connected therewith.

SEC. 1356. **Limitation.** No action for the recovery of any real estate sold by an executor can be sustained by any person claiming under the deceased, unless brought within five years next after the sale.

Filing claims against an estate.

SEC. 1357. **Executor's notice.** Within thirty days after the receipt of their commission, the executors shall publish a notice of their appointment in such manner as the court directs, either by posting up or by publication in a newspaper.

SEC. 1358. This notice need be given only by the executors first appointed and qualified.

SEC. 1359. **Claims.** Claims against the estate must be clearly stated, sworn to, and filed. Ten days notice of the hearing, indorsed on a copy of the claim, must be served upon one of the executors in the manner required for commencing actions in the district court.

SEC. 1360. **Evidence.** The same rules of evidence, including those in relation to the calling and examination of the party as a witness, shall be observed as in cases pending in the district court.

SEC. 1361. **Executor may allow.** The executor may, with the approbation of the court, admit claims with the correctness of which he is satisfied, but not until the claimant has sworn to their correctness. The like rule shall be observed in relation to payments or set-offs to any demands due the estate.

SEC. 1362. **Proof of claims.** All claims not established in the district court must be submitted to and passed upon by the county court; and no claim except such as the executors may admit can be allowed, unless sustained by such testimony as would be sufficient on a trial in the district court.

SEC. 1363. **Where.** Claims for a mere money demand where no lien is to be enforced shall not, except with the approbation of the county court, be prosecuted originally in the district court.

[210] SEC. 1364. Demands though not yet due may be presented, proved, and allowed as other claims.

SEC. 1365. **Contingent.** Contingent liabilities must also be presented and proved, or the court or executor shall be under no obligation to make any provision for satisfying them when they may afterwards accrue.

SEC. 1366. **Referees.** Claims against an estate and set-offs thereto may in the discretion of the court be proved up before one or more referees to be agreed upon between the parties or approved by the court, and their decision being entered upon the record becomes a decision of the court.

SEC. 1367. **Unsatisfied judgments.** Unsatisfied judgments rendered prior to the death of the decedent shall be entered in the catalogue of claims, and so much thereof allowed as the plaintiff will show by his own oath or otherwise is still unpaid. But they possess no preference over other claims except the liens allowed by law in their favor.

SEC. 1368. **Suits pending.** Suits pending at the time of such death may be prosecuted to judgment and then placed in the catalogue of established claims. But no lien is created by such judgment.

SEC. 1369. **Executor interested.** If either of the executors is interested in favor of a claim against the estate he shall not serve in any matter connected with that case. And if all the executors are thus interested the court shall appoint some competent person a temporary executor in relation to such claims.

The payment of claims against the estate.

SEC. 1370. **Preferred claims.** As soon as the executors are possessed of sufficient means over and above the expenses of administration they shall pay off the charges of the last sickness and funeral of the deceased.

SEC. 1371. **Allowance to widow and children.** They shall in the next place pay any allowance which may be made by the court for the maintenance of the widow and minor children, previous to the time when a sufficient amount for such maintenance can be paid to them out of their shares of the estate, which amount so advanced shall afterwards be deducted from their respective portions.

SEC. 1372. **Order of payment.** Other demands against the estate are payable in the following order:

1. Debts entitled to a preference under the laws of the United States;
2. Public rates and taxes;
3. Claims filed within six months after the notice given by the executors of their appointment;
4. All other debts;
- [211] 5. Legacies.

SEC. 1373. **Limitation.** All claims of the fourth of the above classes not filed and proved within one year and a half of the giving of the notice aforesaid are forever barred, unless the claim is pending in the district or supreme court or unless peculiar circumstances entitle the claimant to equitable relief.

SEC. 1374. **When to pay.** After the expiration of the time for filing the claims of the third of the above classes, the executors shall proceed to pay off all claims against the estate in the order above stated as fast as the means of so doing come into their hands.

SEC. 1375. **Same.** Claims of the fourth class may be paid off at any time after the expiration of six months aforesaid without any regard to those claims not filed at the time of such payment. And even legacies may be paid off at any time after the expiration of one year from the date of the notice of appointment of the executor, provided sufficient be left on hand to satisfy all the claims filed at the date of such payment, the claims of the fourth class as well as the legacies being, within the limits above fixed, preferred to the unfilled claims whether the estate be solvent or not.

SEC. 1376. **Same.** No payment can be made to a claimant in any one class until those of a previous class are satisfied.

SEC. 1377. **Not due.** Demands not yet due shall be paid off if the holders will consent to such a rebate of interest as the court thinks reasonable. Otherwise the money to which such claimant would be entitled shall be safely invested until his debt becomes due.

SEC. 1378. **Order of payment.** Within their respective classes, debts shall be paid off in the order in which they have been proved up subject to the provisions of the following section; but the court shall permit them to be proved up in the order in which they are filed.

SEC. 1379. **Dividend.** If there are not likely to be means sufficient in all to pay off the whole of the debts of any one class, the court shall from time to time strike a dividend of the means on hand among all the creditors of that class, and the executor shall pay the several amounts accordingly.

SEC. 1380. **Incumbrances.** The executors may with the approbation of the court use funds belonging to the estate to pay off incumbrances upon lands owned by the deceased, or to purchase lands claimed or contracted for by him prior to his death.

SEC. 1381. **Specific legacies.** Specific legacies of property may be turned over to the rightful claimant at any time upon his giving unquestionable real estate security to restore the property or refund the amount at which it was appraised if wanted for the payment of debts.

SEC. 1382. **Those payable in money.** Legacies payable in money may be paid on like [212] terms whenever the executors possess the means which can be thus used without prejudice to the interest of any claim already filed.

SEC. 1383. **Paying them.** After the expiration of the one year and a half allowed for filing claims as above provided, such legacies may be paid off with-

out requiring the security provided for in the preceding two sections, if the means are still retained to pay off all the claims proved or pending as hereinbefore contemplated.

SEC. 1384. **Order.** If the testator has not prescribed the order in which legacies are to be paid off, and if no security is given as above provided in order to expedite their time of payment, they may be paid off in the order in which they were contained in the will, where the estate is sufficient to pay all.

SEC. 1385. **Same.** Or, when not incompatible with the manifest intention of the testator, the court may direct all payments of money to legatees to be made ratably.

SEC. 1386. **Same.** Such must be the mode pursued when there is danger that the estate will prove insufficient to pay off all the legacies, unless security be given to refund as above provided.

SEC. 1387. **Executor failing.** If the executors fail to make payment of any kind in accordance with the order of the court, they and their sureties may be summoned to appear before the court at a time to be specified in the summons not less than ten days from the time of service, to show cause why they have so failed as aforesaid.

SEC. 1388. **Judgment.** If no sufficient cause be shown the court shall render judgment on the bond of the executors for the amount of money directed to be paid together with costs, and shall issue execution accordingly.

SEC. 1389. **Parties not served.** When any of the obligors in the bond is not served with such summons, a similar course may be pursued to that authorized in parallel cases in the district court and with like consequences.

The distribution of personal property.

SEC. 1390. **Distribution.** The personal property of the deceased not necessary for the payment of debts nor otherwise disposed of as hereinbefore provided, shall be distributed to the same persons and in the same proportions as though it were real estate.

SEC. 1391. **Payment.** The distributive shares shall be paid over as fast as the executor can properly do so.

SEC. 1392. **In kind.** The property itself shall be distributed in kind whenever that can be done satisfactorily and equitably. In [213] other cases the court may direct the property to be sold and the proceeds to be distributed.

SEC. 1393. **Partial distribution.** When the circumstances of the family require it the court, in addition to what is hereinbefore set apart for their use, may direct a partial distribution of the money or effects on hand at any time after filing the inventory, upon the execution of security like that required of legatees in like cases.

The disposition of real property.

SEC. 1294. **Dower.** One third in value of all the real estate in which the husband at any time during the marriage had a legal or equitable interest, which has not been sold on execution or other judicial sale and to which the wife has made no relinquishment of her rights, shall under the direction of the court be set apart by the executor as her property in fee simple upon the death of the husband if she survive him. Continuous co-habitation as husband and wife is presumptive evidence of marriage for the purpose of giving the right aforesaid.

SEC. 1395. **Includes homestead.** Such share shall be so set off as to include the ordinary dwelling house and the land given by law to the husband as a homestead, or so much thereof as will be equal to the share allotted to her by

the last section unless she prefers a different arrangement. But no different arrangement shall be permitted where it would have the effect of prejudicing the rights of creditors.

SEC. 1396. **How set off.** The share thus allotted to her may be set off by the mutual consent of all the parties interested when such consent can be obtained, or it may be set off by referees appointed by the court.

SEC. 1397. **Application.** The application for such admeasurement by referees may be made at any time after twenty days and within ten years after the death of the husband, and must specify the particular tracts of land in which she claims her dower, and ask the appointment of referees.

SEC. 1398. **Notice.** The court shall fix the time for making the appointment and direct such notice thereof to be given to all the parties interested therein as it deems proper.

SEC. 1399. **Action of referees.** The referees may employ a surveyor if necessary; and they must cause the widow's share to be marked off by metes and bounds, and make a full report of their proceedings to the court as early as practicable.

SEC. 1400. **Same.** The court may require a report by such a time as it deems reasonable, and if the referees fail to obey this or any other order of the court it may discharge them and [214] appoint others in their stead, and may impose on them the payment of all costs previously made unless they show good cause to the contrary.

SEC. 1401. **Confirmation.** The court may confirm the report of the referees, or it may set it aside and refer the matter to the same or other referees, at its discretion.

SEC. 1402. **Same.** Such confirmation after the lapse of thirty days, unless appealed from according to law, shall be binding and conclusive as to the admeasurement, and she may bring suit to obtain possession of the land thus set apart for her.

SEC. 1403. **Her right contested.** Nothing in the last section shall prevent any person interested from controverting the general rights of the widow to the dower thus admeasured.

SEC. 1404. **Property not divisible.** If the referees report that the property cannot be readily divided as above directed, the court if satisfied with such report may order the whole to be sold and one third of the proceeds to be paid over to the widow.

SEC. 1405. **Sale—how prevented.** Such sale shall not however take place if any one interested to prevent it will give security to the satisfaction of the court, conditioned to pay the widow the appraised value of her share with ten per cent. interest on the same within such reasonable time as the court may fix not exceeding one year from the date of such security. If no such arrangement is made the widow may keep the property by giving like security to pay off the claims of all others interested within the same time and upon the like terms.

SEC. 1406. **New homestead.** With any money thus paid to the widow she may procure a homestead which shall be exempt from liability for all debts, past or prospective, from which the former homestead would have been exempt in her hands.

SEC. 1407. **Dower and will.** The widow's dower cannot be affected by any will of her husband if she objects thereto and relinquishes all rights conferred upon her by the will.

SEC. 1408. **Descent.** Subject to the rights and charges hereinbefore con-

templated, the remaining estate of which the decedent died seized shall, in the absence of other arrangements by will, descend in equal shares to his children.

SEC. 1409. **Representation.** If any one of his children be dead the heirs of such child shall inherit his share in accordance with the rules herein prescribed, in the same manner as though such child had outlived his parent.

SEC. 1410. **If no issue.** If the intestate leave no issue the one half of his estate (including the dower of his wife), shall go to his father and the other half to his wife, and if he leave no wife nor issue the whole shall go to his father.

SEC. 1411. **Representation.** If his father be previously dead, the portion which would have fallen to his share by the above rules shall be [215] disposed of in the same manner as though he had outlived the intestate and died in the possession and ownership of the portion thus falling to his share, and so on through each ascending ancestor and his issue unless heirs are sooner found.

SEC. 1412. **Female line.** If heirs are not found in the male line the portion thus uninherit shall go to the mother of the intestate and to her heirs, following the same rules as above prescribed.

SEC. 1413. **When wife to inherit.** If heirs are not thus found the portion uninherit shall go to the wife of the intestate or to her heirs if dead, according to like rules; and if he has had more than one wife who either died or survived in lawful wedlock it shall be equally divided between the one who is living and the heirs of those who are dead, or between the heirs of all if all are dead, such heirs taking by right of representation.

SEC. 1414. **Escheat.** If, still, there be property remaining uninherit it shall escheat to the state.

SEC. 1415. **Illegitimate children.** Illegitimate children inherit from the mother, and the mother from the children.

SEC. 1416. **Same.** They also inherit from the father whenever they have been recognized by him as his children, but such recognition must have been general and notorious or else in writing.

SEC. 1417. **Same.** Under such circumstances, if the recognition of relationship has been mutual the father may inherit from his illegitimate child.

SEC. 1418. **Rule in such cases.** But in thus inheriting from an illegitimate child the rule above established must be inverted, so that the mother and her heirs take preference of the father and his heirs, the father having the same right of inheritance in regard to an illegitimate child that the mother has in regard to one that is legitimate.

SEC. 1419. **Advancement.** Property given by an intestate, by way of advancement to an heir shall be considered part of the estate so far as regards the division and distribution thereof, and shall be taken by such heir towards his share of the estate at what it would now be worth if in the condition in which it was so given to him.

SEC. 1420. **Same.** But if such advancement exceeds the amount to which he would be entitled he cannot be required to refund any portion thereof.

SEC. 1421. **Husband to have dower.** All the provisions hereinbefore made in relation to the widow of a deceased husband shall be applicable to the husband of a deceased wife. Each is entitled to the same rights of dower in the estate of the other, and like interests shall in the same manner descend to their respective heirs. The estate by courtesy is hereby abolished.

[216] *Executor's accounting.*

SEC. 1422. **Time.** Within one year from the issuing of the first commission to the executor, and sooner if required by the court, he shall render his account to the court showing the then condition of the estate, its debts, and its effects. And from time to time as may be convenient and as may be required by the court he shall render farther accounts until the estate is finally settled.

SEC. 1423. **To embrace.** Such accounts shall embrace all matters directed by the court and pertinent to the subject.

SEC. 1424. **Executor examined.** The executor may be examined under oath by the court upon any matters relating to his accounts when the vouchers and proofs in relation thereto are not sufficiently full and satisfactory.

SEC. 1425. **Accounting.** He must account for all the property inventoried, at the price at which it was appraised, as well as for all other property which has come into his hands belonging to the estate.

SEC. 1426. **Appraisement presumptive.** The appraisement is only presumptive evidence of the value of an article and shall be so regarded either for or against the executor.

SEC. 1427. **Profit and loss.** He shall derive no profit from the sale of property for a price higher than the appraisement, nor is he chargeable with any loss occurring without any fault of his own.

SEC. 1428. **Failure.** Any executor failing to account upon being required to do so by the court, may be removed and shall be liable on his bond for all the damage caused by such failure.

SEC. 1429. **Compensation.** Executors shall be allowed the following commissions upon the personal estate sold or distributed by them, and for the proceeds of real estate sold for the payment of debts, which shall be received in full compensation for all their ordinary services:

For the first one thousand dollars, at the rate of five per cent;

For the overplus between one and five thousand dollars, at the rate of two and a half per cent;

For the amount over five thousand dollars, at the rate of one per cent.

SEC. 1430. **Farther allowance.** Such farther allowances as are just and reasonable may be made by the court for actual, necessary, and extraordinary expenses or services.

SEC. 1431. **Accounts contested.** Any person interested in the estate may attend upon the settlement of the accounts of the executor and contest the same. Accounts settled in the absence of any person adversely interested and without notice to him may be opened within three months on his application.

[217] SEC. 1432. **Mistakes.** Mistakes in settlements may be corrected at any time before final settlement and discharge of the executor, and even after that time on showing such grounds for relief in equity as will justify the interference of the district court.

SEC. 1433. **Execution against executor.** If judgment is rendered against an executor for costs in any suit prosecuted or defended by him in that capacity, execution shall be awarded against him as for his own debt if it appear to the court that such suit was prosecuted or defended without reasonable cause. In other cases the execution shall be awarded against him in his representative capacity only.

SEC. 1434. **Discharge.** Upon final settlement by the executor an order shall be entered discharging him from farther duties and responsibilities.

Miscellaneous provisions.

SEC. 1435. **Specific performance.** When a person, under such an obligation to convey real estate as might have been enforced against him if living, dies before making such conveyance, the district court may enforce a specific performance of such contract by the executor and require him to execute the conveyance accordingly.

SEC. 1436. **Who made party.** It is not necessary to make any other than the executor party defendant to such proceedings in the first instance, but the court in its discretion may direct other persons interested to be made parties and may cause them to be notified thereof in such manner as they may deem expedient. Heirs and devisees may on their own motion at any time be made defendants.

SEC. 1437. **Notice.** In an action against several executors they are considered one person, and judgment may be taken and execution issued against all as such although only part were duly served with notice.

SEC. 1438. **Executor of executor.** An executor has no authority to act in a matter wherein his principal was merely an executor or trustee.

SEC. 1439. **Executors in their own wrong.** Any person who, without being regularly appointed an executor, intermeddles with the property of a deceased person is responsible to the regular executor, when appointed, for the value of all property taken or received by him and for all damages caused by his acts to the estate of the deceased, but his liability extends no farther.

SEC. 1440. **Actions vs. heir, etc.** In an action against the heirs and devisees, where the judgment is to be against them in proportion to the respective amounts received by them from the estate, costs awarded against them shall be in like proportion.

SEC. 1441. **Tender.** In such cases any one may tender the amount due [218] from him to the plaintiff, which shall have the same effect so far as he is concerned as though he was the sole defendant.

SEC. 1442. **Receipts by one executor.** One of several executors may receive and receipt for money. Such receipt shall be given by him in his own name only, and he must individually account for all the money thus received and receipted for by himself; and this shall not charge his co-executor except so far as it can be shown to have come into his hands.

SEC. 1443. **Escheats.** When the judge of any county court has reason to believe that any property within his county should by law escheat to the state, he must forthwith inform the superintendent of public instruction thereof, and must also appoint some suitable person executor to take charge of such property unless an executor has already been appointed for that purpose in some county in the state.

SEC. 1444. **Notice.** The executor must thereupon give such notice of the death of the deceased and the amount and kind of property left by him within this state, as in the opinion of the judge of the county court will be best calculated to notify those interested, as far as practicable and as the circumstances of the case require.

SEC. 1445. **Sale.** The property may be sold or the money appropriated, as soon thereafter as the superintendent of public instruction directs, and the proceeds thereof treated like those arising from the sale of school lands.

SEC. 1446. **Repayment.** The money or any portion thereof shall be paid over to any one who shows himself entitled thereto within ten years after the sale of the property or the appropriation of the money as an escheat, but not afterwards.

TITLE XVII.

OF THE DOMESTIC RELATIONS.

CHAPTER 84.

HUSBAND AND WIFE.

SECTION 1447. **Her personal property.** The personal property of the wife does not vest at once in the husband, but if left under his control it will, in [219] favor of third persons acting in good faith and without knowledge of the real ownership, be presumed to have been transferred to him except as herein-after provided.

SEC. 1448. **She a creditor of his estate.** If the wife has such property which she leaves under his control she must, in order to avoid the entire surrender of her interest therein, file for record with the recorder of deeds a notice, stating the amount in value of such property and that she has a claim therefor out of the estate of her husband, and if during her life time he dies or becomes insolvent she shall be deemed a preferred creditor of the estate to that amount without interest and may hold and control the same in her own right; but this preference shall not prejudice the interests of those creditors who became such after the property was thus placed under the husband's control and before the filing of the notice aforesaid, unless they had knowledge of her right in that respect.

SEC. 1449. **Proof.** The provisions of the preceding section shall not prevent the necessity of proof on the part of the wife of the actual amount of property thus in good faith placed by her under the control of her husband, but the notice aforesaid will after the lapse of five years from the time of the recording thereof be presumptive evidence of the facts therein stated in this respect.

SEC. 1450. **Specific articles—notice.** Specific articles of personal property may be owned by the wife exempt from the husband's debts, although left under his control, if during his lifetime and prior to its being disposed of by him or levied upon for his debts notice of her ownership is filed for record with the recorder of deeds of the county. But such notice shall not exempt her property from liability for his debts contracted after it was left under his control and before the filing of the notice aforesaid, except as against those having knowledge of her rights.

SEC. 1451. **Record.** The notices aforesaid must be recorded in the book kept for recording mortgages and conveyances of personal property and indexed in like manner.

SEC. 1452. **Stocks, etc.** In the case of bank stock, written securities, things in action, or other property which does not ordinarily pass by mere delivery or by oral contract without an indorsement, assignment, or other written evidence of such transfer, knowledge of the ownership of the wife will be presumed without the recording required by the preceding two sections, unless such property has been conveyed to the wife by the husband.

SEC. 1453. **Debts.** Except as herein otherwise declared, the husband is not liable for the separate debts of the wife, nor is the property of the wife nor the rent nor income thereof liable for the debts of the husband. But the separate debts of the [220] wife as herein contemplated are only those growing out of the contracts mentioned in the next section.

SEC. 1454. **Her contracts.** Contracts made by a wife in relation to her separate property or those purporting to bind herself only, do not bind the husband.

SEC. 1455. **Expenses common.** The expenses of the family, the education of the children, and such other obligations as come within the equity of this provision, are chargeable upon the property of both husband and wife or of either of them, and in relation thereto they may be sued jointly or the husband separately.

SEC. 1456. **Abandoned.** Married women abandoned by their husbands may obtain authority from the district court of the county in which they reside to act and to transact business as though unmarried.

SEC. 1457. **Petition.** The petition for that purpose must be sworn to, filed, and served as in ordinary civil actions, and issues may be joined and tried in like manner.

SEC. 1458. **Decree.** If the fact of abandonment be established either by the default of the defendant or by proof, that fact shall be entered of record and the court shall make a decree giving the power sought.

SEC. 1459. **Powers given.** The court may also under such circumstances authorize the wife to sue or defend in any or all cases in place of her husband, to sell or otherwise dispose of so much of the husband's property as is necessary for the maintenance of the family, and to collect debts due the husband. Deeds made and receipts and discharges executed and delivered by the wife in accordance with the power so given are valid.

SEC. 1460. **Decree revoked.** The court may in its discretion modify or revoke its orders and decrees herein authorized.

SEC. 1461. **Same to husband.** The husband has the same rights in relation to the wife and her property as is above given to the wife, and he may have the same proceedings in like cases.

SEC. 1462. **Homestead.** The husband cannot remove the wife nor their children from their homestead without the consent of the wife, and if he abandons her she is entitled to the custody of their minor children, unless the district court upon application for that purpose shall for good cause otherwise direct.

[221] CHAPTER 85.

MARRIAGE.

SECTION 1463. **A contract.** Marriage is a civil contract requiring the consent of parties capable of entering into other contracts, except as herein otherwise declared.

SEC. 1464. **When valid.** A marriage between a male person of sixteen and a female of fourteen years of age is valid, but if either party has not attained the age thus fixed the marriage is a nullity or not at the option of such party made known at any time before he or she is six months older than the age thus fixed.

SEC. 1465. **License.** Previous to any marriage within this state, a license for that purpose must be obtained from the judge of the county court of the county wherein the marriage is to be solemnized, agreeable to the provisions of this chapter.

SEC. 1466. **Same.** Such license must not in any case be granted where either party is under the age necessary to render the marriage absolutely

valid, nor shall it be granted where either party is a minor without the previous consent of the parent or guardian of such minor, nor where the condition of either party is such as to disqualify him for making any other civil contract.

SEC. 1467. **Proof.** Unless the judge of the county court is acquainted with the age and condition of the parties for the marriage of whom the license is applied for, he must take the testimony of competent and disinterested witnesses on the subject.

SEC. 1468. **Entry of record.** He must cause due entry of the application for the issuing of the license to be made on the records of the county court, stating that he was acquainted with the parties and knew them to be of competent age and condition, or that the requisite proof of such facts was made to him by one or more witnesses (stating their names).

SEC. 1469. **Consent, etc.** If either party is a minor the consent of the parent or guardian must be filed in the county office, after being admitted by the said parent or guardian or proved to be genuine, and a memorandum of such facts must be also entered on the records of the county court.

SEC. 1470. **License—penalty.** If the judge of the county court grants a license contrary to the provisions of the preceding sections he is guilty of a misdemeanor, and if a marriage is solemnized without such license being procured the parties so married, and all persons aiding in such marriage, are likewise guilty of a misdemeanor.

SEC. 1471. **Fee.** The license shall not be issued until the amount [222] of one dollar has been paid into the county treasury and the receipt therefor filed with the judge of the county court.

SEC. 1472. **By whom.** Marriages must be solemnized either:

1. By a justice of the peace, or judge of the county court of the county, or the mayor of the city; wherein the marriage takes place;
2. By some judge of the supreme or district court of this state;
3. By some officiating minister of the gospel, ordained or licensed according to the usages of his denomination.

SEC. 1473. **Certificate.** After the marriage has been solemnized, the officiating minister or magistrate shall on request give each of the parties a certificate thereof.

SEC. 1474. **Penalty.** Marriages solemnized (with the consent of parties) in any other manner than is herein prescribed are valid, but the parties themselves and all other persons aiding or abetting shall forfeit to the school fund the sum of fifty dollars each.

SEC. 1475. **Same—return.** The person solemnizing marriage shall forfeit a like amount unless within ninety days after the ceremony he make return thereof to the county court.

SEC. 1476. **Register.** The clerk of the county court shall keep a register containing the names of the parties, the date of the marriage, and the name of the person by whom the marriage was solemnized, which (or a certified transcript therefrom) is receivable in all courts and places as evidence of the marriage and the date thereof.

SEC. 1477. **Exception.** The preceding provisions, so far as they relate to the manner of solemnizing marriages, are not applicable to marriages among the members of any particular denomination having, as such, any peculiar mode of performing that ceremony.

SEC. 1478. **Return.** But where any mode is thus pursued which dispenses with the services of a clergyman or magistrate, the husband is responsible for

the return directed to be made to the county court and is liable to the above named penalty if the return is not made.

SEC. 1479. **Illegitimates.** Illegitimate children become legitimate by the subsequent marriage of their parents.

[223] CHAPTER 86.

DIVORCE AND ALIMONY.

SECTION 1480. **Jurisdiction.** The district court in the county where the plaintiff resides has jurisdiction of all cases of divorce and alimony, and of guardianship connected therewith.

SEC. 1481. **Petition.** The petition for divorce, in addition to the facts on account of which the plaintiff claims the relief sought, must state that he has been for the last six months a resident of the state and that the application is not made through fear or restraint or out of any levity, but in sincerity and truth for the purpose set forth in the petition. It must also be sworn to by the plaintiff.

SEC. 1482. **Causes.** DIVORCES from the bonds of matrimony may be decreed against the husband in the following cases:

1. When the defendant at the time of his marriage was impotent;
2. When he had a lawful wife then living;
3. When he has committed adultery subsequent to the marriage;
4. When he wilfully deserts his wife and absents himself without a reasonable cause for the space of one year;
5. When he is convicted of felony after his marriage;
6. When, after marriage, he becomes addicted to habitual drunkenness;
7. When he is guilty of such inhuman treatment as to endanger the life of his wife;
8. When it shall be made fully apparent that the parties cannot live in peace and happiness together and that their welfare requires a separation.

SEC. 1483. The husband may in all cases obtain a divorce from the wife for like causes.

SEC. 1484. **Default.** If the defendant does not appear and answer the petition at the proper time the court, if satisfied that the complainant is the injured party, may decree a dissolution of the marriage contract; or when the defendant can be found, it may in its discretion bring him in by attachment and compel him to answer.

SEC. 1485. **Order concerning children.** When a divorce is decreed the court may make such order in relation to the children and property of the parties and the maintenance of the wife as shall be right and proper. Subsequent changes may be made by the court in these respects when circumstances render them expedient.

[224] SEC. 1486. When a divorce is decreed the guilty party forfeits all rights acquired by the marriage.

CHAPTER 87.

MINORS.

SECTION 1487. **Majority.** The period of minority extends, in males to the age of twenty-one years, and in females to that of eighteen years, but all minors attain their majority by marriage.

SEC. 1488. **His contracts.** A minor is bound, not only by contracts for necessaries, but also by his other contracts unless he disaffirms them within a reasonable time after he attains his majority and restores to the other party all money or property received by him by virtue of the contract and remaining within his control at any time after his attaining his majority.

SEC. 1489. No contract can be thus disaffirmed in cases where, on account of the minor's own misrepresentations as to his majority or from his having engaged in business as an adult, the other party had good reason to believe the minor capable of contracting.

SEC. 1490. **Payment to minor.** Where a contract for the personal service of a minor has been made with him alone, and those services are afterwards performed, payment made therefor to such minor in accordance with the terms of the contract is a full satisfaction for those services, and the parent or guardian cannot recover therefor a second time.

CHAPTER 88.

GUARDIANSHIP OF MINORS.

SECTION 1491. **Natural guardian.** The father is the natural guardian of the persons of his minor children. If he dies or is incapable of acting the mother becomes the guardian.

SEC. 1492. **Guardian appointed.** The natural and actual guardian of any minor child may by will appoint another guardian for such minor. If, without such will, both parents be dead or disqualified to act as guardian the county court may appoint one.

SEC. 1493. **Of property.** Although the parents are living and of sound mind, yet if the minor has property not derived from either of them a guardian must be appointed by the county court to manage such property.

[225] SEC. 1494. **Same.** The father, or in case of his death, absence, or incapacity, the mother may be appointed the guardian to take charge of the property of his minor child, if deemed by the court a suitable person for that purpose.

SEC. 1495. **Choosing guardian.** If the minor be over the age of fourteen years and of sound intellect he may select his own guardian, subject to the appointment of the court.

SEC. 1496. **Bond and oath.** Guardians appointed to take charge of the property of a minor must give bond with surety to be approved by the court, in a penalty double the value of the personal estate and of the rents and profits of the real estate of the minor, conditioned for the faithful discharge of their duties as such guardians according to law. They must also take an oath of the same tenor as the condition of the bond.

SEC. 1497. **Inventory.** Within forty days after their appointment they must make out an inventory of all the property of the minor, which shall be appraised in the same manner as the property of a deceased person. The inventory must be filed in the office of the county judge.

SEC. 1498. **Powers.** Guardians of the persons of minors have the same power and control over them that parents would have if living.

SEC. 1499. Guardians of the property of minors must prosecute and defend for their wards. They must also in other respects manage their interests, under the direction of the court. They may thus lease their lands or loan their money during their minority, and may do all other acts which the court may deem for the benefit of the wards.

SEC. 1500. **Real estate.** When not in violation of the terms of a will by which a minor holds his real property, it may, under the discretion of the county court, be sold or mortgaged on the application of the guardian, either when such sale or mortgage is necessary for the minor's support or education, or where his interest will be thereby promoted by reason of the unproductiveness of the property or of its being exposed to waste or of any other peculiar circumstances.

SEC. 1501. **Petition.** The petition for that purpose must state the grounds of the application, must be verified by oath, and a copy thereof with a notice of the time at which such application will be made to the court must be served personally upon the minor, at least ten days prior to the term fixed for such application.

SEC. 1502. **Publication.** The court in its discretion may direct a postponement of the matter, and may order such farther publication through the newspapers or otherwise as it may deem expedient.

SEC. 1503. **Reference.** It may also direct a reference for the purpose of [226] ascertaining the propriety of ordering the sale or mortgage as applied for.

SEC. 1504. **Bond.** Before any such sale or mortgage can be executed the guardian must give security to the satisfaction of the court, the penalty of which shall be at least double the value of the property to be sold or of the money to be raised by the mortgage, conditioned that he will faithfully perform his duty in that respect and account for and apply all moneys received by him under the direction of the court.

SEC. 1505. **Costs.** When the application for the sale of property is resisted the court may in its discretion award costs to the prevailing party, and may when satisfied that there was no reasonable ground for making the application direct the costs to be paid by the guardian from his own funds.

SEC. 1506. **Sales approved.** Deeds may be made by the guardian in his own name, but they must be returned to the court and the sale or mortgage be approved before the same are valid.

SEC. 1507. **Directions.** The same rule that is prescribed in the sale of real property by executors shall be observed in relation to the evidence necessary to show the regularity and validity of the sales above contemplated.

SEC. 1508. **Validity.** No person can question the validity of such sale after the lapse of five years from the time it was made.

SEC. 1509. **Breach of bond.** A failure to comply with any order of the court in relation to the guardianship shall be deemed a breach of the condition of the guardian's bond, which may accordingly be put in suit by any one aggrieved thereby, for which purpose the court may appoint another guardian of the minor if necessary. The court may also commit him to jail until he complies with such order.

SEC. 1510. **Guardians to account.** Guardians of the property of minors must account on oath annually, or oftener if required by the court. It may also direct them to give new or supplemental security, or may remove them for good cause shown which cause must be entered on the records.

SEC. 1511. **New guardian.** Where a new guardian is appointed the court may order the effects of the minor which are in the hands of his predecessor to be delivered up to such new guardian.

SEC. 1512. **Foreign guardians.** The foreign guardian of any non-resident minor may be appointed the guardian of such minor by the court of the county wherein he has any property, for the purpose of selling or otherwise controlling that and all other property of such minor within this state.

SEC. 1513. **Same.** Such appointment may be made upon his filing in the office of the judge of the county wherein there is any such property, an authenticated copy of the order for his ap-[227]-pointment. He shall thereupon qualify like other guardians except as in the next succeeding section.

SEC. 1514. **Same.** Upon the filing of an authenticated copy of the bond and the inventory rendered by the guardian in the foreign state, if the court is satisfied with the sufficiency of the amount of the security it may dispense with the filing of an additional bond.

SEC. 1515. **Compensation.** Guardians shall receive such compensation as the court may from time to time allow. The amount allowed and the service for which the allowance was made must be entered upon the records of the court.

CHAPTER 89.

MASTER AND APPRENTICE.

SECTION 1516. **Minors.** Any minor child may be bound to service until the attainment of the age of legal majority as hereinafter described.

SEC. 1517. **By indenture.** Such binding must be by written indenture specifying the age of the minor and the terms of the agreement. If the minor is more than twelve years of age and not a pauper the indenture must be signed by him of his own free will.

SEC. 1518. **Consent.** A written consent must be appended to, or indorsed upon, such agreement and signed by one of the following persons, to-wit:

1. By the father of the minor; but if he is dead, or has abandoned his family, or is for any cause incapacitated from giving his assent, then

2. By the mother; and if she be dead, or unable, or incapacitated for giving such consent, then

3. By the guardian; and if there be no guardian then by the judge of the county court.

SEC. 1519. **Paupers.** The judge of the county court may bind minors who are paupers, till they have attained the age of majority, without obtaining their assent.

SEC. 1520. The written indenture must in that case be signed by the master and said judge.

SEC. 1521. **Indentures.** The indenture must in all cases where there is a parent or guardian be in three parts, one being left with the master, another with the county judge, and the third with the person by whose assent he is bound.

SEC. 1522. **Powers, rights, etc.** The powers, liabilities, and duties of the master and the rights of the apprentice are the same as those of pa-[228]-rent and child respectively, except as to inheritances and except as is otherwise provided by law.

SEC. 1523. **Duty.** The parent, guardian, or officer, by whose act or con-

sent any minor is thus bound must watch over the interest of the minor, and if the case require must enter complaint as provided for in the following section.

SEC. 1524. **Complaint against master.** Upon complaint by the minor or by any other person made to the judge of the county court, stating under oath that the master is ill-treating his apprentice or is in any other manner palpably failing in the discharge of his duty in regard to him, and stating the particulars with reasonable certainty, the court shall summon the master to appear and answer such complaint.

SEC. 1525. **Service.** The complaint with the proper notice indorsed thereon must be served and returned in the same manner as in the commencement of an action in a justice's court and the time for appearance shall be regulated by the same rules.

SEC. 1526. **Answer—issue.** The answer of the master must also be under oath and if any issue be joined thereon it must be tried as in other cases in the county court.

SEC. 1527. **Judgment.** If the court or jury before whom the case is pending finds the cause of complaint, admitted by the master or proved upon the trial, to be of sufficient magnitude to justify the discharge of the minor from farther service, judgment shall be rendered accordingly and a certificate of such judgment placed in said minor's hands.

SEC. 1528. **Appeals.** From any judgment in such cases, either the minor or the master may appeal to the district court in the same manner as is provided for in ordinary cases.

SEC. 1529. **No bar.** The above proceedings form no bar to the bringing of a suit by or on behalf of the minor for damages or for compensation for services.

SEC. 1530. **Complaint vs. apprentice.** If the apprentice, bound as aforesaid, refuses to serve according to the terms of the indenture, upon complaint made in the manner aforesaid, the judge shall issue a warrant to cause the apprentice to be brought forthwith before him and shall also cause notice of the proceedings to be given to the parent, guardian, or officer, by whose act or consent the minor was bound as an apprentice, if to be found in the county.

SEC. 1531. **Time for answer.** A reasonable space of time not exceeding three days shall be allowed to the minor to consult with his parent, guardian, or other friends previous to making his answer to the complaint.

SEC. 1532. **Proceedings.** The answer must be made, and the issue thereon tried, in the manner hereinafter provided.

[229] SEC. 1533. **Discharged.** If he shows sufficient cause for refusing to serve he may be discharged from service in the manner hereinbefore provided.

SEC. 1534. **Released from indentures.** Instead of proceeding as aforesaid the master may, for any refusal to serve or for any gross misbehaviour on the part of the apprentice, file a complaint for the purpose of releasing himself from the force and effect of the indenture aforesaid.

SEC. 1535. **Proceedings.** Proceedings shall thereupon be had similar to those provided for in case of a complaint by or in behalf of the apprentice, and judgment rendered in like manner, with the same right of appeal.

SEC. 1536. **Dissolution.** The death of the master or his removal from the state works a dissolution of the indenture, unless otherwise provided therein or unless the apprentice elects to continue in his service. And in the event of

a dissolution, the apprentice shall receive such allowance for services previously rendered as may be thought necessary under the circumstances of the case.

SEC. 1537. **Natural guardian removed.** Upon complaint being made to the district court of the proper county, verified by affidavit, that the father or mother of a minor child is, from habitual intemperance and vicious and brutal conduct, or from vicious, brutal and criminal conduct towards said minor child, an unsuitable person to retain the guardianship and control the education of such child, the court may if it find the allegations in the complaint manifestly true, appoint a proper guardian for the child, and may if expedient also direct that such child be bound as an apprentice to some suitable person until he attains his majority. But nothing herein shall be so construed as to take such minor child if the mother be a proper guardian.

SEC. 1538. **Same.** The same proceedings may take place and a like order be made where the mother, who has for any cause become the guardian of her minor child, is in like manner found to be manifestly an improper person to retain such guardianship.

SEC. 1539. **Proceedings.** The complainant in such cases must be sworn to his complaint and file it in the office of the judge, and a copy thereof, with a notice thereon indorsed stating the time when the matter will be brought before the district court for adjudication, must be served personally on the parent from whom the guardianship is sought to be taken at least ten days before the time so fixed for the adjudication.

SEC. 1540. **Issue.** Issues joined shall be tried in the same manner as in ordinary civil actions.

SEC. 1541. **Preference.** Preference shall be given to such cases over the [230] ordinary business of the court, but trials actually commenced need not be suspended for that purpose.

SEC. 1542. **Treatment of minor.** The master shall send the said minor child, after the same be six years old, to school at least four months in each year if there be a school within the district, and in all cases and at all times the master shall clothe the minor child in a comfortable and becoming manner.

PART THIRD

OF COURTS AND THE PROCEDURE THEREIN

TITLE XVIII.

THE ORGANIZATION OF THE SUPREME AND DISTRICT COURTS.

CHAPTER 90.

THE SUPREME COURT.

SECTION 1543. **Districts.** Until otherwise ordered, the four supreme court districts will remain as at present organized and the times and places for holding courts therein continue unchanged.

SEC. 1544. **Terms.** At any general term the court may change the time for holding the next regular term in that district, but there must be at least one term in each of said districts annually.

SEC. 1545. **Special terms.** Special terms may also be called by the chief justice at his discretion for the trial of appeals in civil causes with the consent of both parties, or for the trial of appeals in criminal causes to which the accused consents and the prosecuting attorney can show no sufficient objections.

SEC. 1546. **Record.** The court may prescribe the character of the record to be kept by the clerk and the mode of keeping the same, and subject to the regulations contained in the statute it may prescribe his other duties and powers.

SEC. 1547. **Sheriff, etc.** The sheriff of the county wherein the court is held together with all necessary assistants must attend upon the sessions of the court, and shall each receive two dollars per day as a compensation for such attendance.

SEC. 1548. **Expenses.** All reasonable expenses of the supreme court must be certified by one of the judges of the court and be allowed by the auditor and paid out of the state treasury.

SEC. 1549. **Appeals.** Appeals must be taken to the supreme court for the district in which the causes respectively originate, unless by the written consent of parties or their attorneys they are taken to another district. But cases heard in one district may be decided in another.

SEC. 1550. **Decisions in vacation.** Such decisions and the order of the court thereon, [232] being certified back to the court where the cause was heard and entered on the records of that court, shall have the same force and effect as if made and entered during the session of the court in that district.

SEC. 1551. **Quorum.** The presence of two judges is necessary for the transaction of business, but one alone may adjourn from day to day or to any particular day or until the next term.

SEC. 1552. **Division.** When the court is equally divided in opinion the cause must stand for a re-argument unless the third judge be legally disqualified from serving. In such cases the judgment of the district court shall stand affirmed, but the decision is of no farther force or authority.

SEC. 1553. **Absence of judges.** If all the judges fail to attend on the first day of the term the clerk must enter the fact upon the record and the court shall stand adjourned until the next day. The same proceedings shall be repeated from day to day until the fourth day of the term, when if none of the judges appear the court shall stand adjourned until the next term.

SEC. 1554. **Continuance.** No process or proceeding is in any manner affected by an adjournment or failure to hold court, but all shall stand continued to the next term without any special order to that effect.

SEC. 1555. **Jurisdiction.** The supreme court has an appellate jurisdiction over all final judgments and decisions of any of the district courts, as well in cases of civil actions properly so called as in proceedings of a special or independent character.

SEC. 1556. **Same.** Intermediate orders involving the merits and materially affecting the final decision may also be reversed on appeal.

SEC. 1557. **Rules for appeals.** The court may also in its discretion prescribe rules for allowing appeals on such other intermediate orders or decisions as they think expedient, and for permitting the same to be taken and tried during the progress of the trial in the court below; but such intermediate appeals must not retard proceedings in the trial in chief in the district court.

SEC. 1558. **Process.** The court may issue all writs and process necessary for the exercise and enforcement of its appellate jurisdiction.

SEC. 1559. **Reporter.** The judges of the court may report their own decisions or they may appoint a reporter, who shall hold his office at the pleasure of the court.

SEC. 1560. **Opinions in writing.** The opinions of the court on all questions reviewed on appeal as well as such motions, collateral questions, and points of practice as they may think of sufficient importance, shall be reduced to writing and filed with the clerk of the court.

[233] SEC. 1561. All dissenting opinions must be written and filed in the same manner.

SEC. 1562. The records and reports must in all cases show whether a decision was made by a full bench, and whether either, and if so which, of the judges dissented from the decision.

SEC. 1563. **Supervisory power.** The supreme court has a general supervision over the district court to prevent and correct abuses where no other remedy is provided for by law.

CHAPTER 91.

THE CLERK OF THE SUPREME COURT.

SECTION 1564. **Appointment, etc.** The supreme court may in its discretion remove any of its clerks and appoint others in their stead. The location of their offices shall remain as heretofore, until changed by law.

SEC. 1565. **Duty.** Each of the clerks must keep a complete register of all proceedings of the court with an index to the same. And, generally, they must perform all the other duties ordinarily pertaining to their offices.

CHAPTER 92.

THE DISTRICT COURT.

SECTION 1566. **Districts—terms.** The judicial districts, and the terms of the district courts therein respectively, shall remain as at present fixed until otherwise directed—provided that in any county where, by the laws now in force, terms of the district court are holden within any incorporated city or town not being the seat of justice of such county, the said city or town shall provide and furnish the necessary rooms and places for such terms of said court free from charge to such county.

SEC. 1567. **No time.** In counties where no time is now fixed for holding a court, the judge may appoint the terms by a written notice to the clerk thereof.

SEC. 1568. **Notice.** The clerk shall thereupon prepare as many written notices of the time and place of holding such court as there are townships in the county, and the sheriff shall post up one of such notices in a public place in each of said townships at [234] least three weeks prior to the time therein fixed for holding the court.

SEC. 1569. **Special terms.** A special term may be ordered in any county at any regular term of the court in that county.

SEC. 1570. **Same.** Such special term may also be called at any time by the judge for the trial of those causes in which both parties consent.

SEC. 1571. **Jury.** The court in ordering a special term shall direct whether a grand or petit jury or both or neither shall be summoned.

SEC. 1572. **Issue—terms.** The court may by its rules establish terms in any county for the making up of issues or the transaction of any other business not requiring a jury; but the number of trial-terms above required shall not on that account be lessened.

SEC. 1573. **Court house.** When a county is not provided with a regular court house at the place where the courts are to be held they shall be held at such place as the county court provides.

SEC. 1574. **No place.** If no suitable place be thus provided the district court shall direct the sheriff to procure one.

SEC. 1575. **Exchange.** The district judges may interchange and hold each other's courts.

SEC. 1576. **Jurisdiction.** The several district courts shall exercise general original jurisdiction both civil and criminal, and as well in chancery as at common law, where not otherwise provided by law. They shall also have a general supervision over all inferior courts to prevent and correct abuses where no other remedy is provided.

SEC. 1577. **Records.** The clerk of each district court shall keep a record of the proceedings of the court under the direction of the judge. He shall from time to time read over all entries therein in open court which when correct shall be signed by the judge.

SEC. 1578. **Same.** When it is not practicable to have all the records prepared and thus approved during the term they may be read, corrected, and approved at the next succeeding term, but such delay shall not prevent an execution from issuing in the mean time, and all other proceedings may take place in the same manner as though the record had been approved and signed. Entries authorized to be made in vacation shall be read, approved, and signed at the next term of the court.

SEC. 1579. **Entries corrected.** The record aforesaid is under the control of the court and may be amended or any entry therein expunged at any time during the term at which it is made or before it is signed by the judge as aforesaid.

SEC. 1580. **Same.** Entries made, approved and signed at a previous term can be altered only to correct an evident mistake.

SEC. 1581. **Judge not appearing.** If the judge does not appear on the day appointed [235] for holding the court the clerk shall make an entry thereof in his record and adjourn the court till the next day, and so on until the third day unless the judge appear, provided three days are allowed for such term.

SEC. 1582. **Adjournment.** If the judge does not appear by five o'clock of the third day and before the expiration of the time allotted to the term of the court, it shall stand adjourned till the next regular term.

SEC. 1583. If the judge is sick or for any other sufficient cause is unable to attend court at the regularly appointed time, he may by a written order direct an adjournment to a particular day therein specified, and the clerk shall on the first day of the term or as soon thereafter as he receives the order adjourn the court as therein directed.

SEC. 1584. **Proceedings stand continued.** No recognizance or other instrument or proceeding shall be rendered invalid by reason of there being a failure of the term, but all proceedings pending in court shall be continued to the next regular term, unless an adjournment be made as authorized in the last preceding section.

SEC. 1585. **Same.** In cases of such continuances or adjournments, persons recognized or bound to appear at the regular term which has failed as aforesaid shall be held bound in like manner to appear at the time so fixed, and their sureties (if any) shall be liable in case of their non-appearance in the same manner as though the term had been held at the regular time and they had failed to make their appearance thereat.

SEC. 1586. **Same.** Upon any final adjournment of the court all business not otherwise disposed of will stand continued generally.

CHAPTER 93.

GENERAL PROVISIONS.

SECTION 1587. **Judges cannot act as attorneys.** No judge of the supreme or district court shall practice as an attorney or counselor at law, or give advice in relation to any case pending, or about to be brought, in any of the courts of this state.

SEC. 1588. **Judges to report.** Each of the judges of the supreme and district courts shall report to the legislature at each regular session thereof all omissions, discrepancies, or other evident imperfections of the law, which have fallen under his observation.

SEC. 1589. **Supplying defects herein.** The supreme and district courts shall respectively have power (by the establishment of proper rules) to supply defects in this title, so as to carry out the general spirit and intent of the system of practice herewith adopted.

[236] SEC. 1590. **Rules.** The said courts may adopt also such other rules as they may deem expedient, consistent with law, and may revise the same as often as they think expedient.

SEC. 1591. **Object thereof.** The prime object of such rules shall be to carry out the purposes of the statute, to preserve as far as is consistent with law the substance of previous remedies, dispensing with all needless forms with the view of arriving at the prompt attainment of justice.

SEC. 1592. **Writs.** All process issued by the clerk of the supreme or any district court shall bear date on the day on which it is issued, be tested in the name of the clerk who issued the same, and be under the seal of the court.

SEC. 1593. **Proceedings public.** All judicial proceedings must be public unless otherwise specially provided by statute or otherwise agreed upon by the parties.

SEC. 1594. **Oaths.** All courts have power to administer oaths, connected with any matter pending before them, either by any judge, justice, or clerk thereof, or by any other person appointed for that purpose by them.

SEC. 1595. **Judge disqualified.** A judge or justice is disqualified from acting as such except by mutual consent of parties in any case wherein he is a party or interested, or where he is related to either party by consanguinity or affinity within the fourth degree, or where he has been attorney for either party in the action or proceeding. But this section does not prevent them from disposing of any preliminary matter not affecting the merits of the case.

SEC. 1596. **Sunday.** No court can be opened nor can any judicial business be transacted on Sunday except,

1. To give instructions to a jury then deliberating on their verdict;
2. To receive a verdict or discharge a jury;
3. To exercise the powers of a single magistrate in a criminal proceeding.

SEC. 1597. **Where to sit.** All courts must sit at the places designated for that purpose pursuant to statute unless by common consent some other place is fixed upon.

CHAPTER 94.

CONTEMPTS.

SECTION 1598. **Contempts.** The following acts or omissions are deemed to be contempts and are punishable as such by any of the courts [237] of this state or by any judicial officer acting in the discharge of an official duty, as hereinafter provided:

1. For contemptuous or insolent behavior towards such court while engaged in the discharge of a judicial duty which may tend to impair the respect due to its authority;
2. For any wilful disturbance calculated to interrupt the due course of its official proceedings;
3. For illegal resistance to any order or process made or issued by it;
4. For disobedience to any subpoena issued by it and duly served, or refusing to be sworn or to answer as a witness;
5. For unlawfully detaining a witness or party to an action or proceeding pending before such court while going to, or remaining at, the place where the action or proceeding is thus pending;
6. For any other act or omission specially declared a contempt by law.

SEC. 1599. **Other contempts.** In addition to the above, the supreme and district courts may punish the following acts or omissions as contempts:

1. Failure to testify before a grand jury when lawfully required to do so;
2. Assuming to be an officer, attorney, or counsellor of the court and acting as such without authority;

3. Misbehavior as a juror, by improperly conversing with a party or with any other person in relation to the merits of an action in which he is acting or is to act as a juror, or receiving a communication from any person in respect to it without immediately disclosing the same to the court;

4. Disobedience by an inferior tribunal, magistrate, or officer, to any lawful judgment order or process of a superior court, or proceeding in any matter contrary to law after it has been removed from such tribunal, magistrate, or officer.

SEC. 1600. **Punishment for contempt.** The punishment for contempts may be by fine or imprisonment or both, but where not otherwise specially provided the supreme and district courts are limited to a fine of fifty dollars and an imprisonment not exceeding one day, and all other courts are limited to a fine of ten dollars.

SEC. 1601. **Same.** But if the contempt consists in an omission to perform an act which is yet in the power of the person to perform he may be imprisoned until he performs it. In that case the act to be performed must be specified in the warrant of commitment.

SEC. 1602. **Affidavit.** Unless the contempt is committed in the immediate view and presence of the court or comes officially to its [238] knowledge, an affidavit showing the nature of the transaction is necessary as a basis for farther action in the premises.

SEC. 1603. **Proceedings.** Before punishing for a contempt, unless the offender is already in the presence of the court, he must be served personally with a rule to show cause against the punishment, and a reasonable time given him therefor; or he may be brought before the court forthwith or on a given day by warrant if necessary. In either case he may at his option make a written explanation of his conduct under oath, which must be filed and preserved.

SEC. 1604. **Same.** Where the action of the court is founded upon evidence given by others such evidence must be in writing and be filed and preserved, and if the court act upon their own knowledge in the premises a statement of the facts upon which the order is founded must be entered on the records of the court, or be filed and preserved when the court keeps no record.

SEC. 1605. **Commitment.** When the offender is committed the warrant must state the particular facts and circumstances on which the court acted in the premises, and whether the same was within the knowledge of the court or was proved by witnesses.

SEC. 1606. **Certiorari.** No appeal lies to an order to punish for a contempt, but the proceedings may in proper cases be taken to a higher court for revision by *certiorari*.

SEC. 1607. **No bar.** The punishment for a contempt constitutes no bar to an indictment. But if the offender is indicted and convicted for the same offense, the court in passing sentence must take into consideration the punishment before inflicted.

SEC. 1608. **"A court."** Any officer authorized to punish for a contempt is a court within the meaning of this chapter.

CHAPTER 95.

ATTORNEYS AND COUNSELORS.

SECTION 1609. **Who are.** All persons who, by the law heretofore in force, were permitted to practice as attorneys and counselors may continue to practice as such.

SEC. 1610. **Admitted.** Any white male citizen of the United States who is actually an inhabitant of this state and who satisfies any district court of this state that he possesses the requisite learning and that he is of good moral character, may by such court be permitted to practice in all of the district courts of the state upon taking the usual oath of office.

SEC. 1611. The supreme court may on motion admit any prac-[239]-ticing attorney of the district court to practice in the supreme court upon his taking the usual oath of office.

SEC. 1612. **From other states.** Any practicing attorney of another state, having professional business in either the supreme or district court, may on motion be admitted to practice in either of those courts upon taking the oath as aforesaid.

SEC. 1613. **Oath.** The form of oath aforesaid shall be in substance as follows: "You do solemnly swear that you will support the constitution of the United States and of this state and that you will faithfully discharge the duty of an attorney and counselor of this court according to the best of your ability."

SEC. 1614. **Duties.** It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and to judicial officers;
2. To counsel or maintain no other actions, proceedings, or defenses, than those which appear to him legal and just, except the defense of a person charged with a public offence;
3. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law;
4. To maintain inviolate the confidence, and at any peril to himself to preserve the secret of his client;
5. To abstain from all offensive personalities, and to advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which he is charged;
6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest;
7. Never to reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.

SEC. 1615. **Disbarred.** An attorney and counselor who is guilty of deceit or collusion, or consents thereto with intent to deceive a court, or judge, or a party to an action or proceeding, is liable to be disbarred, and shall forfeit to the injured party treble damages, to be recovered in a civil action.

SEC. 1616. **Authority.** An attorney and counselor has power:

1. To execute in the name of his client a bond for an appeal, *certiorari*, or writ of error, or any other paper necessary and proper for the prosecution of a suit already commenced.
2. To bind his client by his agreement in respect to any proceeding within the scope of his proper duties and powers, but no evidence of any such agreement is receivable except the statement of the attorney himself, his written [240] agreement signed and filed with the clerk, or an entry thereof upon the records of the court;

3. To receive money, claimed by his client in an action or proceeding, during the pendency thereof or afterwards unless he has been previously discharged by his client, and upon payment thereof and not otherwise to discharge the claim or acknowledge satisfaction of the judgment.

SEC. 1617. **May be required to show.** The court may, on motion for either party and on the showing of reasonable grounds therefor, require the attorney for the adverse party or for any one of several adverse parties to produce or prove by his own oath or otherwise the authority under which he appears, and until he does so may stay all proceedings by him on behalf of the parties for whom he assumes to appear.

SEC. 1618. **His lien.** An attorney has a lien for a general balance of compensation upon any papers of his client which have come into his possession in the course of his professional employment; upon money in his hands belonging to his client, and upon money due to his client and in the hands of the adverse party in an action or proceeding in which the attorney was employed, from the time of giving notice of the lien to that party.

SEC. 1619. **How released.** Any person interested in such matter may release such lien by giving security in a penalty double the amount claimed by the attorney and conditioned to pay the amount that may be finally found due for his services.

SEC. 1620. **License revoked, etc.** The supreme and district courts may respectively revoke or suspend the license of any attorney or counselor at law to practice therein, and a revocation or suspension by the district court in one county operates to the same extent in the courts of all other counties.

SEC. 1621. **Causes.** The following are sufficient causes for such revocation or suspension:

1. When he has been convicted of a felony or of a misdemeanor involving moral turpitude, in either of which cases the record of conviction is conclusive evidence;

2. When he is guilty of a wilful disobedience or violation of the order of the court requiring him to do or forbear an act connected with, or in the course of, his profession;

3. For a wilful violation of any of the duties of an attorney or counsellor as hereinbefore prescribed;

4. For doing any other act to which such a consequence is by law attached.

SEC. 1622. **Proceedings.** The proceedings to remove or suspend an attorney may be commenced by the direction of the court or on mo-[241]-tion of any individual. In the former case the court must direct some attorney to draw up the accusation; in the latter the accusation must be drawn up and sworn to by the person making it.

SEC. 1623. **Proceedings.** If the court deem the accusation sufficient to justify farther action, it shall cause an order to be entered requiring the accused to appear and answer on a day therein fixed either at the same or a subsequent term, and shall cause a copy of the accusation and order to be served upon him personally.

SEC. 1624. **Trial.** To the accusation he may plead or demur, and the issues joined thereon shall in all cases be tried by the court, all the evidence being reduced to writing, filed, and preserved.

SEC. 1625. **Judgment.** If the accused plead guilty or fail to answer, the court shall proceed to render such judgment as the case requires.

SEC. 1626. **Appeal.** In case of a removal or suspension being ordered by a district court, an appeal therefrom lies to the supreme court, and all the original

papers together with a transcript of the record shall thereupon be transferred to the supreme court to be there considered and finally acted upon. A judgment of acquittal by the district court is final.

SEC. 1627. **Liability.** An attorney who receives the money or property of his client in the course of his professional business and refuses to pay or deliver it in a reasonable time after demand is guilty of a misdemeanor.

SEC. 1628. **Exception.** Where the attorney claims to be entitled to a lien upon the money or property he is not liable to the penalties of the two preceding sections until the person demanding the money proffers sufficient security for the payment of the amount of the attorney's claim when it is legally ascertained.

SEC. 1629. **Same.** Nor is he in any case liable as aforesaid provided he gives sufficient security that he will pay over the whole or any portion thereof to the claimant when he is found entitled thereto.

CHAPTER 96.

JURORS.

SECTION 1630. **Who competent.** All qualified electors of the state, of good moral character, sound judgment, and in full possession of the senses of hearing and seeing are competent jurors in their respective counties.

[242] SEC. 1631. **Who exempt.** The following persons are exempt from liability to act as jurors, to-wit:—All persons holding office under the laws of the United States or of this state;—all practicing attorneys, physicians and clergymen; all acting professors or teachers of any college, school, or other institution of learning; and all persons disabled by bodily infirmity, or over sixty-five years of age, or specially exempted by any other statute from serving on juries.

SEC. 1632. **Who excusable.** Any person may also be excused from serving on a jury when for any reason his own interests or those of the public will be materially injured by his attendance, or when the state of his own health or the death or sickness of a member of his family requires his absence.

SEC. 1633. **Jury lists.** A jury list of one hundred and fifty competent persons liable to serve on juries shall be annually made in each county from which to select jurors for the year commencing on the first day of August annually.

SEC. 1634. **Same.** Should there be less than that number of such persons in any county the list shall comprise all those who answer the above description.

SEC. 1635. **How selected.** On or before the first Monday in March in each year the county clerk shall apportion the number to be selected from each township as nearly as practicable in proportion to the number of votes polled therein at the last general election, and shall deliver a statement thereof to the sheriff.

SEC. 1636. **Same.** The sheriff shall cause a written notice to be delivered to one of the judges of election in the several townships of the county on or before the day of the April election in each year, informing them of the number of jurors apportioned for the ensuing year to their respective townships.

SEC. 1637. **Same.** Said judges shall thereupon make the requisite selection and return a list of the names so selected to the county judge with the returns of the election.

SEC. 1638. **Same.** The judge shall thereupon file said lists in his office and cause a copy thereof to be recorded in the election book.

SEC. 1639. **Service.** Grand jurors shall be selected for the first term in the year at which such jurors are required, commencing next after the last day of July in each year, and shall serve for one year. Petit jurors shall be selected for each term wherein they are required.

SEC. 1640. **How drawn.** At least twenty days previous to the first day of any term at which a jury of either kind is to be selected, the clerk must write out the names on the lists aforesaid, which have not been previously drawn as jurors during that year, on separate ballots, and the judge of the county court and sheriff having compared said ballots with the jury list and [243] rectified the same, if necessary, shall place the ballots in a box to be provided for that purpose.

SEC. 1641. **Same.** After thoroughly mixing the same the clerk shall draw therefrom the requisite number of jurors to serve as aforesaid.

SEC. 1642. **Their number.** When grand jurors are to be selected their number must be fifteen, and they shall serve for one entire year thereafter; the number of the petit jurors shall be the same unless the judge of the county court deems it expedient to cause a larger number to be summoned.

SEC. 1643. **Summoned.** Within three days after such drawing the clerk must issue a precept to the sheriff, commanding him to summon the said jurors to appear before the district court at eleven o'clock, a. m. of the first day of the next term thereof (naming the month and day), unless the judge of the district court has previously directed a different hour or day for their appearance, in which case such direction must be observed.

SEC. 1644. **Sheriff's return.** The sheriff shall immediately obey such precept and on or before the day for the appearance of said jurors must make return thereof, and on failure to do so without sufficient cause is liable to be fined for a contempt in any amount not exceeding fifty dollars.

SEC. 1645. **Failure.** If a person summoned as a juror as aforesaid fail to appear, the court may issue a rule returnable to that or the succeeding term requiring him to appear and show cause why he should not be fined for a contempt, and unless he render a reasonable excuse for his failure to attend the court may fine him in any amount not exceeding ten dollars and costs.

SEC. 1646. **Grand jurors.** Except when required at a special term which has been called in vacation, the grand jury need not be summoned after the first term, but must appear at the next term without summons under the same penalty as though they had been regularly summoned.

SEC. 1647. **Deficiency.** If the requisite number of jurors does not appear by the time appointed as aforesaid the court may at any time thereafter direct the sheriff to summon, forthwith, the number necessary to make up the deficiency.

SEC. 1648. **First August, 1852.** Jurors shall be chosen in the manner heretofore prescribed, to serve in all courts held prior to the first day of August in the year 1852. But the number of jurors must be such as is above fixed.

SEC. 1649. **Certificate.** Within ten days after the close of each term the clerk of the court must make out a certificate to each juror of the amount to which he is entitled for his services, which must be allowed by the county court and paid as other demands against the county.

[244] CHAPTER 97.

REFEREES.

SECTION 1650. **Appointment.** Referees may be appointed in the cases and for the purposes provided by law.

SEC. 1651. **Number, etc.** When the number is not specified they shall consist of three, who shall possess the qualification of jurors and be sworn to the faithful discharge of their duties. They must also be competent jurors as between the parties.

SEC. 1652. **Rules.** Where not otherwise declared, all the referees must meet to hear proofs and to deliberate, but the decision of a majority shall be regarded as their decision.

SEC. 1653. **Vacancies.** When appointed by a court, any judge of that court may fill vacancies in vacation.

SEC. 1654. **Powers.** Any one of such referees has power to issue subpoenas having the same force and to the same extent as those issued by a justice of the peace, and which shall be served by the same officers. They may also administer all oaths necessary for the discharge of their duties and the full exercise of all their powers.

SEC. 1655. **Compensation.** Unless otherwise specially provided, referees shall be entitled to two dollars per day for all the time actually and necessarily occupied by them in the business of the reference.

CHAPTER 98.

RECEIVERS.

SECTION 1656. **Appointment.** On the petition of either party to a civil action or proceeding, wherein he shows that he has a probable right to any of the property which is the subject of the controversy and that such property or its rents and profits are in danger of being lost or materially injured or impaired, the court, if satisfied that the interests of one or both the parties will be thereby promoted and the substantial rights of neither unduly infringed upon, may appoint a receiver to take charge of and control such property under its direction.

SEC. 1657. **How qualified.** Before entering upon the discharge of his duties he must be sworn faithfully to discharge his trust to the best of his ability, and must also file with the clerk a bond with sureties to be by him approved, in a penalty to be fixed by [245] the court, and conditioned for the faithful discharge of his duties and that he will obey the orders of the court in respect thereto.

SEC. 1658. **Powers.** Subject to the control of the court, a receiver has power to bring and defend actions, to take and keep possession of property, to collect debts, to receive the rents and profits of real property, and, generally, to do such acts in respect to the property committed to him as the court may authorize.

TITLE XIX.

OF THE COURSE OF PROCEEDING IN THE DISTRICT AND SUPREME COURTS.

CHAPTER 99.

LIMITATIONS OF ACTIONS.

SECTION 1659. **Limitations.** The following actions may be brought within the times herein limited respectively after their causes accrue, and not afterwards except when otherwise specially declared, that is to say:

1. *Two years.* Actions of slander, libel, malicious prosecution, injuries to the person, or for a statute penalty, within two years;

2. *Three years.* Those against a sheriff or other public officer growing out of a liability incurred by the doing of an act in an official capacity or by the omission of an official duty, including the non-payment of money collected on execution, within three years;

3. *Five years.* Those founded on unwritten contracts, 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 in this respect, within five years;

4. *Ten years.* Those founded on written contracts, on judgments of any courts (except those courts provided for in the next section), and those brought for the recovery of real property, within ten years;

5. *Twenty years.* Those founded on a judgment of a court of record, [246] whether of this or of any other of the United States or of the federal courts of the United States, within twenty years.

SEC. 1660. **Actions for fraud.** In actions for relief on the ground of fraud as above contemplated the cause of action will not be deemed to have accrued until the discovery of the fraud by the party aggrieved.

SEC. 1661. **Effect of answer.** In actions founded upon contract the above limitations shall not apply if from the answer of the defendant or from his testimony as a witness it appears affirmatively that the cause of action still justly subsists. But the answer of one of several defendants shall not prejudice the interests of others in this respect.

SEC. 1662. **Open account.** Where there is a continuous open current account the cause of action shall be deemed to have accrued on the date of the last item therein as proved on the trial.

SEC. 1663. **Commencement of action.** The delivery of the original notice to the sheriff of the proper county with intent that it be served immediately (which intent shall be presumed unless the contrary appears), or the actual service of that notice by another person, is a commencement of the action.

SEC. 1664. **Time of non-residence.** The time during which a defendant is a non-resident of the state shall not be included in computing any of the periods of limitation above prescribed.

SEC. 1665. **Exception.** But when a cause of action has been fully barred by the laws of any country where the defendant has previously resided, such bar shall be the same defense here as though it had arisen under the provisions of this chapter.

SEC. 1666. **Minors.** The above limitation of actions for the recovery of real

property shall not apply to minors so far as to prevent them from having at least one year after attaining their majority within which to commence such actions.

SEC. 1667. **Death.** If the person entitled to a cause of action die within one year next previous to the expiration of the limitation above provided for, the limitation above mentioned shall not apply until one year after such death.

SEC. 1668. **Failure of action.** If after the commencement of an action the plaintiff fail therein for any cause except negligence in its prosecution and a new suit be brought within six months thereafter, the second suit shall for the purposes herein contemplated be deemed a continuation of the first.

SEC. 1669. **Bank bills.** The above limitations and provisions shall not apply to evidences of debt intended to circulate as money, but shall in other respects be applicable to all actions brought by or against all bodies corporate and politic except when otherwise expressly declared.

SEC. 1670. **Admission.** Causes of action founded on contract are revived [247] by an admission that the debt is unpaid as well as by a new promise to pay the same.

SEC. 1671. **Existing contracts.** The provisions of this chapter are intended to apply to causes of action which have already accrued and are not yet barred, subject to the regulations contained in the following two sections.

SEC. 1672. **Qualification.** The times hereafter allowed for commencing actions in such cases shall not be less than one half the periods of limitations herein respectively prescribed, except as provided in the next section.

SEC. 1673. **Same.** But where the period of limitation heretofore fixed by statute is not enlarged by the provisions of the first section of this chapter, the time allowed for the commencement of a suit shall in no case be greater than that fixed by the law heretofore in force as applied to those cases.

SEC. 1674. **Public lands.** The time of limitation in relation to actions for the recovery of real estate as prescribed in this chapter shall not commence to run in favor of a settler on any public lands until such lands have been sold by the state.

CHAPTER 100.

THE PARTIES TO AN ACTION.

SEC. 1675. **Plaintiff and defendant.** The party seeking to obtain or enforce a remedy by any proceeding is, so far as that proceeding is concerned, the plaintiff; the other party is the defendant.

SEC. 1676. **In whose names.** Civil actions must be prosecuted in the names of the real parties in interest except in the case of a trustee or other person legally authorized to sue for another and except when otherwise provided for by law.

SEC. 1677. **Not to affect rights.** The preceding section merely prescribes a rule of practice and is in no wise to affect substantial rights.

SEC. 1678. **Who joined.** Where not otherwise specially provided, all persons interested in obtaining the relief sought may be joined as plaintiffs, those having adverse interests may be joined as defendants.

SEC. 1679. **Same.** Persons having a united interest must be joined on the same side either as plaintiffs or defendants. But when some who should thus be made plaintiffs refuse to join, they may be made defendants, the reason thereof being set forth in the petition.

SEC. 1680. **One suing for all.** When the question is one of a common or general interest to many persons, or when the parties are very numer-[248]-ous and it is impracticable to bring them all before the court one or more may sue or defend for the benefit of the whole.

SEC. 1681. **Indorsers, sureties, etc.** Persons severally liable on the same instrument, including the makers and indorsers of negotiable paper and sureties, may all or any part of them be joined in the same action.

SEC. 1682. **Several obligors.** Persons jointly and severally liable on the same instrument may all or any part of them be sued at once.

SEC. 1683. **Other parties.** If a complete determination of the controversy cannot be had without joining other parties they may be brought in by amendment of the petition or by a supplemental petition and notice.

SEC. 1684. **Claimant of property.** In actions for the recovery of property any person not a party thereto, on showing himself interested in the subject matter of the suit, may be allowed to appear as defendant therein.

SEC. 1685. **Substitution.** At any time before answering, the defendant may obtain the substitution in his place of any person not already a party who claims the money or property which is the subject matter of the suit.

SEC. 1686. **Same.** For this purpose he must file his affidavit stating the facts on which he founds his application and denying all collusion with the person whom he seeks to substitute as the defendant, and must proffer to pay the money into court or deliver the property to any one the court shall direct. If, in answer to a rule against the plaintiff and the person thus sought to be substituted as defendant, sufficient cause to the contrary be not shown the court shall make the order of substitution and discharging the original defendant from all liability to either party.

SEC. 1687. **Husband and wife.** If husband and wife are sued together the wife may defend for her own right, and if the husband neglect to defend she may defend for his right also.

SEC. 1688. **Minors.** Minors may sue by their guardians, who shall be responsible for the costs of suit. They may also defend by guardian.

SEC. 1689. **Next friend.** Those who have no guardian may sue by next friend, who shall be responsible for costs. The court may appoint a guardian *ad litem* to defend for a minor who has no other guardian.

SEC. 1690. **Partners.** Partners may sue or be sued either in their partnership name or by setting forth their individual names, at the option of the plaintiff.

SEC. 1691. **Same.** If suing or sued in their partnership name their individual property may be made liable to any judgment against them unless sufficient cause be shown to the contrary.

[249] SEC. 1692. **On written instruments.** Where an action is founded on a written instrument, suit may be brought by or against any of the parties thereto by the same name and description as those by which they are designated in such instrument.

SEC. 1693. **On bonds.** When a bond or other instrument given to the state, or to a county, or to any officer or person, is intended for the security either of the public generally or of particular individuals, suit may be brought thereon in the name of any person intended to be thus secured who has sustained any injury in consequence of a breach thereof.

SEC. 1694. **Name not known.** When the precise name of any defendant cannot be ascertained he may be described as accurately as practicable and when the name is ascertained it shall be substituted in the proceedings.

SEC. 1695. **Corporation may sue.** Corporations, foreign or domestic, may bring suit in the courts of this state in their corporate name.

SEC. 1696. **Seduction.** An unmarried female may prosecute an action for her own seduction and may recover therein such damages as shall be assessed in her favor.

SEC. 1697. **Same.** The father, mother, or guardian, as the case may be, may also bring suit for the seduction of a minor daughter or ward though such daughter or ward be not living with nor in the service of the plaintiff and though there be no loss of service; but where the action is brought by the guardian the damages recovered shall enure to the sole benefit of the ward.

SEC. 1698. **Abatement.** Actions do not abate by the death, marriage, or other disability of either party, or by the transfer of any interest therein, if from the nature of the case the cause of action can survive or continue.

SEC. 1699. **Survivorship.** In such cases the court on motion may allow the action to be continued by or against his representative, or successor in interest

SEC. 1700. **Action to settle claims.** An action may be brought by one person against another for the purpose of settling an adverse claim which the latter makes against the former, to be regulated by such rules as the court shall prescribe.

CHAPTER 101.

THE PLACE OF BRINGING SUIT.

SECTION 1701. **Where brought.** Except where otherwise provided, personal actions must be brought in a county wherein some of the defendants actually reside. But if none of them have any residence [250] within this state they may be sued in any county wherein either of them may be found.

SEC. 1702. **Change of venue.** If a suit be brought in a wrong county it may be there prosecuted to a termination unless the defendant demand a change of venue to the proper county. In cases of such change of venue the court shall order the same at the cost of the plaintiff and may award the defendant a reasonable compensation for his trouble and expenses in attending at the wrong county.

SEC. 1703. **Attachment.** In cases of attachment of property when the defendant is not served, or in cases where the suit is brought to obtain possession of personal property, or to enforce a lien or mortgage, or where it relates to real property, it may be brought in any county where the real property or any portion of it lies or where any part of the personal property may be found.

SEC. 1704. **Performance in particular place.** When by its terms a contract is to be performed in any particular place, suit for a breach thereof may be brought in the county wherein such place is situated.

SEC. 1705. **Agencies.** When a corporation, company, or individual has an office or agency in any county for the transaction of business, any suits growing out of or connected with the business of that office or agency may be brought in the county where such office or agency is located as though the principal resided therein, and service on any agent or clerk employed in such office or agency shall be sufficient service upon the principal.

CHAPTER 102.

CHANGE OF VENUE.

SECTION 1706. **When granted.** A change of venue in any civil action may be had in any of the following cases:

1. Where the county in which the suit is pending is a party thereto;
2. Where the judge is a party or is directly interested in the suit, or is connected by blood or affinity with any person so interested nearer than in the fourth degree;
3. Where either party files an affidavit stating that the inhabitants of the county are so prejudiced against him, or that the opposite party or his attorney has such an undue influence over the inhabitants of the county, that he cannot expect an impartial trial.

SEC. 1707. The venue shall be changed to some other county [251] in the same district unless the objections are to the judge, or unless the same objection for which the change was made exists to all the other counties of the district.

SEC. 1708. **To whom application—only one change.** The application for the change of venue may be made either to the court or to the judge in vacation, and the change shall be to the most convenient county to which there is no exception of the character of any of those above enumerated. No party is entitled to more than one change of venue except for causes not in existence when the first change was taken.

SEC. 1709. **Made in vacation.** If the change is ordered by the judge in vacation he must immediately transmit to the clerk of the court where the cause is pending the affidavit if any, and the order for the change.

SEC. 1710. **Duty of clerk.** In such cases, as well as where the order is made in open court, the clerk shall forthwith transmit to the clerk of the proper court a transcript of the record and proceedings in such cause with all the original papers filed therein, having first made out and filed in his own office authenticated copies of all such original papers.

SEC. 1711. **Same.** Upon filing such transcript and papers in the office of the clerk of the court to which the same were certified the cause shall be docketed and proceeded in as though it had originated in that court.

SEC. 1712. **Costs.** The costs occasioned by such change of venue shall be paid by the applicant and not taxed as a part of the costs of the case, and the clerk may require payment of such costs before the transcript and papers are transmitted as aforesaid.

SEC. 1713. **Papers not sent.** No discontinuance shall result from the papers not being transmitted and filed in due time in the manner aforesaid provided such failure was not owing to the negligence of the plaintiff in the cause.

CHAPTER 103.

THE MANNER OF COMMENCING ACTIONS.

SECTION 1714. **Notice.** Actions originating in the district court are to be commenced by serving the defendant with the notice hereinafter described.

SEC. 1715. **Name and form.** Such a notice is to be known as the original notice, and must inform the defendant of the name of the plaintiff, that on or before a certain day therein named a petition will [252] be filed in the office of the clerk of the district court of — county claiming of him (here state briefly the substance of the remedy sought), and that unless he appears and pleads

thereto by (stating the time when by law or by the rules of court he is required to plead) default will be entered against him and judgment rendered thereon.

SEC. 1716. **Discontinuance.** If the petition is not filed by the time thus fixed or if not filed ten days before the first day of the next term the action will be deemed discontinued unless good cause be shown for the failure.

SEC. 1717. **Sheriff to note.** If the notice is placed in the hands of the sheriff for service he must note thereon the time when thus left with him.

SEC. 1718. **Service.** The notice may be served by any person not a party to the action, and either within or without the limits of the state.

SEC. 1719. **Return.** If served out of the county in which the suit is pending return may be made by mail and the postage thereon taxed among the costs.

SEC. 1720. **Continuance.** If not served ten days before the then next term the cause shall stand continued unless a trial be had by consent of parties.

SEC. 1721. **Service.** The service is to be made by reading the notice to the defendant and giving him a copy if demanded. If not found he may be served by a copy left at his usual place of residence with some member of the family more than fourteen years of age.

SEC. 1722. **Copy required.** Unless previously served with a copy of the petition, the defendant may at any time require a copy thereof to be sent to him through the post office directed to any place he may designate.

SEC. 1723. **Return.** The return must state the time and manner of making the service. If made by leaving a copy as aforesaid it must state at whose house and the name of the person with whom the same was left or a sufficient reason must be given for omitting to do so. If served personally it must state whether a copy of the petition was required, and if so to what point it was to be directed.

SEC. 1724. **Notice to defendant.** The plaintiff may notify either of the defendants that no personal claim is made against him, in which case a copy of that notice must accompany the return. If after such notice and return such defendant unreasonably defend the action he must pay costs to the plaintiff.

SEC. 1725. **Publication.** Upon a return of "not found" as to all or any of the defendants, service on such defendants may be made by giving notice of the commencement of the action for four weeks successively in some newspaper printed as convenient [253] as practicable to the court wherein the suit is pending, to be determined by the clerk of the court.

SEC. 1726. **Service on whom.** If a county is defendant service may be made upon the county judge or clerk of the county court. If any other civil corporation, upon a trustee or other officer thereof.

SEC. 1727. **Same.** When an action is brought against a corporation of any other description, service may be made upon either of its officers or upon any clerk engaged in the active management of the ordinary business of the corporation.

SEC. 1728. **Same.** If brought against a partnership or corporation having no officers, service may be made upon any member thereof or upon any agent employed in the general management of their business.

SEC. 1729. **Same.** If against a minor or insane person, service must be made upon the defendant personally, and in case of insane defendants or those under the age of fourteen years service must be made upon the father, mother, or guardian, and if there be none such within the state then upon the person having the legal care and control of such person, if there be any.

SEC. 1730. **Defendant in court.** Upon being served with notice in either of the methods hereinbefore prescribed the defendant shall be considered in court.

SEC. 1731. **Part not found.** Where a part of the defendants who should be individually served with process cannot be found the plaintiff, instead of procuring service upon them by publication, may proceed as though all the defendants were in court, but the judgment in such cases shall not be valid as to those not served until on *scire facias* they have had a full opportunity of showing cause against the judgment.

SEC. 1732. **Service—how proved.** The service of papers is sufficiently proved:

1. By the written admission of the defendant;
2. By the return of the sheriff of the county, when made by him;
3. By the affidavit of any other person who made the same;
4. By the proof of publication in the manner above required.

CHAPTER 104.

THE PLEADINGS.

SECTION 1733. **Action.** All technical forms of actions and of pleadings are hereby abolished.

[254] SEC. 1734. **Pleading.** Any pleading which possesses the following requisites shall be deemed sufficient:

1. When to the common understanding it conveys a reasonable certainty of meaning;
2. When by a fair and natural construction it shows a substantial cause of action or defense.

SEC. 1735. **Defects.** If defective in the first of the above particulars, the court on motion shall direct a more specific statement; if in the latter it is ground of demurrer.

SEC. 1736. **Petition.** The first pleading on the part of the plaintiff is the petition, which must contain a statement of the facts constituting the cause of action as well as a claim of the remedy sought. If money be the object of the action the amount demanded must be stated.

SEC. 1737. **Demurrer or answer.** The defendant shall demur or answer or do both on or before the morning of the second day of the term at which he is required to appear unless the court by general rule or special order otherwise direct.

SEC. 1738. **Same.** The demurrer may be to one portion of the petition and the answer to another, or each may apply to the whole.

SEC. 1739. **Order of trial.** In the latter case the answer shall not be held to overrule the demurrer, but the issues growing out of such pleadings shall be disposed of in their order.

SEC. 1740. **Set off.** The defendant may also set up by way of set-off or cross action any claim which would have been the subject of an action against the plaintiff and which was held by the defendant either matured or not at the time the suit was commenced. But such claim must be matured at the time it is so offered as a set-off.

SEC. 1741. **Other pleadings.** When the answer contains new matter by way of avoidance or set-off the plaintiff may reply thereto by demurrer or otherwise, and like proceedings shall if necessary be continued by way of rejoinder or farther pleadings until a final issue is joined.

SEC. 1742. **Qualities of.** Each pleading subsequent to the petition shall, in relation to every affirmative allegation to which it should respond, contain a specific admission or denial or it must state some sufficient reason for not doing so. Allegations not thus responded to will be taken as true.

SEC. 1743. **Same.** Where the pleading thus shows a reason for not admitting or denying a previous allegation it shall, for the purpose of forming an issue and putting the other party to the proof, be regarded as a denial of the truth thereof.

SEC. 1744. **Oath.** The plaintiff in his petition may at his option require the answer of the defendant to be given under oath. And in like manner the party filing any subsequent pleading [255] setting forth new matter may require the reply thereto to be given under oath.

SEC. 1745. **When evidence.** Any pleading thus required to be made under oath shall be considered as evidence in the cause of equal weight with that of a disinterested witness provided it be sworn to by the party himself who was called upon to answer, but not otherwise.

SEC. 1746. **Oath.** The pleading thus calling for a reply under oath must itself be sworn to. If sworn to by any other than the party himself he must show that he has reasonable means of information on the subject and what those means are.

SEC. 1747. **Modification.** Where the reply under oath is to create much delay or inconvenience the court may require satisfactory evidence (by oath of the party or otherwise) that such sworn reply is important.

SEC. 1748. **Oath by whom.** Such reply must be sworn to by the party himself, or some one of the parties where there are several, or by some one showing himself to be possessed of equal information with the party on the subject matter thereof and that he has authority to make such sworn reply. No pleading verified as above required can be used in a criminal prosecution against the party; nor can a party be compelled to state facts which if true would subject him to a prosecution for felony.

SEC. 1749. **Supplemental pleadings.** Either party may make a supplemental pleading alleging any material facts which have come to his knowledge since the filing of his former pleading.

SEC. 1750. **Copies.** When a pleading is founded upon a written instrument or account a copy thereof must be annexed to such pleading or it will be sufficient ground for a demurrer thereto. A set-off is a pleading within the meaning of this section.

SEC. 1751. **Several causes of action.** Several causes of action may be united in the same petition provided they affect all the parties thereto in the same capacities and if suit on all might be brought in that county. But the court, to prevent confusion therein, may direct all or any portion of the issues joined therein to be tried separately.

SEC. 1752. **Of defense.** Each party may state in either of his pleadings as many different grounds of action or defense as he may think material.

SEC. 1753. **Irrelevant matter.** The court may on motion cause irrelevant, redundant, or scandalous matter to be expunged from any pleading.

SEC. 1754. **Special demurrer.** Demurrers for formal defects are abolished. Those for substantial defects must set forth the true grounds of objection to the pleading demurred to.

[256] SEC. 1755. **Amendments.** Upon the determination of any demurrer the failing party may amend or plead over upon such terms as the court deems just or as it may by general rule prescribe.

SEC. 1756. **Continuance.** No cause shall be continued in consequence of the amendment of any pleading unless the court is satisfied that substantial justice requires such continuance.

SEC. 1757. **Variations.** Immaterial variations, errors, or defects, may be disregarded or the court may direct an amendment without costs.

SEC. 1758. **Same.** No variance, error, or defect, shall be deemed material unless the court is satisfied that the objecting party will be prejudiced by disregarding it or by allowing it to be amended. In such cases amendments shall be allowed in any stage of the proceedings upon such terms as the court deems just.

SEC. 1759. **Material amendments.** The court may allow material amendments at any stage of the proceedings upon such terms and subject to such rules as it may prescribe.

SEC. 1760. **Copies.** If an original pleading or paper be lost or withheld by any person the court may authorize a copy thereof to be filed and used instead of the original.

CHAPTER 105.

THE TRIAL AND ITS INCIDENTS.

SECTION 1761. **Calendar.** The clerk shall keep a calendar of the causes pending in his court arranging the civil and criminal causes respectively in the order of their commencement, and shall furnish the court and bar each with a copy at every term of the court.

SEC. 1762. **Causes apportioned.** The court may in its discretion direct the clerk to apportion the causes for as many days of the term as shall be thought necessary. The clerk shall thereupon issue subpoenas for witnesses returnable on the days respectively on which the causes are set for trial.

SEC. 1763. **When tried.** Except where otherwise provided causes shall be tried at the first term after they are commenced unless reasonable cause for a continuance be shown.

SEC. 1764. **Application for continuance.** Where time is asked for making application for a continuance the cause shall not lose its place on the calendar, or it may be continued at the option of the other party and at the cost of the party applying therefor.

SEC. 1765. **Continuances.** Continuances shall not be granted for any cause growing out of the fault or negligence of the party applying [257] therefor. Subject to this rule they may be allowed for any cause which satisfies the court that substantial justice will thereby be more nearly attained.

SEC. 1766. **Absent witness.** Motions for a continuance on account of the absence of witnesses must be founded on the affidavit of the party, his agent or attorney, showing that due diligence has been used to obtain such testimony, also the name and residence of such witness, what particular facts he expects to prove by him, and that he knows of no other witness by whom such facts can be fully proved.

SEC. 1767. **Same.** If the opposite party will admit that the witness if present would swear to the facts thus stated the cause shall not be continued.

SEC. 1768. **Separate trials.** A separate trial between the plaintiff and any or all of several defendants may be allowed by the court whenever in its opinion justice will be thereby promoted.

SEC. 1769. **Marriage or death.** The marriage of a party is no sufficient ground for a continuance, nor shall a cause be continued on account of the death of a party unless the court is also satisfied that farther proceedings cannot then take place without causing substantial injury to some of the parties.

SEC. 1770. **Order of trial.** Issues of law shall first be tried, but by going to trial on an issue of fact without objection a party shall be deemed to have waived his demurrer.

SEC. 1771. **Demurrer.** Upon the decision of a demurrer, if the unsuccessful party fail to amend or plead over the same consequences shall ensue as though a verdict had passed against the plaintiff or the defendant had made default, as the case may be.

SEC. 1772. **Trial by court.** Issues of fact shall be tried by the court unless one of the parties require a jury. Where a jury is thus required a fee of three dollars shall be assessed against the party having to pay the costs of trial.

SEC. 1773. **Jury.** When a jury trial is demanded the clerk shall select twelve jurors by lot for [from] the regular panel.

SEC. 1774. **How selected.** The plaintiff first, and afterward the defendant, shall complete his challenges for cause. They may then in turn in the same order have the right to challenge one juror each until each shall have peremptorily challenged five jurors, but no more.

SEC. 1775. **Same.** After each challenge the vacancy shall if required be filled before farther challenges are made, and any new juror thus introduced may be challenged for cause as well as peremptorily.

SEC. 1776. **Struck jury.** Or when both parties desire it a struck jury may be ordered, whereupon eighteen jurors shall be called into the box and the plaintiff first and then the defendant shall [258] strike out one juror in turn until each has struck out six, and the remaining six shall try the cause.

SEC. 1777. **Talesmen.** When the requisite number of jurors cannot otherwise be obtained the sheriff shall select talesmen to supply the deficiency from the bystanders or the body of the county.

SEC. 1778. **Testimony omitted.** At any time before the cause is finally submitted to the court or jury either party may be permitted by the court to give farther testimony to correct an evident oversight or mistake, but terms may be imposed upon the party obtaining this privilege.

SEC. 1779. **View of premises.** Whenever in the opinion of the court it is proper that the jury should have a view of the localities connected with the pending controversy, it may order them to be conducted in a body in the custody of proper officers to the place. And while thus absent no person must speak to them on any subject connected with the trial except in a public manner to point out the localities which they have come to examine.

SEC. 1780. **Jury may separate.** At any time before the cause is submitted to the jury they may be permitted to separate under the proper instructions of the court.

SEC. 1781. **When not.** After the cause is submitted to the jury they must be kept together without drink except water, and without food except when otherwise directed by the court.

SEC. 1782. **Sick juror.** If after the impaneling of the jury and before verdict a juror becomes sick so as to be unable to perform his duty he may be discharged. In such cases, unless otherwise arranged by consent, the vacancy thus made must be filled and the trial commence anew, or the court may in its discretion order the jury to be discharged and a new one impaneled.

SEC. 1783. **Jury to take papers.** Upon retiring for deliberation the jury

may take with them all papers, except depositions, which have been received as evidence in the cause.

SEC. 1784. **Adjournments.** While the jury is absent the court may adjourn from time to time in respect to other business, but is to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged.

SEC. 1785. **Sealed verdict.** When by consent the jury have been permitted to seal their verdict and separate before it is rendered such sealing is equivalent to a rendition and recording thereof in open court. The jury shall not be polled nor shall they be permitted to disagree thereto, unless such a course has been agreed upon between the parties.

SEC. 1786. **Verdict.** In every action for the recovery of money only or for specific real or personal property the jury in their discretion may render a general or special verdict.

[259] SEC. 1787. **Same.** In all other cases the court may direct the jury to find a special verdict upon all or any of the issues or may direct them to return a general verdict upon particular questions of fact to be stated in writing.

SEC. 1788. **Jury to assess.** Where an action is for the recovery of money only the jury shall assess the amount of the recovery.

SEC. 1789. **Verdict in writing.** The verdict shall in all cases be returned in writing and filed with the clerk and entered upon the record, after having been put in form by the court if necessary.

SEC. 1790. **Form.** The verdict shall be sufficient in form if it expresses the intention of the jury.

SEC. 1791. **Charge.** The charge of the court shall be confined strictly to matters of law, and shall if desired by either party be in writing and placed in the hands of the jury.

SEC. 1792. **Instructions.** The court may in its discretion require any instruction asked by either party to be committed to writing.

SEC. 1793. **Court's decision.** Upon a trial of a question of fact by the court its decision if requested by either party shall be given in writing stating the facts found and the conclusion founded thereon separately, all which shall be entered upon the record.

SEC. 1794. **Submission to referees.** Any or all of the matters involved in any suit may be submitted to three referees unless one of the parties object thereto. A different number of referees may be fixed upon by consent.

SEC. 1795. **How appointed.** When the parties cannot agree upon the referees the court may appoint them or it may allow each party to select one and itself choose a third.

SEC. 1796. **Powers—report.** The referees when selected shall stand in place of the court and shall possess the same power to preserve order. They may be required to state the facts found and upon them the court shall render judgment. The court may upon a sufficient showing set aside their report in whole or in part and refer the matter anew or any part thereof either to the same or other referees.

SEC. 1797. **Temporary judge.** By the consent of the court and parties any person may be selected to act as judge for the trial of any particular cause or question, and while thus acting he shall possess all the powers of the district court.

SEC. 1798. **Balance in set-off.** When a set-off is proved a balance shall be struck between it and the demand established by the plaintiff, for which balance judgment shall be rendered in favor of the party entitled thereto.

SEC. 1799. **Judgment.** In all other cases judgment shall be rendered in accordance with the law and the facts found in either of the modes above provided.

SEC. 1800. **Damages.** Damages are recoverable at the same rate to which [260] the plaintiff would have been heretofore entitled for the same substantial cause of action.

SEC. 1801. **Non-suit.** The plaintiff cannot take a non-suit without the consent of the defendant after the latter has claimed a set-off, but he may in such cases at any time before the jury retire to consider of their verdict dismiss his cause of action leaving the defendant to proceed on his set-off or counter claim in the capacity of plaintiff.

SEC. 1802. **Withdrawal.** The defendant may in like manner withdraw his counter claim at any time before the jury withdraw.

SEC. 1803. **Non-suit.** When there is no counter-claim to be considered the plaintiff may at any time before the jury return with their verdict submit to a non-suit at his own cost.

SEC. 1804. **Same.** If in any of the cases contemplated in the last three sections the trial is by the court instead of being by a jury, the taking a non-suit, the dismissal of the cause of action, or the withdrawal of the counter claim therein provided for, may take place at any time before the court is prepared to make its decision on the question of fact, but not afterward.

SEC. 1805. **Bill of exceptions.** Either party may except to any decision or opinion of the court. If for matters occurring during the trial, the exceptions must be taken and reduced to writing before the verdict is rendered unless otherwise arranged by consent. And where a bill of exceptions is subsequently filed such consent shall be presumed unless the contrary is shown by the record.

SEC. 1806. **Same.** Such exceptions must be in writing, but the court may allow such time as may be deemed reasonable to settle and reduce the same to form.

SEC. 1807. **When record.** If the truth of the case be fairly stated in such bill of exceptions the judge shall sign the same and it shall thereupon become a part of the record of the case.

SEC. 1808. **Arrest and new trial.** Motions in arrest of judgment or for a new trial must be made within a reasonable time and at the term of the court at which the trial took place.

SEC. 1809. **Same.** The party making such motion shall forthwith furnish the counsel of the opposite party as well as the court with a copy of the points upon which he relies, which points must be plainly and particularly set forth.

SEC. 1810. **Affidavit of jurors.** In application for new trials the affidavits of jurors or officers of the court may be taken and used in relation to such application.

SEC. 1811. **Costs.** Costs shall be recovered by the successful against the losing party. But where the plaintiff is successful as to part of his demands and fail as to others an equitable apportionment of costs may be made by the court.

SEC. 1812. **Costs.** The aggregate amount of costs of the parties ad-[261]-judged against the losing party shall be added to and become a part of the judgment.

SEC. 1813. **Re-taxed.** Costs may be retaxed by the court and the judgment corrected in that respect at any time before it is paid off and satisfied.

SEC. 1814. **"Judgments."** All final adjudications of civil actions are judgments.

SEC. 1815. **How rendered.** Judgment may be rendered for or against one or more of several plaintiffs or defendants, or the court when practicable may determine the ultimate rights of the parties on each side as between themselves and give judgment accordingly.

SEC. 1816. **Same.** A judgment may be rendered for or against one or more of several plaintiffs or defendants before the case is ripe for decision as to all, where such a course will not unjustly prejudice the interests of other parties.

SEC. 1817. **Complete record.** In cases where the title to land is involved and is finally settled or determined the clerk shall make a complete record of the whole cause and enter it in the proper book. But in no other case need a complete entry be made except at the request of a party who pays beforehand the expense of such record.

SEC. 1818. **Penal bonds.** In actions on penal bonds the petition must set forth the breaches, and the judgment rendered thereon must be for the actual damages only.

SEC. 1819. **Satisfaction.** When a judgment is set aside or satisfied by execution or otherwise the clerk shall enter a memorandum thereof in the column left for that purpose in the judgment docket.

SEC. 1820. **Limitation of relief.** The relief granted to the plaintiff cannot exceed that which he has demanded in his petition. In other respects the court may grant any relief consistent with the case made.

SEC. 1821. **Judgment by agreement.** The defendant may at any time submit to any judgment which shall be agreed upon between the parties, which agreement must be in writing and filed with the clerk unless done in open court.

SEC. 1822. **In vacation.** Non-suits when allowable, and judgments by agreement, may take place in vacation. In such cases the clerk may at once make the entry accordingly and execution thereon may issue forthwith unless otherwise agreed upon between the parties.

SEC. 1823. **Court as a jury.** The provisions in this title relative to juries are intended to be applied to the court when acting as a jury in the trial of a cause so far as they are applicable and not incompatible with other provisions herein contained.

[262] CHAPTER 106.

JUDGMENT BY DEFAULT.

SECTION 1824. **When rendered.** If the defendant fail to file his answer or other pleading by the time prescribed, or if having pleaded he withdraw his pleading without permission or authority to replead, judgment by default may on motion of the plaintiff be entered against him.

SEC. 1825. **In vacation.** The district courts may provide by rule for entering defaults in vacation.

SEC. 1826. **Farther proof requisite.** When service has been made by publication only and no appearance had, default shall not be entered until proof has been made that a copy of the petition and notice was directed to the defendant through the post office at his usual place of residence (stating the place) in sufficient time for his appearance, or that such residence is unknown to the plaintiff or his attorney or business agent and could not with reasonable diligence be ascertained.

SEC. 1827. **Defaults.** Default may be set aside on such terms as the court may deem just, but not unless an affidavit of merits be filed and a reasonable excuse be shown for having made such default nor unless application be made therefor at the term on which the default was entered, or if entered in vacation then on the first day of the next succeeding term.

SEC. 1828. **Clerk assess damages.** When the action is for a money demand and the amount of the proper judgment is a mere matter of computation the clerk shall assess the amount.

SEC. 1829. **Referees.** When long accounts are to be examined the court may refer the matter to referees.

SEC. 1830. **Court to assess.** In other cases the court shall assess the damages unless a jury be demanded by the party not in default.

SEC. 1831. **Defendant's rights.** The defendant may appear at the time of the assessment and cross-examine the plaintiff's witnesses, but for no other purpose.

SEC. 1832. **Judgment.** The proper amount having been ascertained by either of the above methods judgment shall be rendered therefor.

SEC. 1833. **Equity.** When the proceedings are of an equitable character the court, upon reading the pleadings and proofs and hearing the testimony offered, shall render such judgment as is consistent with the rules heretofore observed in chancery cases.

SEC. 1834. **Plaintiff to give security.** When judgment by default is rendered against a defendant who has not been personally served, the court [263] before issuing process to enforce such judgment may require the plaintiff to give security to abide the future order of the court as contemplated in the next succeeding section.

SEC. 1835. **Default set aside.** If such defendant or any person legally representing him shall, at the next term of the court after being notified of the judgment and within one year after the rendition thereof, petition the court to set aside such judgment and give security and comply with such conditions as the court direct, the court may in its discretion open the judgment and permit the defendant to defend against the petition.

SEC. 1836. **Rights of other persons.** Such proceedings shall not disturb the rights of *bona fide* purchasers of property under the judgment thus set aside, but the court may make such order on behalf of the defendant and against the plaintiff as the circumstances of the case require.

CHAPTER 107.

JUDGMENT BY CONFESSION.

SECTION 1837. **When allowed.** A judgment by confession without action may be entered by the clerk of the district court, or by a justice of the peace if within his jurisdiction, in the manner hereinafter prescribed.

SEC. 1838. **For what.** Such confession can be only for money due or to become due, or to secure a person against contingent liabilities on behalf of the defendant, and must be for a specified sum.

SEC. 1839. **Proceeding.** A statement in writing must be made and signed by the defendant and verified by his oath to the following effect, and filed with the clerk or justice of the peace:

1. If for money due or to become due, it must state concisely the facts out of which the indebtedness arose and that the sum confessed therefor is justly due or to become due as the case may be;

2. If for the purposes of securing the plaintiff against a contingent liability, it must state concisely the facts constituting such liability and must show that the sum confessed therefor does not exceed the same.

SEC. 1840. **In district court.** If in the district court, the clerk shall thereupon make an entry of judgment in his court record for the amount thus confessed and costs and shall issue execution thereon forthwith unless otherwise stipulated by the defendant in his confession.

SEC. 1841. **Before justice.** If in a justice's court, the justice shall thereupon [264] enter a judgment on his docket with costs and issue execution as above directed. If a transcript of such judgment be filed with the clerk of the district court a copy of the statement must be filed with it.

SEC. 1842. **On past authority.** Upon an authority given before this statute takes effect and which was valid when given, judgment may be rendered up as herein mentioned or as nearly so as the circumstances of the case will permit.

CHAPTER 108.

SUBMITTING CONTROVERSIES WITHOUT ACTION.

SECTION 1843. **When permitted.** Parties to a question in difference which might be the subject of a civil action may present an agreed statement of the facts thereof to any court having jurisdiction of the subject matter.

SEC. 1844. **Real.** It must be shown by affidavit that the controversy is real and that the proceeding is in good faith to determine the rights of the parties thereto.

SEC. 1845. **Judgment.** The court must thereupon hear and determine the case and the judgment rendered thereon will be the same in all respects as though suit had been regularly brought and will be followed by the same consequences.

CHAPTER 109.

ATTACHMENT AND GARNISHMENT.

SECTION 1846. **In what actions.** In an action for the recovery of money the plaintiff may cause any property of the defendant which is not exempt from execution to be attached at the commencement or during the progress of the proceedings by pursuing the course hereinafter prescribed.

SEC. 1847. **Proceedings independent.** If it be subsequent to the commencement of the action a separate petition must be filed, and in all cases the proceedings relative to the attachment are to be deemed independent of the ordinary proceedings and only auxiliary thereto.

SEC. 1848. **Pre-requisites.** The petition which asks an attachment must in all cases be sworn to. It must state that as the affiant verily believes the defendant is a foreign corporation or acting as such, or that he is a non-resident of the state, or that he is [265] in some manner about to dispose of or remove his property out of the state without leaving sufficient remaining for the pay-

ment of his debts, or that he has disposed of his property (in whole or in part) with the intent to defraud his creditors, or that he has absconded so that the ordinary process cannot be served upon him.

SEC. 1849. On contract. If the plaintiff's demand is founded on contract the petition must state that something is due and as nearly as practicable the amount which must be more than five dollars in order to authorize an attachment.

SEC. 1850. Amount attached. The amount thus sworn to is intended as a guide to the sheriff, who must as nearly as the circumstances of the case will permit levy upon property fifty per cent. greater in value than that amount.

SEC. 1851. When not on contract. If the demand is not founded on contract the original petition must be presented to some judge of the supreme or district court or the judge of the county court, who shall make an allowance thereon of the amount in value of the property that may be attached. The provisions of this section apply only to cases in the district court.

SEC. 1852. Attachments for debts not due. The property of a debtor may be attached previous to the time when the debt becomes due when nothing but time is wanting to fix an absolute indebtedness, and when the petition in addition to that fact states that the defendant is about to dispose of his property with intent to defraud his creditors or that he is about to remove from the state and refuses to make any arrangement for securing the payment of the debt when it falls due, and which contemplated removal was not known to the plaintiff at the time the debt was contracted.

SEC. 1853. Security. Before any property can be attached as aforesaid the plaintiff must file with the clerk a bond for the use of the defendant with sureties to be approved by the clerk, in a penalty at least double the value of the property sought to be attached and in no case less than two hundred and fifty dollars if in the district court nor less than fifty dollars if in a justice's court, conditioned that the plaintiff will pay all damages which the defendant may sustain by reason of the wrongful suing out of the attachment.

SEC. 1854. Suit on bond. In an action on such bond the plaintiff therein may recover if he shows that the attachment was wrongfully sued out, and if wilfully wrong he may recover exemplary damages. Nor need he wait until the principal suit is determined before he brings suit on the bond.

SEC. 1855. Attachment in other counties. Where suits are properly commenced in the district court of any county the auxiliary process of attachment [266] may run into any other county where property of the defendant can be found.

SEC. 1856. Same. The clerk shall issue a writ of attachment directing the sheriff of the county therein named to attach property of the defendant to the requisite amount therein stated.

SEC. 1857. Selection of property. The sheriff shall in all cases attach the amount of property directed if sufficient not exempt from execution be found in his county, giving that in which the defendant has a legal and unquestionable title a preference over that in which his title is doubtful or only equitable.

SEC. 1858. In different counties. Writs of attachment from the district court may be sent into different counties at the same time, but if more property be attached in the aggregate than the plaintiff is entitled to hold in that manner he must abandon the overplus and pay all costs incurred in relation to it.

SEC. 1859. What property. Stock or an interest owned by the defendant in any company, and also debts due him, or property of his held by third persons may be attached.

SEC. 1860. **Mode of attachment.** The mode of attachment must be as follows:

1. By giving the defendant in the action if found within the county and also the person occupying or in possession of the property, if it be in the hands of a third person, notice of such attachment;
2. If the property is capable of manual delivery the sheriff must take it into his custody if it can be found;
3. Stock in a company is attached by notifying the president or other head of the company, or the secretary, cashier, or other managing agent thereof, of the fact that the stock has been so attached;
4. Debts due the defendant, or property of his held by third persons and which cannot be found or the title to which is doubtful, are attached by garnishment thereof.

SEC. 1861. **Garnishment.** The attachment by garnishment is effected by informing the supposed debtor or person holding the property that he is attached as garnishee, and by leaving with him a written notice to the effect that he is required not to pay any debt due by him to the defendant or thereafter to become due, and that he must retain possession of all property of the said defendant then or thereafter being in his custody or under his control, in order that the same may be dealt with according to law.

SEC. 1862. **Who garnisheed.** A sheriff or constable may be garnisheed for money of the defendant in his hands. So may a judgment debtor of the defendant when the judgment has not been previously assigned, and also an executor for money due from the decedent to the defendant.

SEC. 1863. **Notice to appear.** Unless exempted as provided in the next section, [267] the notice must also require him to appear on the first day of the next term of the district court wherein the main cause is depending, or on the day fixed for trial if in a justice's court, and answer such interrogatories as may be then propounded to him or that he will be liable to pay the entire judgment which the plaintiff eventually obtains against the defendant.

SEC. 1864. **Answer.** The plaintiff may in writing direct the sheriff to take the answer of the garnishee and append the same to his return.

SEC. 1865. **Proceedings—questions.** In such case the sheriff has power to administer an oath to garnishees requiring them to make true answers to the questions to be propounded, which questions shall be as follows:

1. Are you in any manner indebted to the defendant in this suit, or do you owe him money or property which is not yet due? If so state the particulars.
2. Have you in your possession or under your control any property, rights, or credits of the said defendant? If so what is the value of the same, and state all the particulars.
3. Do you know of any debts owing to the said defendant whether due or not, or any property, rights, or credits belonging to him and now in the possession or under the control of others? If so state the particulars.

SEC. 1866. **If garnishee refuses.** If the garnishee refuse to answer fully and unequivocally each and all the foregoing interrogatories he shall be notified and required to appear and answer on the first day of the next term of the district court, or on the day fixed for trial as above provided.

SEC. 1867. **Questions.** The questions propounded to the garnishee in court may be such as are above prescribed to be asked by the sheriff and such others as the court may think proper and right.

SEC. 1868. **Fees.** Where the garnishee is required to appear at court un-

less he has refused to answer as contemplated above, he is entitled to the pay and mileage of an ordinary witness and may in like manner require payment before hand in order to be made liable for non-attendance.

SEC. 1869. **Garnishee not appearing.** If, when duly summoned and his fees tendered (if demanded), he fail to appear and answer the interrogatories propounded to him without sufficient excuse for his delinquency, he shall be presumed to be indebted to the defendant to the full amount of the plaintiff's demand and shall be dealt with accordingly.

SEC. 1870. **Same.** But for mere failure to appear he is not liable to pay the amount of the plaintiff's judgment until he has had an opportunity to show cause against the issuing of an execution.

[268] SEC. 1871. **Payment by.** A garnishee may at any time after answer exonerate himself from farther responsibility by paying over to the sheriff the amount owing by him to the defendant and by placing at the sheriff's disposal the property of the defendant, or so much of said debts and property as is equal to the value of the property to be attached, all of which may afterward be treated as though attached in the usual manner.

SEC. 1872. **Answer controverted.** When the answer of the garnishee is made at the district court the plaintiff may controvert any facts contained therein and specified by him and issue being thereupon joined may be tried in the usual manner. Upon such trial the answer of the garnishee is competent testimony.

SEC. 1873. **Judgment.** If in any of the above methods it is made to appear that the garnishee was indebted to the defendant or had any of the defendant's property in his hands either at the time of his being served with the garnishee notice aforesaid or at any time subsequent thereto, he is liable to the plaintiff, in case judgment is finally recovered by him, to the full amount of that judgment or to the amount of such indebtedness and of the property so held by him, and a judgment shall be entered up against him accordingly unless he prefers paying or delivering the same to the sheriff as above provided.

SEC. 1874. **Property bound.** Property attached otherwise than by garnishment is bound thereby from the time of the service of the attachment only.

SEC. 1875. **Money.** All money attached by the sheriff or coming into his hands by virtue of the proceeding in attachment shall forthwith be paid over to the clerk to be by him retained till the farther action of the court.

SEC. 1876. **Property discharged.** The defendant may any time before judgment discharge the property attached or any part thereof, by giving bond with surety to be approved by the sheriff in a penalty at least double the value of the property sought to be released, conditioned that such property or its estimated value shall be delivered to the sheriff to satisfy any judgment which may be obtained against the defendant in that suit, within twenty days after the rendition thereof. This bond shall be filed with the clerk of the court.

SEC. 1877. **Appraised.** To determine the value of the property in such cases, unless the parties agree otherwise, the sheriff shall summon two disinterested persons having the qualification of jurors who after being sworn by him to make the appraisal faithfully and impartially shall proceed to the discharge of their duty.

SEC. 1878. **Same.** If such persons disagree as to the value of the property the sheriff shall decide between them.

SEC. 1879. **Defense to bond.** In an action brought upon the bond above contem-[269]-plated, it shall be a sufficient defense that the property for the

delivery of which the bond was given did not at the time of the levy belong to the defendant against whom the attachment was issued.

SEC. 1880. **Sheriff's return.** The sheriff must in all cases return an inventory of the property attached as well as the appraisal above provided for where such appraisal has been made.

SEC. 1881. **Perishable property.** When the sheriff thinks the property attached in danger of serious and immediate waste or decay he may summon three persons having the qualification of jurors to examine the same. If they are of the opinion that the property requires soon to be disposed of they shall specify a day beyond which they do not deem it prudent that it should be kept in the hands of the sheriff. He shall thereupon give the same notice as for the sale of goods on execution and for the same length of time unless the condition of the property renders a more immediate sale necessary. The sale shall be made accordingly.

SEC. 1882. **Same.** The money arising from such sale shall remain in the hands of the clerk to abide the event of the suit.

SEC. 1883. **"Sheriff."** The word "sheriff" as used in this chapter is meant to apply to constables when the proceedings are in a justice's court.

SEC. 1884. **Justice is clerk.** When the proceedings are in a justice's court the justice is to be regarded as the clerk of the court for all the purposes herein contemplated.

CHAPTER 110.

EXECUTION.

SECTION 1885. **Judgments enforced.** Judgments or orders requiring the payment of money or the delivery of the possession of property are to be enforced by execution. Obedience to those requiring the performance of any other act is to be coerced by attachment for contempt.

SEC. 1886. **When issued.** Executions may issue at any time within five years from the entering of the judgment.

SEC. 1887. **Scire facias.** After the lapse of five years such execution can issue only after suing out a *scire facias* and obtaining the requisite order of the court thereon.

SEC. 1888. **To other counties.** Executions from the district court may issue in the first instance into any county which the party ordering them may direct.

SEC. 1889. When sent into any county other than that in [270] which the judgment was rendered return may be made by mail. But money cannot thus be sent except by the direction of the party entitled thereto or his attorney.

SEC. 1890. **Requisites of execution.** The execution must intelligibly refer to the judgment stating the time and place at which it was rendered, the names of the parties thereto, its amount and the amount still to be collected thereon, if for money, and if not for money it must state what specific act is required to be performed.

SEC. 1891. **Against husband and wife.** Where the judgment is against husband and wife the execution may issue against the property of either or both of them.

SEC. 1892. **Stocks, etc.** Stock or interests owned by the defendant in any company, and also debts due him, and property of his in the hands of third

persons, may be levied upon in the manner provided for attaching the same, and the proceeding by garnishment shall be the same as nearly as practicable.

SEC. 1893. **Bank bills, etc.** Bank bills and other things in action may be levied upon and sold or appropriated as hereinafter provided, and assignments thereon by the officer when necessary shall have the same effect as if made by the defendant and may be treated as so made.

SEC. 1894. **Debts due defendant paid to sheriff.** After the rendition of judgment any person indebted to the defendant in execution may pay to the sheriff the amount of such indebtedness or so much thereof as is necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge therefor.

SEC. 1895. **Public property exempt.** Public buildings owned by the state or any county, city, school district, or other civil corporation, and any other public property which is necessary and proper for carrying out the general purpose for which any such corporation is organized, are exempt from execution. The property of a private citizen can in no case be levied upon to pay the debt of a civil corporation.

SEC. 1896. **Scrip issued.** In case no property is found on which to levy which is not exempted by the last section, or if the judgment creditor elect not to issue execution against such corporation, he is entitled to the amount of his judgment and costs in the ordinary evidences of indebtedness issued by that corporation. And if the debtor corporation issues no scrip or evidences of debt a tax must be levied as early as practicable sufficient to pay off the judgment with interest and costs.

SEC. 1897. **Sanction.** A failure on the part of the officers of the corporation to comply with the requirements of the last section renders them personally responsible for the debt.

SEC. 1898. **Property exempt.** The following property of private individuals is also exempt from execution: All wearing apparel kept for actual use and suitable to the condition of the party, and trunks and [271] other receptacles to contain the same; one musket or rifle; the proper tools, instruments, or books of any farmer, mechanic, surveyor, physician, teacher, or professor; the horse or team and wagon or other vehicle with the proper harness or tackle by the use of which any physician, public officer, farmer, teamster, or other laborer habitually earns his living; all libraries, family bibles, portraits and paintings; a seat or pew occupied by the debtor or his family in any house of public worship; and an interest in a public or private burying ground not exceeding one acre for any one defendant.

SEC. 1899. **If head of family.** If the debtor is the head of a family there is farther exempt, his homestead as provided by law; one cow and calf; one horse (unless a horse has previously been exempted); fifty sheep and the wool therefrom; five hogs and all pigs under six months old; the necessary food for all animals exempt from execution, for sixty days; all flax raised by the defendant and the manufactures therefrom; one bedstead and the necessary bedding for every two in the family; all cloth manufactured by the defendant not exceeding one hundred yards in quantity; household and kitchen furniture not exceeding one hundred dollars in value; all spinning wheels and looms and other instruments of domestic labor kept for actual use; and the necessary provisions and fuel for the use of the family for six months.

SEC. 1900. **"Family."** The word "family" as used in the last section does not include strangers or boarders lodging with the family.

SEC. 1901. **Wages.** The earnings of such debtor for his personal services or those of his family at any time within ninety days next preceding the levy are also exempt from execution and attachment.

SEC. 1902. **Non-residents.** None of the exemptions contained in this chapter are intended for the benefit of non-residents, but their property is liable to execution with the exception of ordinary wearing apparel and trunks to contain the same; but any person coming to this state with the intention of remaining is a resident within the meaning of this chapter.

SEC. 1903. **Amount levied on.** The officer shall in all cases select such property and in such quantities as will be likely to bring the exact amount required to be raised, as nearly as practicable.

SEC. 1904. **Proceeding.** He must execute the writ by levying on the property of the judgment debtor, collecting the things in action by suit in his own name if necessary or by selling the same, selling the other property and paying to the plaintiff the proceeds or so much thereof as will satisfy the execution.

SEC. 1905. **Realty—personalty.** The sheriff must give four weeks' notice of the time and place of selling real property, and two weeks' notice of that of personal property.

[272] SEC. 1906. **Notice of sale.** Such notice shall be given by being posted up in at least three public places of the county one of which shall be at the place where the last district court was held. In addition to which, in case of the sale of real estate or where personal property to the amount of two hundred dollars or upwards is to be sold there shall, if either party make of the sheriff a written request therefor or if the defendant be a non-resident, be two publications of such notice in some newspaper printed in the county if there be one.

SEC. 1907. **Without notice.** An officer selling without the notice above prescribed shall forfeit one hundred dollars to the defendant in execution in addition to the actual damages sustained by either party, but the validity of the sale is not thereby affected.

SEC. 1908. **Hour.** The sale must be at public auction between nine o'clock in the forenoon and four o'clock in the afternoon.

SEC. 1909. **Adjournment.** When there are no bidders, or when the amount offered is grossly inadequate, or when for any cause the sale is prevented from taking place on the day fixed, the sheriff may postpone the sale for not more than three days without being required to give any farther notice thereof, but he shall not make more than two such postponements.

SEC. 1910. **Overplus.** When property sells for more than the amount required to be collected the overplus must be paid to the defendant unless the officer have another execution in his hands on which said overplus may be rightfully applied.

SEC. 1911. **Another execution.** If the property levied on sell for less than sufficient for that purpose, the plaintiff may order out another execution which shall be credited with the amount of the previous sale. The proceedings under this second sale shall conform to those hereinbefore prescribed.

SEC. 1912. **No bidders.** When property is unsold for want of bidders the levy still holds good and if there is sufficient time the property may again be advertised and sold under the same execution, or the execution may be returned and a *venditioni exponas* issued.

SEC. 1913. **Purchaser failing to pay.** When the purchaser fails to pay the money when demanded the plaintiff or his attorney may elect to proceed

against him for the amount; otherwise the sheriff shall treat the sale as a nullity and may sell the property again on the same day or after a postponement as above authorized.

SEC. 1914. **Money, etc., applied.** Money levied upon may be appropriated without being advertised or sold. The same may be done with bank bills, drafts, promissory notes, or other papers of a like character, if the plaintiff will receive them at their par value as cash or if the officer can exchange them for cash at that value.

[273] SEC. 1915. **A defendant—surety.** Where, by the indorsement of the clerk upon the writ, it appears that either of the persons against whom it issued is only a surety for some of the others, the sheriff shall in selling first exhaust the property of the principals before he sells any of the property of the surety.

SEC. 1916. **Sheriff's indemnity.** When the sheriff has doubts as to the defendant's ownership of personal property he may refuse to levy or if he has levied he may refuse to sell, and may surrender the property to the claimant unless the plaintiff will first give him a bond of indemnity to enable him to proceed safely.

SEC. 1917. **Joint ownership.** When personal property is owned jointly by the defendant and another the sheriff may take it into custody subject to be released by a delivery-bond or a bond conditioned to pay the debt to the value of the defendant's interest in the property levied on.

SEC. 1918. **Judgment vs. executor—real property.** When a judgment has been obtained against the executor of one deceased which his personal estate is insufficient to satisfy, the plaintiff may file his petition in the office of the clerk of the district court wherein judgment was rendered, against the executor, the heirs, and devisees of real estate (if there are such) setting forth the facts and that there is real estate of the deceased within the state describing its location and extent and praying the court to award execution against the same.

SEC. 1919. **Notice.** A notice shall thereupon be indorsed upon said petition notifying the persons against whom the petition is filed to appear on the first day of the next term and show cause if any they have why execution should not be awarded.

SEC. 1920. **How served.** The petition and notice shall be served and returned in the ordinary manner and the same consequences as in civil actions shall result from not serving them ten days before the next term of the court.

SEC. 1921. **Judgment.** At the proper time the court shall award the execution unless sufficient cause be shown to the contrary.

SEC. 1922. **Nonage.** The nonage of the heirs or devisees shall not be deemed such sufficient cause.

SEC. 1923. **Mutual judgments set off.** Mutual judgments, the executions on which are in the hands of the same officer, may be set-off the one against the other, except that the costs shall not be so set-off unless the balance of cash actually collected on the larger judgment is sufficient to pay the costs of both judgments, and such costs shall be paid therefrom accordingly.

SEC. 1924. **Sale absolute.** When real property has been levied upon, if the estate is less than a lease-hold having two years of an unexpired term the sale is absolute. When the estate is of a [274] larger amount the property is redeemable as hereinafter prescribed.

SEC. 1925. **Certificate.** At the time of the sale the sheriff shall give to the purchaser a certificate containing a description of the property and the

amount of money paid by such purchaser, and stating that unless redemption is made within one year thereafter according to law he or his heirs or assigns will be entitled to a deed for the same.

SEC. 1926. **Redemption by defendant.** The defendant may redeem such property at any time within one year from the day of sale as hereinafter provided and will in the mean time be entitled to the possession of the property.

SEC. 1927. **By creditors.** For the first six months after such sale his right to redeem is exclusive, but if no redemption is made by him at the end of that time any creditor of the defendant whose demand is a lien upon such real estate may redeem the same at any time within nine months from the day of sale. But a mechanic's lien before judgment thereon is not of such a character as to entitle the holder to redeem.

SEC. 1928. **Who creditor.** Any creditor whose claim becomes a lien prior to the expiration of the time allowed by law for redemption by creditors may redeem. A mortgagee may thus redeem before or after the debt secured by the mortgage falls due.

SEC. 1929. **By creditor.** Creditors having the right of redemption may redeem from each other within the time above limited and in the manner herein provided.

SEC. 1930. **Terms of redemption.** The terms of redemption in all cases will be, the reimbursement of the amount paid by the then holder added to the amount of his own lien with interest upon the whole at the rate of ten per cent. per annum together with costs, subject to the exception contained in the next section. But where a mortgagee whose claim is not yet due is the person from whom the redemption is thus to be made, a rebate of interest at the rate of ten per cent. per annum must be made by such mortgagee on his claim.

SEC. 1931. **Senior creditor.** When a senior creditor thus redeems from a junior he is required to pay off only the amount of those liens which are paramount to his own with the interest and costs appertaining to those liens.

SEC. 1932. **Junior creditor.** But the junior creditor may in all such cases prevent a redemption by the holder of the paramount lien by paying off that lien or by leaving with the clerk beforehand the amount necessary therefor.

SEC. 1933. **Same.** Whenever a senior creditor redeems from a junior creditor the latter may in return redeem from the former, and so on as often as the land is taken from him by virtue of a paramount lien.

[275] SEC. 1934. **Last right.** After the expiration of nine months from the day of sale the creditors can no longer redeem from each other except as hereinafter provided. But the defendant may still redeem at any time before the end of the year, as aforesaid.

SEC. 1935. **Who holds.** Unless the defendant thus redeems, the purchaser or the creditor who last redeemed prior to the expiration of the nine months aforesaid will hold the property absolutely.

SEC. 1936. **Claim extinct.** In case it is thus held by a redeeming creditor his lien and the claim out of which it arose will be held to be extinguished unless he pursues the course pointed out in the next section.

SEC. 1937. **Unless.** If he is unwilling to hold the property and credit the defendant therefor with the full amount of his lien he must, within ten days after the expiration of the nine months aforesaid, enter on the sale book the utmost amount that he is thus willing to credit on his claim.

SEC. 1938. **Farther redemptions.** Any unsatisfied lien-creditor, within ten days after the expiration of the time thus allowed to make the entry required

in the last section, may redeem the property by paying the amount of the legal disbursements of the last holder as hereinbefore regulated added to the amount thus entered on the sale book together with interest and costs.

SEC. 1939. **Same.** Such redemptioner shall also credit the defendant with the full amount of his lien unless within ten days after redeeming as aforesaid he likewise makes a like entry on the sale book, in which case any other unsatisfied lien-creditor may in like manner redeem within ten days as aforesaid, and so on until there are no more unsatisfied liens or until the expiration of the year for redemption, the defendant having the final privilege of redeeming from the last redemptioner at the end of the year.

SEC. 1940. **Mode of redeeming.** The mode of making the redemption is by paying the money into the clerk's office for the use of the persons thereto entitled. The person so redeeming, if not the defendant in execution, must also file his affidavit or that of his agent or attorney stating as nearly as practicable the amount still unpaid and due on his own claim.

SEC. 1941. **Same.** The clerk shall thereupon give him a receipt for the money stating the purpose for which it was paid. He must also at the same time enter in the sale book a minute of such redemption, of the amount paid, and the amount of the lien of the last redemptioner as sworn to by him.

SEC. 1942. **Entitled to assignments.** A creditor redeeming as above contemplated is entitled to receive an assignment of the certificate issued by the sheriff to the original purchaser as hereinbefore directed.

SEC. 1943. **Parcels.** When the property has been sold in parcels any distinct portion may be redeemed by itself.

[276] SEC. 1944. **Joint interests.** When the interests of several tenants in common have been sold on execution the undivided portion of any or either of them may be redeemed separately.

SEC. 1945. **Transferable.** The rights of a defendant in relation to redemption are transferable and the assignee has the like power to redeem.

SEC. 1946. **Deed to whom—when to heirs.** If the defendant or his assignee fail to redeem the sheriff must at the end of the year execute a deed to the person who is entitled to the certificate as hereinbefore provided or to his assignee. If the person so entitled be dead the deed shall be made to his heirs, but the property will be subject to the payment of the debts of the deceased in the same manner as if acquired during his life time.

SEC. 1947. **Deed recorded.** The purchaser of real estate at a sale on execution need not place any evidence of his purchase upon record until twenty days after the expiration of the full time of redemption. Up to that time the publicity of the proceedings is constructive notice of the rights of the purchaser but no longer.

SEC. 1948. **Deeds imply regularity.** Deeds executed by a sheriff in pursuance of such sales are presumptive evidence of the regularity of all previous proceedings in the case and may be given in evidence without preliminary proof.

SEC. 1949. **Trespass.** When real estate has been sold on execution, the purchaser thereof or any person who has succeeded to his interest may, after his estate becomes absolute, recover damages for any injury to the property committed after the sale and before possession is delivered under the conveyance.

SEC. 1950. **Past sales.** Lands sold previous to the taking effect of this act shall be redeemed according to the laws heretofore in force.

SEC. 1951. **"Defendant"—"plaintiff."** The term "defendant" as herein

used is intended to designate the party against whom, and the term "plaintiff" the party in favor of whom any execution has issued.

SEC. 1952. **Justice's proceedings.** The provisions of this chapter are intended to embrace proceedings in justice's courts so far as they are applicable; and the terms "sheriff" and "clerk" are accordingly to be understood as qualified in this chapter in the same manner in this respect as in that relative to attachment.

CHAPTER 111.

PROCEEDINGS SUPPLEMENTAL TO EXECUTION.

SECTION 1953. **Order to examine defendant.** When an execution against the property of a judgment debtor has been issued from the district or supreme [277] court to the sheriff of the county where such debtor resides, or to the sheriff of the county wherein the cause was originally tried in case the said debtor resides out of the state, and is returned unsatisfied in whole or in part, the judgment creditor is entitled to an order for the appearance and examination of the said debtor.

SEC. 1954. **Same.** The like order may be obtained at any time after the issuing of an execution upon proof, by affidavit of the party or otherwise to the satisfaction of the court or officer who is to grant the same, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment.

SEC. 1955. **By whom order granted.** Such order may be made by the court in which the judgment was rendered, or by any judge thereof in vacation, or by the county court of the county to which the execution has been issued as aforesaid or by the judge thereof. And the debtor may be required to appear and answer before either of such courts or officers, or before a referee appointed by the court or judge who issued the order.

SEC. 1956. **Defendant interrogated.** The debtor on his appearance may be interrogated in relation to any fact calculated to show the amount of his property or the disposition which has been made of it, or any other matter pertaining to the purpose for which the examination is permitted to be made. And the interrogatories and answers shall be reduced to writing and preserved by the court or officer before whom they are taken.

SEC. 1957. **Result.** If any property, rights, or credits subject to execution are thus ascertained an execution may be issued and they may be levied upon accordingly.

SEC. 1958. **Defendant not appearing.** Should the judgment debtor fail to appear after being personally served with notice to that effect, or should he fail to make full answers to all proper interrogatories thus propounded to him, he will be guilty of contempt and may be arrested and imprisoned until he complies with the requirements of the law in this respect.

SEC. 1959. **Warrant to bring up defendant.** Upon proof to the satisfaction of the court or officer authorized to grant the order aforesaid that there is danger that the defendant will leave the state or that he will conceal himself, the said court or officer instead of the order aforesaid may issue a warrant for the arrest of the debtor and for bringing him forthwith before the court or officer authorized to take his examination as hereinbefore provided. After being thus brought before the said court or officer he may be examined in the same manner and with the like effect as is above provided.

[278] CHAPTER 112.

WRITS OF ERROR CORAM NOBIS.

SECTION 1960. **When.** Any person aggrieved by the judgment of the district court by reason of any material error in fact, may within one year after the rendition thereof obtain from the clerk of the court which rendered the judgment a writ of error *coram nobis* returnable at the next term of said court.

SEC. 1961. **Supersedeas.** Such writ of error does not operate as a *supersedeas* unless the party suing out the same give bond in like manner as required in cases of appeals to the supreme court.

SEC. 1962. **Notice.** Notice of the suing out of such writ must be served on the opposite party or his attorney at least ten days prior to the next term of the court or the cause shall be continued to the next succeeding term, unless the defendant in error consents to a trial at the first term.

SEC. 1963. **Affirmance.** In all cases of affirmance, where the original judgment has been superseded, judgment shall be rendered against the plaintiff in error and his sureties for the amount of the former judgment, interest, and costs, together with damages at the discretion of the court not exceeding ten per cent. on the amount of the judgment.

SEC. 1964. **Rules.** The court may prescribe rules for the service by publication upon defendants who reside out of the state having no known attorney therein, for the assignment of errors, for making up the issues thereon, and for all such other matters as are necessary to give full effect to this proceeding.

CHAPTER 113.

WRIT OF CERTIORARI.

SECTION 1965. **When authorized.** The writ of *certiorari* may be granted whenever specially authorized by law and also in all cases where an inferior tribunal, board, or officer exercising judicial functions, is alleged to have exceeded their proper jurisdiction or is otherwise acting illegally, when in the judgment of the court applied to for the writ there is no other plain, speedy, and adequate remedy.

SEC. 1966. **By whom granted.** The writ may be granted by the district court of the proper county, but if to be directed to a district court or the judge thereof then by the supreme court, and shall com-[279]-mand the defendant therein to certify fully to the court from which the same issues, at a specified time and place, a transcript of the record and proceedings as well as the facts of the case (describing and referring to them or any of them with convenient certainty) and also to have then and there the writ.

SEC. 1967. **Supersedeas.** If a stay of proceedings is sought the court may require a bond and may fix the penalty and conditions thereof.

SEC. 1968. **Motion.** The motion for this writ must be made on affidavit, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause, or may in its discretion grant the writ without notice.

SEC. 1969. **Service and return.** The writ must be served and the proof of such service made in the same manner as is prescribed for the original notice in a civil action, except that the original shall be left with the defendant and the return or proof of service made upon a copy thereof.

SEC. 1970. **If defective.** If the return to the writ be defective the court may order a farther return to be made and may compel obedience to the writ and to such farther order by attachment if necessary.

SEC. 1971. **Action of the court.** When a full return has been made the court must proceed to hear the parties or such of them as may attend for that purpose, and may thereupon give judgment affirming or annulling the proceedings below or in its discretion correcting those proceedings and prescribing the manner in which the defendant shall proceed farther in the matter.

SEC. 1972. **Appeal.** From the decision of the district court an appeal lies to the supreme court as in other cases.

CHAPTER 114.

APPEALS FROM THE DISTRICT COURT TO THE SUPREME COURT.

SECTION 1973. **Within what time.** Appeals in all cases hereafter tried must be taken within one year from the time the judgment is rendered, in all cases heretofore tried within one year from the time this law takes effect. But the time allowed the appellant by the pre-existing law is not to be enlarged.

SEC. 1974. **How taken.** Appeals are taken by the service of a notice in writing on the adverse party, his agent, or attorney, and also on the clerk of the court in which the proceedings were had stating the appeal from the same or some specific part thereof.

[280] SEC. 1975. **Transcript.** The clerk of the district court should not make out the transcript as required in the next section until payment therefor is made by the appellant, and if he sends up such transcript he is in all cases responsible to the county for the amount of the fee for such transcript.

SEC. 1976. **Same.** Upon receiving the notice and the payment aforesaid the clerk shall forthwith transmit to the supreme court a transcript of the record in the cause or so much thereof as the appellant in writing directs, to which shall be appended the notice of the appeal and the written directions of the appellant above contemplated, if any.

SEC. 1977. **What constitutes the record.** All proper entries made by the clerk and all papers pertaining to a cause and filed therein (except subpoenas, depositions, and other papers which are used as mere evidence) are to be deemed parts of the record. But a transcript of motions, affidavits, and other papers, when they relate to collateral matters should not be certified unless by direction of the appellant. If so certified when not material to the determination of the appeal the court may direct the person blamable therefor to pay the costs thereof.

SEC. 1978. **Notice to be served.** The notice of the appeal must be served on the respondent fifteen days prior to the next term or the cause will not be then tried unless by consent of the appellee.

SEC. 1979. **Part appealing.** A part of several co-parties may appeal, but in such a case they must serve notice of the appeal upon all the other co-parties and file the proof thereof with the clerk of the supreme court.

SEC. 1980. **Same.** If the other co-parties refuse to join they cannot take an appeal afterward nor shall they derive any benefit from the appeal unless from the necessity of the case.

SEC. 1981. **Presumption.** Unless they appear and decline to join they shall be regarded as having joined and shall be liable for their due proportion of costs.

SEC. 1982. **Death no abatement.** The death of any or all of the parties shall not cause the proceedings to abate, but the names of the proper persons being substituted the cause may proceed. The court in such cases may in its discretion grant a continuance when such a course will be calculated to promote the ends of justice.

SEC. 1983. **Supersedeas and bond.** Nor shall the appeal in any case stay the execution of the judgment unless a bond be filed in the office of the clerk of the court which rendered the judgment, in a penalty and with sureties to be approved by the clerk thereof, conditioned that if the judgment appealed from or any part thereof is affirmed or judgment rendered against him in the supreme court the appellant will pay the judgment and all the damages and costs which may be awarded against him, and otherwise obey the orders of the court.

[281] SEC. 1984. **Penalty of.** If the judgment was for the payment of money then the penalty shall be in at least twice the amount of the judgment and costs. If not for the payment of money, the penalty shall be sufficient to save the appellee harmless from the consequences of taking the appeal. But it shall in no case be less than one hundred dollars.

SEC. 1985. **Partial appeals.** The taking of the appeal from a part of a judgment and the filing of the bond as above directed does not cause a stay of execution as to any portion of the judgment not appealed from.

SEC. 1986. **Judgment vs. principal and sureties.** The supreme court when it affirms the judgment shall also, if the appellee moves therefor, render judgment against the appellant and his sureties in the bond above mentioned for the amount of the judgment, damages, and costs referred to therein, in case such damages can be accurately known to the court without an issue and trial.

SEC. 1987. **Execution recalled.** If execution has issued prior to the giving of the bond above contemplated the clerk shall countermand the same.

SEC. 1988. **Property delivered up.** Property levied upon and not sold at the time such countermand is received by the sheriff shall forthwith be delivered up to the judgment debtor.

SEC. 1989. **Judgment of supreme court.** The supreme court may reverse or affirm the judgment below or render such judgment as the district court should have done, according as they may think proper.

SEC. 1990. **Damages.** Upon the affirmance of any judgments where a stay of execution was obtained as above contemplated, the court may award to the appellee such damages as it may deem proper not exceeding twelve per cent. upon the amount of the judgment.

SEC. 1991. **Remanding cause.** If the supreme court affirm the judgment it may remand the cause to the district court to have the same carried into effect, or it may itself issue the necessary process for this purpose and direct such process to the sheriff of the proper county.

SEC. 1992. **Writ of restitution.** If by the decision of the supreme court the appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of such judgment, either the supreme or district court may direct execution or writ of restitution to issue for the purpose of restoring to such appellant his property or the value thereof.

SEC. 1993. **Purchasers.** Property acquired by a *bona fide* purchaser under a judgment subsequently reversed shall not be affected by such reversal.

[282] TITLE XX.

OF SPECIAL ACTIONS AND PROCEEDINGS.

CHAPTER 115.

REPLEVIN.

SECTION 1994. **Petition.** When the object of the action is to recover the possession of personal property the petition must in all cases be under oath.

SEC. 1995. **Substance of.** It must state that the property (describing it) is wrongfully detained by the defendant, that the plaintiff is entitled to the present possession thereof, and that it was not taken from him by any legal process or if so taken that it was exempt from seizure by such process. It must also state the alleged cause of detention according to his best knowledge and belief and also the value of the property.

SEC. 1996. **Bond.** He shall also execute a bond to the defendant with sureties to be approved by the clerk in a penalty at least equal to twice the value of the property sought, conditioned that he will appear at the next term of the court and prosecute his suit to judgment and return the property if a return be awarded, and also pay all costs and damages that may be adjudged against him. This bond shall be filed with the clerk of the court and is for the use of any person injured by the proceeding.

SEC. 1997. **Writ.** The clerk shall thereupon issue a writ of replevin directed to the sheriff to take the property therein described and deliver the same to the plaintiff. The ordinary original notice must also be served on the defendant in the usual manner.

SEC. 1998. **Duty of sheriff.** In obedience to such writ the sheriff must forthwith take possession of the property if in the possession of the defendant or his agent, for which purpose he may break open any dwelling house or other inclosure having first demanded entrance and exhibited his authority if required.

SEC. 1999. **Claimant.** If a third person claim the property he must be made a co-defendant.

SEC. 2000. **Judgment.** If the property sought be not obtained the plaintiff, if he establishes his right thereto, shall recover the value of that right. Whether obtained or not he shall recover the [283] damages he has sustained in consequence of the illegal detention thereof.

SEC. 2001. **Same.** If the plaintiff fail to establish his right to the property the defendant shall recover such damages as under the circumstances he shows himself entitled to.

CHAPTER 116.

ACTIONS FOR RECOVERY OF REAL PROPERTY.

SECTION 2002. **By whom.** Any person having a valid subsisting interest in real property and a right to the immediate possession thereof may recover the same by action, which may be brought against any person acting as owner, landlord, or tenant of the property claimed.

SEC. 2003. **Landlord substituted.** Whenever it appears that the defendant is only a tenant the landlord may be substituted, reasonable notice thereof being given him.

SEC. 2004. **Service on agent.** When the defendant is a non-resident having an agent for the property in the state, service may be made upon such agent in the same manner and with the like effect as though made on the principal.

SEC. 2005. **Answer.** The answer of the defendant must set forth under what claim of right (if any) he holds possession, and if as mere tenant the name and residence of his landlord must be given.

SEC. 2006. **Continuances.** The court may grant continuances in cases of this nature for reasons of less importance than those required to be set forth in ordinary civil actions.

SEC. 2007. **Possession.** Where the defendant makes defense it is not necessary to prove him in possession of the premises.

SEC. 2008. **Limitation of damages.** The plaintiff cannot recover for the use and occupation of the premises for more than six years prior to the commencement of the action.

SEC. 2009. **Writ of possession.** When the plaintiff shows himself entitled to the immediate possession of the premises judgment shall be entered and a writ of possession issued accordingly.

SEC. 2010. **Judgment for damages only.** If the interest of the plaintiff expire before the time in which he could be put in possession he can obtain a judgment for damages only.

SEC. 2011. **Discontinuance in part.** Where there is no proof against some of the defendants the court may order a discontinuance as to them before the testimony in the case is closed.

SEC. 2012. **Judgment.** Judgments in proceedings of this nature are as [284] conclusive as those in actions relating to personal property except as herein otherwise provided.

SEC. 2013. **Same.** The preceding section is intended to apply only to interests existing at the time of the trial, and is not intended to prevent a new action to test the validity of rights acquired subsequently to the former trial.

SEC. 2014. **New trial.** The court in its discretion may grant a new trial on the application of a party or those claiming under him made at any time within two years after the determination of the former trial.

SEC. 2015. **Third persons.** The result of such new trial (if granted after the close of the term at which the first trial took place) shall in no case affect the interest of third persons, acquired in good faith for a valuable consideration since the former trial.

SEC. 2016. **Damages.** But the party, who on such new trial shows himself entitled to lands which have thus passed to a *bona fide* purchaser, may recover the proper amount of damages against the other party either in the same or a subsequent action.

SEC. 2017. **Restitution.** The party who has been successful in such new trial shall (if the case require it) have his writ of restitution to restore him his property.

SEC. 2018. **Judgment against landlord.** In an action against a tenant the judgment shall be conclusive against the landlord who has received notice as hereinbefore provided.

SEC. 2019. **Exception.** If not notified, he shall be regarded as a defendant who has not been served with the original notice and shall be treated accordingly.

SEC. 2020. **Title.** The plaintiff must recover on the strength of his own title.

SEC. 2021. **Entry order for.** The court, on motion and after notice to the opposite party, may for cause shown grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof for the purposes of the action.

SEC. 2022. **Same.** The order must describe the property, and a copy thereof must be served upon the owner or person having the occupancy and control of the land.

SEC. 2023. **Improvement set off.** When the plaintiff in an action of this nature is entitled to damages for withholding or using or injuring his property, the defendant may set off the value of any permanent improvements made thereon to the extent of such damages, unless he prefers to avail himself of the law for the benefit of occupying claimants.

SEC. 2024. **Damages.** In case of wanton aggression on the part of a defendant the jury may award exemplary damages.

SEC. 2025. **Reversioner, etc.** An action in the nature of that authorized in this chapter may also be brought by one having a reversionary [285] interest or by one either in or out of possession, against another who claims title to real property, although the defendant may not be in the possession thereof, for the purpose of determining and quieting the question of title.

SEC. 2026. **Same.** The rules above prescribed shall in such cases be observed as far as they are applicable.

SEC. 2027. **Action for dower, etc.** In an action for the recovery of dower before admeasurement, or by a tenant in common or joint tenant of real property against his co-tenant, the plaintiff must show in addition to his evidence of right that the defendant either denied the plaintiff's right or did some act amounting to such denial.

CHAPTER 117.

PARTITION.

SECTION 2028. **Petition.** When the object of the action is to effect a partition of real property among several joint owners the petition must describe the property and the respective interests of the several owners thereof if known.

SEC. 2029. **What to be stated.** If the number of shares or interests is known but the owners thereof are unknown, or if there are, or are supposed to be, any interests which are unknown, contingent, or doubtful, these facts must be set forth in the petition with reasonable certainty.

SEC. 2030. **Lien creditors.** Creditors having a specific or general lien upon all or any portion of the property may or may not be made parties at the option of the plaintiff.

SEC. 2031. **Same—costs.** If the lien is upon one or more undivided interests of any of the parties it shall, after partition or sale, remain a charge upon those particular interests or the proceeds thereof. But the due proportion of costs is a charge upon those interests paramount to all other liens.

SEC. 2032. **Answers.** The answers of the defendants must state among other things the amount and nature of their respective interests. They may deny the interest of any of the plaintiffs and by supplemental pleading if necessary may deny the interest of any of the other defendants.

SEC. 2033. **Replication.** Where there are two or more plaintiffs they may reply jointly, or either of them may reply to any or all the answers of the defendants.

SEC. 2034. **Issues.** Issues may thereupon be joined and tried between any of the contesting parties, the question of costs on such [286] issues being regulated between the contestants agreeably to the principles applicable to other cases.

SEC. 2035. **Proofs of title.** Each of the parties appearing, whether as plaintiff or defendant, must exhibit his documentary proof of title (if he has any) and must file the same or copies thereof with the clerk.

SEC. 2036. **Pleadings true.** If the statements in the petition and answers are not contradicted in the manner aforesaid or by the documentary proof exhibited as above required they shall be taken as true.

SEC. 2037. **Judgment.** After all the shares and interests of the parties have been settled in any of the methods aforesaid judgment shall be rendered confirming those shares and interests and directing partitions to be made accordingly.

SEC. 2038. **Referees.** Upon entering such judgment the court shall appoint referees to make partition into the requisite number of shares.

SEC. 2039. **Special allotments.** For good and sufficient reasons appearing to the court the referees may be directed to allot particular portions of the land to particular individuals. In other cases the shares must be made as nearly as possible of equal value.

SEC. 2040. **Partition cannot be made.** If it appears to the referees that a partition cannot be made without great prejudice to the owners they shall so report to the court.

SEC. 2041. **Order to sell.** If satisfied with such report the court shall cause an order to be entered directing the referees to sell the premises so situated and shall also fix the terms of sale.

SEC. 2042. **Security by referees.** Before proceeding to sell, the referees shall each give security to be approved by the court or judge thereof conditioned for the faithful discharge of his duties. At any time thereafter the court may require farther and better security.

SEC. 2043. **Notice of sale.** The same notice of sale shall be given as when lands are sold on execution by the sheriff and the sales shall be conducted in like manner.

SEC. 2044. **Report.** After completing said sale the referees must report their proceedings to the court with a description of the different parcels of land sold to each purchaser and the price bid therefor, which report shall be filed with the clerk.

SEC. 2045. **Incumbrances.** After making the order of sale as aforesaid, the court shall direct the clerk to report whether there be any general incumbrances by mortgage, judgment, or otherwise upon any portion of the property.

SEC. 2046. **Same.** If deemed advisable, the court may appoint a referee to inquire into the nature and amount of incumbrances [287] and to report accordingly. From that report an appeal lies to the court.

SEC. 2047. **Same.** The referees shall give the parties interested at least five days notice of the time and place when he will receive proof of the amounts of such incumbrances.

SEC. 2048. In taking such proof he may receive, with other evidence, the affidavit of the parties interested.

SEC. 2049. **How disposed of.** If any incumbrance be ascertained to exist the proceeds of the sale of that portion (after the payment of costs) or so much thereof as is necessary shall, if the owner consent, be paid over to the incumbrancer.

SEC. 2050. **Same.** If the owner object to the payment of such incumbrance the money shall be retained or invested by order of the court to await final action in relation to its disposition, and notice thereof shall be forthwith given to the incumbrancer unless he has already been made a party.

SEC. 2051. **Issue.** The court may direct an issue to be made up between the incumbrancer and the owner, which shall be decisive of their respective rights.

SEC. 2052. **Life estates, etc.** If an estate for life or years be found to exist as an incumbrance upon any part of said property, and if the parties cannot agree upon the sum in gross which they will consider an equivalent for such estate, the court shall direct the avails of the incumbered property to be invested and the proceeds to be paid to the incumbrancer during the life time of the incumbrance.

SEC. 2053. **Delay.** The proceedings in relation to incumbrances shall not delay the distribution of the proceeds of other shares in respect to which no such difficulties exist.

SEC. 2054. **Refunding.** The court in its discretion may require all or any of the parties, before they receive the moneys arising from any sale authorized in this chapter, to give satisfactory security to refund such moneys with interest in case it afterward appears that such parties were not entitled thereto.

SEC. 2055. **Conveyances.** If the sales aforesaid be approved and confirmed by the court an order shall be entered directing the referees or any two of them to execute conveyances pursuant to such sales. But no conveyances can be made until all the money is paid, without receiving from the purchaser a mortgage of the land so sold or other equivalent security.

SEC. 2056. **Effect of.** Such conveyances so executed, being recorded in the county where the premises are situate, shall be valid against all subsequent purchasers, and also against all persons interested at the time who were made parties to the proceedings in the mode pointed out by law.

SEC. 2057. **Party married.** If the owner of any share thus sold has a husband or wife living and if such husband and wife do not agree as [288] to the disposition that shall be made of the proceeds of such sale, the court must direct it to be invested in real estate under the supervision of such person as it may appoint, taking the title in the name of the owner of the share sold as aforesaid.

SEC. 2058. **Sales disapproved.** If the sales are disapproved the money paid and the securities given must be returned to the persons respectively entitled thereto.

SEC. 2059. **Partition.** When a partition is deemed proper the referees must mark out the shares by visible monuments, and may employ a competent surveyor and the necessary assistants to aid them therein.

SEC. 2060. **Report.** The report of the referees must be in writing signed by at least two of them. It must describe the respective shares with reasonable particularity and be accompanied by a plat of the premises.

SEC. 2061. **Shares.** Unless the shares are allotted to their respective owners by the referees as hereinbefore contemplated the clerk shall number the shares and then draw the names of the future owners by lot.

SEC. 2062. **Partition in part.** When partition can be conveniently made of part of the premises but not of all, one portion may be partitioned and the other sold as hereinbefore provided.

SEC. 2063. **Report.** On good cause shown the report may be set aside and the matter again referred to the same or other referees.

SEC. 2064. **Judgment.** Upon the report of the referees being confirmed judgment thereon shall be rendered that the partition be firm and effectual forever.

SEC. 2065. **Effect of.** When all the parties in interest have been duly notified to appear and answer, either by the service of the petition and notice or by the publication prescribed by law, any of the proceedings above authorized shall be binding and conclusive upon them all. If only a portion of such parties be served they only shall be bound by such proceedings.

SEC. 2066. **As evidence.** This judgment of partition shall be presumptive evidence of title in all cases, and as between the parties themselves it is conclusive evidence thereof, subject however to be defeated by proof of a title paramount to, or independent of, that under which the parties held as joint tenants or tenants in common.

SEC. 2067. **Costs.** All the costs of the proceedings in partition shall be paid in the first instance by the plaintiffs, but eventually by all the parties in proportion to their interests, except those costs which are created by contests above provided for.

SEC. 2068. **Incumbrancer may appear.** Any person claiming to hold an incumbrance upon any portion of the property involved in the suit may, in default of the owner, appear and act as his representative in any of the proceedings under this act.

SEC. 2069. **Contingent interests.** Persons having contingent interests in such property may be made parties to the proceedings, and the proceeds of the property so situated (or the property itself in case of partition) shall be subject to the order of the court until the right becomes fully vested.

SEC. 2070. **Absent owners.** The ascertained share of any absent owner shall be retained or the proceeds invested for his benefit.

CHAPTER 118.

FORECLOSURE OF MORTGAGES.

SECTION 2071. **How.** Any mortgage to secure the payment of money only and where the time of payment is therein fixed may be foreclosed by notice and sale as hereinafter provided unless a stipulation to the contrary has been agreed upon by the parties.

SEC. 2072. **Notice.** The notice must contain a full description of the property mortgaged together with the time, place, and terms of sale.

SEC. 2073. **On whom.** Such notice must be served on the mortgagor, and upon all persons having recorded liens upon the same property which are paramount to the mortgage or they will not be bound by the proceedings.

SEC. 2074. **Service.** The service and return must be made in the same manner as in case of the original notice by which civil actions are commenced, except that no publication in the newspapers is necessary for this purpose, the general publication directed in the next section being a sufficient service upon all the parties in cases where service is to be made by publication.

SEC. 2075. **Publication.** After notice has been served upon the parties it must be published in the same manner and for the same length of time as is required in cases of the sale of like property on execution, and the sale shall be conducted in the same manner.

SEC. 2076. **Purchaser.** The purchaser shall take all the title and interest on which the mortgage operated as a lien.

SEC. 2077. **Sale.** The sheriff conducting the sale shall execute to the purchaser a bill of sale of the personal property or a deed of the real estate, which shall be respectively effectual to carry the whole title and interest purchased

[290] SEC. 2078. The deeds of real estate must be acknowledged and recorded like deeds for lands sold on execution.

SEC. 2079. **Evidence.** Evidence of the service and publication of the notice aforesaid and of the sale made in accordance therewith together with any postponement or other material matter may be perpetuated by proper affidavits thereof.

SEC. 2080. **Same.** Such affidavits shall be attached to the bill of sale of personal property or recorded with the deed of real property and shall then be receivable in evidence to prove the facts they state.

SEC. 2081. **Effect.** Sales made in accordance with the above requirements are valid in the hands of a *bona fide* purchaser whatever may [be] the equities between the mortgagor and mortgagee.

SEC. 2082. **Rights contested.** The right of the mortgagee to foreclose as well as the amount claimed to be due may be contested by any one interested in so doing, and the proceeding may be transferred to the district court for which purpose an injunction may issue if necessary.

SEC. 2083. **Foreclosure.** The holder of any mortgage may in all cases—and where the mortgage is given for any other purpose than to secure the payment of money at a day certain he must—proceed by civil action in the district court when he wishes to foreclose the same.

SEC. 2084. **Judgment.** If any thing be found due the plaintiff the court shall render judgment therefor and must direct the mortgaged property or so much thereof as is necessary, to be sold to satisfy the amount due with interest and costs. A special execution shall issue accordingly.

SEC. 2085. **General execution.** If the mortgaged property does not sell for sufficient to satisfy the execution a general execution may be issued against the mortgagor unless the parties have stipulated otherwise.

SEC. 2086. **Plaintiff's election.** If separate suits are brought on the bond or note and on the mortgage given to secure it the plaintiff must elect which to prosecute. The other will be discontinued at his costs.

SEC. 2087. **Judgment on bond.** When a judgment is obtained in an action on the bond the property mortgaged may be sold on the execution issued thereon, and the judgment shall be a lien thereon from the date of the recording of the mortgage.

SEC. 2088. **Junior incumbrancer.** At any time prior to the sale made in accordance with either of the above modes of foreclosure, a person having a lien on the property which is junior to the mortgage will be entitled to an assignment of all the interest of the holder of the mortgage by paying him the amount secured with interest and costs together with the amount of any other liens of the same holder which are paramount to his. He [291] may then proceed with the foreclosure or discontinue it at his option.

SEC. 2089. **Overplus.** If there is an overplus remaining after satisfying the mortgage and costs, and if there are no other liens upon the property, such overplus shall be paid to the mortgagor.

SEC. 2090. **Other liens.** If there are other liens on the property sold, or other payments secured by the same mortgage, they shall be paid off in their order. And if the money secured by any such lien is not yet due a suitable rebate of interest must be made by the holder thereof or his lien on such property will be postponed to those of a junior date, and if there are none such the balance will be paid to the mortgagor.

SEC. 2091. **Sale.** As far as practicable, the property sold must be only sufficient to satisfy the mortgage foreclosed in either of the methods aforesaid.

SEC. 2092. **Costs and fees.** The same costs and fees shall be allowed for services rendered and acts performed under the provisions of this chapter as for like acts and services in other cases, which will be paid out of the proceeds of the sales made.

SEC. 2093. **Satisfaction entered.** Whenever the amount due on any mortgage is paid off the mortgagee or those legally acting for him must acknowledge satisfaction thereof in the margin of the record of the mortgage. If he fails to do so within six months after being requested he shall forfeit to the mortgagor the sum of twenty-five dollars.

SEC. 2094. **Contracts.** The vendor of real estate, when part or all the purchase money remains unpaid after the day fixed for payment, whether time is or is not the essence of the contract, may file his petition asking the court to require the purchaser to perform his contract or to foreclose and sell his interest in the property.

SEC. 2095. **Same.** The vendee shall in such cases, for the purpose of the foreclosure, be treated as a mortgagor of the property purchased and his rights may be foreclosed in a similar manner.

SEC. 2096. **Deeds of trust.** Deeds of trust of real or personal property may be executed as securities for the performance of contracts, and sales made in accordance with their terms are valid. Or they may be treated like mortgages and foreclosed by action in the district court.

SEC. 2097. **Agreements.** Nothing herein contained is intended to prevent parties from fixing their own terms to any contract and prescribing the manner in which those contracts shall be enforced; nor to change the rule, or affect the rights of the vendor of real estate, in those cases where time is of the essence of the contract.

[292] CHAPTER 119.

ARBITRATIONS.

SECTION 2098. **Of what.** All controversies which might be the subject of civil actions may be submitted to the decision of one or more arbitrators as hereafter provided.

SEC. 2099. **How submitted.** The parties themselves, or those persons who might lawfully have controlled a civil action in their behalf for the same subject matter, must sign a written agreement specifying particularly what demands are to be submitted, the names of the arbitrators, and the court by which the judgment on their award is to be rendered.

SEC. 2100. **Same.** They shall then appear before some justice of the peace of the county and acknowledge the instrument by them signed to be their free act and deed.

SEC. 2101. **What submitted.** The submission may be of some particular matters or demands, or of all demands which the one party has against the other, or of all mutual demands on both sides.

SEC. 2102. **Of suit.** A submission to arbitration of the subject matter of a suit may also be made by an order of court upon agreement of parties after suit is commenced.

SEC. 2103. **Rule.** All the rules prescribed by law in cases of referees are applicable to arbitrators except as herein otherwise expressed, or except as otherwise agreed upon by the parties.

SEC. 2104. **Irrevocable.** Neither party shall have the power to revoke the submission without the consent of the other.

SEC. 2105. **Default.** If either party neglect to appear before the arbitrators after due notice they may nevertheless proceed to hear and determine the cause upon the evidence which is produced before them.

SEC. 2106. **Award.** If the time within which the award is to be made is fixed in the submission, no award made after that time shall have any legal effect unless made upon a recommitment of the matter by the court to which it is reported.

SEC. 2107. **Same.** If the time of filing the award is not fixed in the submission it must be filed within one year from the time such submission is signed and acknowledged, unless by mutual consent the time is prolonged.

SEC. 2108. **Same.** The award must be in writing and shall be delivered by one of the arbitrators to the court designated in the agreement, or it may be enclosed and sealed by them and transmitted to the court and not opened until the court so orders.

SEC. 2109. **When docketed.** The cause shall be entered on the docket of the [293] court at the term to which the award is returned and shall be called up and acted upon in its order. But the court may require actual notice to be given to either party when it appears necessary and proper before proceeding to act on the award.

SEC. 2110. **In court.** The award may be rejected by the court for any legal and sufficient reasons, or it may be recommitted for a rehearing to the same arbitrators or any others agreed upon by the parties.

SEC. 2111. **Filing, effect.** When the award has been adopted it shall be filed and entered on the records and shall have the same force and effect as the verdict of a jury. Judgment may be entered and execution issued accordingly.

SEC. 2112. **Appeals.** When an appeal is brought on such judgment, copies of the submission and award together with all affidavits shall be returned to the supreme court.

SEC. 2113. **Costs.** If there is no provision in the submission respecting costs the arbitrators may award them at their discretion.

SEC. 2114. **Compensation.** The compensation of the arbitrators shall be two dollars per day for the time actually and necessarily spent unless the court fix a less amount, and the fees of the justice of the peace shall be twenty-five cents for making out the agreement of submission (in case he does so), and the like amount for taking and certifying the acknowledgment thereto.

SEC. 2115. **Saving.** Nothing herein contained shall be construed to affect in any manner the control of the district court over the parties, the arbitrators, or their award; nor to impair or affect any action upon an award or upon any bond or other engagement to abide an award.

CHAPTER 120.

ACTIONS AGAINST BOATS.

SECTION 2116. **Boats when liable.** Any boat found in the waters of this state is liable:

1. For all debts contracted by the master, owner, agent, clerk, or consignee thereof on account of supplies furnished for the use of such boat; on account of work done or services rendered for such boat; or on account of work done or materials furnished in building, repairing, fitting out, furnishing, or equipping such boat;

2. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or any contract relative to the transportation of [294] persons or property, entered into by the master, owner, agent, clerk, or consignee thereof;

3. For all injuries to persons or property by such boat, or by the officers or crew, done in connection with the business of said boat.

SEC. 2117. **Liens.** Claims growing out of any of the above causes are liens upon the boat, its apparel, tackle, furniture, and appendages, including barges and lighters if owned by the owners of the boat and used therewith at the time the suit is commenced.

SEC. 2118. **Order of liens.** Such liens take preference of any claims against the boat itself or any or all of its owners growing out of any other causes than those above enumerated, and as between themselves they are to be preferred in the following order:

1. Those resulting from wages for services rendered on board of such boat within the year then passed, provided suit be commenced within twenty days after the cessation of such labor;

2. Those resulting from contracts made within this state;

3. All other causes.

SEC. 2119. **Limitations.** Actions against boats under the provisions of this chapter cannot be brought after the lapse of one year from the time the cause of action accrued.

SEC. 2120. **Lien attaches.** The lien attaches from the commencement of the suit subject only to such other liens as are of a preferred class.

SEC. 2121. **Petition—warrant.** The original petition must be in writing sworn to and filed with the clerk or justice of the peace, who shall thereupon issue a warrant to the proper officer commanding him to seize the boat, its apparel, tackle, furniture and appendages and detain the same until released by due course of law.

SEC. 2122. **Notice.** The usual notice shall also be issued, directed to the boat by name, and served upon the master, owner, agent, clerk, or consignee thereof, and if none of them can be found it may be served by posting up a copy in some conspicuous part of the boat. The warrant shall be served according to the direction it contains.

SEC. 2123. **Appearance.** Any person interested in the boat may appear for the defendant by himself, his agent, or attorney and conduct the defense of the suit, and no continuance shall be granted to the plaintiff while the boat is held in custody.

SEC. 2124. **Boat, how released.** The boat may be discharged at any time before final judgment by the giving of a bond with sureties, to be approved by the officer serving the warrant or by the clerk or justice who issued it, in a

penalty double the plaintiff's demand conditioned that the obligors therein will pay the [295] amount which may be found due to the plaintiff together with costs.

SEC. 2125. **Execution.** If judgment be rendered for the plaintiff before the boat is thus discharged a special execution shall be issued against it. If it have been previously discharged the execution shall issue against the principal and sureties in the bond without farther proceedings.

SEC. 2126. **Sheriff's sale.** The sheriff may sell any of the furniture or appendages of the boat if by so doing he can satisfy the demand. If he sell the boat itself he must sell it to the bidder who will advance the amount required to satisfy the execution for the lowest fractional share of the boat, unless the person appearing for the boat desire a different and equally convenient mode of sale.

SEC. 2127. **Purchaser.** If a fractional share of the boat be thus sold the purchaser shall hold such share or interest jointly with the other owners.

SEC. 2128. **Appeal bond.** If an appeal be taken by the defendant before the boat is discharged as above provided, the appeal bond, if one be filed, will have the same effect in discharging the boat as the bond above contemplated, and execution shall issue against the obligors therein after judgment in the same manner.

SEC. 2129. **Cumulative.** Nothing herein contained is intended to affect the rights of a plaintiff to sue in the same manner as though the provisions of this chapter had not been enacted.

SEC. 2130. **Complaint.** In actions commenced in accordance with the provisions of this chapter it is sufficient to allege the contract to have been made with the boat itself.

CHAPTER 121.

NUISANCE, WASTE, AND TRESPASS.

SECTION 2131. **Definition.** Whatever is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property is a nuisance and the subject of an action.

SEC. 2132. **Action by whom.** Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

SEC. 2133. **Remedy.** Where a proper case is made the nuisance may be enjoined or abated and damages recovered therefor.

SEC. 2134. **Treble damages.** If a guardian, tenant for life or years, joint tenant, [296] or tenant in common, of real property commit waste thereon he is liable to pay three times the damages which have resulted from such waste to the person who is entitled to sue therefor.

SEC. 2135. **Forfeiture.** Judgment of forfeiture and eviction may be rendered against the defendant whenever the amount of damages so recovered is more than two-thirds the value of the interest such defendant has in the property wasted and when the action is brought by the person entitled to the reversion.

SEC. 2136. **Who liable.** Any person whose duty it is to prevent waste and who has not used reasonable care and diligence to prevent it is deemed to have committed it.

SEC. 2137. **Treble damages.** For wilful trespasses in injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or town lot, or on the public grounds of any town, or any land held by this state for any purpose whatever, the perpetrator shall pay treble damages at the suit of any person entitled to protect or enjoy the property aforesaid.

SEC. 2138. **Exception.** Nothing herein contained authorizes the recovery of more than the just value of timber taken from uncultivated wood land for the repair of a public highway or bridge upon the land in its immediate neighborhood.

SEC. 2139. **Remainder.** The owner of an estate in remainder or reversion may maintain either of the aforesaid actions for injuries done to the inheritance notwithstanding any intervening estate for life or years.

SEC. 2140. **Heirs.** An heir, whether a minor or of full age, may maintain these actions for injuries done in the time of his ancestor as well as in his own time, unless barred by the statute of limitations.

SEC. 2141. **Purchasers.** Whenever lands or tenements are sold by virtue of an execution, the purchaser at such sale may maintain his action against any person for either of the causes above mentioned occurring or existing after his purchase.

SEC. 2142. **Qualification.** This provision is not intended to prevent the person who occupies the lands in the meantime from using them in the ordinary course of husbandry or from using timber for the purpose of making suitable repairs thereon.

SEC. 2143. **Same.** But if for this purpose he employ timber vastly superior to that required for the occasion he will be deemed to have committed waste and will be liable accordingly.

SEC. 2144. **Settlers on public lands.** Any person settled upon and occupying any portion of the public lands held by the state is not liable as a trespasser for improving it or cultivating it in the ordinary course of husbandry, nor for taking and using timber or other material necessary and proper to enable him to do so, provided [297] the timber and other materials be taken from land properly constituting a part of the "claim" or tract of land so settled upon and occupied by him.

CHAPTER 122.

ACTIONS ON OFFICIAL SECURITIES, AND FOR FINES AND FORFEITURES.

SECTION 2145. **Official bonds.** The official bond of a public officer is to be construed as a security to the body politic or civil corporation of which he is an officer, and also to all the members thereof severally who are intended to be thereby secured.

SEC. 2146. **In whose name.** The individual injured by the breach of such bond may sue thereon in his own name or in the name of the obligee. The body politic may sue in the name of the obligee in the bond.

SEC. 2147. **Judgment no bar.** A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency, except that sureties can be made liable in the aggregate only to the extent of their undertaking.

SEC. 2148. **Fines, etc.** Fines and forfeitures not otherwise disposed of go into the treasury of the county where the same are collected, for the benefit of the school fund.

SEC. 2149. **Actions by whom.** Actions for the recovery thereof may be prosecuted by the officers or persons to whom they are by law given in whole or in part, or by the public officer into whose hands they are to be paid when collected.

SEC. 2150. **Collusion.** A judgment for a penalty or forfeiture, rendered by collusion, does not prevent another prosecution for the same subject matter.

CHAPTER 123.

INFORMATIONS.

SECTION 2151. **When to be filed.** An information may be filed against any person unlawfully holding or exercising any public office or franchise within this state, or any office in any corporation created by the laws of this state, or when any public officer has done or suffered any act which works a forfeiture of his office; or when any persons act as a corporation within this state [298] without being authorized by law, or if being incorporated they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation, or when they exercise powers not conferred by law.

SEC. 2152. **By whom.** Such information may be filed by the district attorney of the proper county whenever he deems it his duty so to do.

SEC. 2153. **Same.** He must file such information when directed to do so by the governor, the general assembly, or the district court.

SEC. 2154. **Statement.** Such information shall consist of a plain statement of the facts which constitute the grounds of the proceeding addressed to the court, which shall stand for an original petition.

SEC. 2155. **Filed.** Such statement shall be filed in the clerk's office and notice issued and served in the same manner as hereinbefore provided for the commencement of actions in the district court.

SEC. 2156. **Answer.** The defendants shall appear and answer such information in the usual way, and issue being joined it shall be tried in the ordinary manner.

SEC. 2157. **Contesting claimant.** When the defendant is holding an office to which another is claiming the right the information should set forth the name of such claimant, and the trial must if practicable determine the rights of the contesting parties.

SEC. 2158. **Judgment.** If judgment be rendered in favor of such claimant he shall proceed to exercise the functions of the office after he has qualified as required by law.

SEC. 2159. **Same.** The court, after such judgment, shall order the defendant to deliver over all books and papers in his custody or under his control belonging to said office.

SEC. 2160. **Damages.** When the judgment has been rendered in favor of the claimant, he may at any time within one year thereafter bring suit against the defendant and recover the damages he has sustained by reason of the act of the defendant.

SEC. 2161. **Several claimants.** When several persons claim to be entitled to the same office or franchise, an information may be filed against all or any portion thereof in order to try their respective rights thereto.

SEC. 2162. **Judgment of ouster.** If the defendant be found guilty of unlawfully holding or exercising any office, franchise or privilege, or if a corporation be found to have violated the law by which it holds its existence or

in any other manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted and altogether excluded from such office, franchise or privilege, and also that he pay the costs of the proceeding.

[299] SEC. 2163. **Same.** If the defendant be found to have exercised merely certain individual powers and privileges to which he was not entitled, the judgment shall be the same as above directed, but only in relation to those particulars in which he is thus exceeding the lawful exercise of his rights and privileges.

SEC. 2164. **On private relation.** When an information is upon the relation of a private individual it shall be so stated in the petition and proceedings, and such individual shall be responsible for costs in case they are not adjudged against the defendant. In other cases the title of the cause shall be the same as in a criminal prosecution, and the payment of costs shall be regulated by the same rule.

SEC. 2165. **Costs.** In case judgment is rendered against a pretended, but not real, corporation the costs may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

SEC. 2166. **Trustees.** If a corporation is ousted and dissolved by the proceedings herein authorized the court shall appoint three disinterested persons as trustees of the creditors and stockholders.

SEC. 2167. **Bond.** Said trustees shall enter into bond in such a penalty and with such security as the court approves, conditioned for the faithful discharge of their trust.

SEC. 2168. **Same.** Suit may be brought on such bond by any person injured by the negligence or wrongful act of the trustees in the discharge of their duties.

SEC. 2169. **Their duties.** The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled.

SEC. 2170. **Books and papers.** The court shall, upon an application for that purpose, order any officer of such corporation or any other person having possession of any of the effects, books, or papers of the corporation in any wise necessary for the settlement of its affairs, to deliver up the same to the trustees.

SEC. 2171. **Inventory.** As soon as practicable after their appointment the trustees shall make and file in the office of the clerk of the court an inventory of all the effects, rights and credits which come to their possession or knowledge, the truth of which inventory shall be sworn to.

SEC. 2172. **Act as executors.** They shall sue for and recover the debts and property of the corporation and shall be responsible to the creditors and stockholders respectively to the extent of the effects which come to their hands, in the same manner as though they were the executors of a deceased person.

SEC. 2173. **Officers liable.** When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or [300] officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby.

SEC. 2174. **Contempt.** Any person, who without good reason refuses to obey any order of the court as herein provided, shall be deemed guilty of a contempt of court and shall be fined in any sum not exceeding five thousand dollars and imprisoned in the county jail until he comply with said order, and shall be farther liable for the damages resulting to any person on account of his refusal to obey such order.

SEC. 2175. **Patent annulled.** A proceeding of this kind may be instituted in the manner above contemplated for the purpose of annulling or vacating any letters patent granted by the proper authorities of this state when there is reason to believe that the same were obtained by fraud, or through mistake or ignorance of a material fact, or when the patentee or those claiming under him have done or omitted an act in violation of the terms and conditions on which the letters were granted, or have by any other means forfeited the interest acquired under the same.

CHAPTER 124.

SCIRE FACIAS.

SECTION 2176. **Petition.** Where a *scire facias* is allowed by law it shall be commenced by petition and notice filed and served as in other civil actions.

SEC. 2177. **Affidavit.** The petition must be accompanied by an affidavit of the plaintiff in the proceeding, his agent or attorney, stating that the judgment has not been satisfied to his knowledge, information, or belief, and must specify the amount due thereon.

SEC. 2178. **Answer.** The answer of the defendant must also be under oath, and the issue joined if any, shall be tried in the usual manner.

CHAPTER 125.

MANDAMUS.

SECTION 2179. **When it issues.** The writ of *mandamus* issues from the district court to any inferior tribunal, corporation, board, or person, to [301] compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.

SEC. 2180. **Discretion.** Where a discretion is left to an inferior tribunal the writ of *mandamus* can only compel it to act. It cannot control the discretion of the inferior tribunal.

SEC. 2181. **Other cases.** The writ may also be issued by the supreme court to any district court if necessary, and also in any other case where it is found necessary to enable it to exercise its legitimate power.

SEC. 2182. **When not.** It ought not to be issued in any case where there is a plain, speedy, and adequate remedy in the ordinary course of the law.

SEC. 2183. **Information.** It is issued on the information, under oath, of the party beneficially interested and is either alternative or peremptory.

SEC. 2184. **Alternative writ.** The alternative writ commands the defendant to do the act required to be performed or show cause before the court forthwith or at a specified time and place why he has not done so, and that he then and there return the writ.

SEC. 2185. **Peremptory writ.** The peremptory writ omits the words which require the defendant to show cause why he has not done as commanded.

SEC. 2186. **Assimilated to certiorari.** The mode of obtaining the writ, the service and proof thereof, the return and enforcement of obedience thereto must be in the same manner as in case of the writ of *certiorari*.

SEC. 2187. **Answer.** On the return day of the alternative writ or on such farther day as the court may allow, the party on whom the writ has been served

may show cause by a sworn answer made in the same manner as an answer to a petition in a civil action, and issue may be made thereon and tried accordingly.

SEC. 2188. **Judgment.** If the defendant make default, or judgment after answer be rendered against him, a peremptory *mandamus* issues forthwith. The subject of cost is regulated upon the same principles as in ordinary civil actions.

CHAPTER 126.

INJUNCTIONS AND ORDERS.

SECTION 2189. **Injunctions.** An injunction may be granted as an independent means of relief or as auxiliary to other proceedings in accordance with the rules heretofore observed except as herein modified.

[302] SEC. 2190. **When auxiliary.** When it is a mere auxiliary measure resorted to during the trial of the principal cause, the terms on which it is allowed as well as the kind of notice to be given to the opposite party shall be such as the court prescribes.

SEC. 2191. **When otherwise.** When applied for as an independent means of relief the petition must be sworn to and presented to the district court, if in session in the county, for an allowance of the injunction. If not in session application for that purpose may be made to any judge of the supreme or district court or to the judge of the county court of the proper county.

SEC. 2192. **Allowance.** If the order of allowance is made by the court in session, the clerk shall make an entry thereof in the court record and issue the writ accordingly. If made in vacation the judge must indorse the said order upon the petition.

SEC. 2193. **Bond.** In both the cases contemplated in the last section the order of allowance must direct the writ to issue only after the filing of a bond in the office of the clerk of the district court in a penalty to be therein fixed, with sureties to be approved by said clerk (unless the court or judge granting the said order has previously approved said sureties), and conditioned for the payment of all the damages which may be adjudged against the petitioner by reason of such injunction.

SEC. 2194. **To enjoin civil action.** When proceedings in a civil action are sought to be enjoined the suit must be brought in the county wherein such proceedings are pending. The bond must also in that case be farther conditioned to pay any judgment that may be ultimately recovered against the party who seeks the injunction, for the cause of action on which the suit sought to be enjoined is founded.

SEC. 2195. **Penalty of bond.** The penalty of the bond must be fixed by the court or judge who makes the order and must be doubly sufficient to cover any probable amount of liability to be thereby incurred.

SEC. 2196. **Writ.** Upon the filing of the bond as required, the clerk must issue the writ of injunction as directed by the order of allowance.

SEC. 2197. **Defendant may show cause.** The court or judge before granting the writ may, if deemed advisable, allow the defendant an opportunity to show cause why such order should not be granted.

SEC. 2198. **Motion to vacate.** If the writ is granted without allowing the defendant to show cause, he may at any time before the next term of the court apply to the judge who made the order to vacate or modify the same.

SEC. 2199. **Application.** Such application must be with notice to the plaintiff and may rest upon the ground that the order was impropr-[303]-erly granted or it may be founded upon affidavits on the part of the defendant. In the latter case the plaintiff may fortify his application by counter affidavits and have reasonable time therefor.

SEC. 2200. **Consequence.** The judge may thereupon decide the matter at once unless some good cause for delay be shown. But the vacation of the order shall not prevent the cause from proceeding if any thing be left to proceed upon.

SEC. 2201. **Disobedience.** Any judge of the supreme or district court, being furnished with an authenticated copy of the writ of injunction and also with satisfactory proof that such injunction has been violated, shall issue his precept to the sheriff of the county where the violation of the injunction occurred or to any other sheriff (naming him) more convenient to all parties concerned, directing him to attach said defendant and bring him forthwith before the same or some other judge at a place to be stated in said precept.

SEC. 2202. **Contempt purged.** If, when thus produced, he files his affidavit denying or sufficiently excusing the contempt charged he shall be released and the affidavit shall be filed with the clerk of the court for preservation.

SEC. 2203. **Bond required.** But if he fail to do so, the judge may require him to give bond with surety for his appearance at the next term of the court and also for his future obedience to the injunction, which bond shall be filed with the clerk.

SEC. 2204. **Committed.** If he fail to give such security he may be committed to the jail of the county where the proceedings are pending until the next term of the court.

SEC. 2205. **Contempt punished.** If the security be given, the court at the next term shall act upon the case and punish the contempt in the usual mode.

SEC. 2206. **Motion to dissolve.** The defendant may move to dissolve the injunction either before or after the filing of the answer.

SEC. 2207. **Issue on answer.** Issue may be joined on the defendant's answer and a trial had as in other cases.

SEC. 2208. **Whole case tried.** When practicable, the whole matter connected with the injunction shall be disposed of on such trial and complete justice administered to all parties.

SEC. 2209. **Damages.** If the injunction be dissolved in whole or in part damages may be awarded against the obligors of the bond, which shall be assessed by a jury when required by either party.

SEC. 2210. **Judge's order.** For good cause shown, a judge's order may issue in vacation directing any of the officers of the court in relation to the discharge of their duties.

SEC. 2211. **How long in force.** Such order shall be in force only during the vaca-[304]-tion in which it is granted and for the first two days of the ensuing term.

SEC. 2212. **Bond may be required.** The judge granting it may require the filing of a bond as in case of an injunction unless from the nature of the case such requirement would be clearly unnecessary and improper.

CHAPTER 127.

HABEAS CORPUS.

SECTION 2213. **Substance of petition.** The petition for the writ of *habeas corpus* must be sworn to and must state:

1. That the person in whose behalf it is sought is restrained of his liberty and the person by whom and the place where he is so restrained, mentioning the names of the parties if known, and if unknown describing them with as much particularity as practicable;
2. The cause or pretense of such restraint according to the best information of the applicant; and if it be by virtue of any legal process, a copy thereof must be annexed or a satisfactory reason given for its absence;
3. It must state that the restraint is illegal and wherein;
4. That the legality of the imprisonment has not already been adjudged upon a prior proceeding of the same character, to the best knowledge and belief of the applicant;
5. It must also state whether application for the writ has been before made to, and refused by, any court or judge, and if such application has been made, a copy of the petition in that case with the reasons for the refusal thereto appended must be produced or satisfactory reasons given for the failure to do so.

SEC. 2214. **Sworn to, etc.** This petition must be sworn to by the person confined or by some one in his behalf and presented to some court or officer authorized to allow the writ.

SEC. 2215. **By whom allowed.** The writ of *habeas corpus* may be allowed by the supreme or district court or by any judge of either of those courts. In such cases it may be served in any part of the state.

SEC. 2216. **Same.** It may also be allowed by any county court except when the commitment was made by order of one of the courts or officers mentioned in the last section, but when allowed by the county court it is valid only within the limits of the county where issued.

[305] SEC. 2217. **Application where.** Application for this writ, when made to the supreme or district courts or to either of the judges thereof, must be made to the court or judge most convenient in point of distance to the applicant, and the more remote court or judge if applied to for the writ may refuse the same unless a sufficient reason be stated in the petition for not making the application to the more convenient supreme or district court or a judge thereof.

SEC. 2218. **When refused.** If, from the showing of the petitioner, the plaintiff would not be entitled to any relief the court or judge may refuse to allow the writ.

SEC. 2219. **When not.** But if the petition show a sufficient ground for relief and is in accordance with the foregoing requirements, the writ shall be allowed and may be substantially as follows:

Form.

The State of Iowa,

To the Sheriff of etc. (or to A. B. as the case may be.)

You are hereby commanded to have the body of C. D. by you unlawfully detained as is alleged, before the court (or before me, or before E. F. judge, etc., as the case may be) at _____ on _____ (or immediately after being served with this writ) to be dealt with according to law, and have you then and there this writ with a return thereon of your doings in the premises.

SEC. 2220. **By whom issued.** When the writ is allowed by a court it is to be issued by the clerk, but when allowed by a judge he must issue the writ himself subscribing his name thereto without any seal.

SEC. 2221. **Disallowed.** If the writ is disallowed, the court or judge shall cause the reasons of said disallowance to be appended to the petition and returned to the person applying for the writ.

SEC. 2222. **Penalty for refusing.** Any judge, whether acting individually or as a member of a court, who wrongfully and wilfully refuses such allowance of the writ when properly applied for shall forfeit to the party aggrieved the sum of one thousand dollars.

SEC. 2223. **Issued without application.** Whenever any court or judge authorized to grant this writ has evidence, from a judicial proceeding before them, that any person within the jurisdiction of such court or officer is illegally imprisoned or restrained of his liberty, it is the duty of such court or judge to issue or cause to be issued the writ as aforesaid though no application be made therefor.

SEC. 2224. **By whom served.** The writ may be served by the sheriff or by any other person appointed for that purpose by the court or judge by whom it is issued or allowed. If served by any other than the sheriff, he possesses the same power and is liable to the [306] same penalty for a non-performance of his duty as though he were the sheriff.

SEC. 2225. **How.** The proper mode of service is by leaving the original writ with the defendant and preserving a copy thereof on which to make the return of service.

SEC. 2226. **Defendant not found.** If the defendant cannot be found or if he have not the plaintiff in custody, the service may be made upon any person having the plaintiff in his custody in the same manner and with the same effect as though he had been made defendant therein.

SEC. 2227. **Power of officer.** If the defendant conceal himself or refuse admittance to the person attempting to serve the writ, or if he attempt wrongfully to carry the plaintiff out of the county or the state after the service of the writ as aforesaid, the sheriff or the person who is attempting to serve or who has served the writ as above contemplated is authorized to arrest the defendant and bring him together with the plaintiff forthwith before the officer or court before whom the writ is made returnable.

SEC. 2228. **Same.** In order to make such arrest the sheriff or other person having the writ possesses the same power as is given to a sheriff for the arrest of a person charged with a felony.

SEC. 2229. **Same.** If the plaintiff can be found and if no one appear to have the charge or custody of him, the person having the writ may take him into custody and make return accordingly. And to get possession of the plaintiff's person in such cases he possesses the same power as is given by the last section for the arrest of the defendant.

SEC. 2230. **When warrant to issue.** The court or judge to whom the application for the writ is made, if satisfied that the plaintiff would suffer any irreparable injury before he could be relieved by the proceedings as above authorized, may issue a precept to the sheriff or any other person selected instead commanding him to bring the plaintiff forthwith before such court or judge.

SEC. 2231. **Defendant arrested.** When the evidence aforesaid is farther sufficient to justify the arrest of the defendant for a criminal offense committed in connection with the illegal detention of the plaintiff, the precept must also contain an order for the arrest of the defendant.

SEC. 2232. **Precept, how served.** The officer or person to whom the precept is directed must execute the same by bringing the defendant, and also the plaintiff if required, before the court or judge issuing it, and thereupon the defendant must make return to the writ of *habeas corpus* in the same manner as if the ordinary course had been pursued.

SEC. 2233. The defendant may also be examined and commit-[307]-ted or bailed or discharged, according to the nature of the case.

SEC. 2234. **Want of form.** The writ of *habeas corpus* must not be disobeyed for any defect of form or misdescription of the plaintiff or defendant provided enough is stated to show the meaning and intent of the writ.

SEC. 2235. **Presumption.** Any person served with the writ is to be presumed to be the person to whom it is directed although it may be directed to him by a wrong name or description, or to another person.

SEC. 2236. **Appearance.** Service being made in any of the modes hereinbefore provided the defendant must appear at the proper time and answer the said petition.

SEC. 2237. **Plaintiff brought.** He must also bring up the body of the plaintiff or show good cause for not doing so.

SEC. 2238. **Disobedience.** A wilful failure to comply with the above requisitions renders the defendant liable to be attached for a contempt and to be imprisoned till a compliance is obtained, and also subjects him to the forfeiture of one thousand dollars to the party thereby aggrieved.

SEC. 2239. **Attachment served.** Such attachment may be served by the sheriff or any other person thereto authorized by the judge, who shall also be empowered to bring up the body of the plaintiff forthwith and has for this purpose the same powers as are above conferred in similar cases.

SEC. 2240. **Attorney notified.** The court or officer allowing the writ must cause the prosecuting attorney of the proper county to be informed of the issuing of the writ and of the time and place when and where it is made returnable.

SEC. 2241. **Answer.** The defendant in his answer must state plainly and unequivocally whether he then has, or at any time has had, the plaintiff under his control and restraint, and if so the cause thereof.

SEC. 2242. **Same.** If he has transferred him to another person he must state that fact, and to whom, and the time thereof, as well as the reason or authority therefor.

SEC. 2243. **Same.** If he holds him by virtue of a legal process or written authority, a copy thereof must be annexed.

SEC. 2244. **Reply.** The plaintiff may demur or reply to the defendant's answer, and all issues joined thereon shall be tried by the judge or court.

SEC. 2245. **Same.** Such replication, except when the hearing is before the judge of the county court may deny the sufficiency of the testimony to justify the action of the committing magistrate, on the trial of which issue all written testimony before such magistrate may be given in evidence before the court [308] or judge in connection with any other testimony which may then be produced.

SEC. 2246. **Restriction.** But it is not permissible to question the correctness of the action of a grand jury in finding a bill of indictment, or of the petit jury in the trial of a cause, nor of a court or judge when acting within their legitimate province and in a lawful manner.

SEC. 2247. **Plaintiff.** If no sufficient legal cause of detention is shown the plaintiff must be discharged.

SEC. 2248. **Irregularity.** Although the commitment of the plaintiff may have been irregular, still if the court or judge is satisfied from the evidence before them that he ought to be held to bail or committed either for the offense charged or any other the order may be made accordingly.

SEC. 2249. **Power of judge.** The plaintiff may also in any case be committed, let to bail, or his bail be mitigated or increased, as justice may require.

SEC. 2250. **Plaintiff detained.** Until the sufficiency of the cause of restraint is determined the defendant may retain the plaintiff in his custody and may use all necessary and proper means for that purpose.

SEC. 2251. **Plaintiff's presence.** The plaintiff in writing, or his attorney, may waive his right to be present at the trial, in which case the proceedings may be had in his absence. The writ will in such cases be modified accordingly.

SEC. 2252. **Disobedience.** Disobedience to any order of discharge subjects the defendant to attachment for a contempt, and also to the forfeiture of one thousand dollars to the party aggrieved besides all damages sustained by him in consequence of such disobedience.

SEC. 2253. **Penalty on defendant.** If the defendant attempt to elude the service of the writ of *habeas corpus* or to avoid the effect thereof by transferring the plaintiff to another or by concealing him, he shall on conviction be imprisoned in the penitentiary or county jail not more than one year and fined not exceeding one thousand dollars. And any person knowingly aiding or abetting in any such act shall be subject to the like punishment.

SEC. 2254. **On officer.** Any officer refusing to deliver a copy of any legal process by which he detains the plaintiff in custody to any person who demands such copy and tenders the fees therefor shall forfeit two hundred dollars to the person so detained.

SEC. 2255. **Papers to be filed.** When the proceedings are before a judge (except when the writ is refused) all the papers in the case, including his final order, shall be filed with the clerk of the district court of the county wherein the final proceedings were had, [309] and a brief memorandum thereof shall be entered by the clerk upon his judgment docket.

CHAPTER 128.

CHANGING NAMES.

SECTION 2256. **Power given.** The district court has power to change the names of persons in the following manner.

SEC. 2257. **Petition.** The applicant for such change must file his petition verified by his oath, stating that he is a resident of the county and has for one year then last past been a *bona fide* resident of the state. It must also in a general way give a description of his person, stating his age, height, the color of his hair and eyes, the place of his birth, and who were his parents.

SEC. 2258. **Order.** An order of the court shall thereupon be made and entered of record giving a description of the applicant as set forth in the petition, the new name given, the time at which the change shall take effect (which shall not be less than thirty days thereafter), and directing in what newspaper of general circulation in the county notice of such change shall be published.

SEC. 2259. **Publication.** Previous to the time thus prescribed for the taking effect of such change the applicant shall cause notice thereof to be published for four successive weeks in the newspaper directed by the court.

SEC. 2260. **Proof filed.** The ordinary proof of such publication being filed in the office of the clerk of the court shall be by him filed for preservation, and on the day fixed by the court as aforesaid the change shall be complete.

[310] TITLE XXI.

CHAPTER 129.

OF JUSTICES OF THE PEACE AND THEIR COURTS.

SECTION 2261. **Jurisdiction local.** The jurisdiction of justices of the peace when not specially restricted, is geographically coextensive with their respective counties.

SEC. 2262. **Amount, etc.** Within the prescribed limit, it extends to all civil cases (except cases in chancery and cases where the question of title to any real estate may arise) where the amount in controversy does not exceed one hundred dollars; and by consent of parties it may be extended to any amount not exceeding five hundred dollars.

Where suit may be brought.

SEC. 2263. Suits may in all cases be brought in the township where the defendant, or one of several defendants, resides.

SEC. 2264. They may also be brought in any other township of the same county if actual service on one or more of the defendants is made in such township.

SEC. 2265. Actions of replevin and suits commenced by attachment may be commenced in any county and township wherein any portion of the property is found.

SEC. 2266. If none of the defendants reside in the state, suit may be commenced in any county and township wherein either of the defendants may be found.

SEC. 2267. On written contracts stipulating for payment at a particular place suit may be brought in the township where the payment was agreed to be made.

SEC. 2268. If there is no justice in the proper township qualified or able to try the suit it may be commenced in any adjoining township in the same county.

The Justice's Docket.

SEC. 2269. Every justice of the peace shall keep a docket in which shall be entered in continuous order, with the proper date to each act done:

1. The title to each cause;
2. A brief statement of the nature and amount of the [311] plaintiff's demand and defendant's set-off (if any), giving date to each where dates exist;
3. The issuing of the process and return thereof;
4. The appearance of the respective parties;
5. Every adjournment, stating at whose instance and for what time;
6. The trial, and whether by the justice or by a jury;
7. The verdict and judgment;
8. The execution, to whom delivered, the renewals if any, and the amount of debt, damages, and costs indorsed thereon;

9. The taking and allowance of an appeal (if any);
10. The giving a transcript for filing in the clerk's office or for set-off (if one is given);
11. A note of all motions made and whether refused or granted.

Suits how brought.

SEC. 2270. **Practice.** The parties to the action may be the same as in the district court, and all the proceedings prescribed for that court so far as the same are applicable and not herein changed shall be pursued in justices' courts. The powers of the court are only as herein enumerated.

SEC. 2271. **Same.** Ordinary actions in justices' courts are commenced by voluntary appearance or by notice.

SEC. 2272. **Petition not necessary.** When by notice, no petition need be filed as is required in the district court except where the petition must be sworn to, but the notice must state the cause of action in general terms sufficient to apprise the defendant of the nature of the claim against him.

SEC. 2273. **Notice to whom.** It must be addressed to the defendant by name, but if his name is unknown a description of him will be sufficient. It must be subscribed by the plaintiff or the justice before whom it is returnable.

SEC. 2274. **State amount.** It must state the amount for which the plaintiff will take judgment if the defendant fail to appear and answer at the time and place therein fixed.

SEC. 2275. **Limit of time.** The time thus fixed in the notice must be not more than fifteen days from the date, and the notice must be served not less than five days previous to the trial.

SEC. 2276. **Service and return.** The service and return thereto must be made in the same manner as in the district court except that no service shall be made by publication other than is herein provided, nor shall any return made by another than the sheriff or a constable of the county be valid unless sworn to.

SEC. 2277. The defendant may at any time pay to the officer [312] having the process, or to the justice of the peace, the amount of the claim together with the costs which have then accrued and thereupon the proceeding shall cease.

The appearance of parties.

SEC. 2278. **Agent's authority.** An agent appearing for another may be required by the justice to show his authority if written, or prove it by his own oath or otherwise if verbal.

SEC. 2279. **One hour given.** The parties in all cases are entitled to one hour in which to appear after the time fixed for appearance and neither party is bound to wait longer for the other.

SEC. 2280. **Postponement.** Upon the return day, if the justice be actually engaged in other official business he may postpone proceedings in the case until such business is finished.

SEC. 2281. **Adjournments.** If from any cause the justice is unable to attend to the trial at the time fixed, or if a jury be demanded, he may adjourn the cause for a period not exceeding three days, nor shall he make more than two such adjournments.

SEC. 2282. **Same.** In case of the absence of witnesses, either party, at his own cost, may obtain an adjournment not exceeding sixty days by filing an affidavit like that required to obtain a continuance in the district court for the like cause.

SEC. 2283. **Condition.** Either party applying for an adjournment must, if required by the adverse party, consent that the testimony of any witness of the adverse party who is in attendance be then taken to be used on the trial of the cause.

SEC. 2284. **Pleadings.** The pleadings must be substantially the same as in the district court. They may be written or oral. If oral, they must in substance be written down by the justice in his docket, and sworn to when such verification is necessary.

SEC. 2285. **Set-offs.** Cross-demands or set-offs must be made, if at all, at the time the answer is put in.

SEC. 2286. **Copies.** The original or a copy of all written instruments upon which a cause of action or set off is founded must be filed with the claim founded thereon, or a sufficient reason given for not doing so.

SEC. 2287. **Plea of title.** If in a suit for trespass on real property the defendant justifies by pleading title, it must be in writing. The justice shall thereupon make an entry thereof in his docket, and return the original papers and a transcript of all the entries in his docket to the district court in the same manner and within the same time as is required in cases of appeals.

SEC. 2288. **Dismissed.** When, from the plaintiff's own showing on the trial, it appears that the determination of the action will necessarily involve the decision of a question of title to real property, [313] the justice must dismiss the action stating in his docket the reason therefor.

SEC. 2289. **Actions served.** But when a case is thus transferred or dismissed on account of the title to lands being involved, if there are other causes of action not necessarily connected they may be severed and the latter tried before the justice.

The Trial.

SEC. 2290. **Trial by justice.** Unless one of the parties demand a trial by jury at or before the time for joining issue, the trial shall be by the justice.

SEC. 2291. **Nonsuit.** If the plaintiff fails to appear by himself, his agent, or attorney, on the return day or at any other time fixed for the trial, the justice shall render a judgment of non-suit against him with costs except in the case provided in the next section.

SEC. 2292. **Exception.** When the suit is founded on an instrument of writing purporting to have been executed by the defendant, in which the demand of the plaintiff is liquidated, if the signature of the defendant is not denied under oath and if the instrument has been filed with the justice previous to the day for appearance, he may proceed with the cause whether the plaintiff appear or not.

SEC. 2293. **Default.** In the case provided for in the last section, if the defendant does not appear judgment shall be rendered against him for the amount of the plaintiff's claim.

SEC. 2294. **Same.** But if, where the plaintiff's claim is not founded on such written instrument, the defendant does not appear, the justice shall proceed to hear the allegations and proofs of the plaintiff and shall render judgment thereon for the amount to which he shows himself entitled not exceeding the amount stated in the notice hereinbefore required.

SEC. 2295. **Same—set-off.** In the cases contemplated in the last two sections, if the defendant has previously filed a set-off founded on a written instrument purporting to have been signed by the plaintiff, calling for a sum certain, the justice shall allow such set-off in the same manner as though the defendant had appeared and shall render judgment accordingly.

SEC. 2296. **Judgments set aside.** Judgment of non-suit or by default may be set aside by the justice at any time within six days after being rendered if the party applying therefor can show a satisfactory excuse for his default.

SEC. 2297. **New trial.** In such case a new day shall be fixed for trial and notice thereof given to the other party or his agent.

SEC. 2298. **Costs.** Such order shall be made in relation to the addi-[314]-tional costs thereby created as the justice shall think equitable.

SEC. 2299. **Execution recalled.** Any execution which may in the meantime have been issued shall be recalled in the same manner as in cases of appeals.

SEC. 2300. **Jury fees.** Before either party is entitled to a jury he must deposit three dollars with the justice as jury fees, which shall be included in the judgment as part of the costs in case the party thus calling the jury recover judgment.

SEC. 2301. **Venire.** The justice shall thereupon issue his precept to some constable of the township directing him to summon the requisite number of jurors possessing the same qualifications as are required in the district court.

SEC. 2302. **Number of jurors.** The jury shall consist of six jurors unless a smaller number be agreed upon between the parties. Each party is entitled to three peremptory challenges. Any deficiency in their number arising from any cause may be supplied by summoning others in the manner above directed.

SEC. 2303. **When jury discharged.** The justice may discharge the jury when satisfied that they cannot agree, and shall immediately issue a new precept for summoning another to appear at a time therein fixed not more than three days distant unless the parties otherwise agree.

SEC. 2304. **Motion in arrest.** No motion in arrest of judgment or to set aside a verdict can be entertained by a justice of the peace.

SEC. 2305. **Verdict.** The verdict of the jury must be general. But where there are several plaintiffs or defendants the verdict may be for or against one or more of them.

Judgment, and proceedings incident thereto.

SEC. 2306. **Judgment.** In cases of nonsuit, confession, or on the verdict of a jury, the judgment shall be rendered and entered upon the docket forthwith. In all other cases the same shall be done within three days after the cause is submitted to the justice for final action.

SEC. 2307. **Excess.** If the sum found for either party exceed the jurisdiction of the justice such party may remit the excess and take judgment for the residue, but he can never afterward sue for the amount so remitted.

SEC. 2308. **Same—non-suit.** Instead of so remitting the excess the party obtaining such verdict may elect to have judgment of nonsuit entered against the plaintiff, in which case the plaintiff shall pay the costs.

SEC. 2309. **Mutual judgments.** Mutual judgments between the same parties, rendered by the same or different justices, may be set off against each other.

[315] SEC. 2310. When rendered by the same court, the same course shall be pursued as is prescribed in the district court.

SEC. 2311. **By different justices.** If the judgment proposed to be set off was rendered by another justice, the party offering it must obtain a transcript thereof with a certificate of the justice who rendered it, indorsed thereon, stating that no appeal has been taken and that the transcript was obtained for the purpose of being used as a set off in that case.

SEC. 2312. **Time.** Such transcript shall not be given until the time for taking an appeal has elapsed.

SEC. 2313. **Entry.** The justice so giving a transcript shall make an entry of the fact in his docket, and all other proceedings in his court shall thenceforth be stayed.

SEC. 2314. **Execution for balance.** Such transcript being presented to the justice who has rendered a judgment between the same parties as aforesaid, if execution has not been issued on the judgment rendered by him he shall strike a balance between the judgments and issue execution for such balance.

SEC. 2315. **Execution.** If execution has already issued, the justice shall also issue execution on the transcript filed with him and deliver it to the same officer who has the other execution.

SEC. 2316. **Set-off.** Such officer shall treat the lesser execution as so much cash collected on the larger, and proceed to collect the balance accordingly.

SEC. 2317. **Qualification.** The above rules as to set off are subject to the same prohibition as to setting off costs, when the effect will be to leave an insufficient amount of money actually collected to satisfy the costs of both judgments, as is contained in the rules of proceeding in the district court.

SEC. 2318. **Transcript filed.** When the judgment of another justice is thus allowed to be set off, the transcript thereof shall be filed among the papers of the case in which it is so used and the proper entry made in the justice's docket.

SEC. 2319. **If set-off refused.** If the justice refuses the judgment as a set-off he shall so certify on the transcript and return it to the party who offered it. When filed in the office of the justice who gave it, proceedings may be had by him in the same manner as though no such transcript had been certified by him.

Filing transcripts in the clerk's office.

SEC. 2320. **When permissible.** The party obtaining a judgment in a justice's court for more than ten dollars may cause a transcript thereof to be certified to the office of the clerk of the district court in the county.

SEC. 2321. **Manner and effect.** The clerk shall forthwith file such transcript and enter a memorandum thereof in his judgment docket noting [316] the time of filing the same, and from the time of such filing it shall be treated in all respects as to its effect and mode of enforcement as a judgment rendered in the district court as of that date.

Executions and proceedings thereon.

SEC. 2322. **By whom and when issued.** Executions for the enforcement of judgments in a justice's court, except when docketed in the office of the clerk of the district court, may be issued by the justice before whom the judgment was rendered, on the application of the party entitled thereto, at any time within five years from the entry of the judgment but not afterwards.

SEC. 2323. **Substance of.** Such execution shall be against the goods and chattels of the defendant therein and shall be directed to any constable of the county.

SEC. 2324. **Date and return.** It must be dated as on the day on which it is issued and made returnable within thirty days thereafter.

SEC. 2325. **Renewable.** If not satisfied when returned it may be renewed from time to time by an indorsement thereon to that effect signed by the justice and dated of the date of such renewal.

SEC. 2326. **For thirty days.** Such endorsement must state the amount paid on such execution (if any) and shall continue the execution in full force for thirty days from date of renewal.

SEC. 2327. **Property.** Property levied on before such renewal may be retained by the officer and sold after renewal.

Appeals.

SEC. 2328. **When allowed.** Any person aggrieved by the final judgment of a justice may appeal therefrom to the district court in the county.

SEC. 2329. **Time.** The appeal must be taken and perfected within twenty days after the rendition of the judgment.

SEC. 2330. **By clerk.** If within the twenty days the appellant is prepared to take his appeal and is prevented only by the absence or death of the justice or his inability to act, he may apply to the clerk of the district court of the county for the allowance of his appeal.

SEC. 2331. **And how.** Such application shall be founded on an affidavit stating the amount and nature of the judgment, and the time of the rendition thereof as nearly as practicable, and the reason why he thus applies.

SEC. 2332. **Same.** The clerk has thereupon the same power to act in the premises as the justice would have had. He may require the books and papers of the justice to be delivered to him, for which purpose he may issue a precept to the sheriff [317] to that effect if necessary, and may make out and file the transcript. After this he shall return to the office of the justice of the peace all the papers proper to be kept by the justice.

SEC. 2333. **Recognizance.** The appeal shall in no case be allowed until a recognizance of the following form or its equivalent is taken and filed in the office of the justice, the sureties being approved by him (or by the clerk acting for him as above authorized), and the sum therein inserted being sufficient to secure the judgment as well as the costs of the appeal.

Form.

We the undersigned acknowledge ourselves indebted to _____ in the sum of _____ dollars, upon the following condition. Whereas _____ has appealed from the judgment of _____ a justice of the peace in an action between _____ as plaintiff and _____ defendant;

Now if the said appellant pays whatever amount is legally adjudged against him in the farther progress of this cause, then this recognizance is to be void, and otherwise in force.

Attest, E. F., Justice

A. B., principal.
C. D., surety.

SEC. 2334. **Proceedings cease.** Upon the appeal being taken in accordance with the foregoing provisions all farther proceedings in the cause by him shall be suspended.

SEC. 2335. **If execution issued.** If, in the meantime, an execution has been issued the justice shall give the appellant a certificate that the appeal has been allowed. Upon that certificate being presented to the constable he shall cease farther action and release any property that may have been taken in execution.

SEC. 2336. **Papers filed.** Upon the taking of any appeal, the justice shall file in the office of the clerk of the district court all the original papers relating to the suit with a transcript of all the entries in his docket.

SEC. 2337. **Same.** Upon the return of the justice being filed in the office of the clerk the cause will be deemed in the district court.

SEC. 2338. **District court.** The district court may by rule compel the justice to allow an appeal or to make or amend his return according to law.

SEC. 2339. **Mistakes.** Where an omission or mistake has been made by the justice in his docket entries and that fact is made unquestionable, the district court may correct the mistake or supply the omission or direct the justice to do so.

SEC. 2340. **Return when made.** If an appeal is allowed ten days before the next term of the district court the justice's return must be made [318] at least five days before that term. All such cases must be tried when reached unless continued for cause.

SEC. 2341. **When notice required.** If the appeal is not allowed on the day on which judgment is rendered, written notice thereof must be served upon the appellee or his agent at least ten days before the term of the court to which the cause is returnable (provided there be ten days intervening), or the suit, on motion of the appellee, shall be continued at the cost of the appellant.

SEC. 2342. **How served.** Such notice may be served like the original notice, and if the appellee or his agent have no place of residence in the county it may be served by being left with the justice.

SEC. 2343. **Effect of appeal.** An appeal brings up a cause for trial on the merits and for no other purpose. All errors, irregularities, and illegalities are therefore to be disregarded under such circumstances if the cause might have been prosecuted in the district court.

SEC. 2344. **New demand.** No new demand or set-off can be introduced into a case after it comes into the district court unless by mutual consent.

SEC. 2345. **Appellant for costs.** The appellant must pay the costs of the appeal unless he obtains a more favorable judgment than that from which he appealed.

SEC. 2346. **When appellee.** If the judgment below is against the appellant he may proffer to pay a certain amount with costs, and if the final amount recovered be less favorable to the appellee than such proffer he shall pay the costs of appeal.

SEC. 2347. **Sureties.** Any judgment in the district court against the appellant shall be entered up against him and his sureties jointly.

SEC. 2348. **Damages.** If an appeal is taken for delay the district court shall award such damages, not exceeding ten per cent. on the amount of the judgment below, as may seem right.

Writs of Error.

SEC. 2349. **When allowed.** Any person aggrieved by an erroneous decision in matter of law, or other illegality in the proceedings of a justice of the peace, may remove the same or so much thereof as is necessary into the district court for correction, by writ of error.

SEC. 2350. **Affidavit.** The basis of the proceeding is an affidavit filed in the office of the clerk setting forth the errors complained of.

SEC. 2351. **Writ.** The clerk shall thereupon issue the writ commanding the justice to certify the record and proceedings so far as they relate to the facts stated in the affidavit.

SEC. 2352. **Copy.** A copy of the affidavit shall accompany the writ [319] and be served upon the justice who shall with the least practicable delay make the return required.

SEC. 2353. **Proceedings stayed.** All proceedings in the justice's court subsequent to judgment may be stayed by a recognizance, entered into like that required in cases of appeals and on which recognizance judgment shall be entered against the principal and surety in like manner and under like circumstances.

SEC. 2354. **Amended return.** The district court may compel an amended return when the first is not full and complete.

SEC. 2355. **Judgment.** The district court may render final judgment, or it may remand the cause to the justice for a new trial or such farther proceedings as shall be deemed proper, and may prescribe the notice necessary to bring the parties again before the justice.

SEC. 2356. **Restitution.** If the district court render a final judgment reversing the judgment of the justice of the peace after such judgment has been collected in whole or in part, it may award restitution with interest and issue execution accordingly or it may remand the cause to the justice for this purpose.

Replevin.

SEC. 2357. **As in district court.** The proceedings to gain possession of personal property wrongfully withheld will be the same as are prescribed in such cases in the district court, except as modified in this chapter.

Attachment.

SEC. 2358. **When allowed.** Attachments are not allowable in justices' courts if the sum claimed is less than five dollars. And if more is claimed and less recovered the plaintiff shall pay all the costs of the proceedings so far as they relate to the attachment.

SEC. 2359. **Same.** The attachment can issue only at the commencement of the action and only where the action is founded on contract and the money is due.

SEC. 2360. **Garnishee.** The constable has the same power to administer an oath to the garnishee and to take his answer as is given to the sheriff in cases of attachment in the district court.

SEC. 2361. **Appearance.** Garnishees may be required to appear and answer at the time fixed for the appearance of the parties to the action.

Summary remedy for forcible entry or detention of real property.

SEC. 2362. **When allowed.** This proceeding is allowable :

[320] 1. Where the defendant has by force or intimidation or fraud or stealth entered upon the prior actual possession of another in regard to real property and detains the same ;

2. Where a lessee holds over after the termination, or contrary to the terms of, his lease ;

3. Where the defendant continues in possession after a sale by foreclosure of a mortgage or on execution, unless he claims by a title paramount to the lien by virtue of which the sale was made or by title derived from the purchaser at the sale.

SEC. 2363. **Rent arrear.** The mere non-payment of rent by the time stipulated in the lease does not enable a plaintiff to resort to this action unless expressly so stipulated in the lease.

SEC. 2364. **Who may bring.** The legal representative of the person who might have been plaintiff if alive, may bring this suit after his death.

SEC. 2365. **Notice to quit.** Before suit can be brought in any except the first of the above classes, three days notice to quit must be given to the defendant in writing.

SEC. 2366. **Petition.** The petition must be in writing and sworn to.

SEC. 2367. **Before whom.** The proceedings may be had before a justice of the peace of the township where the premises are situated, or if there is no justice therein able or qualified to act they may be brought before some justice in any adjoining township. They shall be governed by the same rules as other cases before justices of the peace except as herein modified.

SEC. 2368. **Time for appearance.** The time for appearance and pleading must be not less than two nor more than six days from the time the notice is served on the defendant.

SEC. 2369. **Adjournments.** No adjournment shall be made for more than ten days, nor to any other place except by consent of parties.

SEC. 2370. **Judgment.** If the defendant is found guilty judgment shall be entered that he be removed from the premises and that the plaintiff be put in possession thereof, and a warrant of removal shall issue accordingly, to which shall be added a clause commanding the officer to levy the costs as in ordinary cases.

SEC. 2371. **Title not investigated.** The question of title cannot be investigated in this action. And nothing herein contained prevents a party from suing for a trespass or from testing the right of property in any other manner.

SEC. 2372. **Bar.** Thirty days' peaceable and uninterrupted possession with the knowledge of the plaintiff after the cause of action accrued, is a bar to this proceeding.

SEC. 2373. **No joinder.** An action of this kind cannot be brought in connection with any other, nor can it be made the subject of set-off.

[321] SEC. 2374. The warrant for removal can be executed only in the day time.

SEC. 2375. **Appeal.** An appeal taken in the usual way, if the proper security is given, suspends the execution for costs, and may with the consent of the plaintiff prevent the warrant of removal from being executed, but not otherwise.

SEC. 2376. **Restitution.** The district court on the trial of the appeal may issue a warrant of removal or restitution, as the case may require.

General provisions.

SEC. 2377. **Official papers to successor.** Every justice of the peace upon the expiration of his term of office must deposit with his successor his official dockets as well as those of his predecessors which may be in his custody, there to be kept as public records. All his official papers shall also be turned over to his successor.

SEC. 2378. **Or clerk.** If his office become vacant by death, removal from the township, or otherwise, before his successor is elected, the said docket and papers shall be placed in the hands of the clerk of the district court to be by him turned over to the successor of the justice when elected and qualified.

SEC. 2379. **Successor may issue execution.** The justice with whom the docket of his predecessor is thus deposited may issue execution on, or give a transcript of, any judgment there entered in the same manner and with like effect as the justice who rendered judgment might have done.

SEC. 2380. **Successor—how determined.** When two or more justices are equally entitled to be deemed the successor in office of any justice as aforesaid the judge of the county court shall determine by lot which is the successor and shall certify accordingly.

SEC. 2381. **Certificate.** Such certificate shall be in duplicate, one copy of which shall be filed in the county office and the other given to the said successor.

SEC. 2382. **Interchange.** In case of the sickness, other disability, or necessary absence of a justice at the time fixed for a trial of a cause or other proceeding, any other justice of the township may at his request attend and transact the business for him without any transfer of the business to another office. The entries shall be made in the docket of the justice at whose office the business is transacted and the same effect shall be given to the proceedings as though no such interchanging of official service had taken place.

SEC. 2383. **Special constables.** A justice may in writing specially depute any discreet person of suitable age to perform any particular duty properly devolving upon a constable. Such person has the powers of a constable for that particular purpose and is subject to the same obligations, but can receive no fee for his service.

SEC. 2384. **Process limited.** No process can issue from a justice's court into another county except when specially authorized.

SEC. 2385. **Sheriff and constable.** The constable is the proper executive officer of a justice's court, but the sheriff may perform any of the duties required of him. The powers and duties of the sheriff in relation to the business of the district court, so far as the same are applicable and not modified by statute, devolve upon the constable in relation to the justice's court.

SEC. 2386. **Justice clerk.** The justice may be regarded as his own clerk and performs the duty of both judge and clerk.

SEC. 2387. **Successor to renew execution.** When the term of office of a justice of the peace for any cause expires, his successor may issue execution or renew an execution in the same manner and under the same circumstances as the former justice might have done if his term of office had not expired.

TITLE XXII.

MISCELLANEOUS SUBJECTS.

CHAPTER 130.

EVIDENCE.

SECTION 2388. **Who competent.** Every human being of sufficient capacity to understand the obligation of an oath is a competent witness in all cases both civil and criminal except as herein otherwise declared. But an Indian, a negro, a mulatto or black person shall not be allowed to give testimony in any cause wherein a white person is a party.

SEC. 2389. **Credibility.** Facts which have heretofore caused the exclusion of testimony may still be shown for the purpose of lessening its credibility.

SEC. 2390. **Interest.** A person who has a direct, certain, legal interest in the suit is not a competent witness unless called on for that purpose by the opposite party as hereinafter provided.

SEC. 2391. **Husband and wife.** The husband can in no case be a witness against the wife nor the wife against the husband, except in a crimi-[323]-nal proceeding for a crime committed by the one against the other; but they may in all criminal prosecutions be witnesses for each other.

SEC. 2392. **Same.** Neither husband nor wife can be examined in any case as to any communication made by the one to the other while married, nor shall they after the marriage relation ceases be permitted to reveal in testimony any such communication made while the marriage subsisted.

SEC. 2393. **Professional confidence.** No practicing attorney, counsellor, physician, surgeon, minister of the gospel, or priest of any denomination shall be allowed in giving testimony to disclose any confidential communication properly intrusted to him in his professional capacity and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline.

SEC. 2394. **Unless waived.** The prohibitions in the preceding sections do not apply to cases where the party in whose favor the respective provisions are enacted waives the rights thereby conferred.

SEC. 2395. **Public officers.** A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

SEC. 2396. **Civil liability.** No witness is excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability.

SEC. 2397. **Ignominy.** But when the matter sought to be elicited would tend to render him criminally liable or to expose him to public ignominy, he is not compelled to answer except as provided in the next section.

SEC. 2398. **Previous conviction.** A witness may be interrogated as to his previous conviction for a felony. But no other proof of such conviction is competent except the record thereof.

SEC. 2399. **Whole of a subject may be given.** When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other—thus when a letter is read, all other letters on the same subject between the same parties may be given. And when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration or writing which is necessary to make it fully understood or to explain the same may also be given in evidence.

SEC. 2400. **Writing and printing.** When an instrument consists partly of written and partly of printed form, the former controls the latter when the two are inconsistent.

SEC. 2401. **Understanding of parties.** When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it.

[324] SEC. 2402. **Historical works, etc.** Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest.

SEC. 2403. **Subscribing witnesses.** When a subscribing witness denies or does not recollect the execution of the instrument to which his name is subscribed as such witness, its execution may be proved by other evidence.

SEC. 2404. **Hand writing.** Evidence respecting hand writing may be given by comparison made by experts or by the jury with writings of the same person which are proved to be genuine.

SEC. 2405. **Entries, etc.—when evidence.** The entries and other writings of a person deceased made at or near the time of the transaction and in a position to know the facts therein stated, are presumptive evidence of such facts when the entry was made against the interest of the person so making it, or when made in a professional capacity or in the ordinary course of professional conduct, or when made in the performance of a duty specially enjoined by law.

SEC. 2406. **Books of account.** Books of account containing charges by one party against the other made in the ordinary course of business are receivable in evidence only under the following circumstances, subject to all just exceptions as to their credibility:

1. The books must show a continuous dealing with persons generally, or several items of charge at different times against the other party in the same book or set of books;

2. It must be shown by the party's oath or otherwise that they are his books of original entries;

3. It must be shown in like manner that the charges were made at or near the time of the transactions therein entered, unless satisfactory reasons appear for not making such proof;

4. The charges must also be verified by the party or the clerk who made the entries, to the effect that they believe them just and true, or a sufficient reason must be given why such verification is not made.

SEC. 2407. **Private writing.** Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without farther proof.

SEC. 2408. **Judge a competent witness.** The judge of the court is a competent witness for either party and may be sworn upon the trial. But in such a case it is in his discretion to order the trial to be postponed or suspended and to take place before another judge.

SEC. 2409. **Written evidence only admissible.** Except when otherwise specially provided, no evidence of any of the contracts enumerated in the next succeeding section is competent unless it be in writing and signed by the party charged or by his lawfully authorized agent.

SEC. 2410. Such contracts embrace:

1. Those in relation to the sale of personal property when no part of the property is delivered and no part of the price is paid;

2. Those made in consideration of marriage, but not including promises to marry;

3. Those wherein one person promises to answer for the debt, default, or miscarriage of another, including promises by executors to pay the debt of their principal from their own estate;

4. Those for the creation or transfer of any interest in lands except leases for a term not exceeding one year;

5. Those that are not to be performed within one year from the making thereof.

SEC. 2411. **Exceptions.** The provision of the first subdivision of the preceding section does not apply when the article of personal property sold is not at the time of the contract owned by the vendor and ready for delivery, but labor, skill, or money are necessarily to be expended in producing or procuring the same; nor do those of the fourth subdivision of said section apply where the purchase money or any portion thereof has been received by the vendor,

or when the vendee with the actual or implied consent of the vendor has taken and held possession thereof under and by virtue of the contract, or when there is any other circumstance which by the law heretofore in force would have taken a case out of the statute of frauds.

SEC. 2412. **The above regulations.** The above regulations, relating merely to the proof of contracts, do not prevent the enforcement of those which are not denied in the pleadings, unless in cases where the contract is sought to be enforced or damages to be recovered for the breach thereof against some person other than him who made it.

SEC. 2413. **Another exception.** Nothing in the above provisions shall prevent the party himself, against whom the unwritten contract is sought to be enforced, from being called as a witness by the opposite party nor his oral testimony from being evidence.

SEC. 2414. **Notarial protest.** The usual protest by a notary public without proof of his signature or notarial seal is evidence of the dishonor and notice of a bill of exchange or promissory note.

How testimony is to be procured.

SEC. 2415. **Subpoenas duces tecum.** A subpoena is the proper way of bringing a witness [326] into court. It must require the witness to be present at a prescribed time and place to give testimony in a case therein stated. It may also require him to bring with him any books, documents, or other writings under his control and which he is not excused by law from producing in evidence.

SEC. 2416. **How far sent in civil cases.** Witnesses in civil cases cannot be compelled to attend the district court out of the state where they are served, nor at a distance of more than seventy miles from the place of their residence or from that where they are served with a subpoena unless within the same county. No other subpoena but that from the district court can compel his attendance at a greater distance than thirty miles from his place of residence or of service if not in the same county.

SEC. 2417. **Demand of fees.** Witnesses are entitled to receive (in advance if demanded) their traveling fees to and from the court together with their fees for one day's attendance. At the commencement of each day after the first they are farther entitled on demand to receive the legal fees for that day in advance. If not thus paid they are not compelled to attend or remain as witnesses.

SEC. 2418. **Disobeying subpoenas.** For a failure to obey a valid subpoena without a sufficient cause or excuse, or for a refusal to testify after appearance, the delinquent is guilty of a contempt of court. He is also liable to the party by whom he was subpoenaed for all consequences of such delinquency together with fifty dollars additional damages.

SEC. 2419. **When enforced.** Before a witness is thus liable for a contempt for not appearing he must be served personally with the process by reading it to him, and by leaving a copy thereof with him if demanded, and it must be shown that the fees and traveling expenses allowed by law were tendered to him if required; or it must appear that a copy of the subpoena, if left at his usual place of residence, came into his hands together with the said fees and traveling expenses above mentioned.

SEC. 2420. **Powers of officer.** If a witness conceal himself or in any other manner attempt to avoid being personally served with a subpoena, any sheriff or constable having the subpoena may use all necessary and proper

means to serve the same, and for that purpose may break into any building or other place where the witness is to be found having first made known his business and demanded admittance.

SEC. 2421. **Parties to appear.** In addition to the above remedies, if a party to a suit in his own right on being duly subpoenaed fail to appear and give testimony, the other party may at his option have a continuance of the cause as in cases of other witnesses and at the cost of the delinquent.

SEC. 2422. **Or pleading taken as true.** Or the party so calling his opponent may in such a [327] case himself become a witness, or if he shows by his own testimony or otherwise that he could not have a full personal knowledge of the transaction, the court may order his pleading to be taken as true; such order is however subject to be reconsidered during the term of the court upon satisfactory reasons being shown for such delinquency.

SEC. 2423. **Books and papers to be produced.** The district court may by rule require the production of any papers or books which are material to the just determination of any cause pending before it, for the purpose of being inspected and copied by or for the party thus calling for them.

SEC. 2424. **Petition therefor.** The petition for that purpose must state the facts expected to be proved by such books or papers and that as the petitioner believes such books and papers are under the control of the party against whom the rule is sought, and must show wherein they are material. The rule shall thereupon be granted, to produce the books and papers or show cause to the contrary, if the court deems such rule expedient and proper.

SEC. 2425. **Failure to obey.** On failure to obey the rule or show sufficient cause for such failure the same consequences shall ensue as if the party had failed to appear and testify when subpoenaed by the party now calling for the books and papers.

SEC. 2426. **Writings.** Though a writing called for by one party is by the other produced, the party thus calling for it is not obliged to use it as evidence in the case.

Documentary evidence.

SEC. 2427. **Publications in newspapers.** Publications required by law to be made in a newspaper may be proved by the affidavit of any person having knowledge of the fact, specifying the times when and the paper in which the publication was made. But such affidavit must, for the purpose now contemplated, be made within six months after the last day of publication.

SEC. 2428. **Posting of papers.** The posting up or service of any notice or other paper required by law may be proved by the affidavit of any competent witness, attached to a copy of said notice or paper, and made within six months of the time of such posting up.

SEC. 2429. **Other facts.** Any other fact which is required to be shown by affidavit and which may be required for future use in any action or other proceeding may be proved by pursuing the course above indicated as nearly as the circumstances of the case will admit.

SEC. 2430. **Above proof perpetuated.** Such proof so made may be perpetuated and preserved for future use by filing the papers above mentioned in [328] the office of the judge of the county court. And the original affidavit appended to the notice or paper if there be one, and if not the affidavit by itself, is presumptive evidence of the facts stated therein, but does not preclude other modes of proof now held sufficient.

SEC. 2431. **Field notes and plat of surveyors.** A copy of the field notes of any surveyor or a plat made by him and certified under oath as correct may be received as evidence to show the shape or dimensions of a tract of land, or any other fact whose ascertainment requires only the exercise of scientific skill or calculation.

SEC. 2432. **Copies—when evidence.** Duly certified copies of all records and entries or papers belonging to any public office or by authority of law filed to be kept therein, shall be evidence in all cases of equal credibility with the original record or paper so filed.

SEC. 2433. **Officer to give copies.** Every officer having the custody of a public record or writing is bound to give any person on demand a certified copy thereof on payment of the legal fees therefor.

SEC. 2434. **Certificates of officer.** The certificate of a public officer that he has made diligent and ineffectual search for a paper in his office is of the same efficacy in all cases as if such officer had personally appeared and sworn to such facts.

SEC. 2435. **Receiver's certificate.** The usual duplicate receipt of the receiver of any land office or, if that be lost or destroyed or beyond the reach of the party, the certificate of such receiver that the books of his office show the sale of a tract of land to a certain individual, is proof of title equivalent to a patent against all but the holder of an actual patent.

SEC. 2436. **Signature of.** In the cases contemplated in the last three sections the signature of the officer shall be presumed to be genuine until the contrary is shown.

SEC. 2437. **Judicial records.** A judicial record of this state or of any of the federal courts of the United States may be proved by the production of the original, or by a copy thereof certified by the clerk or the person having the legal custody thereof authenticated by his seal of office if he have one.

SEC. 2438. **Of sister states.** That of a sister state may be proved by the attestation of the clerk and the seal of the court annexed if there be a seal, together with a certificate of a judge, chief justice, or presiding magistrate that the attestation is in due form of law.

SEC. 2439. **Of justices of the peace.** The official certificate of a justice of the peace of any of the United States to any judgment and the preliminary proceedings before him, supported by the official certificate of the clerk of any court of record within the county in which such justice resides stating that he is an acting justice of the peace of that county and that the signature to his certificate [329] is genuine, is sufficient evidence of such proceedings and judgment.

SEC. 2440. **Of foreign countries.** Copies of records and proceedings in the courts of a foreign country may be admitted in evidence upon being authenticated as follows:

1. By the official attestation of the clerk or officer in whose custody such records are legally kept, and
2. By the certificate of one of the judges or magistrates of such court that the person so attesting is the clerk or officer legally entrusted with the custody of such records and that the signature to his attestation is genuine, and
3. By the official certificate of the officer who has the custody of the principal seal of the government under whose authority the court is held, attested by said seal, stating that such court is duly constituted, specifying the general nature of its jurisdiction, and verifying the seal of the court.

SEC. 2441. **Acts of the executive.** Acts of the executive of the United States, or of this or any other state of the union, or of a foreign government are

proved by the records of the state department of the respective governments, or by public documents purporting to have been printed by order of the legislatures of those governments respectively or by either branch thereof.

SEC. 2442. **Legislative proceedings.** The proceedings of the legislature of this or any other state of the Union, or of the United States, or of any foreign government, are proved by the journals of those bodies respectively or of either branch thereof, and either by copies officially certified by the clerk of the house in which the proceeding was had or by a copy purporting to have been printed by their order.

SEC. 2443. **Statute laws.** Printed copies of the statute laws of this or any other of the United States, or of congress, or of any foreign government purporting or proved to have been published under the authority thereof, or proved to be commonly admitted as evidence of the existing laws in the courts of such state or government, shall be admitted in the courts of this state as presumptive evidence of such laws.

SEC. 2444. **Unwritten laws.** The public seal of the state or county affixed to a copy of a written law or other public writing is also admissible as evidence of such law or writing respectively. The unwritten laws of any other state or government may be proved as facts by parol evidence, and also by the books of reports of cases adjudged in their courts.

Depositions.

SEC. 2445. **When may be taken.** After the commencement of a civil action, or after an issue is joined in any other civil proceeding, if a witness [330] resides within this state but in a different county from the place of trial, or is about to go beyond the reach of a subpoena, or is for any other cause expected to be unable to attend court at the time of trial, the party wishing his testimony may, whenever he judges it expedient, take his deposition in writing before any person having authority to administer oaths.

SEC. 2446. **Notice.** Reasonable notice of the time and place when and where the same will be taken must be given to the opposite party.

SEC. 2447. **Taken on interrogatories.** Under the state of pleadings above mentioned, if the case is in the district court the deposition of a witness residing out of the county, whether within or without the state, may be taken before one or more commissioners on written interrogatories.

SEC. 2448. **Who commissioners.** The party wishing to take such deposition may select any of the officers mentioned in the next section as such commissioner, or the parties may agree upon, or the court appoint in the commission any other individual for that purpose.

SEC. 2449. **Same.** The clerk or any judge of any court of record, any notary public, or any commissioner appointed by the governor of this state to take acknowledgements of deeds in another state, may be appointed such commissioner by his name of office or otherwise, but the name of the court of which such commissioner is clerk or judge and the state and county in which such notary or commissioner of deeds resides must be stated in the commission.

SEC. 2450. **Qualification.** None of the above named officers is permitted to take the depositions aforesaid by virtue of a commission directed to him merely as such officer unless taken within the geographical limits to which his official jurisdiction extends.

SEC. 2451. **Notice.** Reasonable notice must be given to the opposite party of the time when a commission will be sued out of the office of the clerk of the district court for taking the deposition of the witness (naming him) which notice must be accompanied with a copy of the interrogatories to be asked him.

SEC. 2452. **Cross-interrogatories.** At or before the time thus fixed the opposite party may file cross interrogatories.

SEC. 2453. **Reasonable notice.** The reasonable notice hereinbefore mentioned is at least five days; and when depositions are to be taken in pursuance of the first of the above methods one day in addition must be allowed for every thirty miles travel from the place where the notice is served to the place where the depositions are to be taken.

SEC. 2454. **Farther rules.** Subject to the regulations herein contained the court may establish farther rules for taking depositions and all other acts connected therewith.

[331] SEC. 2455. **The Commission.** The commission issues in the name of the court and under its seal. It must be signed by the clerk and need contain nothing but the authority conferred upon the commissioner, a statement of the cause in which the testimony is to be used, and a copy of the interrogatories on each side appended.

SEC. 2456. **Deposition—how taken.** The person before whom any of the depositions above contemplated are taken must cause the interrogatories propounded (whether written or oral) to be written out and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness if either party requires it. The whole being read over by or to the witness must be by him subscribed and sworn to in the usual manner.

SEC. 2457. **Exhibits.** All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the depositions and returned with them unless sufficient reasons be shown for not so doing.

SEC. 2458. **Certificate—return.** The person taking the deposition shall attach his certificate thereto stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned. The whole, including the commission and interrogatories (when any such were issued), must then be sealed up and returned to the clerk of the proper county by mail unless some other mode be agreed upon between the parties.

SEC. 2459. **Opened.** The depositions when thus returned must be opened by the clerk and placed on file in his office; after which he shall at any time furnish any person with an attested copy of the same upon payment of the customary fees, but must not allow them to be taken from his office previous to the next term of the court unless by the mutual written consent of the parties.

SEC. 2460. **Sent by mail.** The depositions when returned by mail must be directed to the clerk of the court. They should state on the outside of the envelop the title of the cause in which they are to be used, and the clerk is not required to take them from the office until the postage is paid by the party wishing to use them.

SEC. 2461. **Formal deviations.** Unimportant deviations from any of the above directions shall not cause the depositions to be excluded where no substantial prejudice could be wrought to the opposite party by such deviation.

SEC. 2462. **Taken by an officer.** Where depositions are directed to be taken before a judge or justice of the peace merely by his name of office the return must contain an authentication by the clerk of the [332] proper court of record under his seal of office verifying the fact that the person who took the deposition is really such officer.

SEC. 2463. **Deposition—what to show.** The deposition in each of the above

cases must show that the witness is a non-resident of the county or such other fact as renders the taking of the deposition legal, and no such deposition shall be read on the trial if at that time the witness himself is produced in court.

SEC. 2464. **Motions to exclude.** All motions to exclude depositions must be made before the commencement of the trial or objections to their introduction will be deemed waived.

SEC. 2465. **How for justice's courts.** In cases in a justice's court, when the deposition of a witness is to be taken out of the state the commission shall issue from the clerk of the district court under his seal of office. The appointment of the commissioner shall be in point of form made as from the district court but the commission shall state in what court it is to be used.

SEC. 2466. **Transferred to district court.** Depositions taken to be used in a justice's court shall be transferred to the district court if the case be appealed and may be used on the trial there in the same manner as if taken regularly after the case was in the district court.

Perpetuating testimony.

SEC. 2467. **When testimony to be taken.** Any person apprehensive of becoming a party to a civil action or proceeding may cause the evidence of any fact to be perpetuated so as to be used on the trial in case the oral testimony of the witness would be then admissible and cannot, by the exercise of due diligence, be then procured.

SEC. 2468. **Before whom.** Such testimony must be taken before the judge or clerk of the supreme, district, or county court.

SEC. 2469. **Notice.** The same notice must be given to all persons interested, of the subject matter of the testimony and the time and place when and where the same will be taken, as is hereinbefore provided for taking depositions on mere notice in suits already pending.

SEC. 2470. **In cases of minors.** If any of the parties are minors or otherwise incapable of managing their own affairs the notice must be given to their guardians or persons otherwise authorized to act for them.

SEC. 2471. **Against whom receivable.** The testimony when thus taken is receivable only as against those persons who have been thus served with notice and those claiming under them.

SEC. 2472. **Against all persons.** In order to render such testimony receivable against all persons, the notice above prescribed must be published for four successive weeks prior to the time therein fixed, in some newspaper printed as convenient as practicable to the [333] place where the trial may be reasonably expected to take place.

SEC. 2473. **Where to be filed.** The officer before whom such depositions are taken must direct in what clerk's office they shall be filed for preservation.

SEC. 2474. **Costs—how regulated.** In all cases of taking depositions as hereinbefore provided the costs thereof must be paid in the first place by the party at whose instance they are taken, subject like other costs to be taxed against the failing party in the suit.

SEC. 2475. **Affidavits out of the state.** Affidavits taken out of the state before any judge or clerk of a court of record, or before a notary public, or a commissioner appointed by the governor of this state to take acknowledgment of deeds in the state where such affidavit is taken, are of the same credibility as if taken within this state.

SEC. 2476. **Signature and seal—presumption.** The signature and seal of such of the officers herein authorized to take depositions or affidavits as have

a seal, and the simple signature of such as have no seal, are presumptive of the genuineness of such signature as well as of the official capacity of the officer, except as herein otherwise declared.

SEC. 2477. **Persons authorized by other states.** When by the laws of any other state or country testimony may be taken in this state to be used in the courts of such state or country, and also in all cases herein provided for taking depositions, the persons authorized to take such depositions have power to issue subpoenas and compel obedience thereto, to administer oaths, and do any other act of a court which is necessary for the accomplishment of the purpose for which they are acting.

SEC. 2478. **Subpoenas by them valid.** Subpoenas issued by them are valid to the same geographical extent as those emanating from a justice's court, and may be served and returned in the same manner.

SEC. 2479. **Officers must serve.** Any sheriff or constable when called upon for that purpose shall serve such subpoenas and make return thereto.

SEC. 2480. **Affidavits—how compelled.** Where a person is desirous of obtaining the affidavit of another who is unwilling to make the same fully, he may apply to any officer competent to take depositions as herein declared, by petition stating the object for which he desires the affidavit.

SEC. 2481. **Same.** If such officer is satisfied that the object is legal and proper he shall issue his subpoena to bring the witness before him, and if he fails then to make a full affidavit of the facts within his knowledge to the extent required of him by the officer the latter may proceed to take his deposition by question and answer in writing in the usual way, which deposition may afterwards be used instead of an ordinary affidavit.

[334] SEC. 2482. **Notice to opposite party.** The officer thus applied to may in his discretion require notice of the taking of such affidavit or deposition to be given to any other person interested in the subject matter and allow him to be present and cross-examine such witness.

SEC. 2483. **Witness cross interrogated.** The court or officer to whom any *ex-parte* affidavit is presented as a basis for some action, in relation to which any discretion is lodged with such court or officer, may if deemed proper require the witness to be brought before some proper officer and subjected to cross interrogatories by the opposite party.

SEC. 2484. **Existing rules.** The ordinary rules of evidence not incompatible with those herein prescribed are not intended to be hereby changed.

CHAPTER 131.

JUDGMENT LIENS.

SECTION 2485. **What judgments—what property.** Judgments in the supreme or district court of this state, or in the district or circuit court of the United States if rendered within this state, are liens upon the real estate owned by the defendant at the time of such rendition and also upon all he may subsequently acquire before the expiration of the lien as hereinafter provided.

SEC. 2486. **From what date.** When the lands lie in the county wherein the judgment was rendered the lien shall attach from the date of such rendition.

SEC. 2487. **In other counties.** If the lands lie in any other county the lien does not attach until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the land lies.

SEC. 2488. **Docketed in other counties.** Such clerk shall, on the filing of a transcript of the judgment in his office, immediately proceed to docket and index the same in the same manner as though rendered in the court of his own county.

SEC. 2489. **Liens ten years.** The liens above authorized continue in force for the term of ten years only from the date of the judgment.

[335] CHAPTER 132.

DEPOSITS.

SECTION 2490. **When ordered.** When it is admitted by the pleading or examination of a party that he has in his possession or under his control any money or property capable of delivery, which is in any degree the subject of litigation and which is held by him as trustee for another party or which belongs or is due to another party, the court may order the same to be deposited in the office of the clerk or delivered to such party with or without security, subject to the farther direction of the court.

SEC. 2491. **Sanction thereof.** Whenever in the exercise of its authority a court has ordered the deposit or delivery of money or other property and the order is disobeyed, the court, besides punishing the disobedience, may make an order requiring the sheriff to take the money or property and deposit and deliver it in conformity with the directions of the court.

SEC. 2492.—**Powers of sheriff.** The sheriff has the same power in such cases as when acting by authority of a writ of replevin.

CHAPTER 133.

NOTICES, AND THE SERVICE OF PAPERS.

SECTION 2493. **Notice in writing.** When not otherwise provided, notices required by law must be in writing and served as hereinafter provided.

SEC. 2494. **Service.** All papers requiring to be served upon a party to an action or other proceeding must be served as follows, when no other mode is particularly pointed out.

SEC. 2495. **Upon whom.** The service may be upon the party or upon his agent or attorney.

SEC. 2496. **How made.** The service may be personal or it may be left at the usual place of residence of either of the persons aforesaid in the same manner as is provided for the service of the original notice in civil actions; or it may be served upon the attorney by being left at his office with any person having the charge thereof, and if there is no person in the office then by leaving it in a conspicuous place therein during daylight.

SEC. 2497. **When by mail.** When the party making the service and he on whom it is to be made reside in different places between [336] which there is a regular communication by mail, service may be made by directing the paper properly through the post office and paying the postage thereon. The paper shall in that case be deemed served at the time at which the next regular mail would reach the place of residence of the party on whom it is to be served.

SEC. 2498. **When on agent.** If a party resides out of the state and has an agent or attorney within the state, service must be made upon the latter.

SEC. 2499. **Return.** The return or proof of service must show particularly the manner in which it was made.

CHAPTER 134.

GENERAL PROVISIONS.

SECTION 2500. **Civil remedy not merged.** The right of civil remedy is not merged in a public offense, but may in all cases be enforced independently of and in addition to the punishment of the latter.

SEC. 2501. **Homicides civilly liable—frauds.** When a wrongful act produces death the perpetrator is civilly liable for the injury. The parties to the action shall be same as though brought for a claim founded on contract against the wrong doer and in favor of the estate of the deceased. And the sum recovered shall be disposed of in the same manner, except that when the deceased left a wife, child, or parent surviving him it shall not be liable for the payment of debts.

SEC. 2502. **Actions ex delicto.** Unless from the necessity of the case, no cause of action *ex delicto* dies with either or both the parties, but the prosecution thereof may be commenced or continued by or against their respective representatives.

SEC. 2503. **This statute liberally construed.** The rule that laws in derogation of the common law are to be strictly construed has no application to this statute, but shall receive a liberal construction in order to carry out its general purposes and objects.

SEC. 2504. **Keepers of seventh day protected.** A person whose religious faith and practice are to keep the seventh day of the week as a day set apart by divine command, and dedicated to rest and religious uses, cannot be compelled to attend as a juror on that day, and shall in other respects be protected in the enjoyment of his opinions to the same extent as those who keep the first day of the week.

SEC. 2505. **Security to be by bond.** When security is required by law to be given and no particular mode is prescribed, it shall be by bond.

SEC. 2506. **Its character.** Such security, when not otherwise directed, may, [337] if for the benefit of individuals, be given to the party intended to be thereby secured. If in relation to public matters concerning the inhabitants of one county or part of a county, it may be made payable to the county; if concerning the inhabitants of more than one county, it may be made payable to the state. But a mere mistake in these respects will not vitiate the security.

SEC. 2507. **Investments—how made.** Where investments of money are directed to be made and no mode of investment is pointed out by statute, they must be made in the stocks of this state or in those of the United States, or upon bond and mortgage of real property of the clear unincumbered value of at least twice the investment.

SEC. 2508. **Security—how discharged.** When such investment is made by order of any court, the security taken shall in no case be discharged, impaired or transferred without an order of the court to that effect entered on the minutes thereof.

SEC. 2509. **Money received and re-invested.** The clerk or other person appointed in such cases to make the investment must receive all moneys as they become due thereon and apply or re-invest the same under the direction of the court, unless the court appoint some other person to do such acts.

SEC. 2510. **Accounts rendered.** Once in each year, and oftener if required by the court, the person so appointed must render to the court an account in writing and on oath of all moneys so received by him and of the application thereof.

SEC. 2511. **Defective bonds not to vitiate proceedings.** No defective bond or other security, or affidavit in any case, shall prejudice the party giving or making it, provided it be so rectified within a reasonable time after the defect is discovered as not to cause essential injury to the other party.

SEC. 2512. **Inferior tribunals—presumption.** The future proceedings of all officers and of all courts of limited and inferior jurisdiction within this state shall, like those of general and superior jurisdiction, be presumed regular except in regard to matters required to be entered of record, and except where otherwise expressly declared.

SEC. 2513. **Computing time.** The mode of computing time is by excluding the first day and including the last, and should the last day fall on Sunday the length of time prescribed shall be extended one day so as to include the whole of the following Monday unless otherwise expressed.

SEC. 2514. **Proceedings commenced to be continued.** Proceedings already commenced for the enforcement of remedies may be continued in accordance with the rules herein prescribed as far as they are compatible with the proceedings which have already taken place.

SEC. 2515. **In other cases, rules herein followed.** In other cases, rights of action secured by previous [338] existing laws may be prosecuted in the manner herein provided. Should a case arise in which an adequate remedy cannot thus be had the practice heretofore in use may be adopted so far as is necessary to prevent a failure of justice. But the judge of the court shall in such cases forthwith report the fact to the governor who shall lay the same as soon as practicable before the general assembly.

SEC. 2516. **Rules in district court to be followed elsewhere.** The rules of proceeding prescribed for civil actions proper, in the district court, shall be followed in all proceedings of a special character whether before the district court or other tribunals, so far as they are applicable and not otherwise regulated.

SEC. 2517. **Corporations subject to laws.** No corporation is subject to the jurisdiction of a court of this state unless it appears in the court, or has been created by or under the laws of this state, or has an agency established herein for the transaction of some portion of its business, or has property herein, and in the last case only to the extent of such property.

CHAPTER 135.

FORMS.

SECTION 2518. **Forms.** The following or other equivalent forms are sufficient for the purposes for which they are intended.

For an original notice in the District Court.

To A— B—,

Sir:—You are hereby notified that there is now [or that on or before the ——— day of ——— there will be] on file in the office of the clerk of the district court in ——— county a petition of C— D—, claiming of you ——— dollars as money due “on a promissory note” [or “on account,” or “for labor,” or “for a trespass committed by your cattle,” or for whatever else may be the subject of the action] [or claiming of you “the specific performance of a contract,” or “the recovery of a tract of land,” or “the foreclosure of a

mortgage," as the case may be], and that unless you appear and answer thereto on or before the _____ day of _____, judgment will be rendered against you thereon.

(Signed) C— D—, Plaintiff.
[or E— F—, Att'y for plaintiff.]

[339] *For a petition in the District Court.*

To the District Court of _____ County:

Your petitioner, C— D—, claims of the defendant A— B—, the sum of _____ dollars which he alleges to be due him from the said defendant. And for cause of such claim states that the said defendant executed a promissory note to one G— W—, dated _____ for the sum of _____ dollars payable [state when], which said promissory note has now become the property of your petitioner, and that the amount above claimed is still due thereon. He therefore asks judgment for that amount with interest and costs.

(Signed) C— D—, Plaintiff.
[or E— F—, Att'y for plaintiff.]

SEC. 2519. **General direction.** If the action is brought for any other cause, enough must be stated to show substantially the nature of the particular claim and its amount. And if from the nature of the cause of action as stated in the petition a demand was necessary before suit could be legally brought, such demand must be averred. But nothing need be stated by way of rebutting any defense which the petition itself has not shown to exist.

SEC. 2520. **Original notice in a Justice's court.**

To A— B—,

Sir:—You are hereby notified that I claim of you _____ dollars as justly due me "on account," [or "for labor," or "for fraud in the sale of a horse," or "for injury caused by burning my fence," as the case may be] and that unless you appear at the office of M— N—, a justice of the peace on _____ the _____ day of _____ at _____ o'clock, — M., and make defense to said claim, judgment will be rendered against you for the whole amount with interest and costs.

(Signed) C— D—, Plaintiff.

SEC. 2521. **Signed by justice.** When the notice is signed by the justice it must be modified accordingly.

CHAPTER 136.

COMPENSATION OF OFFICERS.

SECTION 2522. **No fees unless allowed.** No officer is allowed fees or other compensation for any services farther than is expressly permitted by law.

[340] SEC. 2523. **General provisions.** Any officer legally called upon to perform any of the following services is entitled to the following compensation:

For drawing and certifying an affidavit, or for giving a certificate not attached to any other paper or document.....	\$.25
For fixing his official certificate to any paper, whether the certificate be under seal or not.....	.35
For making out a copy or transcript of any public papers or records under his control, for the use of a private individual or company, or recording articles of incorporation, ten cents for every one hundred words.	

SEC. 2524. **Secretary of state.** The secretary of state may take the following fees in addition to his salary:

For making out each commission for a commissioner of deeds.....	\$1.00
For a copy of laws or records upon the request of any private person or company, for every one hundred words.....	.10
For recording articles of incorporation for each one hundred words.....	.10
For certificate and seal.....	1.00

SEC. 2525. **Clerk of supreme court.** The clerk of the supreme court may take the following fees as his whole compensation, and where they are payable by a party to a suit they may (except in criminal cases) be required in advance. If not so paid in advance the clerk may at any time after judgment issue a fee bill which shall have the force of a special execution against the party adjudged to pay costs:

Upon filing each appeal.....	\$3.00
Upon entering each judgment where the cause has been decided upon its merits	2.00
Upon each continuance of a cause.....	1.00
Upon issuing each execution	1.25
Entering satisfaction of judgment.....	.50
Upon issuing each writ, rule, or order to be served upon any person not in court .....	.25
For copying an opinion to be transmitted to the district court in case of a reversal of judgment, ten cents for every one hundred words, to be paid by the party against whom costs are adjudged.	

SEC. 2526. **In criminal cases.** In criminal cases the clerk shall charge no fees against the county or state, except that where a judgment is reversed he is entitled to the legal fees for a copy of the decision to be paid from the county treasury. As against the [341] accused he is entitled to the same compensation as is allowed in civil cases.

SEC. 2527. **Clerk of the district court.** The clerk of the district court must, in addition to the fees elsewhere authorized, charge and collect the following:

On the filing of an appeal or the commencement of an original suit.....	\$2.50
Additional amount on issuing an attachment.....	2.00
On entering a judgment by confession in a case not pending in court, in all	3.00
If the case is already pending, in addition to the first charge at the commencement of the suit.....	1.00
On the submission of a cause without action.....	2.50
On entering judgment when not by confession.....	2.50
On entering a general continuance.....	1.00
On entering a special continuance at a party's costs and judgment thereon	2.50
On issuing execution and entering return.....	1.25
On entering satisfaction of judgment.....	.50

SEC. 2528. **Paid in advance.** The above fees of the clerk of the district court, as well as the jury fee required by law, must be paid in advance unless ample security is given to the approval of the clerk for the payment thereof when the suit is determined.

SEC. 2529. **Unless security given.** Where security is given as contemplated in the preceding section, if the money is not paid at the time stipulated the security shall be treated as an authority to confess judgment for the proper amount, and the clerk must enter up judgment either in term time or vacation and issue execution thereon accordingly. And in all cases heretofore decided in the district court, the clerk is authorized to issue a fee bill in the same manner as is above provided for the clerk of the supreme court.

SEC. 2530. **By whom paid.** The above fees of the supreme or district court clerk must, unless otherwise provided by law, be paid in the first instance by the plaintiff or appellant as the case may be, except in cases where the services are rendered at the instance and for the benefit of some other person, in which case the fees must be paid by such person. But unless otherwise ordered by the court the party paying such fees, if successful in the suit, is entitled to recover them back from the opposite party.

SEC. 2531. **Clerk of district court—criminal cases.** In criminal cases where the defendant is adjudged to pay the costs, the clerk of the district court must charge fees as follows:

In cases of appeals, the same fees in all respects as are allowed on appeals in civil cases.

[342] On an indictment for a misdemeanor where there is no trial.....\$5.00
Where there is a trial by the court..... 7.00
Where by a jury10.00

In cases of indictment for felonies the above fees shall be doubled.

The same fees for issuing execution and entering satisfaction of judgment must be charged in criminal as in civil cases.

SEC. 2532. **In criminal cases, not advanced.** In criminal cases, whether commenced by indictment or brought up on appeal, the fees shall not be required in advance but must be collected by execution against the defendant, being added to and treated as a part of the judgment or fine in case a judgment for money has been rendered against the defendant.

SEC. 2533. **County judge.** The county judge shall, in addition to the fees elsewhere permitted, charge ten cents for every one hundred words for all wills and certificates recorded in his office as required by law, and shall retain pay therefor out of the first money coming into the hands of the executor after the payment of the charges of the last sickness and funeral expenses of the deceased.

SEC. 2534. **Recorder.** The recorder of deeds must charge for recording each premium note given to a mutual insurance company containing less than fifty words.....\$.25
For each deed and mortgage containing not more than one hundred words50
For every additional one hundred words or fraction thereof in either case .10

SEC. 2535. **Same.** The fees allowed the recorder must be paid him in advance, and he will be charged with them as so much money actually received by him.

SEC. 2536. **Sheriff.** The sheriff is entitled to the following fees:

For serving any writ or notice (not including subpoenas) and return thereof—

For the first person served.....\$.50
For each additional person25
For each copy of such writ or notice when required, ten cents for each hundred words.
Serving writ with *posse comitatus*..... 1.50
Each commitment to prison25
Discharge from prison25
Attending with a person before a judge or court when required—not at a regular term of the court in his county—for each day, besides mileage 1.00
Copy of a paper required by law, for each one hundred words..... .10
[343] Serving and returning subpoenas, for each person..... .20
Calling a jury, in each case..... .10

Summoning a grand or petit jury, for each panel including mileage, (to be paid out of the county treasury).....	8.00
Traveling fees in other cases required by law, going and returning, per mile .....	.05
Selling land or other property on execution, per day.....	1.00
For time actually employed by him as assessor two dollars per day, to be regulated by the same rules and allowed in the same manner as the compensation of supervisors of roads.	
Making and executing a deed for land sold on execution.....	1.00
Serving one person with order of court, besides mileage.....	.50
For each additional person embraced in the same order.....	.25
Summoning a jury in cases of forcible entry and detainer, including mileage	1.50
Serving an execution or order for the partition of real estate or assigning dower (besides mileage).....	2.00
For each bond required by law.....	.25
For summoning a jury to assess the damages to the owner of lands taken for any work of internal improvement and attending upon them, in all	5.00
If such case occupies more than one day he may charge for each additional day or fraction thereof.....	1.50
For serving each attachment.....	1.00
For the time necessarily employed in making an inventory of property attached or levied upon, per day.....	1.00
For collecting and paying over money on the first two hundred dollars or part thereof, three per cent.	
On the next three hundred dollars or any part thereof, two per cent.	
And on all excess over five hundred dollars, one per cent.	
But when property is purchased by a plaintiff in execution, so that the money does not pass through the sheriff's hands he is entitled to only one-half the above named rates.	
Returning a writ not served.....	.05
Receiving prisoner on surrender by bail.....	.25
Taking new bail .....	.25
Dieting a prisoner, per day.....	.25

SEC. 2537. **When prosecution fails.** The above items, when chargeable in criminal [344] cases where the prosecution fails or where the money cannot be made from the person liable to pay the same, the facts being certified to by the clerk as far as his knowledge extends, and sworn to by the sheriff, shall be allowed and paid out of the county treasury.

SEC. 2538. **Sheriff—salary.** The sheriff is also entitled to receive one-tenth of the annual salary of the county judge for delivering notices (including mileage) and for other services for which no other compensation is allowed by law.

Coroner's fees.

SEC. 2539. **Coroner.** For a view of each body and for taking and returning inquest\$5.00
 Each subpoena, warrant, or venire..... .25
 The above fees are to be paid from the county treasury where they cannot be obtained from the estate of the deceased.
 For all other services the same fees as are allowed to sheriffs in similar cases

Constable's fees.

SEC. 2540. Constable. For serving any notice or process, on each person named therein	\$.25
Copy thereof when required.....	.10
For serving an attachment or writ of replevin.....	.50
Traveling fees, going and returning, per mile.....	..05
Summoning a jury (including mileage).....	.50
Attending same on trial.....	.25
Serving execution (besides mileage) .....	.25
Advertising and selling property (besides mileage).....	.50
Advertising without selling .....	.25
Notifying plaintiff of the time of such sale (besides mileage) unless he waives such notice .....	.20
Return of execution when no levy is made.....	.05
On taking bond in any case.....	.25
On all sums collected on execution and paid over, four per cent.	
Serving subpoenas (besides mileage).....	.15
Posting up each notice required by law (besides mileage).....	.15
Commitment to prison (besides mileage).....	.25

SEC. 2541. **In criminal cases.** The fees of a constable for services in criminal cases where the prosecution fails or when the money cannot be made from the person liable to pay the same, the facts being [345] certified by the justice and sworn to by the constable, shall be allowed and paid out of the county treasury.

Notary's fees.

SEC. 2542. Notary. For every protest of a bill or note.....	\$.75
Noting a bill of exchange for non-acceptance or non-payment.....	.25
Notarial affidavit to an account under seal.....	.25
Registering protest of a bill of exchange or promissory note for non-acceptance or non-payment .....	.50
Certifying power of attorney .....	.25
Administering any oath.....	.05
Being present at demand, tender, or deposit, and noting the same.....	.35
Other services, the same fees as are allowed to other officers for like services.	

Justice's fees.

SEC. 2543. Justice. At the commencement of each suit.....	\$.50
In case of an attachment or forcible entry and detainer.....	1.00
On taking judgment by confession after suit is commenced.....	.50
If not on suit previously brought.....	1.00
On submitting controversies without action the same fees as on suit brought.	
The following additional fees are allowed in the cases to which they apply:	
On entering judgment when not contested.....	.50
If contested.....	1.00
If jury is called, additional.....	1.00
On issuing execution (for issuing as well as for return and entering satisfaction) .....	.50

When any cause consumes more than one entire day of six hours the justice is entitled to one dollar for each day or fraction of a day thereafter in addition.

And on all amounts of money coming into the justice's hands without suit and by him actually paid over, two per cent. shall be allowed him therefor.

For every continuance or adjournment at the request of either party...	.50
Making and certifying transcript.....	.50
On setting aside a judgment of non-suit or by default.....	.50
[346] Justices shall also be allowed the following fees in criminal cases—	
For process of any kind except subpoenas.....	.50
Entering judgment .....	.50
Taking recognizance or any undertaking.....	.25
Order of discharge to jailer.....	.25
The first of the above charges shall be payable by the county in cases where the prosecution fails.	

Witnesses.

SEC. 2544. Witnesses. Each witness for attending before the district court, each day, is entitled to.....	\$1.00
Before a justice of the peace.....	.50
Mileage for actual travel per mile, each way.....	.05
An attorney or juror or officer who is in habitual attendance on the court during the term at which he is subpoenaed as a witness shall charge for only one day's attendance.	
A witness who is subpoenaed in two or more cases by the same party shall be entitled to but one single compensation from such party for the same day's attendance or travel.	
The court may disallow to the successful party any witness who without sufficient cause was absent at the trial or whose testimony was unimportant or unnecessary.	
For attending before a grand or petit jury in a criminal case witnesses are entitled to a like fee, which, when they are called in behalf of the prosecution, shall be paid out of the county treasury. But they cannot claim their fees in such cases in advance.	

Jurors.

SEC. 2545. Jurors. A juror, for each day's attendance, whether as a grand or petit juror.....	\$1.00
Before justices of the peace.....	.50
Traveling per mile, going and returning.....	.05

County Surveyor.

SEC. 2546. Surveyor. For each day's service actually performed in traveling to and from the place where the survey is to be made, making survey and return.....	\$3.00
For a certified copy of the plat or field notes.....	.25

[347] *Supervisor of Roads.*

SEC. 2547. **Supervisor of roads.** The supervisor of roads is entitled to receive from the road fund the sum of two dollars per day's service actually rendered in the discharge of his duty. He must keep a weekly register of all the time so spent, marking down the days and fractions of a day spent by him during the week, reckoning eight hours service as a day's labor as nearly

as practicable, and at the settlement of his accounts with the county court, which must be as often as once in each year, he must be sworn to the correctness of his register.

SEC. 2548. **Township officers.** The township trustees and township clerk shall each receive at the rate of one dollar per day for services rendered by them, reckoning six hours as one day. And from week to week when they perform any services for which they are entitled to compensation from the county treasury they must keep a register thereof and must at the time of their settlements with the county court, make oath to the correctness of their accounts. When serving as fence viewers they must be paid by the parties interested.

SEC. 2549. **Receipts.** Every officer charging fees shall, if required by the person paying them, give him a receipt therefor setting forth the items and the date of each.

SEC. 2550. **Appraisers.** Every appraiser of property is entitled to fifty cents for each day or fraction thereof during which he is employed as such, except when a different compensation is provided.

SEC. 2551. **Marriage.** Any person authorized to marry is entitled to charge two dollars for officiating in each case and making return thereof.

SEC. 2552. **Depositions.** Any officer or person taking depositions is authorized to charge therefor at the rate of ten cents per hundred words exclusive of the certificate.

SEC. 2553. **Fees sworn to.** Where fees are charged against the county as hereinbefore provided in certain cases, their correctness and the actual rendition of the services for which they are charged must be sworn to.

SEC. 2554. **Paid in cash.** All fees allowed to the county judge, prosecuting attorney, clerk, and recorder, whether in this chapter or elsewhere, are to be deemed a part of the county revenue and appropriated as provided by law, but are to be paid in cash.

SEC. 2555. **Blanks.** The county judge is authorized in his discretion to procure printed blanks necessary for the use of the salaried officers of the county as far as can be conveniently done, and to pay therefor out of the county treasury.

SEC. 2556. **Who recovers costs.** In all cases unless otherwise provided, the party in whose favor judgment is given shall recover costs, but all [348] courts may allow or refuse costs at their discretion upon all motions.

SEC. 2557. **Payment on rendering service.** Where no other provision is made on the subject, the party requiring any service shall pay the fees therefor upon the same being rendered, and a bill of particulars being presented if required.

SEC. 2558. **Advertisements.** In all cases where an officer in the discharge of his duty is required to set up an advertisement he shall, when not otherwise provided, be allowed twenty-five cents, and if an advertisement is required to be published in a newspaper, the money therefor shall be paid by the party and may be taxed in the bill of costs.

SEC. 2559. **Fees posted.** Every officer entitled to fees shall keep posted up in his office a fair table thereof on pain of forfeiture of two dollars per day for the benefit of the county for each day he fails to keep such table of fees thus posted up.

SEC. 2560. Any officer who wilfully takes higher or other fees than are allowed by law is guilty of a misdemeanor, and may be fined therefor a sum not less than ten nor more than fifty dollars.

SEC. 2561. **Attorney appointed.** An attorney appointed by a court to defend a person indicted for any offense, on account of such person being unable to procure counsel, is entitled to receive from the county treasury one of the following fees:

For defending in a case of murder.....	\$25.00
In cases of other felonies.....	10.00
In cases of misdemeanor	5.00

SEC. 2562. **Same.** An attorney cannot in such case be compelled to follow a case into another county or into the supreme court, and if he does so may recover an enlarged compensation to be graduated on a scale corresponding to the prices above allowed.

SEC. 2563. **Only one attorney.** Only one attorney in any one case shall receive the compensation above contemplated, nor is he entitled to this compensation until he files his affidavit that he has not directly or indirectly received any compensation for such services from any other source.

SEC. 2564. **In cases now pending.** The provisions of this chapter which relate to fees of the clerks of the supreme or district courts do not apply to cases already pending in those courts respectively, except that the fees received by the clerk of the district court shall go into the county treasury in the same manner as hereinbefore provided. But the provisions of this chapter are intended to apply fully in all other respects and to all other officers in regard to all cases pending when this statute takes effect, so far as it respects the compensation for their future services.

PART FOURTH

OF CRIMES AND PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES.

TITLE XXIII.

OF CRIMES AND PUNISHMENTS.

CHAPTER 137.

OFFENSES AGAINST THE SOVEREIGNTY OF THE STATE.

SECTION 2565. **Treason.** Whoever is guilty of treason, by levying war against the state, or adhering to its enemies, giving them aid and comfort, shall be punished with death.

SEC. 2566. **Misprision of treason, etc.** If any person have knowledge of the commission of the crime of treason against the state and conceal the same, and not as soon as may be disclose such offense to the governor or some judge within the state, he is guilty of misprision of treason and shall be fined not exceeding one thousand dollars or be imprisoned in the penitentiary not exceeding three years nor less than one year.

SEC. 2567. **Evidence.** No person can be convicted of the crime of treason unless on the evidence of two witnesses to the same overt act, or on confession in open court.

CHAPTER 138.

OFFENSES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

SECTION 2568. **Definition.** Whoever kills any human being with malice aforethought either express or implied is guilty of murder.

SEC. 2569. **First degree.** All murder which is perpetrated by means of poison or lying in wait or any other kind of wilful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate any arson, rape, robbery, [350] mayhem, or burglary, is murder of the first degree and shall be punished with death.

SEC. 2570. **Second degree.** Whoever commits murder otherwise than is set forth in the preceding section is guilty of murder of the second degree, and shall be punished by imprisonment in the penitentiary for life or for a term of not less than ten years.

SEC. 2571. **Degree—how determined.** Upon the trial of an indictment for murder the jury if they find the defendant guilty must inquire, and by their verdict ascertain, whether he be guilty of murder of the first or second degree; but if such defendant be convicted upon his own confession in open court the court must proceed by the examination of witnesses to determine the degree of murder and award sentence accordingly.

SEC. 2572. **Duelling.** Whoever fights a duel with deadly weapons and inflicts a mortal wound on his antagonist, whereof death ensues, is guilty of murder of the first degree and shall be punished accordingly.

SEC. 2573. **Same—aiding, etc.** Any person who fights a duel with deadly weapons or is present at the fighting of such duel, as aid, second, or surgeon, or advises, encourages, or promotes such duel although no homicide ensue, and any person who challenges another to fight a duel or sends or delivers any verbal or written message purporting or intended to be such challenge, although no duel ensue, shall be fined in a sum not exceeding one thousand dollars nor less than four hundred dollars and imprisoned in the penitentiary not more than three years nor less than one year.

SEC. 2574. **Accepting challenge—aiding, etc.** Any person who accepts such challenge or who consents to act as a second, aid, or surgeon on such acceptance, or who advises, encourages, or promotes the same, although no duel ensue, shall be punished as prescribed in the preceding section.

SEC. 2575. **Posting for not accepting, etc.** If any person post another, or in writing or print use any reproachful or contemptuous language to or concerning another, for not fighting a duel or for not sending or accepting a challenge, he shall be fined not exceeding three hundred dollars nor less than one hundred dollars and shall be imprisoned in the county jail for not more than six months nor less than two months.

SEC. 2576. **Manslaughter.** Any person guilty of the crime of manslaughter shall be punished by imprisonment in the penitentiary not more than eight years nor less than one year and by fine not exceeding one thousand dollars nor less than one hundred dollars.

SEC. 2577. **Maiming or disfiguring.** If any person, with intent to maim or disfigure, cut or maim the tongue; put out or destroy an eye; cut, slit, or tear off an ear; cut, slit, bite, or mutilate the nose, or lip; or [351] cut off or disable a limb or any member of another person, he shall be punished by imprisonment in the penitentiary not more than five years and by fine not exceeding one thousand dollars nor less than one hundred dollars.

SEC. 2578. **Robbery.** If any person, with force or violence or by putting in fear, steal and take from the person of another any property that is the subject of larceny, he is guilty of robbery and shall be punished according to the aggravation of the offense as is provided in the following two sections.

SEC. 2579. **First degree.** If such offender at the time of such robbery is armed with a dangerous weapon with intent, if resisted, to kill or maim the person robbed; or if being so armed he wound or strike the person robbed; or if he have any confederates aiding and abetting him in such robbery, present and so armed, he shall be punished by imprisonment in the penitentiary for a term not exceeding twenty years nor less than ten years.

SEC. 2580. **Second degree.** If such offender commit such robbery otherwise than is mentioned in the preceding section he shall be punished by imprisonment in the penitentiary not exceeding ten years nor less than two years.

SEC. 2581. **Rape.** If any person ravish and carnally know any female of the age of ten years or more by force and against her will, or carnally know and abuse any female child under the age of ten years, he shall be punished by imprisonment in the penitentiary for life or any term of years.

SEC. 2582. **Compelling to marry, etc.** If any person take any woman unlawfully and against her will, and by force, menace, or duress compel her to marry him or any other person to be defiled, he shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding ten years.

SEC. 2583. **Carnal knowledge by producing stupor.** If any person unlawfully have carnal knowledge of any female by administering to her any substance or by any other means producing such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, he shall upon conviction be punished as provided in the section relating to ravishment.

SEC. 2584. **Enticing female under 15 years.** If any person take or entice away any unmarried female under the age of fifteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, he shall upon conviction be punished by imprisonment in the penitentiary for not more than three years, or by fine of not more than one thousand dollars and imprisonment in the county jail not more than one year.

SEC. 2585. **Enticing child under 12.** If any person maliciously, forcibly, or fraudulently lead, take, decoy, or entice away any child under the age [352] of twelve years with the intent to detain or conceal such child from its parent, guardian, or any other person having the lawful charge of such child, he shall be punished by imprisonment in the penitentiary not more than ten years or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

SEC. 2586. **Seduction.** If any person seduce and debauch any unmarried woman of previously chaste character, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year.

SEC. 2587. **Marriage a bar.** If before judgment upon an indictment the defendant marry the woman thus seduced it is a bar to any farther prosecution for the offense.

SEC. 2588. **Kidnapping, etc.** If any person wilfully and without lawful authority forcibly or secretly confine or imprison any other person within this state against his will; or forcibly carry or send such person out of the state; or forcibly seize and confine, or inveigle or kidnap any other person with the intent either to cause such person to be secretly confined or imprisoned in this state against his will or to cause such person to be sent out of the state against his will, he shall be punished by imprisonment in the penitentiary not more than five years or by fine not exceeding one thousand dollars, or by both fine and imprisonment at the discretion of the court.

SEC. 2589. **Exposing child.** If the father or mother of any child under the age of six years, or any person to whom such child has been entrusted or confided expose such child in any highway, street, field, house, or outhouse, or in any other place with intent wholly to abandon it, he or she, upon conviction thereof, shall be punished by imprisonment in the penitentiary not exceeding five years.

SEC. 2590. **Malicious threats to extort.** If any person either verbally or by any written or printed communication maliciously threaten to accuse another of a crime or offense or to do any injury to the person or property of another, with intent thereby to extort any money or pecuniary advantage whatever or to compel the person so threatened to do any act against his will, he shall be punished by imprisonment in the penitentiary not more than two years or by fine not exceeding five hundred dollars.

SEC. 2591. **Assault, with intent to murder.** If any person assault another with intent to commit murder he shall be punished by imprisonment in the penitentiary not exceeding ten years.

SEC. 2592. **With intent to commit rape.** If any person assault a female with intent to commit a rape he shall be punished by imprisonment in the penitentiary not exceeding twenty years.

SEC. 2593. **With intent to maim, rob, steal, etc.** If any person assault another with intent to maim, [353] rob, steal, or commit arson or burglary, he shall be punished by imprisonment in the penitentiary not exceeding five years or by fine not exceeding one thousand dollars, or by both fine and imprisonment at the discretion of the court.

SEC. 2594. **With intent to inflict injury.** If any person assault another with intent to inflict a great bodily injury he shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding five hundred dollars.

SEC. 2595. **With intent to commit any felony.** If any person assault another with intent to commit any felony or crime punishable by imprisonment in the penitentiary, where the punishment is not otherwise prescribed, he shall be punished by imprisonment in the penitentiary not more than five years or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year.

SEC. 2596. **Mingling poison with food, etc.** If any person mingle any poison with any food, drink, or medicine, with intent to kill or injure any human being; or wilfully poison any spring, well, cistern, or reservoir of water, he shall be punished by imprisonment in the penitentiary not exceeding ten years and by fine not exceeding one thousand dollars.

SEC. 2597. **Assault and battery.** Whoever is convicted of an assault or an assault and battery, where no other punishment is prescribed, shall be punished by imprisonment in the county jail not exceeding six months or by fine not exceeding two hundred dollars, or both such fine and imprisonment at the discretion of the court.

CHAPTER 139.

OFFENSES AGAINST PROPERTY.

SECTION 2598. **Burning inhabited buildings, etc., in night time.** If any person wilfully and maliciously burn in the night time the inhabited building, boat, or vessel of another; or wilfully and maliciously set fire to any other building, boat, or vessel owned by himself or another by the burning whereof such inhabited building, boat, or vessel is burnt in the night time, he shall be punished by imprisonment in the penitentiary for life or any term of years.

SEC. 2599. **In the day time.** If any person wilfully and maliciously burn in the day time the inhabited building, boat, or vessel of another, or any building, boat, or vessel adjoining thereto; or wilfully and maliciously set fire to any building, boat, or vessel, owned by himself or another by the burning whereof such inhabited building, boat, or vessel is burnt in the day time; [354] or in the day time wilfully and maliciously set fire to any building, boat, or vessel owned by himself or another by the burning of which any such inhabited building, boat, or vessel is burnt in the night time, he shall be punished by imprisonment in the penitentiary for a term not exceeding thirty years.

SEC. 2600. **Burning uninhabited buildings, etc., in night time.** If any person wilfully and maliciously burn in the night time any uninhabited dwelling house, boat, or vessel belonging to another or any court house, jail, college, church, or any building erected for public use; or any other building, boat, or vessel, by the burning whereof any building, boat, or vessel mentioned in this section is burnt in the night time, he shall be punished by imprisonment in the penitentiary not exceeding twenty years.

SEC. 2601. **In the day time.** If any person wilfully and maliciously burn in the day time any building, boat, or vessel mentioned in the preceding section he shall be punished by imprisonment in the penitentiary not exceeding fifteen years.

SEC. 2602. **Burning mills, bridges, locks, dams, etc.** If any person wilfully and maliciously burn either in the night or day time, any warehouse, store,

manufactory, mill, railroad depot, barn, stable, shop, office, out house, or any building whatsoever of another other than is mentioned in the preceding section of this chapter, or any bridge, lock, dam or flume, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

SEC. 2603. **Setting fire with intent to burn.** If any person set fire to any building, boat, or vessel mentioned in the preceding sections of this chapter, or to any material with intent to cause any such building, boat, or vessel to be burnt, he shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not more than one year.

SEC. 2604. **Burning wood, lumber, fences, grain, etc.** If any person wilfully and maliciously burn or otherwise destroy or injure any pile or parcel of wood, boards, timber, or other lumber, or any fence, bars, or gate, or any stack of grain, hay, or other vegetable product severed from the soil and not stacked, or any standing trees, grain, grass, or other standing product of the soil of another, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2605. **Provisions extend to married women.** The preceding sections of this chapter severally extend to a married woman who commits either of the offenses therein described, though the property burnt or set fire to may belong partly or wholly to her husband.

SEC. 2606. **Burning to injure insurers.** If any person wilfully burn any building, goods, wares, merchandise, or other chattels which are insured [355] against loss or damage by fire, or wilfully cause or procure the same to be burned, with intent to injure the insurer, whether such person be the owner of such property or not, he shall be punished in the penitentiary not exceeding ten years.

SEC. 2607. **Burning prairie.** If any person wilfully or without using proper caution set fire to and burn or cause to be burnt any prairie or timbered land by which the property of another is injured or destroyed, he shall be fined not exceeding five hundred dollars or imprisoned in the county jail not more than one year, or by both fine and imprisonment at the discretion of the court.

SEC. 2608. **Burglary.** If any person break and enter any dwelling house in the night time with intent to commit the crime of murder, rape, robbery, larceny, or any other felony; or after having entered with such intent break any such dwelling house in the night time, any person being then lawfully therein, such offender shall be punished according to the aggravation of the offense as is provided in the following two sections.

SEC. 2609. **Being armed or assaulting a person.** If such offender at the time of committing such burglary is armed with a dangerous weapon, or so arm himself after having entered such dwelling house, or actually assault any person being lawfully therein, or have any confederate present aiding and abetting in such burglary, he shall be punished by imprisonment in the penitentiary for life or any term of years.

SEC. 2610. **Without being armed.** If such offender commit such burglary otherwise than is mentioned in the preceding section he shall be punished by imprisonment in the penitentiary not exceeding twenty years.

SEC. 2611. **Breaking in the day time, with intent to commit a felony.** If any person with intent to commit a felony, in the day time break and enter, or in the night time enter without breaking, any dwelling house; or at any time break and enter any office, shop, store, warehouse, boat, or vessel, or any building in which any goods, merchandise, or valuable things are kept for use,

sale, or deposit, he shall be punished by imprisonment in the penitentiary not more than ten years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year.

[356] CHAPTER 140.

LARCENY, AND RECEIVING STOLEN GOODS.

SECTION 2612. **Larceny.** If any person steal, take and carry away, of the property of another, any money, goods, or chattels; any writ, process, or public record; any bond, bank note, promissory note, bill of exchange, or other bill, order or certificate; or any book of accounts respecting money, goods, or other things; or any deed or writing containing a conveyance of real estate; or any contract in force; or any receipt, release, or defeasance; or any instrument or writing whereby any demand, right, or obligation is created, increased, extinguished or diminished; he is guilty of larceny and shall be punished, when the value of the property stolen exceeds the sum of twenty dollars, by imprisonment in the penitentiary not more than five years; and when the value of the property stolen does not exceed the sum of twenty dollars, by fine not exceeding one hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2613. **In the night time—value over \$20.** If any person in the night time commit larceny in any dwelling house, store, or any public or private building, or in any boat, vessel or water craft, when the value of the property stolen exceeds the sum of twenty dollars, he shall be imprisoned in the penitentiary not exceeding ten years; and when the value of the property stolen is less than twenty dollars, by fine not exceeding three hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2614. **In the day time—value under \$20.** If any person in the day time commit larceny as specified in the preceding section and the value of the property stolen exceeds twenty dollars, he shall be punished by imprisonment in the penitentiary not more than five years; and when the value of the property stolen is less than twenty dollars, by fine not exceeding two hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2615. **At fires, or from the person.** If any person commit the crime of larceny by stealing from any building that is on fire, or by stealing any property removed in consequence of an alarm caused by fire, or by stealing from the person of another, he shall be punished by imprisonment in the penitentiary not exceeding fifteen years nor less than one year.

SEC. 2616. **Fraudulently personating another.** If any person falsely personate or represent another and in such assumed character receive any money or property intended to be delivered to the party so personated, [357] with intent to convert the same to his own use, he is guilty of larceny and shall be punished accordingly.

SEC. 2617. **Finding property and appropriating it.** If any person come, by finding, to the possession of any personal property of which he knows the owner and unlawfully appropriate the same or any part thereof to his use, he is guilty of larceny and shall be punished accordingly.

SEC. 2618. **Officers embezzling public money.** If any officer within this state charged with the collection, safe keeping, transfer, or disbursement of public money unlawfully convert to his own use in any way whatever, or use by way of investment in any kind of property, or loan without the authority of law any portion of the public money entrusted to him for collection, safe keeping,

transfer, or disbursement, every such act is an embezzlement of so much of said money as is thus taken, converted, invested, used, loaned, or unaccounted for, and upon conviction thereof he shall be imprisoned in the penitentiary not exceeding five years and fined in a sum equal to the amount of money embezzled, and moreover he is forever afterward disqualified from holding any office under the laws or constitution of this state.

SEC. 2619. **Embezzlement by officers, etc.** If any officer, agent, clerk, or servant of any incorporated company; or if any clerk, agent or servant of a co-partnership; or of [if] any person over the age of sixteen years embezzle and fraudulently convert to his own use, or take and secrete with intent to convert to his own use, without the consent of his employer or master, any money or property of another which has come to his possession or is under his care by virtue of such employment, he is guilty of larceny and shall be punished accordingly.

SEC. 2620. **Embezzlement by carriers and others.** If any carrier or other person to whom any money, goods, or other property which may be the subject of larceny has been delivered to be carried for hire, or if any other person intrusted with such property, embezzle or fraudulently convert to his own use any such money, goods, or other property either in the mass as the same were delivered or otherwise, and before the same were delivered at the place or to the person where and to whom they were to be delivered, he is guilty of larceny and shall be punished accordingly.

SEC. 2621. **Receiving stolen goods.** If any person buy, receive, or aid in concealing any stolen money, goods, or any property the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same was so obtained, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year.

SEC. 2622. **Notorious thief.** If any person, having been before convicted of larceny, afterward commit another larceny and be thereof con-[358]-victed; or if any person at the same term of court is convicted as principal or as accessory after the fact in three distinct larcenies, he is deemed a common and notorious thief and shall be punished by imprisonment in the penitentiary for not less than five years.

SEC. 2623. **Receivers of stolen goods on second conviction.** If any person after having been convicted of the offenses of buying, receiving, or aiding in the concealment of stolen money, goods, or any property the stealing of which is larceny, or property obtained by robbery or burglary, be again convicted of the like offense; or if any person at the same term of court is convicted of three distinct acts of buying, receiving, or aiding in the concealment of stolen property or property obtained by robbery or burglary, knowing the same was so obtained, he shall be punished as provided in the preceding section.

SEC. 2624. **Receiver tried though principal not convicted.** In any prosecution for the offense of buying, receiving, or aiding in the concealment of stolen property or property obtained by robbery or burglary knowing the same was so obtained, it shall not be necessary to aver nor to prove on the trial thereof that the person who stole, robbed, or took the property, has been convicted.

SEC. 2625. **Measure of value.** If the property stolen consists of any bank note, bond, bill, covenant, bill of exchange, draft, order, or receipt; or any evidence of debt whatever; or any public security; or any instrument whereby any demand, right, or obligation may be assigned, transferred, created, increased, released, extinguished or diminished, the money due thereon or secured

thereby and remaining unsatisfied or which in any event or contingency might be collected thereon, or the value of the property transferred or effected, as the case may be, shall be adjudged the value of the thing stolen.

CHAPTER 141.

FORGERY AND COUNTERFEITING.

SECTION 2626. Forgery of records, and instruments of writing. If any person, with intent to defraud, falsely make, alter, forge, or counterfeit any public record, or any process issued or purporting to be issued by any competent court, magistrate or officer; or any pleading or proceeding filed or entered in any court of law or equity; or any attestation or certificate of any public officer or other person in relation to any matter wherein such attestation or certificate is required by law or may be received or be taken as legal proof; any charter, deed, will, testament, bond, writing obligatory, power [359] of attorney, letter of credit, policy of insurance, bill of lading, bill of exchange, promissory note; or any order, acquittance, discharge, or accountable receipt for money or other valuable thing; or any acceptance of any bill of exchange or order; or any indorsement or assignment of any bill of exchange, promissory note or order, or of any debt or contract; or any other instrument in writing, being or purporting to be the act of another, by which any pecuniary demand or obligation or any right or interest in or to any property whatever is or purports to be created, increased, transferred, conveyed, discharged, or diminished, he shall be punished by imprisonment in the penitentiary not more than ten years.

SEC. 2627. Uttering the same as true. If any person utter and publish as true, any record, process, certificate, deed, will, or any other instrument of writing mentioned in the preceding section, knowing the same to be false, altered, forged, or counterfeited, with intent to defraud, he shall be punished by imprisonment in the penitentiary not more than fifteen years and fined not exceeding one thousand dollars.

SEC. 2628. Forgery of public securities. If any person, with intent to defraud, falsely make, utter, forge, or counterfeit any note, certificate, state bond, warrant, or other instrument, being public security for money or other property, issued or purporting to be issued by authority of this state or any other of the United States; or any indorsement or other writing purporting to transfer the right or interest of any holder of such public security, he shall be punished by imprisonment in the penitentiary not more than twenty years nor less than five years.

SEC. 2629. Counterfeiting bank notes, etc. If any person make, alter, forge, or counterfeit any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company duly authorized for that purpose by any state of the United States or any other government or country, with intent to injure or defraud, he shall be punished by imprisonment in the penitentiary not more than ten years, or by fine not exceeding three hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2630. Having counterfeit bills with intent to defraud. If any person has in his possession any forged, counterfeited, or altered bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued as is mentioned in the preceding section, with intent to defraud, knowing them to be so forged, counterfeited, or altered, he shall be punished by im-

prisonment in the penitentiary not more than five years, or by fine not exceeding two hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2631. Uttering as true counterfeit public security. If any person utter or pass or tender in payment [360] as true any false, altered, forged, or counterfeit note, certificate, state bond, warrant, or other instrument of public security; or any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company duly authorized as heretofore mentioned, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud, he shall be punished by imprisonment in the penitentiary not more than ten years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2632. Repetition of last offenses. If any person, having been convicted of the offenses described in the preceding section, afterward be convicted of a like offense; or if any person at the same term of the court is convicted of three such distinct offenses, he shall be punished by imprisonment in the penitentiary, not less than two years, nor more than ten years.

SEC. 2633. Tools for counterfeiting, etc. If any person engrave, make, or mend or begin to engrave, make or mend any plate, block, press, or other tool, instrument, or implement; or make or provide any paper or other materials adapted and designed for the forging or making any false and counterfeit note, certificate, state bond, warrant, or other instrument of public security for money or other property of this state or any other of the United States, or any bank bill, promissory note, draft, or other evidence of debt issued or purporting to be issued by any corporation or company; and every person who has in his possession any such plate or block engraved in any part, or any press or other tool, instrument or implement, paper or other material adapted and designed as aforesaid, with intent to use the same or to cause or permit the same to be used in forging or making any such false and forged certificates, notes, bonds, warrants, public securities, or evidences of debt, shall be punished by imprisonment in the penitentiary for not more than five years nor less than two years.

SEC. 2634. Counterfeiting coin. If any person forge or counterfeit any gold or silver coin current by law or usage within this state, and if any person have in his possession at the same time five or more pieces of false money or coin counterfeited in the similitude of any gold or silver coin current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, he shall be punished by imprisonment in the penitentiary not more than ten years nor less than one year.

SEC. 2635. Uttering counterfeit coin, and having in possession. Every person who has in his possession any number of pieces less than five of the counterfeit coin mentioned in the preceding section knowing the same to be false or counterfeit, with intent to utter or pass the same as true; [361] and any person who utters, passes, or tenders in payment any false and counterfeit coin, knowing the same to be false and counterfeit, shall be punished by imprisonment in the penitentiary not exceeding eight years, or fined not more than five hundred dollars and imprisoned in the county jail not exceeding one year.

SEC. 2636. Counterfeiting parts of instruments. If any person fraudulently connect together different parts of several genuine bank bills, notes, or other instruments in writing so as to produce one instrument, or alter any note or instrument in writing in a matter that is material, with intent to

defraud, the same shall be deemed forgery in like manner as if such bill or note or other instrument had been forged and counterfeited, and the offender shall be punished accordingly.

SEC. 2637. **Affixing fictitious signatures.** If any fictitious or pretended signature of an officer or agent of any corporation be fraudulently affixed to any instrument of writing purporting to be a note, draft, or other evidence of debt issued by such corporation, with intent to utter or pass the same as true, it is forgery though no such person may ever have been an officer or agent of such corporation, nor such corporation have ever existed. Every person guilty of this offense shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding three hundred dollars and imprisoned in the county jail not more than one year.

SEC. 2638. **Fraudulent obliterations, forgery.** The total or partial erasure or obliteration of any record, process, certificate, deed, will, or any other instrument in writing mentioned in this chapter, with intent to defraud, shall be deemed forgery and the offender shall be punished by imprisonment in the penitentiary not exceeding five years, or fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year.

SEC. 2639. **Repetition of offenses.** If any person, having been convicted of either of the offenses mentioned in the preceding section, be afterward convicted of a like offense; or if any person at the same term of court be convicted of three such distinct offenses, he shall be punished by imprisonment in the penitentiary not more than ten years nor less than three years.

SEC. 2640. **Making or having instruments for counterfeiting.** If any person cast, stamp, engrave, make or mend or have in his possession any mould, die, press, or other instrument or tool adapted and designed for the forging or counterfeiting of any coin before mentioned, with intent to use the same or permit the same to be used for that purpose, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not more than one year.

[362] SEC. 2641. **Counterfeiting foreign coin.** If any person forge or counterfeit any gold or silver coin of any foreign government or country, with intent to export the same to injure or defraud any such government or the citizens thereof, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

SEC. 2642. **Forgery of the great seal of this state, of public offices, etc.** Every person who is convicted of having forged, counterfeited, or falsely altered the great seal of this state; or the seal of any public office authorized by law; or the seal of any court, corporation, city or county; or who falsely makes, forges, or counterfeits any impression purporting to be the impression of any such seal, with intent to defraud, shall be punished by imprisonment in the penitentiary not exceeding ten years.

SEC. 2643. **Acts of incorporation proved by reputation—persons of skill competent.** On the trial of any person for forging or counterfeiting any bill, note, or any other evidence of debt purporting to be issued by any incorporated company; or for uttering, passing or attempting to pass, or having in possession the same with intent to utter or pass such bill, note, or evidence of debt, it is not necessary to prove the incorporation by the charter or act thereof, but the same may be proved by general reputation, and persons of skill are competent witnesses to prove that such bill, note, or evidence of debt is forged or counterfeit.

CHAPTER 142.

OFFENSES AGAINST PUBLIC JUSTICE.

SECTION 2644. **Perjury.** If any person on oath or affirmation lawfully administered wilfully and corruptly swear or affirm falsely to any material matter in any proceeding in any court of justice or before any officer thereof, or before any tribunal or officer created by law, or in any proceeding or in regard to any matter or thing in or respecting which an oath or affirmation is or may be required or authorized by law, he is guilty of perjury and shall be punished, if the perjury was committed on the trial of a capital crime, by imprisonment in the penitentiary for life or any term not less than ten years; and if committed in any other case, by imprisonment in the penitentiary not more than ten years nor less than two years.

SEC. 2645. **Subornation of perjury.** If any person procure another to commit perjury he is guilty of subornation of perjury and shall be punished as provided in the preceding section.

SEC. 2646. **Attempt to suborn.** If any person endeavor to incite or procure another to commit perjury, though no perjury be committed, he shall [363] be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisoned in the county jail not more than one year.

SEC. 2647. **Bribery of public officers.** If any person give, offer, or promise to any executive or judicial officer or member of the general assembly after his election or appointment, and either before or after he has been qualified or has taken his seat, any valuable consideration, gratuity, service or benefit whatever with intent to influence his act, vote, opinion, or judgment in any matter, question, cause or proceeding which may be pending or which may legally come or be brought before him in his official capacity, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not more than one thousand dollars and imprisonment in the county jail not more than one year.

SEC. 2648. **Acceptance of bribes, etc., by such officers.** If any executive or judicial officer or member of the general assembly accept any valuable consideration, gratuity, service or benefit whatever, or any promise to make the same or to do any act beneficial to such officer or member under the agreement or with the understanding that his vote, opinion, decision or judgment shall be given in any particular manner or upon any particular side of any question, cause, or other proceeding which is, or may by law be brought, before him in his official capacity, or that in such capacity he will make any particular nomination or appointment, he shall be imprisoned in the penitentiary not more than ten years, or be fined not more than two thousand dollars and imprisoned in the county jail not more than one year.

SEC. 2649. Every person who is convicted under either of the two preceding sections of this chapter shall forever afterward be disqualified from holding any office under the laws or constitution of this state.

SEC. 2650. **Corrupt solicitation for places of trust.** If any person directly or indirectly give, offer, or promise any valuable consideration or gratuity to any other person not being such officer as is mentioned in the preceding section, with intent to induce such other person to procure for him by his interest, influence, or any other means whatever any place of trust within this state, he shall be punished by fine not exceeding three hundred dollars and imprisoned in the county jail not exceeding one year.

SEC. 2651. **Acceptance of such reward.** If any person, not being such officer as is referred to in the preceding sections of this chapter, accept and receive of another any valuable consideration or gratuity whatever as a reward for procuring or attempting to procure any office or place of trust within this state for any person, he shall be punished by fine not exceeding three hundred [364] dollars and imprisonment in the county jail not exceeding one year.

SEC. 2652. **Bribery of jurors, referees, etc.** If any person give, offer, or promise any valuable consideration or gratuity whatever to any one summoned, appointed, or sworn as a juror; or appointed or chosen arbitrator, or umpire, or referee; or to any master in chancery; or appraiser of real or personal estate; or auditor, with intent to influence the opinion or decision of any such person in any matter, inquest, or cause, which may be pending or can legally come before him, or which he may be called on to decide in either of said capacities, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

SEC. 2653. **Acceptance of bribes by such persons.** If any person summoned appointed, or sworn as a juror; or appointed arbitrator, umpire, or referee; or master in chancery; or auditor; or appraiser as aforesaid, take or receive any valuable consideration or gratuity whatever to give his verdict, award, or report in favor of any particular party in a matter for the hearing or decision of which such person has been summoned, appointed, or chosen as aforesaid, he shall be punished by imprisonment in the penitentiary not more than ten years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year.

SEC. 2654. **Attempt to corrupt jurors or referees.** If any person attempt improperly to influence any juror in any civil or criminal cause, or any one drawn or summoned or appointed or sworn as such juror, or any arbitrator or referee, in relation to any cause or matter pending in or to be brought before the court for which such juror has been drawn, summoned, appointed or sworn, or for the hearing and decision of which such arbitrator or referee has been chosen or appointed, he shall be punished by fine not exceeding five hundred dollars and by imprisonment in the county jail not more than six months.

SEC. 2655. **Jurors receiving evidence without authority.** If any person drawn, summoned, or sworn as juror make any promise or agreement to give a verdict for or against any person in any civil or criminal case, or corruptly receive any paper, evidence, or information from any one in relation to any matter or cause for the trial of which he is sworn, without the authority of the court or officer before whom such cause or matter is then pending, he shall be punished by a fine not exceeding two hundred dollars or imprisoned in the county jail not exceeding three months.

SEC. 2656. **Sheriffs, etc., for neglect of duties.** If any sheriff, deputy sheriff, constable, or coroner receive from a defendant or any other person any money or other valuable thing as a consideration or inducement for [365] omitting or delaying to arrest any defendant, or to carry him before a magistrate or to prison; or for postponing, delaying, or neglecting the sale of property on execution; or for omitting or delaying to perform any other duty pertaining to his office, he shall be punished by fine not exceeding five hundred dollars or imprisoned in the county jail not exceeding six months, or by both fine and imprisonment at the discretion of the court.

SEC. 2657. **Officers refusing to execute process in criminal cases.** If any officer authorized to serve process wilfully refuse to execute any lawful process to him directed requiring him to apprehend or confine any person charged

with, or convicted of, any public offense; or wilfully delay or omit to execute such process, whereby such person escape, he shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding one thousand dollars or by both fine and imprisonment at the discretion of the court.

SEC. 2658. **Extortion.** If any person corruptly and wilfully demand and receive of another, for performing any service or official duty for which the fee or compensation is established by law, any greater fee or compensation than is allowed or provided for the same; or if any witness falsely and corruptly certify that as such he has traveled more miles or attended more days than he has actually traveled or attended, he shall be punished by fine not exceeding one hundred dollars for each offense, or imprisoned in the county jail not exceeding six months.

SEC. 2659. **Compounding the greater felonies.** If any person having knowledge of the commission of any offense punishable with death or imprisonment in the penitentiary for life, take any money or valuable consideration or gratuity, or any promise therefor, upon an agreement or understanding express or implied to compound or conceal such offense, or not to prosecute the same, or not to give evidence thereof, he shall be punished by imprisonment in the penitentiary not more than six years or by fine not exceeding one thousand dollars.

SEC. 2660. **Compounding lesser felonies.** If any person having knowledge of the commission of any offense punishable by imprisonment in the penitentiary for a limited term of years is guilty of the offense described in the preceding section he shall be punished by imprisonment in the county jail not more than one year and by fine not exceeding four hundred dollars.

SEC. 2661. **Suffering person on charge, etc., of capital felony to escape.** If any jailer or other officer voluntarily suffer any prisoner in his custody upon charge or conviction of a capital felony to escape, he shall be punished by imprisonment in the penitentiary not more than ten years nor less than one year.

SEC. 2662. **One charged with a lesser felony.** If any jailer or other officer voluntarily suffer any prisoner in his custody upon charge or conviction of a felony other than capital to escape, he shall be punished by imprisonment in the penitentiary not more than eight years or by fine not more than one thousand dollars.

SEC. 2663. **Other escapes.** If any jailer or other officer voluntarily suffer any prisoner in his custody upon charge or conviction of any public offense to escape, he shall be fined not more than five hundred dollars or imprisoned in the county jail not exceeding one year, or both fined and imprisoned.

SEC. 2664. **Assisting to escape in case of felony.** If any person by any means whatever aid or assist any prisoner lawfully detained in the penitentiary or in any jail or place of confinement for any felony, in an attempt to escape, whether such escape be affected or not; or forcibly rescue any person held in legal custody upon any criminal charge, he shall be punished by imprisonment in the penitentiary not exceeding ten years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2665. **In cases of misdemeanor.** Every person who by any means whatever aids or assists any prisoner lawfully committed to any jail or place of confinement, charged with or convicted of any criminal offense other than a felony, whether such escape be affected or not; or who conveys into such jail or place of confinement any disguise, instrument, arms, or other thing proper or useful to facilitate the escape of any prisoner so committed, whether

such escape be affected or attempted or not, shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding five hundred dollars, or by both such fine and imprisonment at the discretion of the court.

SEC. 2666. **From an officer.** Every person who aids or assists any prisoner in escaping or attempting to escape from the custody of any sheriff, deputy sheriff, marshal, constable, or other officer or person who has the lawful charge of such prisoner upon any criminal charge, shall be punished by fine not exceeding three hundred dollars or imprisonment in the county jail not exceeding one year, or by both fine and imprisonment at the discretion of the court.

SEC. 2667. **Prisoners escaping from penitentiary.** If any person confined in the penitentiary for any less period than for life break such prison and escape from thence, he shall be punished by imprisonment in such prison for a term not exceeding five years, to commence from and after the expiration of the original term of his imprisonment.

SEC. 2668. **From county jail.** If any person confined in a county jail upon any conviction for a criminal offense break such jail and escape therefrom, he shall be imprisoned in such prison not exceeding one year, to commence from and after the expiration of [367] his former sentence, and fined not exceeding three hundred dollars.

SEC. 2669. **Resisting execution of process.** If any person knowingly and wilfully resist or oppose any officer of this state or any person authorized by law, in serving or attempting to execute any legal writ, rule, order, or process whatsoever, he shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding one thousand dollars nor less than fifty dollars, or by both fine and imprisonment at the discretion of the court.

SEC. 2670. **Refusing to assist officers.** If any person, being lawfully required by any sheriff, deputy sheriff, coroner, constable, or other officer, wilfully neglect or refuse to assist him in the execution of his office in any criminal case or in any case of escape or rescue, he shall be punished by imprisonment in the county jail not more than six months or by fine not more than one hundred dollars.

SEC. 2671. **Falsely assuming to be a judge, justice, etc.** If any person falsely assume to be a judge, justice of the peace, magistrate, sheriff, deputy sheriff, coroner, or constable, and take upon himself to act as such or to require any one to aid or assist him in any matter pertaining to the duty of any such officer, he shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding three hundred dollars.

SEC. 2672. **Exercising office without authority, and officers exceeding authority.** If any person take upon himself to exercise or officiate in any office or place of authority in this state without being legally authorized, or if any person by color of his office wilfully and corruptly oppress any person under pretense of acting in his official capacity, he shall be punished by fine not exceeding one thousand dollars or imprisonment in the county jail not more than one year, or by both fine and imprisonment.

SEC. 2673. **Stirring up quarrels.** If any judge, justice of the peace, clerk of any court, sheriff, coroner, constable, attorney or counselor at law encourage, excite or stir up any suit, quarrel, or controversy between two or more persons with intent to injure such person or persons, he shall be punished by fine not exceeding five hundred dollars and shall be answerable to the party injured in treble damages.

SEC. 2674. **Neglect of duty by public officers.** When any duty is, or shall be, enjoined by law upon any public officer or upon any person holding any public trust or employment, every wilful neglect to perform such duty, where no special provision has been made for the punishment of such delinquency, is a misdemeanor.

SEC. 2675. **Certain acts misdemeanors.** When the performance of any act is prohibited by any statute and no penalty for the violation of such statute is imposed, the doing of such act is a misdemeanor.

[368] SEC. 2676. **Punishment for misdemeanors, where not otherwise provided for.** Every person who is convicted of a misdemeanor, the punishment of which is not otherwise prescribed by any statute of this state, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

SEC. 2677. **Public officers making false entries, returns, etc.** If any public officer fraudulently make or give false entries or false returns or false certificates or receipts in cases where entries, returns, certificates, or receipts are authorized by law, he shall be fined not exceeding five hundred dollars or imprisoned in the county jail not exceeding one year, or both at the discretion of the court.

CHAPTER 143.

MALICIOUS MISCHIEF AND TRESPASS ON PROPERTY. .

SECTION 2678. **Injuries to beasts of another.** If any person maliciously kill, maim, or disfigure, any horse, cattle, or other domestic beast of another; or maliciously administer poison to any such animals; or expose any poisonous substance with intent that the same should be taken by them, he shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding three hundred dollars.

SEC. 2679. **Injuries to dams, etc.** If any person maliciously injure or destroy any dam, lock, canal, trench, or reservoir, or any of the appurtenances thereof, or any of the gear or machinery of any mill or manufactory; or maliciously draw off the water from any mill pond, reservoir, canal, or trench; or destroy, injure, or render useless any engine or the apparatus thereto belonging prepared or kept for the extinguishment of fires, he shall be punished by imprisonment in the county jail not exceeding one year and by fine not exceeding five hundred dollars.

SEC. 2680. **Injuries to bridges, etc.** If any person maliciously injure, remove, or destroy any bridge, rail or plank road; or place, or cause to be placed any obstruction on such bridge, or road; or wilfully obstruct or injure any public road or highway; or maliciously cut, burn, or in any way break down, injure, or destroy, any telegraph post, or in any way cut, break or injure the wires or any apparatus thereto belonging, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2681. **Letting loose rafts, boats, etc.** If any person maliciously cut away, let loose, injure or destroy, any boom or raft of wood, logs, or other lumber, or any boat or vessel fastened to any place, of which he is not the owner or legal possessor, he shall be punished by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year, and shall also forfeit to the use of the person so injured double the amount of damages by him thereby sustained to be recovered in an action at law.

SEC. 2682. **Injuring trees, and breaking down fences, gates, etc.** If any person maliciously cut down, injure or destroy, any fruit or ornamental tree or other tree, vine, or shrub of another, standing or growing for ornament or use; or maliciously break down, mar, deface, or injure, any fence, hedge, or ditch inclosing lands belonging to another; or throw down, or open, any gate, or bars not his own or under his charge and leave them open, whereby an injury is done to another; or maliciously injure, destroy, or sever from the land of another any produce thereof or any thing attached thereto, he shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding one hundred dollars, or by both imprisonment and fine at the discretion of the court.

SEC. 2683. **Monuments, mile stones, sign boards, etc.** If any person maliciously take down, injure, or remove any monument erected or any tree marked as a boundary of any tract of land, city, town, or lot; or destroy, deface or alter the marks of any such monument or tree made for the purpose of designating such boundary, or injure or deface any mile stone, post, or guide board, erected on any public way; or remove, deface, or injure any sign board; or break or remove any lamp or lamp post, or extinguish any lamp on any bridge, way, street, or passage, he shall be punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment at the discretion of the court.

SEC. 2684. **Trespass by cutting, digging, carrying away, etc.** If any person wilfully commit any trespass by cutting down or destroying any timber or wood standing or growing on the land of another; or by carrying away timber or wood being on such land; or by digging or carrying away any earth, stone, marble, slate, coal, copper, lead, iron ore, or any other ore or metal; or by taking and carrying from such land, any grass, hay, corn, grain, fruit or other vegetables; or carrying away from any wharf, street, or landing place, any goods whatever in which he has no interest, he shall be punished by fine not exceeding five hundred dollars or imprisonment in the county jail not more than one year, or by both fine and imprisonment at the discretion of the court.

SEC. 2685. **Trespass on gardens, orchards, etc.** If any person wilfully commit any trespass by entering upon the garden, orchard, or improved land of another with intent to take, carry away, destroy, or injure the trees, [370] shrubs, grain, grass, hay, fruit, or vegetables there being he shall be punished by fine not exceeding fifty dollars or by imprisonment in the county jail not more than thirty days.

SEC. 2686. **Injury to buildings, fixtures, goods, etc.** If any person maliciously injure, deface, or destroy any building or fixture attached thereto, or wilfully and maliciously destroy, injure, or secrete, any goods, chattels, or valuable papers of another, he shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars, and is liable to the party injured in a sum equal to three times the value of the property so destroyed or injured, in a civil action.

SEC. 2687. **Defacing public buildings.** If any person wilfully write, make marks, or draw characters on the walls or any other part of any church, college, academy, school house, court house, or other public building; or wilfully injure, or deface the same, or any wall or fence inclosing the same, he shall be punished by fine not exceeding two hundred dollars or by imprisonment in the county jail not more than one year, or by both fine and imprisonment at the discretion of the court.

SEC. 2688. **Defacing and destroying notices, etc.** If any person intentionally deface, obliterate, tear down, or destroy, in whole or in part, any transcript, or extract from or of any law of the United States or of this state, or any proclamation, advertisement, or notification set up at any place within this state by authority of law or by order of any court, during the time for which the same is to remain set up, he shall be fined in a sum not exceeding one hundred dollars and not less than ten dollars, and may at the discretion of the court be imprisoned in the county jail not exceeding thirty days.

SEC. 2689. **Taking cord wood, etc., without consent.** If any owner, master, clerk, or any other person having charge of or belonging to any boat, vessel, or raft, take any cord wood or any other species of property from the owner or his agent without the knowledge of such owner or agent or without paying the customary price for the same, he shall be punished by fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding six months.

SEC. 2690. **Injuring monuments of state boundary.** If any person wilfully dig up, pull down, break, or destroy or in any other manner injure or remove any of the cast iron pillars or other evidences planted and fixed, or which may hereafter be planted or fixed, in and along any part of the boundaries of this state, he may be indicted therefor, and upon conviction before any court having competent jurisdiction shall be punished by fine not less than fifty dollars nor more than two hundred dollars or by imprisonment in the penitentiary for a term not less than six months, or [371] by both such fine and imprisonment at the discretion of the court.

CHAPTER 144.

OFFENSES AGAINST THE RIGHT OF SUFFRAGE.

SECTION 2691. **Bribery.** If any person offer or give a bribe to any elector for the purpose of influencing his vote at any election authorized by law; and if any elector entitled to vote at such election receives such bribe, he shall be punished by fine not exceeding five hundred dollars or imprisoned in the county jail not exceeding one year, or by both fine and imprisonment at the discretion of the court.

SEC. 2692. **Voting more than once.** If any elector unlawfully vote more than once at any election which may be held by virtue of any law of this state, he shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding one year.

SEC. 2693. **Voting when not qualified.** If any person knowing himself not to be qualified vote at any election authorized by law, he shall be punished by fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding six months.

SEC. 2694. **Voting in a county when not a resident.** If any person go or come into any county of this state and vote in such county, not being a resident thereof, he shall be punished by fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding one year.

SEC. 2695. **Voting without being qualified.** If any person wilfully vote who has not been a resident of this state for six months next preceding the election, or who at the time of the election is not twenty-one years of age, or who is not a citizen of the United States, or who is not duly qualified from other disability to vote at the place where and time when the vote is to be given; he shall be fined in a sum not exceeding three hundred dollars or imprisoned in the county jail not exceeding one year.

SEC. 2696. **Counseling one to vote when not qualified.** If any person procure, aid, or assist, counsel, or advise another to give his vote, knowing that such person is disqualified he shall be punished by fine not exceeding five hundred dollars nor less than fifty dollars and by imprisonment in the county jail not exceeding one year.

SEC. 2697. **Inducing to vote by false representation.** If any person furnish an elector with a ticket or ballot informing him that it contains a name or names different from those which are written or printed therein with an intent to induce him to vote contrary to his inclination, or [372] fraudulently or deceitfully change a ballot of any elector by which such elector is deprived of voting for such candidate or person as he intended, he shall be punished by imprisonment in the county jail not exceeding two years and by fine not exceeding one thousand dollars nor less than one hundred dollars.

SEC. 2698. **Preventing from voting by force or threats.** If any person unlawfully and by force, or threats of force, prevent or endeavor to prevent an elector from giving his vote at any public election in this state, he shall be punished by imprisonment in the county jail not exceeding six months and a fine not more than two hundred dollars.

SEC. 2699. **Giving bribe to judges, clerks, etc., of election.** If any person give or offer a bribe to any judge, clerk, or canvasser of any election authorized by law, or any executive officer attending the same, as a consideration for some act done or omitted to be done contrary to his official duty in relation to such election, he shall be punished by fine not exceeding seven hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2700. **Procuring vote or influence by force or threats.** If any person procure or endeavor to procure the vote of any elector or the influence of any person over other electors at any election, for himself or for or against any candidate, by means of violence, threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of debts, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him or by his means, he shall be punished by fine not exceeding five hundred dollars or imprisonment in the county jail not more than one year.

SEC. 2701. **Judges and clerks making false entry, etc.** If any judge or clerk of any election authorized by law knowingly make or consent to any false entry on the list of voters or poll books; or put into the ballot box or permit to be so put in any ballot not given by a voter; or take out of such box or permit to be so taken out any ballot deposited therein, except in the manner prescribed by law; or by any other act or omission designedly destroy or change the ballots given by the electors, he shall be punished by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year.

SEC. 2702. **Refusing to permit electors to vote, et contra.** When any one who offers to vote at any election is objected to by an elector as a person not possessing the requisite qualifications, if any judge of such election unlawfully permit him to vote without producing proof of such qualification in the manner directed by law, or if any such judge wilfully refuse the vote of any person who complies with the requisites prescribed by law to prove his qualifications, he shall be punished by fine not exceeding two hundred dollars [373] nor less than twenty dollars or by imprisonment in the county jail not exceeding six months.

SEC. 2703. **Acts of officers rendering election void.** If any judge, clerk, or executive officer, designedly omit to do any official act required by law or designedly do any illegal act in relation to any public election by which act or

omission the votes taken at any such election in any city, town, precinct, township, or district be lost or the electors thereof be deprived of their suffrage at such election; or designedly do any act which renders such election void, he shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned in the county jail not more than one year, or by both fine and imprisonment at the discretion of the court.

SEC. 2704. **Not returning poll books in time.** If any judge, clerk, or messenger, after having been deputed by the judges of the election to carry the poll books of such election to the place where by law they are to be canvassed, wilfully or negligently fail to deliver such poll books within the time prescribed by law safe with the seal unbroken, he shall for every such offense be punished by fine not exceeding five hundred dollars nor less than fifty dollars.

CHAPTER 145.

OFFENSES AGAINST CHASTITY, MORALITY AND DECENCY.

SECTION 2705. **Adultery.** Every person who commits the crime of adultery shall be punished by imprisonment in the penitentiary not more than three years, or by fine not exceeding three hundred dollars and imprisonment in the county jail not exceeding one year; and when the crime is committed between parties only one of whom is married both are guilty of adultery and shall be punished accordingly. No prosecution for adultery can but be commenced on the complaint of the husband or wife.

SEC. 2706. **Bigamy.** If any person who has a former husband or wife living marry another person, or continue to cohabit with such second husband or wife in this state, he or she, except in the cases mentioned in the following section, is guilty of bigamy and shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year.

SEC. 2707. **Excepted cases.** The provisions of the preceding section do not extend to any person whose husband or wife has continually [374] remained beyond seas or who has voluntarily withdrawn from the other and remained absent for the space of three years together, the party marrying again not knowing the other to be living within that time; nor to any person who has good reason to believe such husband or wife to be dead; nor to any person who has been legally divorced from the bonds of matrimony.

SEC. 2708. **Knowingly marrying husband or wife.** Every unmarried person who knowingly marries the husband or wife of another when such husband or wife is guilty of bigamy thereby, shall be punished by imprisonment in the penitentiary not exceeding three years, or by fine not more than three hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2709. **Lewdness.** If any man and woman not being married to each other lewdly and lasciviously associate and cohabit together, or if any man or woman married or unmarried is guilty of open and gross lewdness and designedly make any open and indecent or obscene exposure of his or her person or of the person of another, every such person shall be punished by imprisonment in the county jail not exceeding six months or by fine not exceeding two hundred dollars.

SEC. 2710. **Keeping house of ill fame.** If any person keep a house of ill fame resorted to for the purpose of prostitution or lewdness, he shall be punished by imprisonment in the county jail not more than one year or by fine not

exceeding five hundred dollars; and any person who, after having been once convicted of such offense, is again convicted of the like offense shall be punished by imprisonment in the penitentiary not less than one year nor more than three years.

SEC. 2711. **Lease to person convicted void.** When the lessee of a dwelling house is convicted of keeping the same as a house of ill fame the lease or contract for letting such house is, at the option of the lessor, void and such lessor may thereupon have the like remedy to recover possession as against a tenant holding over after the expiration of his term.

SEC. 2712. **Leasing house for such purpose.** If any person let any house knowing that the lessee intends to use it as a place or resort for the purpose of prostitution and lewdness, or knowingly permit such lessee to use the same for such purpose, he shall be punished by fine not exceeding three hundred dollars or imprisonment in the county jail not exceeding six months.

SEC. 2713. **Enticing virtuous females to bad houses.** If any person inveigle or entice any female, before reputed virtuous, to a house of ill fame, or knowingly conceal or aid or abet in concealing such female so deluded or enticed for the purpose of prostitution or lewdness, he shall be punished by imprisonment in the penitentiary not more than ten years nor less than three years.

[375] SEC. 2714. **Violation of sepulchre and exposure of dead bodies.** If any person without lawful authority wilfully dig up, disinter, remove, or carry away any human body or the remains thereof from its place of interment, or aid or assist in so doing; or wilfully receive, conceal, or dispose of any such human body or remains thereof; or if any person wilfully and unnecessarily and in an improper manner indecently expose, throw away, or abandon any human body or the remains thereof in any public place or in any river, stream, pond, or other place, every such offender shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding one thousand dollars, or by both fine and imprisonment.

SEC. 2715. **Injury to monuments, etc.** If any person wilfully destroy or injure any tomb, grave-stone, monument, or other thing placed or designated as a memorial of the dead; or any fence, railing or other thing placed about the same; or any place inclosed for the burial of the dead; or wilfully destroy, injure or remove any tree, shrub or plant within such inclosure, he shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars, or by both fine and imprisonment.

SEC. 2716. **Cruelty to animals.** If any person cruelly beat or torture any horse or ox or other beast, whether belonging to himself or another, he shall be punished by fine not exceeding one hundred dollars.

SEC. 2717. **Selling obscene books, pictures, etc.** If any person import, print, publish, sell, or distribute any book, pamphlet, ballad, or any printed paper containing obscene language or obscene prints, pictures or descriptions manifestly tending to corrupt the morals of youth; or introduce into any family, school, or place of education; or buy, procure, receive, or have in his possession any such book, pamphlet, ballad, printed paper, picture or description, either for the purpose of loan, sale, exhibition, or circulation; or with intent to introduce the same into any family, school, or place of education, he shall be punished by fine not exceeding two hundred dollars.

SEC. 2718. **Disturbing worshiping congregations.** If any person wilfully disturb or disquiet any assembly of persons met for religious worship, by profane discourse or rude and indecent behavior, or by making a noise either within the place of worship or so near as to disturb the order and solemnity of the assembly, he shall be punished by imprisonment in the county jail not more than thirty days or by fine not exceeding fifty dollars.

SEC. 2719. **Same.** If any person, within one mile from the place where any religious society is collected together for religious worship in any field or woodland, expose to sale or gift any spirituous or other liquors or any article of merchandise or [376] any provisions or other articles of traffic, he shall be punished by fine not exceeding fifty dollars.

SEC. 2720. **Saving.** The preceding section does not apply to tavern or grocery keepers exercising their calling or business in the places mentioned in their licenses (if they have such); nor to any distillers or manufacturers or others in the prosecution of their ordinary calling or business, so as to prevent them from vending or exposing to sale the articles above prohibited at their place of residence; nor to any person who has a written permit from the person having the charge of such religious society to sell any of such prohibited articles on complying with the regulations of such religious assembly and with the laws of the state.

SEC. 2721. **Keeping gambling houses.** If any person keep a house, shop, or place resorted to for the purpose of gambling; or permit or suffer any person in any house, shop, or other place under his control or care, to play at cards, dice, faro, roulette, equality, or other game for money or other thing, such offender shall be fined in a sum not less than fifty dollars nor more than three hundred dollars or imprisoned in the county jail not exceeding one year, or be both fined and imprisoned. In a prosecution under this section any person who has the charge of or attends to any such house, shop, or place, may be deemed the keeper thereof.

SEC. 2722. **Search warrant against.** If any person make oath before a justice of the peace that he has probable cause to suspect and does suspect that any house, building, or place (naming the house or place and the occupant) is unlawfully used as a common gaming house or place for the purpose of gaming for money or other property, and that persons resort to the same for that purpose, whether they be known to the complainant or not, such justice may issue his warrant for the purpose of searching such house or building for all such implements or gambling devices mentioned in the preceding section and for the apprehension of the occupant or keeper of said house or building; and after such search, seizure, and arrest, the said implements and keeper shall be carried before such justice of the peace to be dealt with as provided by law. And any gambling device brought before the justice may be destroyed by him, and an entry thereof shall be made upon his docket.

SEC. 2723. **Gaming and betting.** If any person play at any game for any sum of money or other property of any value, or make any bet or wager for money or other property of value, he shall be punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding six months.

SEC. 2724. **Gaming contracts void.** All promises, agreements, notes, bills, bonds, or other contracts, mortgages, or other securities, when the [377] whole or any part of the consideration thereof is for money or other valuable thing won or lost, laid, staked, or bet at or upon any game of any kind or on any wager, are absolutely void and of no effect.

CHAPTER 146.

OFFENSES AGAINST PUBLIC HEALTH.

SEC. 2725. **Selling unwholesome provisions.** If any person knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer he shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding two hundred dollars, or by both fine and imprisonment.

SEC. 2726. **Adulterating food or liquor.** If any person fraudulently adulterate for the purpose of sale, any substance intended for food, or any wine, spirituous or malt liquor or other liquor intended for drinking, he shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding three hundred dollars, and the article so adulterated shall be forfeited and destroyed.

SEC. 2727. **Adulterating drugs and medicines.** If any person fraudulently adulterate for the purpose of sale any drug or medicine in such manner as to lessen the efficacy or change the operation of such drugs or medicines, or to make them injurious to health; or sell them knowing that they are thus adulterated, he shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding five hundred dollars, and such adulterated drugs and medicines shall be forfeited and destroyed.

SEC. 2728. **Apothecaries, etc., neglecting to label poisons.** If any apothecary, druggist, or other person, sell and deliver any arsenic, corrosive sublimate, prussic acid, or any poisonous liquid or substance, without having the word "poison" and the true name thereof written or printed upon a label attached to the vial, box, or parcel containing the same, he shall be punished by fine not exceeding one hundred dollars nor less than twenty dollars.

SEC. 2729. **Inoculating with small pox, with intent to cause its spread.** If any person inoculate himself or any other person, or suffer himself to be inoculated with the small pox within this state, or come within the state with intent to cause the prevalence or spread of this infectious disease, he shall be punished by imprisonment in the penitentiary not more than three years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year.

[378] CHAPTER 147.

OFFENSES AGAINST PUBLIC POLICY.

SEC. 2730. **Establishment of lotteries, and sale of tickets.** If any person make or aid in making or establishing any lottery in this state; or advertise or make public any scheme for any such lottery; or advertise or offer for sale any ticket or part of a ticket in any lottery; or sell, negotiate, or dispose of, or purchase, or receive the same, or have in his possession any ticket or paper purporting to be the number of any ticket of any lottery, with intent to sell or dispose of the same on his own account or as the agent of another, he shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding one thousand dollars, or by both fine and imprisonment at the discretion of the court.

SEC. 2731. **Banking associations.** If any person subscribe to, or become a member of, or be in any way interested in, any association or company formed for the purpose of issuing or putting in circulation any bill, check, ticket.

certificate, promissory note, or other paper, or the paper of any bank to circulate as money in this state, he shall be punished by imprisonment in the county jail not exceeding one year, or by fine not more than one thousand dollars.

SEC. 2732. Penalty on directors, etc. No incorporated company shall employ its effects or any part thereof, or be in any way interested in any fund that is employed for the purpose of issuing notes or other evidences of debt to be loaned or put in circulation as money, and any director, officer, or agent of any such company who violates the provisions of this section shall be imprisoned in the county jail not exceeding one year or be fined not exceeding one thousand dollars.

SEC. 2733. Notes, etc., given to banking associations void. All notes and other securities for the payment of money or the delivery of property, made or given to any association, institution, or company that is formed for any such unlawful purpose, or made, or given to secure the payment of any money loaned or discounted by any company or its officers contrary to the provisions of the preceding section, are void.

SEC. 2734. Issuing bills to circulate as money. No person, association, or corporation shall issue any bills, drafts, or other evidences of debt to be loaned or put in circulation as money or to pass or be used as a currency or circulating medium; and every person, association, or corporation, and every member thereof who violates the [379] provisions of this section shall be punished by fine not exceeding one thousand dollars.

SEC. 2735. Disposing of liquor to Indians or persons intoxicated. If any tavern keeper or other person give, sell, or dispose of any spirituous or intoxicating drink to any Indian within this state or to any person who is intoxicated, he shall be punished by fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding one year, or by both fine and imprisonment at the discretion of the court.

SEC. 2736. Bringing paupers within this state. If any person knowingly bring within this state, any pauper or poor person with the intent of making him a charge on any of the townships or counties therein, he shall be punished by fine not exceeding five hundred dollars and stand charged with his support.

SEC. 2737. Transacting business — license. If any person carry on or transact any business or occupation without license therefor when such license is required by any law of this state; he shall be fined in a sum not exceeding two hundred dollars or imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment.

CHAPTER 148.

OFFENSES AGAINST THE PUBLIC PEACE.

SECTION 2738. Affray between two or more. If two or more persons voluntarily or by agreement engage in any fight, or use any blows or violence toward each other in an angry or quarrelsome manner; in any public place to the disturbance of others, they are guilty of an affray and shall be punished by imprisonment in the county jail not exceeding three months or by fine not exceeding fifty dollars.

SEC. 2739. Unlawful assembly of three or more. When three or more persons in a violent or tumultuous manner assemble together to do an unlawful act, or when together attempt to do an act whether lawful or unlawful in an unlawful, violent, or tumultuous manner to the disturbance of others, they

are guilty of an unlawful assembly and every such offender shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars.

SEC. 2740. **Riot.** When three or more persons together and in a violent or tumultuous manner commit an unlawful act, or together do a lawful act in an unlawful, violent, or tumultuous manner, to the disturbance of others, they are guilty of a riot, and every such offender shall be punished as is provided in the preceding section.

[380] SEC. 2741. **One person may be convicted of a riot.** Any person guilty of unlawfully assembling, or of a riot, may alone be indicted and convicted thereof, but it must be alleged in the indictment and proved on the trial that three or more persons were engaged therein.

SEC. 2742. **Exciting disturbance in certain houses.** If any person make or excite any disturbance in any tavern, store, or grocery, or at any election or public meeting, or in any other place where the citizens are peaceably and lawfully assembled, he shall be punished by fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding six months.

SEC. 2743. **Injuring or destroying houses, boats, etc.** If any person or persons unlawfully or riotously assembled pull down, injure, or destroy; or begin to pull down, injure or destroy, any dwelling house or other building; or destroy or attempt to injure or destroy any boat or vessel; or perpetrate any premeditated injury on the person of another, not being a felony, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year, and shall also be answerable to any person injured to the full amount of the damages by him sustained, in an action at law.

CHAPTER 149.

CHEATING BY FALSE PRETENSES, GROSS FRAUDS AND CONSPIRACY.

SECTION 2744. **Cheating by false pretenses.** If any person designedly and by false pretense or by any privy or false token and with intent to defraud obtain from another any money, goods, or other property; or so obtain the signature of any person to any written instrument the false making of which would be punished as forgery, he shall be punished by imprisonment in the penitentiary not more than seven years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2745. **Fraudulent conveyances.** Any person who knowingly being a party to any conveyance or assignment of any estate or interest in lands, goods, or things in action, or of any rents or profits arising therefrom; or being a party to any charge on such estate, interest, rents, or profits, made or created with intent to defraud prior or subsequent purchasers or to hinder, delay, or defraud creditors or other persons; and every person who being privy to or knowing of such fraudulent conveyance, assignment, or charge, puts the same in use as having been made in good faith, shall be fined not exceeding one thousand [381] dollars and imprisoned in the county jail not exceeding one year.

SEC. 2746. **Suppression of last will.** If any person, having in his possession or under his control any last will and testament of any deceased person, wilfully suppress, secrete, deface, or destroy the same, or any codicil thereto belonging, with intent to injure or defraud any devisee, legatee, or other

person, he shall be punished by imprisonment in the penitentiary not more than seven years, or by fine not exceeding one thousand dollars and imprisonment in the county jail not more than year.

SEC. 2747. **False weights and measures.** If any person with intent to defraud use a false balance, weight, or measure in the weighing or measuring of any thing whatever that is purchased, sold, bartered, shipped or delivered for sale or barter or that is pledged or given in payment, he shall be punished by fine not exceeding five hundred dollars nor less than fifty dollars or by imprisonment in the county jail not more than six months, or by both fine and imprisonment at the discretion of the court.

SEC. 2748. **Forfeited to the county.** The magistrate granting the warrant of arrest for this offense must also direct the seizure of the false weights, balances, or measures; and if the party be convicted, or they are found to be false, they shall be forfeited to the county and after being made of standard weight or measure may be sold and the money arising from such sale must be paid into the county treasury.

SEC. 2749. **Altering stamps, marks and brands.** If any person falsely alter any stamp, brand, or mark on any cask, package, box, or bale containing merchandise or produce, made by a public officer appointed for that purpose in order to denote the quality, weight, or quantity of the contents thereof, with intent to defraud, he shall be fined not more than five hundred dollars and imprisoned in the county jail not exceeding one year.

SEC. 2750. **Counterfeiting mark of another.** If any person counterfeit any mark, stamp, or brand of another, or falsely mark any cask, package, box, or bale as to quality or quantity, with intent to defraud, he shall be punished by fine not exceeding two hundred dollars or by imprisonment in the county jail not more than six months, or by both fine and imprisonment.

SEC. 2751. **Using box, etc., marked by another with intent to defraud.** If any person with intent to defraud use any cask, package, box or bale, marked, branded, or stamped by another, for the sale of merchandise or produce of an inferior quality or less in quantity or weight than is denoted by such mark, stamp or brand, he shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding two hundred dollars, or by both fine and imprisonment at the discretion of the court.

SEC. 2752. Every person who is convicted of any gross fraud [382] or cheat at common law shall be punished as provided in the preceding section.

SEC. 2753. **Fraudulent destruction of boats, etc.** If any person cast away, sink, or otherwise destroy any raft, boat, or vessel within any county of this state with intent to injure or defraud any owner or insurer thereof, or the owner or insurer of any property laden on board the same or of any part thereof, he shall be punished by imprisonment in the penitentiary not exceeding five years, or fined not exceeding two thousand dollars and imprisoned in the county jail not exceeding one year.

SEC. 2754. **Fitting them out for such purpose.** If any person lade, equip, or fit out, or assist in lading, equipping or fitting out any raft, boat, or vessel with intent that the same be cast away, burnt, sunk, or otherwise destroyed, to injure or defraud any owner or insurer thereof or of any property laden on board the same, he shall be punished by fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year.

SEC. 2755. **Making false bills of lading, etc.** If any owner of any boat or vessel or of any property laden or pretended to be laden on board the same, or if any other person concerned in the lading or fitting out such boat or vessel, make out and exhibit or cause to be made out and exhibited any false estimates of any goods or property laden or pretended to be laden on board

such boat or vessel, with intent to injure or defraud any insurer of such boat or vessel or property or of any part thereof, he shall be fined not exceeding one thousand dollars or imprisoned in the penitentiary not more than three years.

SEC. 2756. **Making false affidavits and protests.** If any master or other officer of any boat or vessel make or cause to be made any false affidavit or protest, or if any owner or other person concerned in such boat or vessel or in the goods or property laden on board the same procure any such false affidavit or protest to be made or exhibit the same, with intent to injure, deceive, or defraud any insurer of such boat or vessel or of the goods or property laden on board of the same, he shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding two thousand dollars and imprisonment in the county jail not exceeding one year.

SEC. 2757. **Conspiracy to prosecute.** If two or more persons conspire or confederate together with intent falsely and maliciously to cause or procure another person to be indicted or in any way impleaded or prosecuted for an offense of which he is innocent, whether such person be so impleaded, indicted or prosecuted or not, they shall be deemed guilty of a conspiracy and upon conviction thereof shall be punished by imprisonment in the penitentiary not more than five years, or by a fine not exceed-[383]-ing one thousand dollars nor less than one hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 2758. **Conspiracy in other cases.** If any two or more persons conspire or confederate together with the fraudulent or malicious intent wrongfully to injure the person, character, business, or property of another; or to do any illegal act injurious to the public trade, health, morals or police; or to the administration of public justice; or to commit any felony, they are guilty of a conspiracy, and every such offender, and every person who is convicted of conspiracy at common law, shall be punished by imprisonment in the penitentiary not more than three years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year.

CHAPTER 150.

NUISANCES, AND THE ABATEMENT THEREOF.

SECTION 2759. **What deemed nuisances.** The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which by occasioning noxious exhalations, offensive smells, or other annoyances becomes injurious and dangerous to the health, comfort, or property of individuals or the public; the causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others; the obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water; or the corrupting or rendering unwholesome or impure the water of any river, stream, or pond; or unlawfully diverting the same from its natural course or state to the injury or prejudice of others; and the obstructing or incumbering by fences, buildings, or otherwise, the public highways, private ways, streets, alleys, commons, landing places, or burying grounds, are nuisances.

SEC. 2760. **Building for manufacture of powder.** If any person carry on the business of manufacturing gunpowder or of mixing or grinding the composition therefor in any building within eighty rods of any valuable building

erected at the time when such business may be commenced, the building in which such business is thus carried on is a public nuisance and such person is liable to be prosecuted accordingly.

SEC. 2761. **Houses of ill fame, gambling houses, etc.** Houses of ill fame kept for the purpose of prostitution and lewdness, gambling houses, or houses where drunkenness, quarrelling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others, are nui-[384]-sances and may be abated and punished as provided in this chapter.

SEC. 2762. **Punishment and abatement of nuisances.** Whoever is convicted of erecting, causing, or continuing a public or common nuisance as described in this chapter, or at common law when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided shall be punished by a fine not exceeding one thousand dollars, and the court with or without such fine may order such nuisance to be abated, and issue a warrant as hereinafter provided.

SEC. 2763. **Process for the abatement of.** When upon indictment, complaint, or action, any person is adjudged guilty of a nuisance, the court before whom such conviction is had may, in addition to the fine imposed if any or to the judgment for damages and costs for which a separate execution may issue, order that such nuisance be abated or removed at the expense of the defendant, and after inquiry into and estimating as nearly as may be the sum necessary to defray the expense of such abatement, the court may issue a warrant therefor.

SEC. 2764. **Justice of peace may issue such warrant.** When the conviction is had upon an action before a justice of the peace and no appeal is taken, the justice after estimating as aforesaid the sum necessary to defray the expenses of removing or abating the nuisance may issue a like warrant.

SEC. 2765. **Warrant stayed if, etc.** Instead of issuing such warrant the court or justice may order the same to be stayed, upon motion of the defendant and upon his entering into an undertaking in such sum and with such surety as the court or justice may direct, to the state, conditioned either that the defendant will discontinue said nuisance or that within a time limited by the court and not exceeding six months he will cause the same to be abated and removed as either is directed by the court; and upon his default to perform the condition of his undertaking the same shall be forfeited and the court in term time or vacation, or justice of the peace as the case may be, upon being satisfied of such default may order such warrant forthwith to issue, and a *scire facias* on such undertaking.

SEC. 2766. **Expenses of abatement.** The expense of abating a nuisance by virtue of a warrant can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any building, fences, or other things, that may be removed as a nuisance may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of removal such balance must be paid by the officer to the defendant or to the owner of the property levied upon, and if said proceeds are not sufficient to [385] pay such expenses the officer must collect the residue thereof.

CHAPTER 151.

LIBEL.

SECTION 2767. **Definition.** A libel is the malicious defamation of a person made public by any printing, writing, sign, picture, representation, or effigy, tending to provoke him to wrath or expose him to public hatred, contempt, or ridicule, or to deprive him of the benefits of public confidence and social intercourse; or any malicious defamation made public as aforesaid, designed to blacken and villify the memory of one who is dead, and tending to scandalize or provoke his surviving relatives or friends.

SEC. 2768. **Punishment.** Every person who makes, composes, dictates, or procures the same to be done; or who wilfully publishes or circulates such libel; or in any way knowingly and wilfully aids or assists in making, publishing, or circulating the same shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding one thousand dollars.

SEC. 2769. **The truth given in evidence.** In all prosecutions or indictments for libel the truth thereof may be given in evidence to the jury, and if it appear to them that the matter charged as libelous was true and was published with good motives and for justifiable ends the defendant shall be acquitted.

SEC. 2770. **No libel without publication.** No printing, writing, or other thing is a libel unless there has been a publication thereof.

SEC. 2771. **What is publication.** The delivering, selling, reading, or otherwise communicating a libel; or causing the same to be delivered, sold, read, or otherwise communicated, to one or more persons or to the party libeled, is a publication thereof.

SEC. 2772. **Jury to determine law and fact.** In all indictments or prosecutions for libel the jury, after having received the direction of the court, shall have the right to determine at their discretion the law and the fact.

[386] TITLE XXIV.

OF PROCEEDINGS IN CRIMINAL CASES.

CHAPTER 152.

THE PREVENTION OF PUBLIC OFFENSES.

SECTION 2773. **Who may resist.** Lawful resistance to the commission of a public offense may be made by the party about to be injured or by others.

SEC. 2774. **In what cases.** Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person;
2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

SEC. 2775. **Any person may aid another.** Any other person in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

CHAPTER 153.

INTERVENTION OF PUBLIC OFFICERS TO PREVENT THE COMMISSION OF PUBLIC OFFENSES.

SECTION 2776. **Mode of preventing.** Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace;
2. By forming a police in cities and villages, and by requiring their attendance in exposed places;
3. By suppressing riots.

SEC. 2777. **Who may aid officers.** Whenever the officers of justice are authorized to act in the prevention of public offenses, other persons who by their command act in their aid are justified in so doing.

[387] CHAPTER 154.

SECURITY TO KEEP THE PEACE.

SECTION 2778. **Magistrates—their powers and duties.** The judges of the supreme, district, and county courts, mayors of cities or towns, and justices of the peace, are magistrates, and have power to cause all laws made for the preservation of the public peace to be kept, and in the execution of that power may require persons to give security to keep the peace, in the manner provided in this chapter.

SEC. 2779. **Complaint and testimony in writing.** Whenever complaint is made to a magistrate that any person has threatened to commit any offense against the person or property of another, it is the duty of the magistrate to examine such complainant, and any witnesses he may produce, on oath, and to reduce such examination to writing and cause the same to be subscribed by the parties so examined.

SEC. 2780. **When warrant to issue.** If it appear from such examination that there is just cause to fear the commission of any public offense, such magistrate must issue a warrant under his hand directed generally to the sheriff of the county or any constable, marshal, or policeman of the city or town, reciting the substance of the information and commanding the officer forthwith to arrest the person complained of and bring him before the magistrate.

SEC. 2781. **Defendant appearing—testimony.** When the person complained of is brought before the magistrate, if the charge be controverted the magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witnesses.

SEC. 2782. **When defendant discharged.** If it appear that there is no just reason to fear the commission of the offense alleged, the person complained of must be discharged.

SEC. 2783. **When to give security.** If there be just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in such sum as the magistrate may direct, with one or more sufficient sureties, to abide the order of the next district court of the county and in the meantime to keep the peace toward the people of this state and particularly toward the complainant.

SEC. 2784. **When committed.** If the undertaking required by the last section be given, the party complained of must be discharged. If he do not give it, the magistrate must commit him to prison specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

SEC. 2785. If the person complained of be committed for not [388] giving an undertaking he may be discharged by a magistrate upon giving the same.

SEC. 2786. **Papers returned to district court.** The undertaking together with the complaint, depositions, and other papers in the cause, must be returned by the magistrate to the district court of the county on the first day of the next term thereof.

SEC. 2787. **Assaulting before magistrate.** Any person who, in the presence of a court or magistrate, shall assault or threaten to assault another or to commit an offense against his person or property, may be ordered by the court or magistrate to give security as above provided in the section relating to keeping the peace.

SEC. 2788. **Of appearance.** A person who has entered into an undertaking to keep the peace must appear on the first day of the next term of the district court of the county, and if the complainant appear and the defendant do not appear, the court may forfeit the undertaking and order the same to be prosecuted.

SEC. 2789. **Same.** If neither the complainant nor defendant appear, the court must discharge the undertaking on payment of costs by the defendant; but if both parties appear the court may hear their proofs and allegations and may either discharge the undertaking or require a new one for a time not exceeding one year.

CHAPTER 155.

POLICE IN CITIES AND VILLAGES, AND THEIR ATTENDANCE AT EXPOSED PLACES.

SECTION 2790. **Police in cities and towns.** The organization and regulation of the police in cities and towns shall be as regulated by law.

SEC. 2791. **Mayor to order out force.** The mayor or other officer having the direction of the police in a city or village must order a force sufficient to keep the peace to attend any public meeting when he is satisfied that a breach of the peace is to be apprehended.

SEC. 2792. **When no police.** If there be no police in such city or town he may order out such number of able bodied citizens as he may deem necessary for the purpose of keeping the peace, as provided in the last section.

[389] CHAPTER 156.

RESISTANCE OF PROCESS, AND SUPPRESSION OF RIOTS.

SECTION 2793. **Calling out posse.** When a sheriff or other officer authorized to execute process finds, or has reason to apprehend, that resistance will be made to the execution thereof he may command as many male inhabitants of his county as he may think proper, and any military company or companies in the county, armed and equipped, to assist him in overcoming the resistance, and if necessary in seizing, arresting, and confining the resisters and their aiders and abettors, to be punished by law.

SEC. 2794. **Officer to certify court of resisters.** The officer shall certify to the court from which the process issued, the names of the resisters and their aiders and abettors, to the end that they may be punished for a contempt.

SEC. 2795. **Refusing to assist.** Every person commanded by a public officer to assist him in the execution of process, as provided in the first section of this chapter, who without lawful cause refuses or neglects to obey such command, is guilty of a misdemeanor.

SEC. 2796. **Power of county not sufficient.** If it appear to the governor that the power of any county is not sufficient to enable the sheriff to execute process delivered to him, he may on the application of the sheriff order such posse or military force from any other county or counties as is necessary.

SEC. 2797. **Unlawful assemblies.** When persons to the number of twelve or more armed with dangerous weapons, or persons to the number of thirty or more, whether armed or not, are unlawfully or riotously assembled in any city or town, the judges, sheriff and his deputies if they be present, the mayor, aldermen, marshal, constables, and justices of the peace of such city or town, must go among the persons assembled or as near them as may be safe and command them in the name of the state immediately to disperse.

SEC. 2798. **Arrest of the persons.** If the persons assembled do not immediately disperse, the magistrates and officers must arrest them, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

SEC. 2799. **Refusing to aid officer.** If any person commanded to aid the magistrate or officer, without good cause neglect to do so, he is guilty of a misdemeanor.

SEC. 2800. **Officer failing to do his duty.** If a magistrate or officer, having notice of an unlawful or riotous assembly as above provided in this chapter, [390] neglect to proceed to the place of the assembly or as near thereto as he can with safety and to exercise the authority with which he is invested for suppressing the same and arresting the persons, he is guilty of a misdemeanor.

SEC. 2801. **If assembly does not disperse.** If the persons so assembled and commanded to disperse do not immediately disperse, any two of the magistrates or officers before mentioned may command the aid of a sufficient number of persons and may proceed in such manner as in their judgment is necessary to disperse the assembly and arrest the offenders.

SEC. 2802. **When armed force is called out.** When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly or arresting the offenders, it must obey such orders in relation thereto as have been made by the governor, or by a judge of the supreme, district, or county court, a sheriff, or magistrate, as the case may be.

CHAPTER 157.

THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

SECTION 2803. **Persons liable under the laws of this state.** Every person, whether an inhabitant of this or any other state or country or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States.

SEC. 2804. **Offenses commenced without the state, and consummated in it.** When the commission of a public offense commenced without this state is

consummated within the boundaries thereof, the defendant is liable to punishment therefor in this state though he was without the state at the time of the commission of the offense charged, provided he consummated the offense through the intervention of an innocent or guilty agent within this state, or any other means proceeding directly from himself; and in such case the jurisdiction is in the county in which the offense is consummated.

SEC. 2805. **Fighting duel without the state.** When an inhabitant or resident of this state by previous appointment or engagement fights a duel or is concerned as second therein without the jurisdiction of this state and in such duel a wound is inflicted upon any person whereof he die within this state, the jurisdiction of the offense is in the county where the death may happen.

SEC. 2806. **Offense in part in one county, etc.** When a public offense is committed in part in one county and in part within another, or when the acts or effects [391] constituting or requisite to the consummation of the offense occur in two or more counties, jurisdiction is in either county.

SEC. 2807. **Committed near boundary of county.** When a public offense is committed on the boundary of two or more counties or within five hundred yards thereof, the jurisdiction is in either county.

SEC. 2808. **Offenses on boats and vessels.** When an offense is committed within this state on board a boat or vessel navigating a river, lake, or canal, or lying therein in the prosecution of her voyage, the jurisdiction is in any county through which the boat or vessel is navigated in the course of her voyage or in the county where the voyage shall terminate.

SEC. 2809. **Jurisdiction in any county where, etc.** The jurisdiction of an indictment for the crime of forcibly and without lawful authority seizing and confining another, or kidnapping him with intent against his will to cause him to be confined or imprisoned within the state, or to be sent out of the state; or of taking or enticing away a child under the age of twelve years from the parents, guardian, or other person having the legal charge of her person, with the intent to detain or conceal such child; or of taking or enticing away an unmarried female of previously chaste character under the age of fifteen years, for the purpose of prostitution: or of taking any woman unlawfully and against her will, or by force, menace, or duress compelling her to marry against her will; or of seducing and debauching any unmarried woman of previously chaste character, is in any county in which the offense is committed or into or out of which the person upon whom the offense was committed may, in the prosecution of the offense, have been brought, or in which an act is done by the offender in instigating, procuring, promoting, aiding in, or being an accessory to, the commission of the offense, or in abetting the parties concerned therein.

SEC. 2810. **Jurisdiction in case of bigamy.** When the offense of bigamy is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county.

CHAPTER 158.

THE TIME OF COMMENCING CRIMINAL ACTIONS.

SECTION 2811. **Limitation—murder.** A prosecution for murder may be commenced at any time after the death of the person killed.

SEC. 2812. **Within one year.** An indictment or a prosecution for a public offense must be found or commenced within one year after the commission thereof in the following cases, and not after:

[392] 1. Taking or enticing away an unmarried female under the age of fifteen years, for the purpose of marriage or prostitution;

2. Seducing and debauching an unmarried female of previously chaste character;

3. For rape and adultery;

4. For an assault with an intent to commit a rape;

5. All misdemeanors triable before a justice of the peace.

SEC. 2813. **Within three years.** In all other cases an indictment for a public offense must be found within three years after the commission thereof, and not afterward.

SEC. 2814. **If defendant out of the state.** If when the offense is committed the defendant is out of the state, the indictment or prosecution may be found or commenced within the time herein limited after his coming into the state, and no period during which the party charged was not usually and publicly resident within the state is a part of the limitation.

SEC. 2815. **When indictment is found.** An indictment is found within the meaning of this chapter when it is duly presented by the grand jury in open court and there received and filed.

CHAPTER 159.

GENERAL DEFINITIONS AND PROVISIONS AS TO CRIMES AND OFFENSES.

SECTION 2816. **Division of offenses.** Public offenses are divided into felonies and misdemeanors.

SEC. 2817. **Felony.** A felony is an offense punishable with death, or by imprisonment in the penitentiary of this state.

SEC. 2818. **Misdemeanor.** Every other criminal offense is a misdemeanor.

SEC. 2819. **Who punished.** No person can be punished for a public offense except upon legal conviction in a court having jurisdiction thereof.

SEC. 2820. **Style of prosecution.** All criminal prosecutions shall be commenced and carried on in the name of "The State of Iowa."

SEC. 2821. **Second prosecution.** No person shall be subject to a second prosecution for a public offense for which he has once been prosecuted and legally convicted or acquitted.

[393] CHAPTER 160.

INFORMATION AND MAGISTRATES.

SECTION 2822. **Information.** The information is the allegation made to a magistrate that a person has been guilty of some designated public offense.

SEC. 2823. **Who are magistrates.** The following persons are magistrates:

1. The judges of the supreme court;
2. The judges of the district and county courts;
3. Justices of the peace;
4. Police and other special justices in cities, towns, and villages;
5. The mayors of cities and towns.

CHAPTER 161.

WARRANT OF ARREST.

SECTION 2824. **Magistrate to examine.** When an information is laid before a magistrate of the commission of a public offense triable within the county, he must examine on oath the informant or prosecutor and any witnesses he may produce and take their depositions in writing and cause them to be subscribed by the party making them.

SEC. 2825. **Affidavits.** The affidavits must set forth the facts stated by the prosecutor and his witnesses tending to establish the commission of the offense and the guilt of the defendant.

SEC. 2826. **Warrant issued.** If the magistrate be satisfied from such testimony that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, he shall issue a warrant of arrest.

SEC. 2827. **Form of warrant.** The warrant may be substantially in the following form:

“County of (here name the county),

The State of Iowa.

To any sheriff, constable, or marshal of the state.

Information upon oath having been this day laid before me by A. B. (here state the name) that the crime of (designating it by its name) has been committed, and accusing C. D. (the name of the defendant, if known) thereof;

You are therefore commanded forthwith to arrest the above [394]named C. D. and bring him before me at (naming the place), or in case of my absence or inability to act before the nearest or most accessible magistrate in this county.

Dated at — this — day of — A. D. —”

SEC. 2828. **What warrant to contain.** The warrant must specify the name of the defendant, or if it be unknown to the magistrate he may be designated therein by any name. It must also state an offense which authorizes the magistrate to issue the warrant, the time of issuing it, and the county, city, town or village, where it was issued, and must be signed by the magistrate with his name of office.

SEC. 2829. **Direction of warrant.** The warrant must be directed to and executed by a peace officer, and may be executed in any county of this state.

SEC. 2830. **Who peace officers.** Peace officers are sheriffs of counties, constables, marshals and policemen of cities, towns, and villages respectively.

SEC. 2831. **Arrest.** If the offense charged in the warrant be a felony the officer making the arrest must take the defendant before the magistrate who issued it, or in the event of his absence or inability to act before the nearest or most accessible magistrate in the county where the warrant was issued.

SEC. 2832. **Arrest in another county.** If the offense charged in the warrant be a misdemeanor and the defendant be arrested in another county, the officer must, upon being required by the defendant, bring him before a magistrate of such county, who shall admit the defendant to bail.

SEC. 2833. **Admitting to bail.** On admitting the defendant to bail the magistrate must certify on the warrant the fact of the bail being taken, and deliver the same together with the undertaking of bail to the officer having charge of the defendant, who shall forthwith discharge him from arrest and without delay deliver the warrant and the undertaking to the clerk of the court at which the defendant is required to appear.

SEC. 2834. **Bail not given.** If bail be not forthwith given to such magistrate the officer shall take the defendant before the magistrate who issued the warrant, or if he be absent or unable to act before the nearest or most accessible magistrate of the county where the warrant was issued.

SEC. 2835. **No delay.** In all cases where the defendant has been arrested he must be taken before the magistrate without unnecessary delay.

SEC. 2836. **If before another magistrate.** If the defendant be brought for examination before a magistrate of the county other than the one who issued the warrant the affidavits on which the same was issued must be sent to such magistrate, or if they cannot be procured the [395] prosecutor and his witnesses must be summoned to give their testimony anew.

CHAPTER 162.

ARREST BY AN OFFICER UNDER A WARRANT, AND WITHOUT A WARRANT.

SECTION 2837. **Arrest.** Arrest is the taking a person into custody that he may be held to answer for a public offense.

SEC. 2838. **How made.** An arrest is made by an actual restraint of the person of the defendant or by his submission to the custody of the officer.

SEC. 2839. **Authority stated.** The officer must inform the defendant that he acts under the authority of a warrant and must also show the warrant if required.

SEC. 2840. **Arrest without warrant.** A peace officer may without a warrant arrest a person:

1. For a public offense committed or attempted in his presence;
2. Where a public offense has in fact been committed and he has reasonable cause for believing the person arrested to have committed it.

SEC. 2841. **Must state his authority.** When arresting a person without a warrant the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of the offense or when he is pursued immediately after an escape.

SEC. 2842. **By private person.** He may take before a magistrate any person who, being engaged in the commission of a public offense, is arrested by a bystander and delivered to him.

SEC. 2843. **Breaking doors, etc.** To make an arrest, the officer may break open any outer or inner door or window of a dwelling house if after notice of his office and purpose he be refused admittance.

SEC. 2844. **Force.** If after notice of the intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

SEC. 2845. **Arrest by verbal order.** When a public offense is committed in the presence of a magistrate he may by verbal order command any person to arrest the offender, and may thereupon proceed as if the defendant had been brought before him on a warrant.

[396] CHAPTER 163.

ARREST BY A PRIVATE PERSON.

SECTION 2846. **When private person may arrest.** A private person may arrest another:

1. For a public offense committed or attempted in his presence;
2. When a felony has been committed and he has reasonable cause for believing the person arrested to have committed it.

SEC. 2847. **Must inform of the cause.** He must, before making the arrest, inform the person to be arrested of the cause thereof and require him to submit, except when he is in the actual commission of the offense or when he is arrested on pursuit immediately after its commission.

SEC. 2848. **May break doors, etc.** If the person to be arrested has committed a felony and a private person, after notice of his intention to make the arrest, be refused admittance he may break open any outer or inner door or window of a dwelling house for the purpose of making the arrest.

SEC. 2849. **No delay.** A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer.

CHAPTER 164.

ARREST, AND RETAKING AFTER ESCAPE.

SECTION 2850. **When.** An arrest may be made on any day, and at any time of the day or night. If a person arrested escape or be rescued, the person from whose custody he made escape or was rescued may immediately pursue and retake him at any time and within any place in the state.

SEC. 2851. **Rescue or escape.** To retake the person escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open any outer or inner door or window of a dwelling house.

[397] CHAPTER 165.

EXAMINATION BY A MAGISTRATE.

SECTION 2852. **Defendant informed of offense.** When the defendant is brought before a magistrate upon arrest either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the offense with which he is charged and of his right to the aid of counsel in every stage of the proceedings.

SEC. 2853. **Time to get counsel.** The magistrate must allow the defendant a reasonable time to send for counsel, and if necessary must adjourn the examination for that purpose.

SEC. 2854. **Examination.** The magistrate immediately after the appearance of counsel, or, if the defendant require the aid of counsel, after waiting a reasonable time therefor, must proceed to examine the case.

SEC. 2855. **Same.** The examination must be terminated at one session unless the magistrate for good cause shown adjourn it.

SEC. 2856. **Adjournment.** No examination can be adjourned for a longer period than thirty days.

SEC. 2857. **Bail.** If an adjournment be had for any cause, the magistrate shall commit the defendant for examination or require him to give ample security for his appearance at the time and place to which the examination is adjourned.

SEC. 2858. **Committal.** If the defendant is charged with an offense punishable with death he must be committed.

SEC. 2859. **If no jail.** If there is no jail in the county the sheriff must retain the defendant in his custody until the time of examination.

SEC. 2860. **Proceedings on examination.** At the examination the magistrate must in the first place read to the defendant the depositions of the witnesses on the taking of the information, and if the defendant request it must summon the witnesses so examined if they be within the county. He shall also issue subpoenas for any additional witnesses required by the prosecutor or the defendant.

SEC. 2861. **Same.** When the examination of the witnesses on the part of the state is closed, the magistrate must inform the defendant that it is his right to make a statement explaining the charge made against him, or that he may waive the same, and such waiver cannot be used against him on the examination before the magistrate, or on trial.

SEC. 2862. **Defendant's statement.** If the defendant choose to make a statement, the magistrate shall proceed to take the same in writing without [398] oath, and shall put to the defendant the following questions only:

What is your name and age?

Where were you born?

Where do you reside, and how long have you resided there?

What is your business or profession?

Give any explanation you think proper of the circumstances appearing in the testimony against you, and state any facts which you think may tend to your exculpation.

SEC. 2863. **Same.** The answer of the defendant to each of the questions must be read to him as it is taken down, and he may thereupon correct or add to the same until it is made conformable to what he declares is the truth.

SEC. 2864. **Same.** Such answer or statement of the defendant shall be signed by him, or if he refuses to sign it his reasons for such refusal shall be stated by the magistrate.

SEC. 2865. **Witnesses called.** After the waiver of the defendant to make a statement or after he has made it, his witnesses if he produce any may be sworn and examined.

SEC. 2866. **Witnesses excluded.** The witnesses on the part of the defendant must not be present at the time he makes his statement.

SEC. 2867. **Same.** While a witness is under examination before the magistrate he may exclude all others who have not been examined. He may also cause the witnesses to be kept separate that they may not converse with each other until they are all examined.

SEC. 2868. **Testimony in writing.** The testimony given on the part of the state and the defendant must be reduced to writing by the magistrate or under his direction, and must set forth the age and place of residence of the witness and be signed by him.

SEC. 2869. **Magistrate's certificate.** After the examination is closed the magistrate must make out and annex to the depositions and statement his certificate, which must set forth in substance:

1. The time and place of the examination;

2. That the defendant made and signed the annexed statement, or if after making a statement he refused to sign it, the reasons of making such refusal must be set forth;

3. That the witnesses named in the depositions were duly sworn, and subscribed the same in the presence of the magistrate.

SEC. 2870. **Same.** Such certificate must be signed by the magistrate with his official name.

SEC. 2871. **Decision—discharge.** If after hearing the testimony and statement it appear to the magistrate, either that a public offense has not been committed or that there is no sufficient cause to believe the defendant guilty thereof, he must order the defendant to [399] be discharged; and such order must be indorsed on the depositions and signed by the magistrate to the following effect: "There being no sufficient cause to believe the within named defendant guilty of the offense herein mentioned, I have ordered him to be discharged."

SEC. 2872. **Same—held to answer.** If it appear from the examination that a public offense has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate shall in like manner indorse on the depositions an order signed by him to the following effect: "It appearing to me by the within depositions and statement (if any) that the offense therein mentioned (or any other offense, according to the fact) has been committed and that there is sufficient cause to believe the within named defendant guilty thereof, I order that he be held to answer the same."

SEC. 2873. **Same—committed.** If the offense is not bailable the following word, or words to the same effect, must be added to the indorsement, "and that he be committed to the jail of the county of —."

SEC. 2874. **Same—bail.** If the offense is bailable and bail be taken by the magistrate, the following words in substance must be added to the second indorsement above mentioned: "and I have admitted him to bail to answer to the undertaking hereto annexed." If the defendant does not give bail then the magistrate must add to the indorsement in substance as follows: "and that he be admitted to bail in the sum of (state the amount) and be committed to the jail of (name the county) until he gives such bail."

SEC. 2875. **Mittimus.** If the magistrate order the defendant to be committed, he shall make out a warrant of commitment signed by him with his name of office and deliver it with the defendant to the officer to whom he is committed, or, if the officer be not present, to a peace officer who shall deliver the defendant into the proper custody, together with the warrant of commitment, which warrant may be in form following:

"The State of Iowa:

To the sheriff of ——— county.

An order having been this day made by me that A—— B——, (the name of the defendant) be held to answer upon a charge of (state the offense), you are commanded to receive him into your custody and detain him in the jail of the county until he be legally discharged.

Dated at — this — day of — A. D. —"

SEC. 2876. **Witnesses to appear.** On holding the defendant to answer, the magistrate must take from each material witness examined by him on the part of the state a written undertaking, to the effect [400] that he will appear and testify at the court to which the defendant is bound to answer or that he will forfeit the sum of one hundred dollars.

SEC. 2877. **To give security.** Whenever the magistrate is satisfied by oath or otherwise that there is reason to believe that any such witness will not

fulfill his undertaking to appear and testify unless surety be required, he may order the witness to enter into a written undertaking with sureties, and in such sum as he may deem proper for his appearance.

SEC. 2878. **Minors and married.** Infants and married women who are material witnesses against the defendant may in like manner be required to procure sureties for their appearance as provided in the preceding section.

SEC. 2879. **Committal of witness.** If a witness, required to enter into an undertaking to appear and testify either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him until he comply or be legally discharged.

SEC. 2880. **Return of papers.** When a magistrate has discharged a defendant or held him to answer, he must return to the next district court of the county at or before its opening on the first day of the term, the warrant and statement, if any, and the depositions and all undertakings of bail for the appearance of the defendant and witnesses taken by him.

CHAPTER 166.

IMPANELING GRAND JURY.

SECTION 2881. **Panel filed.** On the first day of the term of the court for which a grand jury has been summoned they must be called, and if fifteen do not appear or if the number appearing be reduced to less than fifteen the court may order the sheriff of the county to summon a sufficient number of qualified persons to complete the panel. Persons thus summoned can serve only during the term.

SEC. 2882. **Challenge.** A defendant held to answer for a public offense may challenge the panel of the grand jury or any individual juror.

SEC. 2883. **To panel.** A challenge to the panel can be interposed only for the reason that they were not appointed, drawn, or summoned as prescribed by law.

SEC. 2884. **To the person.** A challenge to an individual juror may be made for one or more of the following causes only:

1. That he is a minor, insane, or not competent by law to serve as such juror;

[401] 2. That he is the prosecutor upon a charge against the defendant;

3. That he has formed or expressed an unqualified opinion that the defendant is guilty of the offense for which he is held to answer.

SEC. 2885. **When in writing.** Challenges to the panel must be in writing specifically stating the grounds thereof, but challenges to individual jurors may be oral.

SEC. 2886. **Tried by court.** Challenges to the panel or to an individual juror must be decided by the court.

SEC. 2887. **Challenge allowed.** If a challenge to the panel be allowed, the grand jury is prohibited from inquiring into the charge against the defendant by whom it was interposed. If the jury does so and finds an indictment the court must set it aside.

SEC. 2888. **Same.** If a challenge to an individual juror be allowed he shall not be present at or take any part in the consideration of the charge against the defendant.

SEC. 2889. **Same.** The grand jury must inform the court of a violation of the last section, that it may be punished as a contempt.

SEC. 2890. **Challenge by co-defendant.** When several persons are held to answer for one and the same offense no challenge to the panel can be made unless they all join in such challenge, nor can any objection be interposed by a defendant to the grand jury or to an individual juror for any cause of challenge after they are sworn.

SEC. 2891. **Foreman.** From the persons summoned to serve as grand jurors the court must appoint a foreman. The court shall also appoint a foreman when the person already appointed is discharged or excused before the grand jury is dismissed.

SEC. 2892. **Oath.** The following oath must be administered to the foreman of the grand jury: "You, as foreman of the grand jury, shall diligently inquire and true presentment make of all public offenses against the people of this state, committed or triable within this county, of which you have, or can obtain legal evidence; you shall present no person through malice, hatred, or ill will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding. So help you God."

SEC. 2893. **Oath.** The following oath must thereupon be administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part. So help you God."

[402] SEC. 2894. **Charge.** The grand jury being impaneled and sworn may be charged by the court. In doing so the court shall give them such information as it may deem proper as to the nature of their duties, and any charges for public offenses returned to the court or likely to come before the grand jury.

SEC. 2895. **Clerk of jury.** The grand jury must appoint one of its number as clerk, who must preserve minutes of the proceedings and of the evidence given before them, except the votes of the individual members on indictments.

SEC. 2896. **Discharge.** The grand jury, on the completion of its business shall be discharged by the court. But whether its business be completed or not, it is discharged by the final adjournment thereof.

CHAPTER 167.

POWERS AND DUTY OF GRAND JURY.

SECTION 2897. **Duty of jury.** The grand jury has power, and it is made its duty, to inquire into all indictable offenses committed or which may be tried within the county, and present them to the court by indictment.

SEC. 2898. **Testimony.** Upon such inquiry it may, where the defendant has been held to answer for a public offense, find an indictment upon the testimony taken before a magistrate.

SEC. 2899. **Same.** In all other cases the indictment must be found upon such evidence as is given by witnesses produced and sworn before them or furnished by legal documentary proof.

SEC. 2900. **Same.** The grand jury is not bound to hear evidence for the defendant, but it is its duty to weigh all the evidence submitted to it, and when it has reason to believe that other evidence within its reach will explain away the charge it may order such evidence to be produced.

SEC. 2901. **Of a member.** If a member of the grand jury knows or has reason to believe that a public offense has been committed, triable in the county, he must declare the same to his fellow jurors and be sworn as a witness upon the investigation before them.

SEC. 2902. **Special duty of jury.** It is made the special duty of the grand jury to inquire:

1. Into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted;

2. Into the condition and management of the public prisons within the county;

[403] 3. Into the wilful and corrupt misconduct in office of all county officers;

4. Into the obstruction of roads and highways.

SEC. 2903. **Subpoenas.** The clerk of the court must, whenever required by the foreman of the grand jury or prosecuting attorney, issue subpoenas for witnesses to appear before the grand jury.

SEC. 2904. **Offices and jails.** The jury is entitled to free access at all reasonable times to the county jails and to the examination without charge of all public records within the county.

SEC. 2905. **Prosecuting attorney.** Whenever required by the grand jury it is the duty of the prosecuting attorney to attend before it for the purpose of examining witnesses, and of giving it legal advice.

SEC. 2906. **Same.** Such attorney shall be allowed at all times to appear before the grand jury on his own request for the purpose of giving information relative to any matter cognizable by it, but no such attorney nor any other officer or person except the grand jury must be present when the question is taken upon the finding of an indictment.

SEC. 2907. **Proceedings secret.** Every member of the grand jury must keep secret the proceedings of that body and the testimony given before them except as hereinafter required. Nor shall any grand juror or officer of the court disclose the fact that an indictment for a felony has been found against any person not in custody or under bail, otherwise than by presenting the same in court or issuing or executing process thereon, until such person has been arrested. A violation of this section is a misdemeanor.

SEC. 2908. **Exception.** A member of the grand jury may be required by the court to disclose the testimony of a witness examined before them, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any witness upon a charge against him for perjury.

SEC. 2909. **Juror not to be questioned.** No grand juror shall be questioned for anything he may say or any vote he may give in the grand jury relative to a matter legally pending before them, except for perjury of which he may have been guilty in making an accusation or in giving testimony to his fellow jurors.

CHAPTER 168.

FINDING AND PRESENTMENT OF INDICTMENTS.

SECTION 2910. **By twelve jurors.** An indictment cannot be found without the concurrence of twelve grand jurors; and when so found it must [404] be indorsed "A true bill," and the indorsement must be signed by the foreman of the grand jury.

SEC. 2911. **Dismissal.** If twelve grand jurors do not concur in finding an indictment the testimony and statement taken before the magistrate must be returned to the court with an indorsement thereon signed by the foreman to the effect that the charge is dismissed.

SEC. 2912. **Same.** Such dismissal shall not prevent the same charge from being again submitted to the grand jury as often as the court may direct.

SEC. 2913. **Witnesses indorsed.** When an indictment is found the names of the material witnesses for the state examined before the grand jury, or whose depositions have been read before it, must in all cases be indorsed thereon before it is presented to the court.

SEC. 2914. **Presented.** An indictment, when found by the grand jury and indorsed as prescribed by this chapter, must be presented by their foreman in their presence to the court, and filed by the clerk.

CHAPTER 169.

FORMS AND REQUISITES OF INDICTMENTS.

SECTION 2915. **Definition.** An indictment is an averment in writing, made by a grand jury legally convoked and sworn, that a person therein named or described has done some act, or been guilty of some omission, which by law is a public offense.

SEC. 2916. **When sufficient.** No indictment shall be quashed, or judgment thereon arrested or deemed invalid, if it can be understood:

1. That the same was presented to some court having jurisdiction of the offense charged in the indictment, although the name of the court may not be accurately set forth;

2. That it was found by a grand jury of the county in which the court was held;

3. That the defendant is named, or if his name cannot be discovered that he be described by a fictitious name with the statement that his real name is unknown;

4. That the offense was committed at some place within the jurisdiction of the court, except where it is otherwise provided that the act, when done without the local jurisdiction of the county, is triable therein;

5. That the offense was committed at some time prior to the time of finding the indictment;

6. That the act or omission charged be so clearly and [405] distinctly set forth as to enable the accused to plead the judgment on such indictment in bar of any future prosecution for the same offense;

7. That, where material, the name of the person injured be set forth when known by the grand jury; and if not known that it may be so stated in the indictment;

8. That the indictment be indorsed by the foreman "A true bill," and marked filed by the clerk.

SEC. 2917. **One offense.** An indictment must present but one public offense, but such offense may be therein charged in different forms to meet the evidence in the case.

SEC. 2918. **Degrees.** On an indictment for a public offense admitting of different degrees the defendant may be convicted of such offense on any degree lower than that charged in form in such indictment.

SEC. 2919. **Equivalent words.** Words used in a statute to define a public offense need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

SEC. 2920. **Formal defects.** No indictment is insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matters of form which do not tend to the prejudice of the defendant.

SEC. 2921. **What not stated.** Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment.

SEC. 2922. **Pleading judicial proceeding.** In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, the facts conferring jurisdiction need not be stated in the indictment, but it is sufficient to state that the judgment or determination was duly made or the proceedings duly had before such court or officer; but the facts constituting the jurisdiction must be established on the trial.

SEC. 2923. **Private statute.** In pleading a private statute or right derived therefrom, it is sufficient to refer to the same by its title and the day of its approval, and the court must thereupon take judicial notice thereof.

SEC. 2924. **For libel.** An indictment for a libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter upon which the indictment is founded, but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on trial.

SEC. 2925. **Instrument destroyed, etc.** When an instrument which is the subject of an indictment has been destroyed or withheld by the act or procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

SEC. 2926. **For perjury.** In an indictment for perjury or subornation of per-[406]-jury it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer the same, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or the authority of the court or person before whom the perjury was committed.

SEC. 2927. **Intent to defraud.** In any case where an intent to defraud is required to constitute the offense of forgery or any other offense that may be prosecuted, it shall be sufficient to allege in the indictment an intent to defraud without naming the particular person or body corporate intended to be defrauded, and on the trial of such indictment it is sufficient if there appear to be an intent to defraud the United States, or any state, county, city, or township, or any body corporate, or any public officer in his official capacity, or any co-partnership or member thereof, or any particular person.

SEC. 2928. **Accessories.** The distinction between an accessory before the fact and a principal is abrogated, and all persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense or aid and abet in its commission, though not present, must hereafter be indicted, tried, and punished as principals.

SEC. 2929. **Same.** An accessory after the fact to the commission of a public offense may be indicted, tried, and punished though the principal be neither tried nor convicted.

SEC. 2930. **Compounding offense.** A person may be indicted for having, with the knowledge of the commission of a public offense, taken money or property of another or a gratuity or reward, or engagement or promise

therefor, upon agreement or understanding express or implied to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof though the person guilty of the original offense has not been indicted or tried.

CHAPTER 170.

ARRAIGNMENT OF THE DEFENDANT.

SECTION 2931. When the indictment is filed the defendant must be arraigned thereon before the court in which the trial is to be had.

[407] SEC. 2932. **Personal presence.** If the indictment be for a felony the defendant must be personally present, but if for a misdemeanor only his personal appearance is unnecessary and he may appear upon arraignment by counsel.

SEC. 2933. **Non-appearance.** If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for arraignment when his personal attendance is necessary, the court, in addition to the forfeiture of his undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

SEC. 2934. **Bench warrant.** The clerk on the application of the prosecuting attorney may accordingly at any time after the order, whether the court be in session or not, issue a bench warrant into one or more counties of this state for the arrest of the defendant.

SEC. 2935. **Where served.** A bench warrant may be served in any county in this state and directed to any sheriff, constable, marshal, or policeman thereof.

SEC. 2936. **Right to counsel.** If the defendant appear for arraignment without counsel he shall be informed by the court that it is his right to have counsel if he so desire.

SEC. 2937. **Arraignment—what.** The arraignment must be made by the court, or by the clerk or prosecuting attorney under its direction, and consists in reading the indictment to the defendant and in asking him whether he plead guilty or not guilty.

SEC. 2938. **Name of defendant.** When the defendant is arraigned he must be informed that if the name by which he is indicted be not his true name he must then declare the same or be proceeded against by the name in the indictment.

SEC. 2939. **Same.** If he give no other name or give his true name, he is thereafter precluded from objecting to the indictment upon the ground of being therein improperly named.

SEC. 2940. **Same.** If he allege that another name is his true name the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

SEC. 2941. **Time to answer.** If on the arraignment the defendant require it he may be allowed until the next day, or such farther time may be given him as the court may deem reasonable, to answer the indictment.

SEC. 2942. **Same.** If the defendant require time as provided in the last section, then on the next day or at such farther day as the court may have allowed him he may, in answer to the arraignment, either move the court to set aside the indictment or may demur or plead thereto.

[408] CHAPTER 171.

SETTING ASIDE THE INDICTMENT.

SECTION 2943. **For what causes.** The indictment must be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases:

1. When it is not indorsed by the foreman of the grand jury as a true bill;
2. When it has not been marked filed by the clerk;
3. When the names of the witnesses examined before the grand jury or whose depositions have been read before it are not indorsed on the indictment.

SEC. 2944. **Motion waived.** If the motion to set aside the indictment be not made before demurring or pleading, the defendant is precluded from afterward taking the objections mentioned in the last section.

SEC. 2945. **Hearing of.** The motion must be heard when it is made unless for good cause the court postpone the hearing to another time.

SEC. 2946. **Answer.** If the motion be denied the defendant must immediately answer the indictment either by demurring or pleading thereto.

SEC. 2947. **Set aside.** If the motion be granted the court must order the defendant, if in custody, to be discharged, or if admitted to bail that his bail be exonerated, or if he has deposited money instead of bail that the money deposited be refunded to him, unless the court direct that the case be re-submitted to the same or another grand jury.

SEC. 2948. **Case re-submitted to jury.** If the court direct that the case be re-submitted the defendant, if already in custody, must so remain unless he be admitted to bail; or if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment.

SEC. 2949. **No bar.** An order to set aside the indictment as provided in this chapter shall be no bar to a future prosecution for the same offense.

[409] CHAPTER 172.

DEMURRER.

SECTION 2950. **Pleadings.** The only pleading on the part of the defendant is either a demurrer or plea.

SEC. 2951. **When put in.** Both the demurrer and plea must be put in in open court either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

SEC. 2952. **Ground of demurrer.** The defendant may demur to the indictment when it appears upon its face either:

1. That the grand jury had no legal authority to inquire into the offense charged;
2. That the facts stated do not constitute a public offense;
3. That the indictment contains any matter which if true would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

SEC. 2953. **Requisites of.** The demurrer must be in writing, signed either by the defendant or his counsel, and filed with the clerk. It must distinctly specify the grounds of demurrer to the indictment or it shall be disregarded.

SEC. 2954. **Hearing.** Upon the demurrer being filed the objections thereby presented must be heard immediately or at such time as the court may appoint.

SEC. 2955. **Pleading over.** If the demurrer be disallowed the court shall permit the defendant at his election to plead, which he must do forthwith or at such time as the court may prescribe.

SEC. 2956. **Objections on the face of indictment.** Objections which appear upon the face of the indictment can be taken only by demurrer, except that objections to the jurisdiction of the court or that the facts stated do not constitute a public offense may be taken at the trial under the plea of not guilty, and in arrest of judgment.

CHAPTER 173.

PLEAS TO INDICTMENT.

SECTION 2957. **Kind.** There are three kinds of pleas to an indictment which may be pleaded by the defendant:

1. Guilty;
2. Not guilty;
3. A former judgment of conviction or acquittal of the [410] offense charged in the indictment, and which last plea may be pleaded either with or without the plea of not guilty.

SEC. 2958. **Requisites.** Every plea must be in writing, signed by the defendant or his counsel, and filed with the clerk.

SEC. 2959. **Issue.** Upon the filing of the plea of not guilty or of a former judgment of conviction or acquittal the parties are at issue without any other or farther pleading.

SEC. 2960. **Not guilty.** The plea of not guilty is a denial of every material allegation in the indictment.

SEC. 2961. **Plea withdrawn.** The court may, at any time before judgment upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted by the defendant.

SEC. 2962. **Bar to what.** When the defendant has been convicted or acquitted upon an indictment for an offense consisting of different degrees, the conviction or acquittal shall be a bar to another indictment for the offense charged in the former or for any lower degree of that offense, or for an offense necessarily included therein.

SEC. 2963. **Standing mute.** If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty must be entered by the court, and the trial shall proceed as if the same had been filed by the defendant in writing.

CHAPTER 174.

FORMATION OF TRIAL JURY.

SECTION 2964. **Jurors names.** At the opening of the court the clerk shall prepare separate ballots containing the names of the persons returned as jurors, which shall be folded each in the same manner as near as may be and so that the name thereon shall not be visible and must deposit them in a box to be kept for that purpose.

SEC. 2965. **Panel full.** When the indictment is called for trial and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and that an attachment issue against those who are absent; but the court may in its discretion wait or not for the return of the attachment.

SEC. 2966. **Drawing jurors.** Before the name of any juror is drawn the box must be closed and shaken so as to intermingle the ballots therein, and the clerk shall draw such ballots, without seeing the names written on them, from the box through the top or lid thereof.

SEC. 2967. **Disposition of ballots.** When the jury is completed the ballots containing the names of the jurors sworn must be laid aside and kept [411] apart from the ballots containing the names of the other jurors until the jury so sworn is discharged.

SEC. 2968. **Same.** After the jury is so discharged the ballots containing their names must be again folded and returned to the box, and so on as often as a trial is had.

SEC. 2969. **Juror absent.** If a juror be absent when his name is drawn or be set aside or excused from serving on that trial, the ballot containing his name must be folded and returned to the box as soon as the jury is sworn.

SEC. 2970. **Talesmen.** If by reason of there being one or more juries impaneled or for any other reason there should not remain any ballots undrawn, or if in consequence of jurors being set aside no jury can be obtained from the list of those returned by the sheriff for the trial of issues, the court may order the sheriff, or if he be a party to or interested in the cause some other person, to summon jurors from the by-standers or other persons, who shall be returned for the trial of the indictment.

SEC. 2971. **A jury.** The jury consists of twelve men accepted and sworn to try the issue.

CHAPTER 175.

CHALLENGING THE JURY.

SECTION 2972. **Challenge—what.** A challenge is an objection made to the trial jurors and is of two kinds:

1. To the panel;
2. To an individual juror.

SEC. 2973. **Severance in trial.** When several defendants are tried together they are not allowed to sever their challenges, but must join therein.

SEC. 2974. **To panel.** A challenge to the panel can be founded only on a material departure from the forms prescribed by statute in respect to the drawing and return of the jury.

SEC. 2975. **When and how.** A challenge to the panel must be taken before a juror is sworn and must be in writing specifying plainly and distinctly the facts constituting the ground of challenge.

SEC. 2976. **Trial of challenge.** A challenge to the panel may be taken by either party, and upon the trial thereof the officers whether judicial or ministerial whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

SEC. 2977. **Challenge allowed.** If the facts of the challenge be allowed by the court the jury must be discharged so far as the trial of the indict-[412]-ment in question is concerned. If it be disallowed the court shall direct the jury to be impaneled.

SEC. 2978. **To the person.** A challenge to an individual juror is either peremptory or for cause.

SEC. 2979. **When made.** It must be taken when the juror appears and before he is sworn, but the court may for good cause permit it to be taken after the juror is sworn and before the jury is completed.

SEC. 2980. **Peremptory.** A peremptory challenge is an objection to a juror for which no reason need be given but upon which the court may exclude him.

SEC. 2981. **How many.** The defendant on his trial if indicted for a capital crime or an offense punishable with imprisonment in the penitentiary for life may challenge peremptorily twelve jurors and no more; if indicted for any other felony he may challenge only six in the same manner; and if for an offense less than felony, only four. In each case the prosecuting attorney has the right to challenge peremptorily one-half as many as the defendant is entitled to.

SEC. 2982. **For cause.** A challenge for cause may be taken either by the state or by the defendant.

SEC. 2983. **General or particular.** It is an objection to a particular juror, and is either

1. General, that the juror is disqualified from serving in any case; or
2. Particular, that he is disqualified in the case on trial.

SEC. 2984. **General.** General causes of challenge are:

1. A conviction for felony;
2. A want of any of the qualifications prescribed by statute to render a person a competent juror;
3. Unsoundness of mind, or such defects in the faculties of the mind or the organs of the body as render him incapable of performing the duties of a juror.

SEC. 2985. **Particular—bias.** Particular causes of challenge are of two kinds:

1. For such a bias as, when the existence of the fact is ascertained, in judgment of law disqualifies the juror, and which is known in this chapter as implied bias;
2. For the existence of a state of mind on the part of the juror in reference to the case which, in the exercise of a sound discretion, leads to the inference that he will not act with entire impartiality, and which is actual bias.

SEC. 2986. **Implied bias.** A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the ninth degree to the person alleged to be injured by the offense charged or on [413] whose complaint the prosecution was instituted, or to the defendant;
2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant or of the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted, or in his employment on wages;
3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment;

5. Having served on a trial jury which has tried another defendant for the offense charged in the indictment;

6. Having been one of a jury formerly sworn to try the same indictment and whose verdict was set aside, or which was discharged without a verdict after the cause was submitted to it;

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense;

8. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged;

9. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

SEC. 2987. **Exemption.** An exemption from service on a jury is not a cause of challenge but the privilege of the person exempted.

SEC. 2988. **Trial of challenge.** Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge and must answer every question pertinent to the inquiry thereon.

SEC. 2989. **Witnesses and evidence.** Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues shall govern the admission or exclusion of testimony on the trial of the challenge.

SEC. 2990. **Trial by court.** In all challenges the court shall determine the law and the fact and must either allow or disallow the challenge.

[414] CHAPTER 176.

THE TRIAL.

SECTION 2991. The jury having been impaneled and sworn, the trial shall proceed in such order as the court may direct.

SEC. 2992. **Separate trials.** When two or more defendants are jointly indicted for felony, any defendant requiring it may be tried separately. In other cases, defendants jointly indicted may be tried separately or jointly in the discretion of the court.

SEC. 2993. **Discharging a defendant.** When two or more persons are included in the same indictment the court may at any time before the defendant has gone into his defense, on the application of the prosecuting attorney, direct any defendant to be discharged from the indictment that he may be a witness for the state.

SEC. 2994. **Same.** When two or more persons are included in the same indictment and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, an order may be made that he be discharged from the indictment before the evidence is closed, that he may be a witness for his co-defendant.

SEC. 2995. **Same.** The order mentioned in the last two sections shall be deemed an acquittal of the defendant and shall be a bar to another prosecution for the same offense.

SEC. 2996. **Overt acts.** Upon a trial for a conspiracy in a case where an overt act is required by law to constitute the offense, the defendant cannot be

convicted unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts alleged be proved; but other overt acts not alleged in the indictment may be given in evidence.

SEC. 2997. **Rape.** Proof of actual penetration into the body is sufficient to sustain an indictment for rape.

SEC. 2998. **Testimony of accomplice.** A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely show the commission of the offense or the circumstances thereof.

SEC. 2999. **Of female enticed.** Upon a trial for enticing or taking away an unmarried female of previously chaste character for the purpose of prostitution, or aiding or assisting therein, or for seducing and debauching any unmarried woman of previously chaste character, the defendant cannot be convicted upon the testimony of the person injured unless she be corroborated by [415] other evidence tending to connect the defendant with the commission of the offense.

SEC. 3000. **Higher offense proved.** If it appear by the testimony that the facts proved constitute an offense of a higher nature than that charged in the indictment, the court may direct the jury to be discharged and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on bail to answer any new indictment which may be found against him for the higher offense.

SEC. 3001. **Same.** If the indictment for the higher offense be dismissed by the grand jury or be not found at the next term, the court must proceed to try the defendant on the original indictment.

SEC. 3002. **Want of jurisdiction.** The court may also discharge the jury where it appears that it has not jurisdiction of the offense or that the facts as charged in the indictment do not constitute an offense punishable by law.

SEC. 3003. **Same.** If the jury be discharged because the court has not jurisdiction of the offense charged in the indictment and it appear that it was committed out of the jurisdiction of this state, the defendant must be discharged.

SEC. 3004. **Order to await new indictment.** If the offense was committed within the exclusive jurisdiction of another county of this state, the court must direct the defendant to be committed for such time as shall be deemed reasonable to await a warrant from the proper county for his arrest; or if the offense be bailable he may be admitted to bail in an undertaking with sufficient sureties that he will within such time as the court may appoint render himself amenable to a warrant for his arrest from the proper county, and if not sooner arrested thereon will attend at the office of the sheriff of the county where the trial was had at a certain time particularly designated in the undertaking to surrender himself upon the warrant if issued, or that the bail will forfeit such sum as the court may fix, to be mentioned in the undertaking.

SEC. 3005. **Papers certified.** In the case provided for in the last section the clerk shall forthwith transmit a certified copy of the indictment, and all the papers in the action filed with him, to the prosecuting attorney of the proper county.

SEC. 3006. **Defendant discharged.** If the defendant be not arrested on a warrant from the proper county he shall be discharged from custody, or his bail in the action shall be exonerated, or money deposited instead of bail shall be refunded, as the case may be, and the sureties in the undertaking must be discharged.

SEC. 3007. **New arrest.** If he be arrested the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

[416] SEC. 3008. **Defendant discharged.** If the jury be discharged because the facts set forth do not constitute an offense punishable by law, the court must order that the defendant if in custody be discharged therefrom, or if admitted to bail that his bail be exonerated, or if he has deposited money instead of bail that the money deposited be refunded, unless in its opinion a new indictment can be framed upon which the defendant can be legally convicted, in which case the court may direct that the case be submitted to the same or another grand jury.

SEC. 3009. **View by jury.** Whenever in the opinion of the court it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body in the custody of proper officers to the place, which shall be shown them by a person appointed by the court for that purpose.

SEC. 3010. **Juror a witness.** If a juror have any personal knowledge respecting a fact in controversy in a cause he must declare the same in open court during the trial, and if during the retirement of the jury a juror declare any fact which could be evidence in the cause as of his own knowledge, the jury must return into court and the juror must be sworn as a witness and examined in the presence of the parties.

SEC. 3011. **Separation of jury.** The jurors sworn to try an indictment may at any time before the submission of the cause to them, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer.

SEC. 3012. **Not to converse.** The jury shall also at each adjournment of the court, whether they be permitted to separate or be kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves on any subject connected with the trial or to form or express any opinion thereon until the cause is finally submitted to them.

SEC. 3013. **Juror sick.** If before the conclusion of a trial a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged, and in such case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterward be impaneled.

SEC. 3014. **One may be convicted.** Upon an indictment against several defendants any one or more may be convicted or acquitted.

SEC. 3015. **Trial of libel.** On the trial of an indictment for a libel the jury have the right to determine the law and the fact.

SEC. 3016. **Law and fact—who to try.** On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court; saving the right of the defendant and the state to except. Questions of fact are to be tried by the jury. And although [417] the jury have the power to find a general verdict which includes questions of law as well as fact, they are bound nevertheless to receive as law what is laid down as such by the court.

SEC. 3017. **Charge of court.** In charging the jury the court shall state to them all such matters of law as it shall think necessary for their information in giving their verdict.

SEC. 3018. **When in writing.** The charge of the court to the jury must be reduced to writing, signed, and filed with the clerk, when required by either party.

SEC. 3019. **Officer's duty with jury.** After hearing the charge the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place without meat or drink unless otherwise ordered by the court, and not to permit any person to speak to them, nor to speak with them themselves unless it be to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed.

SEC. 3020. **Defendant under bail appearing for trial.** When a defendant, having given bail, appears for trial, the court may in its discretion at any time after his appearance for trial order him to be committed to the custody of the proper officer to abide the judgment or farther order of the court; and he shall be committed and held in custody accordingly.

CHAPTER 177.

CONDUCT OF JURY AFTER THE CAUSE IS SUBMITTED TO IT.

SECTION 3021. **Jury may take papers.** Upon retiring for deliberation the jury may take with it all papers which have been received as evidence in the case, except depositions and copies of such parts of public records or private documents as ought not in the opinion of the court to be taken from the person having them in possession.

SEC. 3022. **And notes of testimony, etc.** The jury may also take with them notes of the testimony or other proceedings on the trial taken by themselves or any of them, but none taken by any other person.

SEC. 3023. **Coming into court.** After the jury have retired for deliberation if there be any disagreement between them as to any part of the testimony or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court, and upon their being brought in the information required must be given in the presence of or after notice to the prosecuting attorney and the defendant or his counsel.

SEC. 3024. **Juror sick.** If after the retirement of the jury one of them be taken sick so as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the court may discharge them.

SEC. 3025. **When discharged.** Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open court, unless by the consent of both parties entered upon the record, or unless at the expiration of such time as the court may deem proper it satisfactorily appear that there is no reasonable probability that the jury can agree.

SEC. 3026. **New trial.** In all cases where a jury is discharged or prevented from giving a verdict by reason of any accident or other cause, except where the defendant is discharged from the indictment, during the progress of the trial or after the cause is submitted to them, the cause may be again tried at the same or another term of the court.

SEC. 3027. **Adjournment of court.** While the jury is absent the court may adjourn from time to time as to other business, but it shall nevertheless be deemed open for every purpose connected with the cause submitted to the jury until a verdict be rendered or the jury is discharged.

SEC. 3028. **Same.** A final adjournment of the court discharges the jury.

CHAPTER 178.

VERDICT.

SECTION 3029. **Return of jury.** When the jury has agreed upon its verdict it must be conducted into court by the officer having it in charge. The names of the jurors must then be called, and if all do not appear the rest must be discharged without giving a verdict. In such case the cause may be again tried at the same or another term.

SEC. 3030. **Defendant's presence.** If the indictment be for a felony the defendant must be present at the rendition of the verdict. If it be for a misdemeanor the verdict may be rendered in his absence.

SEC. 3031. **Verdict rendered.** When the jury have answered to their names the court or the clerk shall ask them whether they have agreed upon their verdict, and if the foreman answers in the affirmative they must on being required declare the same.

SEC. 3032. The jury may either render a general verdict, or [419] where they are in doubt as to the legal effect of the facts proven they may, except upon an indictment for libel, find a special verdict.

SEC. 3033. **General.** A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal on every material allegation in the indictment. Upon a plea of a former conviction or acquittal of the same offense it is either "for the state" or "for the defendant."

SEC. 3034. **Special.** A special verdict is that by which the jury finds the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by the evidence and not the evidence to prove them, and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

SEC. 3035. **Same.** The special verdict must be reduced to writing by the jury or in their presence, entered upon the minutes of the court, read to the jury and agreed to by them, before they are discharged.

SEC. 3036. **Same.** The special verdict need not be in any particular form but shall be sufficient if it present intelligibly the facts found by the jury.

SEC. 3037. **Judgment.** The court must give judgment upon the special verdict, as follows:

1. If the plea be not guilty and the facts prove the defendant guilty of the offense charged in the indictment or of any other offense of which he could be convicted in law, under that indictment, judgment shall be given accordingly. But if the facts found do not prove the defendant guilty of the offense charged or of any offense of which he could be so convicted under the indictment, judgment of acquittal must be rendered;

2. If the plea be a former conviction or acquittal of the same offense, the court must give judgment of conviction or acquittal according as the facts prove or fail to prove the former conviction or acquittal.

SEC. 3038. **Verdict insufficient.** If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact from the evidence as established to their satisfaction, the court may order them to retire for farther deliberation.

SEC. 3039. **Other offense than charged.** In all other cases the defendant may be found guilty of any offense the commission of which is necessarily included in that with which he is charged in the indictment.

SEC. 3040. **May agree as to part.** On an indictment against several, if the jury cannot agree upon a verdict as to all they may render a verdict as to those in regard to whom they do agree, on which a [420] judgment shall be entered accordingly and the case to the rest may be tried by another jury.

SEC. 3041. **Verdict insufficient.** If the jury render a verdict which is neither a general nor special verdict, the court may direct them to reconsider it and it shall not be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury, whether to render a general verdict, or to find the facts specially and to leave the judgment to the court.

SEC. 3042. **Informal.** If the jury persist in finding an informal verdict, from which however it can be understood that their intention is to find for the defendant upon the issue, it shall be entered in the terms in which it is found and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue or judgment be given against him upon a special verdict.

SEC. 3043. **Jury polled.** When a verdict is rendered and before it is recorded, the jury may be polled on the requirement of either party; in which case they shall be severally asked whether it be their verdict, and if any one answer in the negative the jury must be sent out for farther deliberation.

SEC. 3044. **Insanity of defendant.** If the defense be the insanity of the defendant the jury must be instructed, if they acquit him on that ground, to state that fact in their verdict. The court may thereupon, if the defendant be in custody and his discharge is deemed dangerous to the public peace or safety, order him to be committed or retained in custody until he becomes sane.

SEC. 3045. **Discharge of defendant.** If judgment of acquittal be given on a general verdict and the defendant be not detained for any other legal cause he must be discharged as soon as the judgment is given.

CHAPTER 179.

BILLS OF EXCEPTIONS.

SECTION 3046. **For what allowed.** On the trial of an indictment exceptions may be taken by the defendant or prosecuting attorney to a decision of the court upon matters of law in any of the following cases:

1. In disallowing a challenge to the panel of the jury, or to an individual juror for a general disqualification or for actual or implied bias.

2. In admitting or rejecting witnesses or testimony, [421] or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue.

SEC. 3047. **How.** A bill of exceptions must be settled and signed by the judge who tried the cause and filed with the clerk.

SEC. 3048. **When.** The bill of exceptions must be settled at the trial unless the court otherwise direct. If no such direction be given the point of exception must be particularly stated in writing and delivered to the court and shall immediately be corrected or added to until it is made conformable to the truth.

SEC. 3049. **Evidence inserted.** The bill of exceptions must contain so much of the evidence only as is necessary to present the question of law upon which the exceptions were taken.

CHAPTER 180.

NEW TRIALS.

SECTION 3050. **Definition.** A new trial is a re-examination of the issue in the same court before another jury after a verdict has been given.

SEC. 3051. **Effect.** The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew and the former verdict cannot be used or referred to either in evidence or in argument.

SEC. 3052. **Causes for.** The court may grant a new trial for the following causes, or any of them:

1. When the trial has been had in the absence of the defendant, if the indictment be for a felony;
2. When the jury has received any evidence, paper, or document out of court not authorized by the court;
3. When the jury have separated without leave of the court after retiring to deliberate upon their verdict, or have been guilty of any misconduct tending to prevent a fair and due consideration of the case;
4. When the verdict has been decided by lot or by means other than a fair expression of opinion on the part of all the jurors;
5. When the court has misdirected the jury in a material matter of law;
6. When the verdict is contrary to law or evidence. But no more than two new trials shall be granted for this cause alone.

SEC. 3053. **Application—when made.** The application for a new trial must be made before judgment, by the defendant.

[422] CHAPTER 181.

ARREST OF JUDGMENT.

SECTION 3054. **When granted.** A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal, and may be granted by the court for either of the following causes:

1. That the grand jury who found the indictment had no legal authority to inquire into the offense charged, by reason of its not being within the jurisdiction of the county;
2. That the facts stated do not constitute a public offense.

SEC. 3055. **Without motion.** The court may also on its view of any of these defects arrest the judgment without motion.

SEC. 3056. **Effect.** The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

SEC. 3057. **Recommittal—new indictment.** If by the evidence on the trial a fatal variance appear between such evidence and the offense charged in the indictment and there is reasonable ground to believe that the defendant can be convicted of such offense if properly charged, the court may at any time before such cause is submitted to the jury arrest the trial, discharge the jury, and order the defendant to be recommitted to the officer of the proper county or admitted to bail anew to answer a new indictment.

CHAPTER 182.

JUDGMENT.

SECTION 3058. **When.** After a verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted the court must pronounce judgment.

SEC. 3059. **Defendant's presence.** For the purpose of judgment, if the conviction be for a felony the defendant must be personally present; if it be for a misdemeanor judgment may be pronounced in his absence.

SEC. 3060. **Same.** When the defendant is convicted of a felony, if he [423] be in custody the court may direct the officer in whose custody he is to bring him before it for judgment.

SEC. 3061. **Defendant brought up.** If the defendant has been discharged on bail or has deposited money instead thereof and do not appear for judgment when his personal attendance is necessary, the court may order the clerk to issue a bench warrant for his arrest.

SEC. 3062. **Bench warrant.** The clerk, on the application of the prosecuting attorney, may accordingly at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties for his arrest.

SEC. 3063. **When served.** The bench warrant may be served in any county of this state in the same manner as a warrant of arrest.

SEC. 3064. **Same.** Whether the bench warrant be served in the county where it was issued or in another county, the officer must arrest the defendant and bring him before the court or commit him to the officer mentioned in the warrant according to the command thereof.

SEC. 3065. **Judgment.** When the defendant appears for judgment he shall be informed by the court or by the clerk under its direction of the nature of the indictment and of his plea and the verdict, if any thereon, and must be asked whether he have any legal cause to show why judgment should not be pronounced against him.

SEC. 3066. **Same.** If no sufficient cause be alleged or appear to the court why judgment should not be pronounced, it shall thereupon be rendered.

SEC. 3067. **Circumstances of aggravation.** After a plea or verdict of guilty in any case where a discretion is conferred upon the court as to the extent of the punishment, the following are to be considered by the court as circumstances of aggravation in pronouncing the sentence upon the defendant:

1. If the person committing the offense was, by the duties of his office or by his condition, obliged to prevent the particular offense committed or to bring offenders committing it to justice;

2. If he hold any other public office, although not one requiring the suppression of the particular offense;

3. Although holding no office, if his education, fortune, profession, or reputation, placed him in a situation in which his example would probably influence the conduct of others;

4. When the offense was committed with premeditation in consequence of a plan formed with others;

5. When the defendant attempted to induce others to join in committing the offense;

6. When the condition of the offender created a trust which was broken by the offense, or when it afforded him easier means of committing the offense;

[424] 7. When, in the commission of the offense, any other injury was offered than that necessarily suffered by the offense itself—such as wanton cruelty or humiliating language in case of personal injury;

8. When the offense was attended with a breach of any other moral duty than that necessarily broken in committing it—such as personal injury accompanied by ingratitude;

9. When the injury was offered to one whose age, sex, office, conduct, or condition, entitled him to respect from the offender;

10. When the injury was offered to one whose age, sex, or infirmity rendered him incapable of resistance;

11. When the general character of the defendant is marked by those passions or vices which generally lead to the commission of the offense of which he has been convicted.

SEC. 3068. **In alleviation.** The following circumstances are to be considered in alleviation of the punishment:

1. The minority of the offender, if so young as to justify a supposition that he was ignorant of the law or that he acted under the influence of another;

2. If the offender was so old as to render it probable that the faculties of his mind were weakened;

3. Those conditions which suppose the party to have been influenced in committing the offense by another standing in a correlative superior situation to him;

4. The order of a superior officer is no justification for committing a public offense, but under circumstances of misapprehension of the duty of obedience may be shown in extenuation of the offense;

5. When the offense has been caused by great provocation or other cause sufficient to excite in men of ordinary tempers such passions as require unusual strength of mind to restrain.

SEC. 3069. **Circumstances may be shown.** All matters in aggravation which form no part of the charge in the act of accusation, and matters of extenuation which do not amount to a legal defense and which have not necessarily or incidentally appeared to the court on the trial, may be produced either by the examination of witnesses in open court or by their affidavits, as the court may deem most conducive to justice in each particular case; but the opposite party must in all cases have an opportunity of cross-examining the witnesses if he require it and of producing counter proof.

SEC. 3070. **Judgment on several convictions.** If the defendant has been convicted of two or more offenses before judgment on either, the judgment may be that [425] the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses.

SEC. 3071. **Judgment for fine.** A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine and costs be satisfied.

SEC. 3072. **And costs—a lien.** When judgment is rendered the clerk must enter the same upon the records of the court, and if such judgment or any part thereof be for a fine or fine and costs it is a lien upon the real estate of the defendant when entered, as in civil cases.

SEC. 3073. **Committed to jail of another county.** When a person is in any event to be committed to jail, if there be no jail or no sufficient one in the county where the party would be committed under the ordinary provisions of law, the court or magistrate committing may order him to be committed to the jail of some other county, which shall be one which is the most convenient and safe, and the county to which the cause originally belonged shall be holden for all the expenses thereof.

CHAPTER 183.

THE EXECUTION.

SECTION 3074. **Copy of judgment.** When a judgment has been pronounced a certified copy of the entry thereof must be forthwith furnished to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require the execution thereof.

SEC. 3075. **Committal.** If the judgment be imprisonment, or a fine and imprisonment until it be satisfied, the defendant must forthwith be committed to the custody of the proper officer and by him detained until the judgment be complied with or the defendant discharged by due course of law.

SEC. 3076. **By whom executed.** When the judgment is imprisonment in a county jail or a fine, and that the defendant be imprisoned until it be satisfied, the judgment must be executed by the sheriff of the county.

SEC. 3077. **Same.** If the judgment be imprisonment, except in the county jail, the sheriff must deliver a copy of the entry of the judgment together with the body of the defendant to the keeper of the prison in which the defendant is to be imprisoned.

SEC. 3078. **Officer's authority in committing.** The sheriff or his deputy while conveying the defendant to the proper prison has the same authority to require the assistance of any citizen of the state in securing the [426] defendant and in retaking him if he escape as if the sheriff were in his own county; and every person who neglects or refuses to assist the sheriff when so required shall be punishable as if the sheriff were in his own county.

SEC. 3079. **Judgment of death.** When judgment of death is rendered, the judge of the court shall sign and deliver to the sheriff of the county a warrant stating the conviction and judgment and appointing a time on which the judgment shall be executed, which shall not be less than thirty days from the time of judgment.

SEC. 3080. **If prevented.** If for any reason a judgment of death has not been executed and the same remains in force the district court, on the application of the prosecuting attorney of the county where the conviction was had, must order the defendant to be brought before it, or if he be at large a warrant for his apprehension may be issued by that court.

SEC. 3081. **New order.** Upon the defendant being brought before the court it shall inquire into the facts, and if no legal objection exist must make an order that the sheriff execute the judgment, and may fix the time and place of execution.

SEC. 3082. **How inflicted.** The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

SEC. 3083. **Public or private.** The court in issuing its warrant for the execution of the sentence of death against a defendant must direct in such warrant whether the execution be public or private.

SEC. 3084. **Private—who to attend.** If private, the sheriff must notify the judge of the county court, clerk of the district court and prosecuting attorney, together with two physicians and twelve respectable citizens to be present as witnesses of such execution. And the sheriff, at the request of the defendant, may permit any minister of the gospel whom the defendant shall name and any of his relatives to attend the execution; and also such magistrates, peace officers, and guards as the sheriff shall deem proper. But no other person than those mentioned in this section must be present at the execution.

SEC. 3085. **Deputy sheriff.** If the sheriff, from sickness or otherwise, is unable to act the warrant mentioned in the preceding section must be executed by his deputy.

SEC. 3086. **Sheriff's return.** Whenever a sheriff inflicts the punishment of death upon a defendant in obedience to a warrant he must make return thereof under his hand with his doings thereon to the clerk of the court from whence it issued, and the clerk shall place the same on file with the indictment and subjoin to the record of the sentence a brief abstract of the sheriff's return on the warrant.

SEC. 3087. **Executions for fines.** Executions may be issued by the clerk of the court for the collection of fines and costs and be executed and returned in the same manner as in civil cases.

[427] CHAPTER 184.

WRITS OF ERROR, WHEN ALLOWED, AND HOW TAKEN.

SECTION 3088. The only mode of reviewing a judgment or order in a criminal action, is by a writ of error as prescribed in this chapter.

SEC. 3089. **When sued—notice.** Such writ of error may be sued out by the defendant at any time within one year after the rendition of judgment but not afterward. Notice of the suing out thereof must within five days thereafter be given to the prosecuting attorney of the proper county except in capital cases.

SEC. 3090. **Same—capital case.** No writ of error can be sued out in a criminal action until final judgment has been rendered, nor in a capital case except upon the allowance of a judge of the supreme court and after ten days notice to the prosecuting attorney of the time and place of making the application.

SEC. 3091. **Of course—when a stay.** In cases not capital writs of error shall issue as a matter of course, but cannot operate to stay proceedings on the execution of the judgment unless allowed in the manner provided in the preceding section.

SEC. 3092. **Application—how made.** Applications for such allowance must in all cases be formed upon a transcript of the indictment and bill of exceptions, or other record upon which error is alleged, under the certificate of the clerk and seal of the court where the trial was had.

SEC. 3093. **One may bring.** When several defendants are tried jointly any one or more of them may bring a writ of error. But those of their co-defendants who do not join in suing out such writ shall reap no benefit therefrom.

SEC. 3094. **Order for custody.** When a stay of proceedings shall be ordered as provided in this chapter the judge may at the same time make such order as the case may require for the custody of the defendant or for letting him to bail.

SEC. 3095. **Proceedings stayed.** If a stay of proceedings be allowed by the judge, the sheriff upon being served with the certificate thereof must cease all farther proceedings in execution of the sentence, but must retain the defendant in custody or bail him in accordance with the order of the judge to him directed.

SEC. 3096. **Writ to whom directed.** The writ of error authorized by this chapter shall be directed to the clerk of the court where the trial was had, and thereupon without delay he must make out a full and complete transcript of the proceedings in the cause and return them with the writ to the clerk of the supreme court of the proper district.

[428] CHAPTER 185.

JUDGMENT UPON WRIT OF ERROR.

SECTION 3097. **Technical errors disregarded.** The supreme court must give judgment without regard to technical errors or defects which do not affect the substantial rights of the parties.

SEC. 3098. **What judgment.** The supreme court may reverse, affirm, or modify the judgment of the district court, and may if necessary or proper order a new trial.

SEC. 3099. **Supreme court may render.** If judgment be reversed without ordering a new trial, the supreme court shall direct if the defendant be in custody that he be discharged, or if he be admitted to bail that his bail be exonerated, or if money be deposited instead of bail that it be refunded to him.

SEC. 3100. **And proceedings.** On a judgment of affirmance against the defendant the original judgment shall be carried into execution as the supreme court shall direct.

SEC. 3101. **Thereon.** When the judgment of the supreme court is rendered it must be entered on the judgment book, and a certified copy of the entry must be forthwith remitted to the clerk where the original judgment was rendered.

SEC. 3102. After the certificate of the judgment has been remitted as provided in the preceding section the supreme court has no farther jurisdiction of the proceedings thereon, and all orders which may be necessary to carry the judgment into effect must be made by the court to which the certificate is remitted.

CHAPTER 186.

IMPRISONMENT FOR PUBLIC OFFENSES, AND THE DISCIPLINE OF PRISONS.

SECTION 3103. **Jails—for what used.** The common jails now erected or which may hereafter be erected in the several counties in this state, in charge of the respective sheriffs, are to be used as prisons:

1. For the detention of persons charged with offenses and duly committed for trial or examination;
2. For the detention of persons who may be duly committed to secure their attendance as witnesses on the trial of any criminal cause;
3. For the confinement of persons pursuant to sentence upon conviction for any offense, and of all other persons duly committed for any cause authorized by law.

[429] And the provisions of this section extend to persons detained or committed by authority of the courts of the United States as well as the courts and magistrates of this state

SEC. 3104. **Keeper's duty.** It is the duty of the keeper of the jail of the county to see that the same is constantly kept in a cleanly and healthy condition, and he must pay strict attention to the personal cleanliness of all the prisoners in his custody as far as may be. Each prisoner must be furnished daily with as much clean water as may be necessary for drink and for personal cleanliness, and with a clean towel and shirt once a week, and must be served three times each day with wholesome food which must be well cooked and in sufficient quantity.

SEC. 3105. **Sheriff's duty.** The sheriff of the county must keep a true and exact calendar of all prisoners committed to any prison under his care, which calendar must contain the names of all persons who are committed, their place of abode, the time of their commitment, the time of discharge, the cause of commitment, the authority that committed them, and description of their person; and when any prisoner is liberated such calendar must state the time when and the authority by which such liberation took place; and if any person escape it must state particularly the time and manner of such escape.

SEC. 3106. **Calendar for court.** At the opening of each term of the district court within his county the sheriff must return a copy of such calendar under his hand to the judge of such court, and if any sheriff neglect or refuse so to do he shall be punished by fine not exceeding one hundred dollars.

SEC. 3107. **Hard labor.** Whenever any person is confined in any jail pursuant to the sentence of any court, if such sentence or any part thereof be confinement at hard labor the sheriff must furnish such convict with suitable tools and materials to work with either in the jail or yard thereof, and the expenses of said tools and materials must be defrayed by the county in which said convict is confined, and such county is entitled to his earnings.

SEC. 3108. **What furnished prisoners.** The keeper of each jail must furnish necessary bedding, clothing, fuel, and medical aid for all prisoners under his charge and keep an accurate account of the same.

SEC. 3109. **Prisoners in case of fire.** Whenever by reason of any jail being on fire, or any building contiguous or near to a jail being on fire, there be reason to apprehend that the prisoners confined in such jail may be injured or endangered thereby, the sheriff or keeper of such jail may at his discretion remove such prisoners to some safe and convenient place and there confine them so long as may be necessary to avoid such danger.

SEC. 3110. **Inspectors.** In each county of this state the judge of the county [430] court and prosecuting attorney are inspectors of the jails respectively, and have power from time to time to visit and inspect the same and inquire into all matters connected with the government, discipline, and police of such prisons.

SEC. 3111. **Their duty.** It is the duty of such inspectors to visit and inspect such prisons twice each year, and at the next district court which is thereafter held in their county to present to such court on the first day of its sitting a detailed report of the condition of such prisons at the time of such inspection.

SEC. 3112. **Their report.** Such report must state the number of persons confined in such prisons and for what causes respectively, the number of persons usually confined in one room, the distinction if any usually observed in the treatment of prisoners, the evils if any found to exist in such prisons; and particularly, whether any of the provisions of this chapter have been violated or neglected and the causes of such violation or neglect.

SEC. 3113. **Right to inspect all things.** It is the duty of the keepers of such prisons to admit the said inspectors or any of them into every part of such prisons, to exhibit to them on demand all the books, papers, documents, and accounts pertaining to the prison or to the prisoners confined therein, and to render them every other facility in their power to enable them to discharge the duties above prescribed.

SEC. 3114. **May swear officers, etc.** For the purpose of obtaining the necessary information to enable them to make such report as is above required in this chapter, the said inspectors have power to examine on oath, to be administered by either of them, any of the officers of such prison or any of the prisoners therein.

SEC. 3115. **Prisoners refractory.** If any person confined in any jail upon a conviction or charge of any offense is refractory or disorderly, or if he wilfully destroy or injure any article of bedding or other furniture, door, or window, or any other part of such prison, the sheriff of the county after due inquiry may chain and secure such person, or cause him to be kept in solitary confinement not more than ten days for any one offense; and during such solitary confinement he must be fed with bread and water only unless other food is necessary for the preservation of his health.

SEC. 3116. **Expenses of jail.** All charges and expenses of safe keeping and maintaining convicts and persons charged with public offenses and committed for examination or trial to the county jail, shall be paid from the county treasury, the accounts therefor being first settled and allowed by the county court; except prisoners committed or detained by the authority of the courts of the United States, in which cases the United States must pay such expenses to the county.

[431] CHAPTER 187.

THE PENITENTIARY OF THE STATE, AND THE GOVERNMENT AND DISCIPLINE THEREOF.

SECTION 3117. **At Fort Madison.** The penitentiary at Fort Madison in the county of Lee shall continue to be maintained as the penitentiary of this state, in which convicts sentenced for life or any term of time shall be confined, employed, and governed, as hereinafter provided.

SEC. 3118. **Punishment—hard labor.** All punishment in the penitentiary by imprisonment must be by confinement to hard labor, and not by solitary imprisonment; but solitary imprisonment may be used as a prison discipline for the government and good order of the convicts as hereinafter mentioned.

SEC. 3119. **Prisoners of U. S.** Convicts sentenced to hard labor in the penitentiary for life or any term of time by any court of the United States held within this state must be received into the prison by the warden thereof, when delivered by the authority of the United States, and there kept in pursuance of their sentences.

SEC. 3120. **Penitentiary under what government.** The penitentiary shall be under the government and direction of three inspectors, one warden, one deputy warden, one person to perform the duties of clerk and commissary, and such number of overseers not exceeding ten as the inspectors may determine to be necessary.

SEC. 3121. **Inspectors and warden.** The inspectors and warden shall be appointed by the governor by and with the consent of the senate, and be commissioned to hold their offices during the pleasure of the executive, but not more than four years under one appointment. One of the inspectors shall in his commission be designated as chairman. The inspectors and warden before entering on the discharge of their respective duties must take and subscribe the oaths of office; and the warden must also give bond to the state in the sum of ten thousand dollars with sufficient sureties, to be approved by the governor, conditioned that he shall account for all moneys that come into his hands as treasurer of the penitentiary; that he will not be concerned in the business of trade or commerce during his continuance in office; and that he will faithfully perform all the duties incumbent on him as warden of such prison, which bond must be filed in the office of the secretary of state.

SEC. 3122. **Other officers appointed by warden.** The other officers, with the exception of the clerk before mentioned, whenever the number of prisoners and the business of the prison require it, must be appointed by the [432] warden under his hand subject to the approval or disapproval of the inspectors and hold their offices during the pleasure of the inspectors and warden; the clerk shall be appointed by the inspectors and hold his office during their pleasure; but the inspectors without the concurrence of the warden may remove the deputy warden or overseers for negligence or unfaithfulness in the discharge of their duties, and appoint others in their places; and if the warden should think any subordinate officer ought to be removed and the inspectors will not consent thereto, the warden may appeal to the governor, who after reasonable notice to the inspectors may make such removal and appoint such other person as he may deem proper. Such subordinate officers must take and subscribe the oaths of office, and the deputy warden and clerk must also give bond to the state with sufficient sureties, the former in the sum of five hundred dollars and the latter in the sum of one thousand dollars, to be approved of by the inspectors, conditioned for the faithful performance of their respective duties, which bonds shall be filed in the office of the secretary of state.

SEC. 3123. **Duty of inspectors.** It is the duty of the inspectors to meet together at stated times at the penitentiary, once at least in every three months and oftener if necessary, to attend to and inspect the concerns of the prison, the manner of keeping the books and accounts, and the register of punishments kept by the warden; and from time to time carefully to examine the same and to keep a record of their doings; one of them at least must visit the prison as often as once in each month, to examine into all the concerns thereof and to see that the laws and regulations thereof are duly observed and the duties of the several officers faithfully performed, and to advise with the warden of the prison on the concerns thereof whenever thereto requested; and each of them shall at all times have free access to all parts of the prison and be allowed to inspect and examine all the books, accounts, and writings, pertaining to the prison or the business, management, and government thereof. And the inspectors as soon as may be after each stated meeting, or oftener if necessary, shall transmit to the governor a transcript of the record of their doings and such other information relative to the concerns of the prison as they may deem proper.

SEC. 3124. **To audit and settle account.** It is the duty of the inspectors on the first Monday of November annually to audit, correct, and settle the accounts of the warden with the prison and the state for the year ending on the last day of September preceding and make report thereof in the same month to the governor, which report must exhibit an account of the stock on hand of different kinds as [433] well at the beginning as at the close of the year; the several sums expended for materials, provisions, fuel, clothing, bedding, lights, tools and other articles; the amount of manufactures of each kind, and all other articles sold from the prison; the profits or loss upon each branch of business; and all other particulars necessary to give the governor a full understanding of the fiscal and other concerns of the prison, and must at the same time furnish an estimate of the probable income and expense of the prison for the ensuing year.

SEC. 3125. **Inquire into conduct of officers.** It is the duty of the inspectors to inquire into any improper conduct which may be alleged to have been committed by the warden or any subordinate officer of the prison in relation to the concerns thereof; and for that purpose may issue subpoenas for witnesses to compel their attendance and the production of papers and writings, and may examine witnesses under oath to be administered by the chairman, and may adjudicate on such alleged improper conduct in like manner and with like effect as in case of arbitration.

SEC. 3126. **And of prisoners.** The inspectors must examine into all disorderly conduct among the prisoners, and when it appears to them that such conduct is disorderly, refractory, or disobedient, they may order such punishment as they may deem necessary to enforce obedience and as shall not be inconsistent with humanity and may be authorized by the rules and regulations established for the government of the prison.

SEC. 3127. **Establish regulations.** The inspectors must from time to time establish such rules and regulations consistent with the laws of the state as they may deem necessary and expedient for the direction of the officers, agents, and servants of the prison in the discharge of their respective duties; or for their respective compensation not established by law; for the government, instruction and discipline of the convicts and for their clothing and subsistence; and for the custody, preservation and management of the public property; and so soon as may be after the establishment of the same by the inspectors they shall cause a copy thereof to be laid before the governor, who may approve or modify the same and make and establish such other rules and regulations consistent with the laws of the state as to him may seem fit; and the governor must communicate all such rules and regulations as shall be thus approved or established to the next legislature after the same have been so approved and established, and the inspectors must cause a copy of such rules and regulations to be certified by the clerk and delivered to the warden.

SEC. 3128. **Duty of warden.** The warden must not carry on nor be concerned in the business of trade or commerce during his continuance in office; he must reside constantly within the precincts of the [434] prison, and shall have the care and custody of the prison and of the convicts therein in conformity to their respective sentences, and of the lands, buildings, machines, tools, stock, provisions, and every other kind of property belonging to or within the precincts of the same. He is the treasurer of the prison and must receive, pay out, and be accountable for all moneys granted for maintaining the same or derived from the manufactures or other concerns thereof, and shall make or cause to be made in the books of the prison regular entries of all pecuniary and other concerns of the prison, and must render to the inspectors whenever required a fair account of all the expenses and disbursements, receipts and profits of the prison with sufficient vouchers for the same, and a statement of its general affairs for the year then passed, including the number of convicts received and discharged during the year and the number remaining; and a similar account and statement examined and approved by the inspectors the warden shall also render under oath to the legislature at the commencement of every regular session thereof.

SEC. 3129. **Oversee convicts.** It is the duty of the warden to inspect and oversee the conduct of the convicts and cause all the rules and regulations of the prison to be strictly and promptly enforced; he must give immediate information of any officer who neglects or refuses to enforce the discipline established to the inspectors, who must forthwith remove any officer who is guilty of such neglect of duty. He has authority to punish any convict for disobedience, disorderly behavior, or indolence, in such manner as may be directed by the inspectors or prescribed in the rules and regulations, and must keep a register of all such punishments and the cause for which they were inflicted.

SEC. 3130. **Serve process in prison.** The warden or his deputy shall serve, execute and return all process within the precincts of the prison, and such process may be directed to him or his deputy accordingly; and for the doings of his deputy the warden as well as his deputy is answerable. The warden shall have the command of all the force for guarding the prison and of all officers and persons employed under him.

SEC. 3131. **Contracts for supplies.** All articles of food, clothing, bedding, raw materials for manufacture, fuel, and other articles that may be necessary for the use of the prison, must be contracted for by the year when such contracts can be advantageously made, in the following manner: The warden shall annually make an estimate of the quantity of each article necessary for the then next ensuing year, commencing on the first day of October of each year and ending on the last day of September [435] thereafter, and advertise that he will receive sealed proposals for furnishing and delivering at the prison such articles or any of them until the first day of October; payments to be made quarterly, stating the quantity and quality of each article required, the time when each article must be delivered, and the terms of payment; which advertisement he shall cause to be inserted in one or more of the papers published in Fort Madison and in one or more of the papers published at the seat of government of this state, three weeks successively, the last publication to be at least one month before the first day of October in each year.

SEC. 3132. **Proposals examined.** The inspectors must meet at the prison within five days next after the first day of October of each year, and having first estimated the lowest price at which each article advertised for can be procured shall open and examine the proposals; and the lowest offer for furnishing any article, not being above the market price, shall be accepted if good security be given to the warden for the faithful performance of the contract.

SEC. 3133. **Same.** If no such offer be made below the estimated market price or if any article should not be included in such advertisement or if the inspectors should deem it expedient to decline any or all of such proposals, the warden may procure such articles as may be necessary for the prison by advertising anew or in such manner as may be prescribed by the inspectors.

SEC. 3134. **Warden to take bills of supplies.** The warden must take bills of the quantity and price of the supplies furnished for the prison at the time of delivery and must exhibit the same to the clerk who must compare the same with the articles delivered; if the bills are found correct he must enter them with the date in a book to be kept for that purpose; in like manner bills shall be taken and entered of all services rendered for the prison; if any such bill be found incorrect the clerk shall omit to enter it and immediately give notice to the warden, that the error may be corrected.

SEC. 3135. **Security required.** No contract can be accepted by the warden unless the contractor give satisfactory security for the performance of it, and no officer of the prison shall be directly or indirectly interested in any such contract.

SEC. 3136. **Actions on such contracts.** All actions founded on contract made with the warden in his official capacity may be brought by or against the warden for the time being; and any action for injuries done or occasioned to the real or personal property belonging to the state and appropriated to the use of the prison or being under the management of the warden thereof may be prosecuted in the name of the warden for the time being, and no [436] such action shall abate by the warden's ceasing to be in office, but his successor, upon notice, is required to assume the prosecution or defense of the same. In any such action the warden is a competent witness, and his property shall not be taken or attached in any such suit nor shall any execution issue against him on any judgment thereon, but such judgment shall stand as an ascertained claim against the state; and whenever a new warden is appointed all the books, accounts, and papers belonging to the prison shall be delivered to him, and he shall be vested with all the powers and subject to all the obli-

gations with regard to any contracts or any debts due to or from the prison that his predecessor would have been if no change had taken place in the office.

SEC. 3137. **Wardenship vacant.** Whenever the office of warden is vacant or he is absent from the prison or unable to perform the duties of his office, the deputy warden has the power to perform the duties, and shall be subject to all the obligations and liabilities, of the warden.

SEC. 3138. **Deputy supplying the office.** If the office of warden become vacant before a new one is appointed, and the deputy warden enter upon the duties of the office, the inspectors may require such deputy to give bond to the state in the sum of five thousand dollars with good security, conditioned for the faithful discharge of the duties incumbent on him as deputy warden and treasurer, which bond must be approved by the inspectors; and from the time such bond is approved the deputy may receive the salary and emoluments of the warden in lieu of his former pay so long as he performs the duty of the office; if the deputy warden do not give such bond when required the inspectors may remove him from office and appoint a warden for the time being, who must give bond similar to the one required of the deputy warden, and shall have the power and authority and perform the duties and receive the salary and emoluments of the warden until a warden is duly appointed and enter upon the discharge of the duties of his office.

SEC. 3139. **Duty of clerk.** It is the duty of the clerk and commissary to keep an exact account of all supplies purchased for the use of the prison as before provided in this chapter and of all the articles sold and delivered from the same, and to assist in effecting sales and purchases in such manner as the warden may direct; he must attend the meetings of the inspectors when they require him so to do and keep a record of their proceedings, and perform such other services pertaining to his employment and the superintending of the prison as may be directed by the inspectors or warden.

SEC. 3140. **Overseers.** Persons having suitable knowledge and skill in the branches of labor and manufacture carried on in the prison [437] may when practicable be employed as overseers; and they must respectively superintend such portions of the labor of convicts for which they are most suitably qualified, and which shall be assigned to them by the warden; and all of them as well as the other subordinate officers of the prison must perform such services in the management, superintending, and guarding of the prison as may be prescribed by the rules and regulations or directed by the warden.

SEC. 3141. **Delinquency of officers.** If any subordinate officer of the prison is guilty of negligence or unfaithfulness in the discharge of his duties or of a violation of any of the laws or rules and regulations for the government of the prison, the warden, with the approbation of the inspectors, may deduct from the pay of such officer a sum not exceeding his pay for one month.

SEC. 3142. **Physician.** The inspectors must appoint some suitable person to be a physician and surgeon to the penitentiary, whose duty it is to visit the prison whenever requested by the warden, prescribe for the convicts who may be sick, see that the proper attention be paid to the clothing, regimen and cleanliness of such as may be in the hospital, and advise when the illness of any convict may require his removal to the same; and upon such advice he must forthwith be removed to the hospital, there to receive such care and attention and be furnished with such medicines and diet as his situation may require until the physician determine that he may leave it without injury to his health.

SEC. 3143. **Pestilence among convicts.** In case of any pestilence or contagious sickness breaking out among the convicts in the prison the inspectors

and warden may cause the convicts confined therein or any of them to be removed to some suitable place of security where such of them as are sick shall receive all necessary care and medical assistance. Such convicts must be returned as soon as may be to the penitentiary, to be confined according to their respective sentences if the same be unexpired.

SEC. 3144. **Convicts suffered at large.** If any officer or other person employed in the prison or its precincts negligently suffer any convict confined therein to be at large without the precincts of the prison or out of the cell or apartment assigned to him, or to be conversed with, relieved, or comforted contrary to law or the rules and regulations of the prison, he shall be punished by fine not exceeding five hundred dollars.

SEC. 3145. **Resistance to authority.** If a convict sentenced to the penitentiary resist the authority of any officer or refuse to obey his lawful commands, it is the duty of such officer immediately to enforce obedience by the use of such weapons or other aid as may be effectual; and if in so doing any convict thus resisting be [438] wounded or killed by such officer or his assistants they are justified and shall be held guiltless.

SEC. 3146. **Insurrection.** It is the duty of all the officers and other citizens of this state by every means in their power to suppress any insurrection among the convicts sentenced to the penitentiary, and to prevent the escape or rescue of any such convicts therefrom, or from any other legal confinement, or from any person in whose legal custody they may be; and if in so doing or in arresting any convict who may have escaped such officer or other person wound or kill such convict or other person aiding or assisting such convict, they shall be justified and held guiltless.

SEC. 3147. **Escape.** When any convict escapes from the penitentiary it is the duty of the warden to take all proper measures for his apprehension; and for that purpose he may offer a reward not exceeding fifty dollars, to be paid by the state, for the apprehension and delivery of such convict.

SEC. 3148. **Discharge.** No convict can be discharged from the penitentiary until he has remained the full term for which he was sentenced, to be computed from and including the day on which he was received into the same, exclusive of the time he may have been in solitary confinement for any violation of the rules and regulations of the prison, unless he be pardoned or otherwise released by legal authority.

SEC. 3149. **Property of convicts.** It is the duty of the warden to receive and take care of any property that a convict may have with him at the time of his entering the penitentiary, and, when it may be convenient, to place the same at interest for the benefit of such convict; of which property the warden must keep an account and pay the same to such convict on his discharge, or in case of his death to his representatives, unless the same have been otherwise legally taken and disposed of.

SEC. 3150. **Good conduct.** When any convict is discharged from the penitentiary who has conducted well during his imprisonment, the warden at his discretion may give to such convict from the funds of the prison a sum not exceeding five dollars, and if he desire it a certificate of such good conduct, and must take care that every convict on his discharge from the penitentiary is provided with decent clothing.

SEC. 3151. **Fee from visitors.** The warden has authority to demand and receive of each person, not exempt by law, who visits the prison for the purpose of viewing the interior or precincts, such sum not exceeding twenty-five cents and under such regulations as the inspectors may prescribe, of which

the warden must keep an account, and which money shall be applied for the purchase of books for the use of the prison under the direction of the inspectors.

[439] SEC. 3152. **Who authorized to visit.** The following persons are authorized to visit the penitentiary at pleasure: the governor, secretary, auditor, and treasurer of state, members of the general assembly, judges of the supreme, district and county courts, prosecuting attorneys of any of the counties of this state, and all regular officiating ministers of the gospel; and no other person shall be permitted to go within the walls of the prison where convicts are confined except by special permission of the warden or under such regulations as the inspectors shall prescribe.

SEC. 3153. **Economy—receipts.** It is the duty of the inspectors and warden to see that rigid economy is practiced in all matters pertaining to the prison and the employment of the convicts, and that duplicate receipts be taken for all expenditures made on account of the prison, one copy of which must be forwarded to the auditor of state monthly.

SEC. 3154. **Compensation of officers.** The inspectors shall be allowed for their services respectively the sum of three dollars for each and every day actually and necessarily occupied in inspecting the prison and inquiring into the management thereof, not exceeding twenty days each in any year. The warden shall be allowed the yearly salary of five hundred dollars, to be paid quarterly; and the subordinate officers and other persons employed in managing, guarding, and superintending the prison shall at stated times receive such compensation as shall be established in the rules and regulations of the prison or allowed by the inspectors and warden with the approbation of the governor.

SEC. 3155. **Perquisites of warden.** The warden shall not receive any perquisites or emoluments for his services other than the compensation allowed by law, except that he shall keep his office and reside with his family in the penitentiary and shall be furnished with fuel and lights from the stock provided for the use of the prison.

CHAPTER 188.

IMPEACHMENTS.

SECTION 3156. **Who liable.** Any civil officer of this state except county or township officers may be impeached for corruption or other malconduct in office as well as for high crimes and misdemeanors.

SEC. 3157. **By whom found.** A majority of all the members of the house of representatives elected must concur in an impeachment.

[440] SEC. 3158. **Requisites.** The impeachment must specify the offenses charged with the same precision as is requisite in an indictment, and the accused must be allowed counsel as in cases of other prosecutions.

SEC. 3159. **Senate.** When possessed of an impeachment the senate must forthwith cause the person accused to be brought before it.

SEC. 3160. **Process.** All writs and process must be issued by the secretary of the senate and tested in his name, and may be served by any person thereto authorized by the senate or its president.

SEC. 3161. **Time to answer.** Upon the appearance of the person impeached he is entitled to a copy of the impeachment and to a reasonable time in which to answer the same.

SEC. 3162. **Oath.** Before proceeding to the trial, an oath truly and impartially to try and determine the charge in question according to the evidence shall be administered by the secretary of the senate to the president, and by him to each of the members of that body.

SEC. 3163. **Two-thirds vote.** The person impeached shall be declared acquitted unless two-thirds of the members present assent to his conviction.

SEC. 3164. **Judgment.** Upon conviction, the judgment shall be removal from office. It may also attach a disqualification to hold any office of honor, trust or profit under the laws of this state.

SEC. 3165. **Sentence.** Every officer impeached shall be suspended from the exercise of his official duties until his acquittal.

SEC. 3166. **No bar.** Conviction on an impeachment does not exempt the offender from a private action or public prosecution for the same act or offense.

SEC. 3167. **When president of senate impeached.** If the president of the senate be impeached notice thereof must immediately be given to the senate, which shall thereupon choose another president to hold his office until the result of the trial is determined.

[441] TITLE XXV.

MISCELLANEOUS PROVISIONS RELATING TO CRIMINAL PROCEEDINGS.

CHAPTER 189.

COMPELLING THE ATTENDANCE OF WITNESSES.

SECTION 3168. **Subpoenas.** A magistrate before whom an information is laid may issue subpoenas subscribed by him for witnesses within the state on behalf of either the state or the defendant.

SEC. 3169. **Who.** The prosecuting attorney of the county may issue subpoenas subscribed by him for witnesses within the county in support of the prosecution, or for such other witnesses as the grand jury may direct, to appear before the grand jury upon any investigation pending before them.

SEC. 3170. **May issue.** The clerk of the court at which an indictment is to be tried must at all times, upon the application of the defendant and without charge, issue as many blank subpoenas under the seal of the court and subscribed by him as clerk, for witnesses within the state, as may be required by the defendant. He must also issue subpoenas on the part of the state when required.

SEC. 3171. **Who to serve.** A peace officer must serve within his town, or county, as the case may be, any subpoena delivered to him for service on the part of either the state or defendant, and must make a written return of the service subscribed by him and stating the time and place of service, without delay. A subpoena may however be served by any other person.

SEC. 3172. **How.** The service of a subpoena must be by delivering a copy and showing the original to the witness personally.

SEC. 3173. **Witness out of county.** No person is obliged to attend as a witness before any court or magistrate out of the county where he resides or is served with the subpoena unless a judge of the supreme, district, or county

court, upon an affidavit of the prosecuting attorney or of the defendant or his attorney, stating that he believes that the evidence of the witness is material and his attendance at the examination or trial necessary, shall indorse on the subpoena an order for the attendance of the witness.

SEC. 3174. **Disobedience.** Disobedience to a subpoena, or a refusal to be [442] sworn or to answer as a witness, may be punished by the court or magistrate as a contempt.

SEC. 3175. **Forfeiture for.** A witness wilfully disobeying a subpoena issued on the part of the state or defendant without good cause shall also forfeit the sum of fifty dollars to the party injured, which may be recovered in a civil action.

SEC. 3176. **Breaking doors.** If a witness conceal himself to avoid the service of a subpoena, the officer may break open doors or windows for the purpose of making service.

CHAPTER 190.

EXAMINATION OF WITNESSES CONDITIONALLY.

SECTION 3177. **Conditional depositions in.** When a defendant has been held to bail to answer a charge for a public offense, he may either before or after indictment have witnesses examined conditionally on his behalf, as prescribed in this chapter and not otherwise.

SEC. 3178. **Criminal cases.** When a material witness for the defendant is about to leave the state or is so sick or infirm as to afford reasonable ground for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

SEC. 3179. **Application.** The application must be made upon affidavit showing:

1. The nature of the offense charged;
2. The state of the proceedings in the action;
3. The name and residence of the witness and that his testimony is material to the defense of the action, and
4. That the witness is about to leave the state or is so sick or infirm as to afford reasonable ground for believing that he will be unable to attend the trial.

SEC. 3180. **In term.** The application if made during the term must be made to the court.

SEC. 3181. **Out of term.** If not made during term, the application must be made as follows:

1. When the indictment or proceedings are pending in the district court, to a judge of the district, supreme, or county court.
2. When the proceedings are pending before a justice of the peace for the trial of a misdemeanor, to the justice.

SEC. 3182. **Allowance.** If the court or officer to whom the application is made be satisfied that the examination of the witness is necessary to the attainment of justice, an order may be made [443] that the witness be examined conditionally at a specified time and place, and that a copy of the order and of the affidavit on which it was granted be served on the prosecuting attorney within a specified time before that fixed for the examination.

SEC. 3183. **The order.** The order for the examination of the witness must direct before whom the same shall take place.

SEC. 3184. **The taking.** On proof being made to the officer or person before whom the examination is appointed of the service of a copy of the order and of the affidavit on which it was granted, on the prosecuting attorney, or if he cannot be found by leaving a copy thereof at his office or dwelling house, if no counsel appear on the part of the state the examination may proceed.

SEC. 3185. **Same.** If the prosecuting attorney or other counsel appear on the part of the state and it be shown to the satisfaction of the court or person authorized to take the testimony, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the state or is not so sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination shall not take place; and all costs of such application shall be paid by the defendant.

SEC. 3186. **Requisites.** The testimony of the witness must be reduced to writing and sworn to and subscribed by him, and be authenticated by the person taking the same as follows:

1. The certificate must state that the deposition was sworn to and subscribed by the witness;

2. The time and place of taking the same.

SEC. 3187. **Return.** The deposition must be returned by the person taking it to the clerk of the court or magistrate where the action is pending, without delay.

SEC. 3188. **When read.** The deposition may be read in evidence by either party on the trial upon its being satisfactorily proved that the witness is unable to attend the trial by reason of his death, insanity, sickness or infirmity, or of his continued absence from the state so that his attendance could not be compelled by subpoena or attachment.

SEC. 3189. **When not.** The deposition, however, cannot be read if it be satisfactorily shown that the copy of the order and the affidavit on which it was founded was not served on the prosecuting attorney as directed, or that the examination was not conducted as prescribed in this chapter.

SEC. 3190. **Objections.** Upon the reading of the deposition in evidence the same objections may be taken to any question or answer contained therein as if the witness had been examined orally in court.

[444] SEC. 3191. The attendance of the witness may be compelled by the officer or person appointed to take the deposition by a subpoena issued and subscribed by him.

SEC. 3192. **Contempt.** Disobedience to the subpoena or a refusal to be sworn as a witness or to answer after being sworn may be punished as a contempt by the court or magistrate where the action is pending.

CHAPTER 191.

EXAMINATION OF WITNESSES ON COMMISSION.

SECTION 3193. **Depositions abroad.** When any indictment, or information appealed, is pending before a district court the defendant may have any material witness residing out of the state examined in his behalf as prescribed in this chapter, and not otherwise.

SEC. 3194. **Application.** The application must be made upon affidavit showing:

1. The nature of the offense charged;
2. The state of the proceedings in the action, and that an issue of fact has been joined therein;

3. The name of the witness and what is expected to be proved by him;
4. That the same facts cannot be established by any other witness within the jurisdiction of the court to the knowledge of the defendant;
5. That the witness resides out of the state, and his place of residence.

SEC. 3195. **In term, or out.** The application if made during the term must be made to the court; if not made during the term the application may be made to the judge of the court or to a judge of the supreme or county court.

SEC. 3196. **How made.** If the application be made to the court, it may be without notice to the prosecuting attorney unless the court direct notice to be given, in which case it must prescribe the manner of giving the same. If made to one of the officers mentioned in the last section the application must be made upon five days' notice to the prosecuting attorney with a copy of the affidavit upon which it is founded.

SEC. 3197. **Allowance.** If the court or officer to whom the application is made be satisfied that the witness resides out of the state and that his examination is necessary to the attainment of justice, an order shall be made that a commission be issued to take his testimony.

SEC. 3198. **Notice.** When the commission is ordered the defendant [445] must serve upon the prosecuting attorney without delay a copy of the interrogatories to be annexed thereto, with notice of two days of their settlement before the court or judge ordering the commission.

SEC. 3199. **Same.** The prosecuting attorney may in like manner serve upon the defendant or his counsel cross-interrogatories to be annexed to the commission with the like notice of the settlement thereof.

SEC. 3200. **Interrogations.** In the interrogatories either party may insert any questions pertinent to the issue.

SEC. 3201. **Their settlement.** Upon the settlement of the interrogatories the judge must expunge any question not legal or pertinent to the issue, and must modify the questions so as to conform them to the rules of evidence, and when settled shall indorse upon them his allowance and annex them to the commission.

SEC. 3202. **Commission.** The commission must be issued under the seal of the court and the signature of the clerk, directed to one or more persons designated as commissioners authorizing them to examine the witness upon oath on the interrogatories annexed thereto, to take and certify the deposition of the witness and to return it together with the commission, interrogatories, and exhibits, according to the directions given with the commission.

SEC. 3203. **How executed.** The commissioners, or any one of them, unless otherwise specially directed, must execute the commission as follows:

1. They must publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth;
2. They must cause the examination of the witness to be reduced to writing;
3. They shall write the answers of the witness as near as possible in the language in which he gives them, and must read to him each answer as it is taken down and correct or add to it until it is made conformable to what he declares is the truth;
4. If the witness declines answering a question, that fact with the reason for which he declines answering it, must be stated;
5. If any papers or documents are produced before them and proved by the witness, they must be annexed to his deposition and be subscribed by the witness and certified by the commissioners;

6. The commissioners must subscribe their names to each sheet of the deposition and annex the same with the documents proved by the witness to the commission, and [446] must close up under seal and address the same as directed in the commission;

7. If there be a direction in the commission to return it by mail, the commissioners must immediately deposit it in the nearest post office. If any other direction be made by the written consent of the parties or by the officer in the commission, as to its return, they must comply with the direction.

SEC. 3204. **Same.** A copy of the last section must be annexed to the commission.

SEC. 3205. **Filed.** The clerk or judge receiving and opening the commission and return must immediately file it in the clerk's office of the court where the indictment is pending.

SEC. 3206. **Open.** The commission and return shall be open to the inspection of the parties.

SEC. 3207. **Reading—objections.** The depositions taken under the commission may be read in evidence by either party on the trial, and the same objections may be taken to any question in the interrogatories or to any answer in the depositions as if the witness had been examined orally in court.

SEC. 3208. **When not read.** Such depositions shall not be read at the trial if it be made satisfactorily to appear that such witness is within the jurisdiction of the court and his personal attendance can be procured.

CHAPTER 192.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

SECTION 3209. **Definition.** Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon the taking of bail.

SEC. 3210. **How taken.** The taking of bail consists in the acceptance by a competent court or magistrate of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking or that the bail will pay to the state a specified sum.

SEC. 3211. **When not admitted.** The defendant cannot be admitted to bail where he is charged:

1. With an offense punishable with death; or
2. With the infliction of a personal injury upon another likely to produce death, and under such circumstances as that, if death ensue, the offense would be murder:

SEC. 3212. **Admitted before conviction.** If the charge be for any other offense he may be admitted to bail before conviction as follows:

- [447] 1. As a matter of right, in cases of misdemeanor;
2. As a matter of discretion, in all other cases.

SEC. 3213. **After conviction.** After conviction of an offense not punishable with death, a defendant who has sued out a writ of error to take his case from the district to the supreme court of the state and where there is a stay of proceedings, but not otherwise, may be admitted to bail:

1. As a matter of right, where the writ of error is from a judgment imposing a fine only;
2. As a matter of discretion, in other cases.

SEC. 3214. **Before conviction—how.** Before conviction, a defendant may be admitted to bail:

1. For his appearance before a magistrate on the examination of the charge, before being held to answer;

2. To appear to the court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer after examination;

3. After indictment, either upon the bench warrant issued for his arrest, or upon an order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found or to which it may be sent or removed for trial.

SEC. 3215. **After conviction—how.** After conviction and upon a writ of error when there is a stay of execution, the defendant may be admitted to bail as follows:

1. If the writ of error be from a judgment imposing a fine only, on the undertaking of bail that he will pay the same or such part of it as the supreme court may direct if the judgment be affirmed or modified or the writ of error be dismissed;

2. If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment upon its being affirmed or modified or upon the writ of error being dismissed.

CHAPTER 193.

BAIL UPON BEING HELD TO ANSWER BEFORE INDICTMENT.

SECTION 3216. **Admitted by whom.** When the defendant has been held to answer for any bailable public offense, the admission to bail may be by the magistrate who held him to answer or by any judge of the supreme, district, or county courts, or by the court to [448] which the depositions and statement are returned by the committing magistrate.

SEC. 3217. **Application to court.** If the application for admission to bail be made to the court, an order must be made granting or denying it, and if it be granted stating the sum in which bail must be taken.

SEC. 3218. **To magistrate.** If the application be made to a magistrate, he must certify in writing his decision granting or denying the same, and if he grant the application he must state in the certificate the sum in which bail is to be taken, which certificate he shall cause to be forthwith filed with the clerk of the court to which the depositions are required to be sent.

SEC. 3219. **How given.** Bail is put in by a written undertaking executed by one or more sufficient sureties (with or without the defendant, in the discretion of the court or magistrate.) and acknowledged before the court or magistrate taking the same.

SEC. 3220. **Qualifications of bail.** The qualifications of bail are as follows:

1. Such bail must be a resident and householder or freeholder within the state;

2. Such bail must be worth the amount specified in the undertaking exclusive of property exempt from execution, but the court or magistrate on taking bail may allow more than one bail to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of one sufficient bail.

SEC. 3221. **Justification.** The bail must in all cases justify by affidavit taken before the court or magistrate as the case may be, and the affidavit must state that they each possess the qualifications prescribed in this chapter.

SEC. 3222. **Same.** The prosecuting attorney or the court or magistrate may thereupon farther examine the bail upon oath concerning their sufficiency in such manner as they may deem proper.

SEC. 3223. **Same.** The court or magistrate may also receive other testimony either for or against the sufficiency of the bail.

SEC. 3224. **Determination.** When the examination is closed the court or magistrate must make an order either allowing or disallowing the bail, and must forthwith cause the same with the affidavits of justification and the undertaking of bail to be filed with the clerk of the court to which the depositions and statements are to be sent.

SEC. 3225. **Order of discharge.** Upon the allowance of the bail and the execution of the undertaking, the court or magistrate must make an order, signed by him with his name of office, for the discharge of the defendant to the following effect:

[449] "The State of Iowa,

To the sheriff of _____ county.

A— B—, (the name of the defendant) who is detained by you on commitment to answer a charge for the offense of (here designating it generally) having given sufficient bail to answer the same, you are commanded forthwith to discharge him from custody.

Dated.

Signed.

SEC. 3226. **Disallowed.** If the bail be disallowed the defendant must be detained in custody until other bail be put in and justify.

CHAPTER 194.

BAIL UPON AN INDICTMENT BEFORE CONVICTION.

SECTION 3227. **In case of misdemeanor.** When the offense charged in the indictment is a misdemeanor and the amount of bail has been fixed by the court, the officer serving the bench warrant, if therein required, must take the defendant before a magistrate in the county in which it is issued or in which he is arrested, for the purpose of giving bail.

SEC. 3228. **Felony.** If the offense charged in the indictment be a felony, the officer arresting the defendant must deliver him into custody according to the command of the warrant.

SEC. 3229. **By whom taken.** When the defendant is so delivered into custody, if the felony charged be bailable and the amount thereof be fixed by the court, bail may be taken by the court in which the indictment was found or to which it has been removed or by any magistrate in the county having authority to admit a defendant to bail.

CHAPTER 195.

BAIL ON WRIT OF ERROR.

SECTION 3230. **By whom ordered.** In the cases in which the defendant may be admitted to bail upon a writ of error as before provided, the order admitting him to bail may be made either by the court where the judgment was rendered or the judge thereof, or by the supreme court, or by the judge of the county court.

SEC. 3231. **Notice.** When the admission to bail is a matter of discretion, the court or officer by whom it may be ordered may re-[450]quire such notice of the application therefor as he may deem reasonable to be given to the prosecuting attorney of the county in which the judgment was originally rendered.

CHAPTER 196.

DEPOSIT OF MONEY INSTEAD OF BAIL.

SECTION 3232. **With whom—and effect.** The defendant, at any time after an order admitting him to bail, instead of giving bail may deposit with the clerk of the district court in which he is held to answer the sum mentioned in the order, and upon delivering to the officer in whose custody he is a certificate of the deposit he shall be discharged from custody.

SEC. 3233. **After giving bail.** If the defendant have given bail he may at any time before the forfeiture of the undertaking in like manner deposit the sum mentioned in the undertaking, and upon the deposit being made the bail shall be exonerated.

SEC. 3234. **Bail after deposit.** If money be deposited as provided in the last section, bail may be given in the same manner as if it had been originally given upon the order for admission to bail at any time before the forfeiture of the deposit. The court or magistrate before whom the bail is taken shall thereupon direct in the order of allowance, that the money deposited be refunded by the clerk to the defendant and it shall be refunded accordingly.

SEC. 3235. **Money applied to fine.** Where money has been deposited, if it remain on deposit at the time of a judgment for the payment of a fine and costs the clerk shall, under the direction of the court, apply the money in satisfaction thereof, and after paying the fine and costs shall refund the surplus if any to the defendant.

CHAPTER 197.

SURRENDER OF DEFENDANT.

SECTION 3236. **When.** At any time before the forfeiture of their undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of the bail must [451] be delivered to the officer, who shall detain the defendant in his custody thereon as upon a commitment, and must by a certificate in writing acknowledge the surrender;

2. Upon the undertaking and a certificate of the officer, the court in which the indictment or writ of error (as the case may be) is pending may upon reasonable notice to the prosecuting attorney of the county, with a copy of the undertaking and certificate, order the bail to be exonerated; and on filing the order and the papers used in the application they shall be exonerated accordingly.

SEC. 3237. **Arrest by bail.** For the purpose of surrendering the defendant the bail, at any time before they are finally charged and at any place within the state, may themselves arrest him, or by a written authority indorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so.

SEC. 3238. **On surrender, deposit returned.** If money has been deposited instead of bail and the defendant, at any time before the forfeiture thereof, shall surrender himself to the officer to whom the commitment was directed, in the manner prescribed in this chapter, the court shall order a return of the deposit to the defendant upon producing the certificate of the officer showing the surrender and upon a reasonable notice to the prosecuting attorney with a copy of the certificate.

CHAPTER 198.

FORFEITURE OF THE UNDERTAKING OF BAIL, OR OF THE DEPOSIT OF MONEY.

SECTION 3239. **How forfeited.** If the defendant do not appear for arraignment or trial or judgment or upon any other occasion when his presence in court is lawfully required, or surrender himself in execution of the judgment, the court shall enter his default.

SEC. 3240. **Scire facias.** On such default the prosecuting attorney must sue out a *scire facias* to be served on the bail, or in case of a money deposit on the defendant, which shall be served as other civil process, requiring such bail or defendant as the case may be to show cause at the next term of the court why such recognizance shall not be estreated, or money be forfeited.

SEC. 3241. **Cause shown.** If such bail or defendant, as the case may be, appear in pursuance of such *scire facias* and show good cause in excuse for such default, the court may set aside the same on the payment of the costs of the default and *scire facias*.

[452] SEC. 3242. **Judgment on scire facias.** If such bail or defendant do not appear or do not show good cause in excuse of such default, the court shall thereupon order the undertaking or money to be forfeited, and in case of an undertaking by bail must enter judgment for the amount thereof and costs against such bail.

CHAPTER 199.

RE-COMMITMENT OF THE DEFENDANT AFTER GIVING BAIL.

SECTION 3243. **When ordered.** The court to which the committing magistrate may return the depositions and statements, or in which an indictment or writ of error is pending, or in which a judgment is to be carried into effect, may order the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail and his detention until legally discharged, in the following cases:

1. When by reason of his failure to appear he has incurred a forfeiture of his bail or money deposited instead thereof;
2. When it satisfactorily appears to the court that his bail or either of them are dead or insufficient or have removed from the state;
3. When upon the finding of an indictment the court deem the bail taken by the committing magistrate insufficient.

SEC. 3244. **Order—its requisites.** The order for the re-commitment of the defendant must recite generally the facts upon which it is founded, and must direct that the defendant be arrested and committed to the custody of the sheriff of the county where the depositions and statement were returned, or the indictment was found, or the conviction was had, as the case may be, to be detained until legally discharged.

SEC. 3245. **Arrest.** The defendant may be arrested pursuant to the order upon a certified copy thereof, in any county in the state.

SEC. 3246. **Committal.** If the order recite as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

SEC. 3247. **New bail.** If the order be made for any other cause and the offense be bailable, the court may fix the amount of bail and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

[453] CHAPTER 200.

DISMISSAL OF CRIMINAL ACTIONS BEFORE AND AFTER INDICTMENT FOR WANT OF PROSECUTION OR OTHERWISE.

SECTION 3248. **Prosecution—when.** When a person has been held to answer for a public offense, if an indictment be not found against him at the next regular term of the court at which he is held to answer, the court must order the prosecution to be dismissed unless good cause to the contrary be shown.

SEC. 3249. **Dismissed.** If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial at the next regular term of the court in which the indictment is triable after the same is found, the court must order it to be dismissed unless good cause to the contrary be shown.

SEC. 3250. **Defendant on his own undertaking.** If the defendant be not indicted or tried as provided in the last two sections, and sufficient reason therefor shown, the court may order the action to be continued from term to term and in the meantime may discharge the defendant from custody on his own undertaking or on the undertaking of bail for his appearance to answer the charge at the time to which the action is continued, but no such continuance can be extended beyond three terms of the court.

SEC. 3251. **Nolle prosequi.** The court may either of its own motion or upon the application of the prosecuting attorney, and in fartherance of justice, order any action after indictment to be dismissed; but in such case the reason of the dismissal must be set forth in the order, which must be entered upon the record of the court.

SEC. 3252. **Same.** The entry of a *nolle prosequi* is abolished, and no prosecuting attorney or counsel for the state shall hereafter discontinue or abandon a prosecution for a public offense, except as provided in the last section.

CHAPTER 201.

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

SECTION 3253. **Held by officer.** When property alleged to have been stolen or embezzled comes into the custody of a peace officer, he must hold the same subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

[454] SEC. 3254. **Delivered to owner.** On satisfactory proof of title by the owner of the property the magistrate to whom the information is laid, or who shall examine the charge against the person accused of stealing or embezzling

the same, may order it to be delivered to the owner on his paying the reasonable and necessary expenses incurred in the preservation and keeping thereof, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.

SEC. 3255. **Same.** If the property stolen or embezzled come into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his title and on his paying the necessary expenses incurred in its preservation, to be certified as before provided.

SEC. 3256. **Same.** If the property stolen or embezzled has not been delivered to the owner, the court before which a conviction is had, may on proof of his title, order its restoration.

SEC. 3257. **Not claimed.** If property stolen or embezzled be not claimed by the owner before the expiration of six months from the conviction of the person for stealing or embezzling it, the magistrate or other officer having it in his custody, must, on payment of the necessary expenses incurred for its preservation, deliver it to the clerk of the county court to be applied under the direction of the judge thereof for the benefit of the poor of the county.

SEC. 3258. **Receipts therefor.** When the money or other property is taken from the defendant arrested upon a charge of a public offense, the officer taking it shall at the time give duplicate receipts therefor, specifying particularly the amount of money and the kind of property taken; one of which receipts he must deliver to the defendant and the other he must forthwith file with the clerk of the district court of the county where the depositions and statement are to be sent by the magistrate.

CHAPTER 202.

INQUIRY INTO THE INSANITY OF THE DEFENDANT, BEFORE TRIAL OR AFTER CONVICTION.

SECTION 3259. **Insanity of defendant.** An act done by a person in a state of insanity cannot be punished as a public offense; nor can a person be tried, adjudged to punishment, or punished for a public offense while he is insane.

SEC. 3260. **Trial of.** When an indictment is called for trial, or when upon conviction the defendant is brought up for judgment, if a reasonable doubt arise as to the sanity of the defendant, [455] the court must order a jury to be impaneled from the jurors summoned and returned for the term or who may be summoned by the direction of the court, to inquire into the fact.

SEC. 3261. **Indictment suspended.** The trial of the indictment or the pronouncing of the judgment, as the case may be, must be suspended until the question of insanity is determined by the verdict of the jury.

SEC. 3262. **If sane.** If the jury find that the defendant is sane, the trial of the indictment shall proceed or judgment may be pronounced, as the case may be.

SEC. 3263. **If insane.** If the jury find the defendant insane the trial or judgment must be suspended until he become sane; and the court, if it deem his discharge dangerous to the public peace or safety, may order that he be in the meantime committed to the county jail or state lunatic asylum (should there be one) until he become sane.

SEC. 3264. **Committal of insane.** The commitment of the defendant as mentioned in the last section shall exonerate the bail he may have given.

SEC. 3265. **Restoration.** After the defendant becomes sane, he must be brought to trial or judgment, as the case may be, or be otherwise discharged by due course of law.

SEC. 3266. **Insane committed to friends.** Upon application of any friend of such insane person to a judge of the supreme or district court, or county judge of the proper county, (except in capital cases) any such judge may commit such insane person to the custody and safe keeping of such friend, he first undertaking in writing with sufficient sureties to the state that he will safely keep such person and deliver him into the custody of the sheriff of the county upon the order of the court where the indictment or trial is pending, and pay all damages which any person may sustain by reason of the acts of such insane person.

SEC. 3267. **Expenses.** All expenses for the imprisonment or keeping of any insane defendant must be paid out of his estate if he have any; if not then by any relative, township, or county required by law to provide for and maintain him, and if he has no such means of support then such expenses must be paid by the county.

CHAPTER 203.

LIBERATION OF POOR CONVICTS.

SECTION 3268. **When and on what terms.** When any person convicted of a criminal offense is sentenced to pay a fine and costs only and stand committed until sentence be performed, if the sentence be not complied with by payment of the sum due within thirty days next following the sheriff may liberate him from prison, if committed for no other cause, and if he be unable to pay such fine and costs, upon his giving his promissory note for the amount due payable to the treasurer of the county where he was committed on demand with interest, accompanied with a written schedule containing a true account of all his property of every kind, by him signed and sworn to; which note and schedule must be by such sheriff delivered without delay to the treasurer for the use of the county.

SEC. 3269. **False schedule.** If such convict knowingly and wilfully make any false schedule on oath relating to the amount or nature of his property he is guilty of perjury.

CHAPTER 204.

CHANGING VENUE IN CRIMINAL CASES.

SECTION 3270. **Who may have change.** In all criminal cases which may be pending in any of the district courts of this state, any defendant therein may petition the court for a change of venue to another county.

SEC. 3271. **Petition.** Such petition must set forth the nature of the prosecution, the court where the same is pending, and that such defendant cannot receive a fair and impartial trial owing to the prejudice of the judge, or to excitement and prejudice against him in such county, and must verify the same by his affidavit stating the same to be true as he verily believes.

SEC. 3272. **How and when granted.** Such court in the exercise of a sound discretion may grant such change of venue, and if the same is prayed on the ground of objections to the judge such change must be awarded to some convenient county of an adjoining district, or if such change is prayed on the ground of excitement and prejudice in the county such change must be awarded to the nearest and most convenient county where such excitement and prejudice does not exist.

SEC. 3273. **Transcript.** Upon the making of such order the clerk must make out and certify a transcript of all the proceedings appearing upon the record of the court, which together with the indictment and all the papers in the cause must be transmitted to the clerk of the court to which the venue has been changed.

SEC. 3274. **Transfer of defendant.** The sheriff of the county, if any defendant be in his custody, must on the order of the court transfer and deliver such defendant to the sheriff of the county to which such change is allowed, and upon such transfer and de-[457]-livery with a certified copy of such order the sheriff last mentioned must receive and detain the defendant in his custody until legally discharged therefrom and give a certificate of such delivery.

SEC. 3275. **Court to which venue is changed.** The court to which such change of venue is granted must take cognizance of the cause and proceed therein to trial, judgment, and execution, in all respects as if the indictment had been found by the grand jury impaneled in such court.

SEC. 3276. **Costs of the change.** In all changes of venue under the provisions of this chapter the county from which the change of venue was taken shall pay the expenses and charges of removing, delivering, and keeping the defendant, and all other expenses necessary and consequent upon such change of venue and the trial of such defendant, which shall be audited and allowed by the court trying such case.

SEC. 3277. **Fees allowed sheriff.** Sheriffs, for delivering prisoners under the provisions of this chapter, are entitled to the same fees therefor as are allowed for the conveyance of convicts to the penitentiary.

CHAPTER 205.

PARDONS AND COMMUTATIONS OF FINES AND PUNISHMENTS.

SECTION 3278. **Conditional.** In all cases in which the governor is authorized by the constitution to grant pardons he may grant them upon such conditions and with such restrictions and limitations as he may think proper, and may issue his warrant to all proper officers to carry into effect such conditional pardon.

SEC. 3279. **Officer's return.** Whenever any convict is pardoned by the governor, or his punishment is commuted, the officer to whom the warrant is directed after executing the same must make return thereof with his doings thereon to the secretary of state as soon as may be, and such officer must also file in the clerk's office of the court in which the offender was convicted a certified copy of the warrant and return, a brief abstract of which the clerk shall subjoin to the record of conviction.

SEC. 3280. **Fines remitted.** Fines imposed as a punishment for a public offense can be remitted only by the governor of this state; those for contempts of court may be remitted by the court by which they were imposed.

SEC. 3281. **Reprieve in capital cases.** In capital cases the governor may for good cause shown grant a reprieve to any convict for a time not exceeding one year from the rendition of the judgment.

[458] CHAPTER 206.

FUGITIVES FROM JUSTICE.

SECTION 3282. **Agents appointed and expense.** The governor of this state may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any other state or territory, or from the executive authority of any foreign government, any fugitive from justice charged with treason or felony, and the accounts of the agents appointed for that purpose must be audited by the auditor of state and paid out of the state treasury.

SEC. 3283. **Requisition from abroad.** Whenever a demand is made upon the governor of this state by the executive of any other state or territory in any case authorized by the constitution and laws of the United States, for the delivery of any person charged in such state or territory with any crime, if such person is not held in custody or under bail to answer for any offense against the laws of the United States or of this state, he shall issue his warrant under the seal of the state authorizing the agent who makes such demand, either forthwith or at such time as may be designated in the warrant, to take and transport such person to the line of this state at the expense of such agent, and may also by such warrant require all peace officers to afford needful assistance in the execution thereof.

SEC. 3284. **Warrant of magistrate.** If any person be found in this state charged with any crime committed in any other state or territory and liable by the constitution and laws of the United States to be delivered over upon the demand of the governor thereof, any magistrate may upon complaint on oath setting forth the offense and such other matters as are necessary to bring the case within the provisions of law issue a warrant to arrest such person.

SEC. 3285. **Bail required.** If upon examination it appear that there is reasonable cause to believe the complaint true and that such person may be lawfully demanded of the governor, he shall, if not charged with murder, be required to enter into an undertaking with sufficient surety in a reasonable sum to appear before such magistrate at a future day (allowing reasonable time to obtain the warrant from the governor) and abide the order of such magistrate in the premises.

SEC. 3286. **Committal.** If such person does not give bail, or if he is charged with the crime of murder, he must be committed to prison and there detained until such day in like manner as if the offense charged had been committed within this state.

[459] SEC. 3287. **Forfeiture.** A failure of such person to attend before the magistrate at the time and place mentioned in the undertaking is a forfeiture thereof.

SEC. 3288. **Discharge.** If such person appear before the magistrate upon the day ordered he must be discharged unless he is demanded by some person authorized by the warrant of the governor to receive him, unless the magistrate see good cause to commit him or to require him to enter into a new undertaking for his appearance at some other day to await a warrant from the governor.

SEC. 3289. **Arrest is discharge of bail.** Whether the person so charged be bound to appear, be committed or discharged, any person authorized by the warrant of the governor may at any time take him into custody, and the same is a discharge of the undertaking if there be one.

SEC. 3290. **Expenses.** The complainant in any such case is answerable for all the costs and charges and for the support in prison of any person so committed, and the magistrate before issuing his warrant or hearing the cause must require the complainant to give security for the payment of all such costs, or may require them in advance.

CHAPTER 207.

SEARCH WARRANTS AND PROCEEDINGS THEREON.

SECTION 3291. **Definition.** A search warrant is an order in writing, in the name of the state, signed by a magistrate, directed to a peace officer, commanding him to search for personal property and bring it before the magistrate.

SEC. 3292. **When issued.** It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled or of any other person in whose possession it may be;

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense or of any other person in whose possession it may be;

3. When it is in the possession of any person with the intent to use it as the means of committing a public of-[460]-fense, or in the possession of another to which he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, from a house or other place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it.

SEC. 3293. **Affidavit.** No search warrant can be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

SEC. 3294. **Complainant examined.** The magistrate must before issuing the warrant examine on oath the complainant and any witness he may produce, and take their depositions in writing and cause them to be subscribed by the parties making them.

SEC. 3295. **Depositions.** The depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

SEC. 3296. **Issued, and to whom.** If the magistrate be thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he shall issue a search warrant signed by him with his name of office to a peace officer in his county commanding him forthwith to search the person or place named for the property specified and bring it before him.

SEC. 3297. **Service by whom.** A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer, on his requisition, he being present and acting in its execution.

SEC. 3298. **Breaking doors, etc.** The officer may break open any outer or inner door or window of a house, or any part of the house, or any thing therein to execute the warrant if, after notice of his authority and purpose, he be refused admittance.

SEC. 3299. **Return.** A search warrant must be executed and returned to the magistrate by whom it was issued within ten days after its date. After the expiration of such time the warrant, unless executed, is void.

SEC. 3300. **Receipt for property.** When the officer takes any property under the warrant he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken or in whose possession it was found, or in the absence of the person he must leave it in the place where he found the property.

SEC. 3301. **Return and inventory.** The officer must forthwith return the warrant to the magistrate and at the same time deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken and of the applicant for the warrant if they be present, verified [461] by the affidavit of the officer at the foot of the inventory and taken before the magistrate, to the following effect: "I, the officer by whom the annexed warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

SEC. 3302. **Copy of inventory.** The magistrate, if required, must deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

SEC. 3303. **Trial.** If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

SEC. 3304. **Testimony.** The testimony given by each witness must be reduced to writing and authenticated by the magistrate.

SEC. 3305. **Property restored.** If it appear that the property taken is not the same as that described in the warrant or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate shall cause it to be restored to the person from whom it was taken.

SEC. 3306. **Property delivered to owner, or retained.** If the property taken by virtue of a search warrant was stolen or embezzled, it must be restored to the complainant upon his making satisfactory proof to the magistrate of his ownership thereof or his right of possession thereto. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of the second section of this chapter, the magistrate must retain it in his possession subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense is triable.

SEC. 3307. **Return to district court.** The magistrate must annex the depositions to the complaint together with the return and inventory, and return them to the next district court of the county at or before its opening on the first day of the term.

SEC. 3308. **Malicious suing out.** Whoever maliciously and without probable cause procures a search warrant to be issued and executed, is guilty of a misdemeanor.

SEC. 3309. **Searching person charged with felony.** When a person charged with a felony is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon or any thing which may be

used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence and the weapon or other thing to be retained subject to his order or the order of the court in which the defendant may be tried.

[462] CHAPTER 208.

VAGRANTS.

SECTION 3310. **Who are vagrants.** The following persons are vagrants: All persons who tell fortunes or where lost or stolen goods may be found; all common prostitutes and all keepers of bawdy houses or houses for the resort of prostitutes; all habitual drunkards, gamesters, or other disorderly persons; all persons wandering about and having no visible calling or business to maintain themselves; all persons begging in public places or from house to house or procuring children so to do; all persons going about as collectors of alms or charitable institutions under any false or fraudulent pretense; all persons playing or betting in any street, or public or open place at or with any table or instrument of gaming at any game or pretended game of chance.

SEC. 3311. **Complaint—arrest.** Upon complaint made on oath to any justice of the peace against any person as being such vagrant, he shall issue his warrant for the arrest of such person to be brought before him for examination; and if it appear by the confession of such person or by competent testimony that such person is a vagrant, the justice may require of such person an undertaking with sufficient sureties for good behavior for the term of one year thereafter.

SEC. 3312. **Security required.** The justice shall make up, sign, and file with the clerk of the district court a record of conviction of such person as a vagrant, specifying generally the nature and circumstances of the charge: and shall in default of such sureties being given by warrant under his hand commit such vagrant to the common jail of the county, there to remain until such sureties be found or such vagrant be discharged according to law.

SEC. 3313. **Breach.** The committing of any of the acts which constitute such person so bound a vagrant shall be deemed a breach of the condition of such undertaking.

SEC. 3314. **New security.** On a recovery upon any such undertaking the court before which such recovery may be had may in its discretion either require new sureties for good behavior or may commit such vagrant to the common jail of the county for any time not exceeding six months.

SEC. 3315. **Discharge on bail.** Any person committed to jail for not finding sureties for good behavior may be discharged by any magistrate upon giving such sureties for good behavior as were originally required of such person.

[463] SEC. 3316. **Hearing in district court.** Any district court to which any return of such persons so convicted of being vagrants shall be made shall inquire into the circumstances of each case and hear any proofs that may be offered and shall examine the record of conviction, which shall be deemed presumptive evidence of the facts therein contained until disproved.

SEC. 3317. **Judgment—may be bound out.** The district court may revise such conviction and discharge such vagrant from the undertaking or confinement absolutely, or upon sureties for good behavior, in its discretion. Or such court may in its discretion authorize the judge of the county court of the county to bind out such vagrants as shall be minors in some lawful calling as servants or apprentices, or otherwise, until they shall be of full age re-

spectively; or to contract for the services of such vagrants as shall be of full age with any suitable person, as laborers or servants, for any time not exceeding one year, which binding out and contracts shall be as valid and effectual as the indenture of any apprentice with his own consent and the consent of his parents and shall subject the person so bound out or contracted for to the same control of their masters respectively and of such court as if they were bound apprentices.

SEC. 3318. **Imprisonment.** Such district court may in its discretion order any such vagrant to be kept in the common jail for any time not exceeding six months at hard labor.

SEC. 3319. **Labor in jail.** If there be no means provided in such jail for employing offenders at hard labor, such court may direct the keeper thereof to furnish such employment as it shall specify, to such vagrant as may be committed thereto either by a justice or any court, and for that purpose to purchase any necessary raw materials and implements not exceeding such amount as the court shall prescribe and to compel such persons to perform such work as shall be allotted to them.

SEC. 3320. **Expenses.** The expenses incurred in pursuance of such order shall be audited by the judge of the county court and paid out of the county treasury.

SEC. 3321. **Proceeds of labor.** One-half of the net proceeds of such labor shall be paid to the person earning the same upon his discharge from imprisonment, and the other half shall be paid into the county treasury for the use of the county.

[464] CHAPTER 209.

PROCEEDINGS AND TRIAL BEFORE JUSTICES OF THE PEACE FOR MISDEMEANORS AND PUBLIC OFFENSES WITHIN THEIR JURISDICTION.

SECTION 3322. **Jurisdiction of justices.** Justices of the peace in their respective counties have jurisdiction of and may hear, try, and determine, all public offenses where the punishment imposed by law does not exceed two hundred dollars fine or imprisonment in the county jail not more than six months, or where the punishment is by both such fine and imprisonment.

SEC. 3323. **Information.** Criminal actions for the commission of a public offense must be commenced before a justice of the peace by an information subscribed and sworn to, and filed with the justice.

SEC. 3324. **Its requisites.** Such information must contain:

1. The name of the county and of the justice where the information is filed;
2. The names of the parties if the defendant's be known, and if not then such name as may be given him by the complainant;
3. A statement of the acts constituting the offense in ordinary and concise language and the time and place of the commission of the offense as near as may be.

SEC. 3325. **Form.** The information may be substantially in the following form:

_____county.	} Before justice (here insert the name of the justice.)
The State of Iowa,	
Against	
A— B—, defendant.	

The defendant is accused of the crime of (here name the offense;)

For that the defendant on the —— day of —— A. D. 18—, at the [here name the city, village, or township] in the county aforesaid [here state the act, or omission constituting the offense as in an indictment.]

SEC. 3326. **Filed.** The justice must file such information and mark thereon the time of filing the same.

SEC. 3327. **Warrant.** Immediately upon the filing of such information the justice may in his discretion issue his warrant directed to any sheriff, constable, or peace officer, for the arrest of the de-[465]-fendant, and such warrant may be served in any county in the state.

SEC. 3328. **Service.** The officer who receives the warrant must serve the same by arresting the defendant if in his power, and bringing him without unnecessary delay before the justice who issued the same.

SEC. 3329. **Appearance.** When the defendant is brought before the justice, the charge against him must be distinctly read to him and he shall be asked whether he is presented by his right name and be required to plead. If he object that he is wrongly named in the information he must give his right name, and if he refuse to do so or does not object that he is wrongly named the justice shall make an entry thereof in his docket, and he is thereafter precluded from making any such objection.

SEC. 3330. **Pleadings.** The defendant may plead the same pleas as upon an indictment. His pleas must be oral and shall be entered on the docket of the justice.

SEC. 3331. **Jury trial.** Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury the magistrate must proceed to try the issue.

SEC. 3332. **Same.** Before the magistrate has heard any testimony upon the trial the defendant may demand a trial by jury.

SEC. 3333. **Impaneling jury.** If a trial by jury be demanded, the magistrate shall direct the sheriff or any constable of the county to make a list in writing of the names of eighteen inhabitants of the county having the qualifications of jurors in the district court, from which list the prosecutor and defendant may each strike out three names.

SEC. 3334. **Striking out.** In case the prosecutor or the defendant neglect or refuse to strike out such names, the magistrate shall direct some disinterested person to strike out the names for either or both of the parties so neglecting or refusing; and upon such names being struck out the magistrate must issue a *venire* directed to the sheriff, constable, or any peace officer of the county requiring him to summon the twelve persons whose names remain upon such list to appear before such magistrate at the time and place named therein to make a jury for the trial of the cause.

SEC. 3335. **Venire.** The officer to whom such *venire* is delivered must forthwith summon such jurors and return the *venire* to the magistrate within the time therein specified, naming the persons summoned and the manner of service.

SEC. 3336. **Drawing.** The names of the persons returned as jurors shall be written on separate ballots, folded each in the same manner as near as possible and so that the name be not visible, [466] and shall under the direction of the magistrate be deposited in a box or other convenient thing.

SEC. 3337. **Same.** The magistrate must then draw out six of the ballots successively, and if any of the persons whose names are drawn do not appear or are challenged or set aside such farther number must be drawn as will make a jury of six after all legal challenges have been allowed.

SEC. 3338. **Challenge.** The same challenges may be taken by either party to any individual juror as on the trial of an indictment for a misdemeanor, but no challenge to the panel is allowed.

SEC. 3339. **Deficiency.** If any of the jurors named in the *venire* cannot be found or do not attend or are challenged by either party so that a sufficient number cannot be obtained, the magistrate may direct the officer to summon any by-standers or others who may be competent and against whom no sufficient cause of challenge appears, to act as jurors.

SEC. 3340. **Venire not returned.** If the officer by whom the *venire* is received do not return it as required he may be punished by the magistrate as for a contempt, and the magistrate shall issue a new *venire* for the summoning of the same jurors, upon which the same proceedings shall be had as upon the one first issued.

SEC. 3341. **Six a jury.** When six jurors appear and are accepted they shall constitute the jury.

SEC. 3342. **Oath.** The magistrate must thereupon administer to them the following oath or affirmation: "You do swear (or you do solemnly affirm, as the case may be) that you will well and truly try the issue between the state of Iowa and the defendant and a true verdict give according to the evidence."

SEC. 3343. **Proceedings of jury.** After the jury are sworn they must sit together and hear the proofs and allegations of the parties, which must be delivered in public. After which they may either decide in court or may retire for consideration.

SEC. 3344. **Same.** If they do not immediately agree they must retire with the officer, who shall be sworn to the following effect—"You do swear that you will keep the jury together in some private and convenient place without meat or drink unless otherwise ordered by the court; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed."

SEC. 3345. **Verdict.** When the jury have agreed on their verdict they must deliver it publicly to the magistrate, who shall enter it on his docket.

SEC. 3346. **Discharge of jury.** The jury cannot be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict, unless for good cause the magistrate sooner discharge them.

SEC. 3347. **Same.** If the jury be discharged as provided in the last section the magistrate may proceed again to the trial in the same manner as upon the first trial; and so on until a verdict is rendered.

SEC. 3348. **Judgment.** When the defendant pleads guilty or is convicted either by the magistrate or by a jury, the magistrate shall render judgment thereon of fine or imprisonment or both as the case may require, being governed by the rules prescribed for the district court as far as the same are applicable, in rendering such judgment.

SEC. 3349. **Imprisonment for fine.** A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied.

SEC. 3350. **Defendant discharged.** When the defendant is acquitted either by the magistrate or by a jury he must be immediately discharged.

SEC. 3351. **Certificate of conviction.** Whenever a conviction is had upon a plea of guilty or upon trial, the magistrate must make and sign with his name of office a certificate of such conviction, in which it shall be sufficient briefly to state the offense charged and the conviction and judgment thereon, and if any fine has been collected, the amount thereof.

SEC. 3352. **Filed in county office.** Within twenty days after such conviction the magistrate must cause such certificate to be filed in the office of the judge of the county court in the county where the conviction was had.

SEC. 3353. **Evidence.** Every certificate of conviction made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence in all courts and places of the facts therein contained.

SEC. 3354. **Judgment executed.** The judgment shall be executed by the sheriff of the county or by a constable or marshal of the city or town where the conviction is had, by virtue of a warrant under the hand of the magistrate specifying the particulars of such judgment.

SEC. 3355. **Fines—to whom paid.** If a fine be imposed and paid before commitment it shall be received by the magistrate and by him paid over to the county treasurer within thirty days after the receipt thereof.

SEC. 3356. **To sheriff.** If the defendant be committed for not paying a fine he may pay it to the sheriff of the county, but to no other person, who must in like manner within thirty days after the receipt thereof pay it into the county treasury.

SEC. 3357. **Receipt.** If the fine or any part thereof is paid to the magistrate or sheriff, he must execute duplicate receipts therefor, [468] one of which he must file without delay with the clerk of the county court.

SEC. 3358. **Appeal.** The defendant may appeal to the next term of the district court if on the rendition of the judgment he or some one for him make or cause to be made an affidavit, stating the facts showing the alleged errors in the proceedings or conviction complained of and that he verily believes that injustice has been done.

SEC. 3359. **Security on appeal.** Upon allowing the appeal the magistrate must take from the defendant a written undertaking with one or more sufficient sureties, that the defendant will appear on the first day of the next term of the district court, and will not depart thence without leave, and will abide the judgment of the district court, and will prosecute the appeal without delay.

SEC. 3360. **Transcript.** When an appeal is thus taken the magistrate must cause all material witnesses to enter into an undertaking as in cases of arrest, to testify in the cause at the term to which the appeal is returnable, and shall on or before the first day of the next term of the district court of the proper county file in the office of the clerk thereof a certified copy of the entries on his docket together with all the undertakings and papers in the cause.

SEC. 3361. **Hearing above.** After hearing the appeal the court shall give judgment without regard to technical errors or defects which have not prejudiced the substantial rights of the defendant and may render such judgment as the magistrate should have rendered; or may, according to the justice of the case, affirm or reverse the judgment in whole or in part, as to all or any of the defendants if there be more than one, or may order a new trial.

SEC. 3362. **Affirmance.** If the judgment be affirmed the court shall direct the execution thereof, and if the defendant has been discharged on bail after the commencement of the execution of a judgment of imprisonment shall commit him to the jail of the county for the remainder of his term of imprisonment.

SEC. 3363. **Reversal.** If the judgment be reversed and the defendant be imprisoned in pursuance of the judgment of the magistrate, the district court must order him to be discharged.

SEC. 3364. **New Trial.** If a new trial be ordered it shall be had in the district court in the same manner as upon an issue of fact on an indictment; and the court may proceed to judgment and execution thereon as in an action prosecuted by indictment.

SEC. 3365. **In district court.** If any proceedings be necessary to carry the judgment upon appeal into effect they shall be had in the district court.

[469] SEC. 3366. **Writ of error.** If the judgment on the appeal be against the defendant he may sue out his writ of error therefrom to the supreme court in the same manner as from a judgment in an action prosecuted by indictment, and may be admitted to bail upon the writ of error in like manner.

SEC. 3367. **Judgment of supreme court.** The same proceedings shall be had to carry into effect the judgment of the supreme court upon the writ of error as if it had been taken upon a judgment in an action prosecuted by indictment.

GEO. TEMPLE,
Speaker of the House of Representatives.
ENOS LOWE,
President of the Senate.

Approved February 5, 1851.
S. HEMPSTEAD.

[470] PART OF AN ACT

TO PROVIDE FOR THE APPOINTING OF COMMISSIONERS TO DRAFT, REVISE,
AND ARRANGE A CODE OF LAWS.

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

SECTION 1. That Charles Mason of the county of Des Moines, William G. Woodward of the county of Muscatine, and Stephen Hempstead of the county of Dubuque, be and they are hereby appointed a committee to draft, revise, and prepare a code of laws for the state of Iowa.

SEC. 5. Said commissioners shall prepare a complete and perfect code of laws, as nearly as may be, of a general nature only, and furnish a complete index to the same when completed.

Approved Jan. 25, 1848.

AN ACT

RELATIVE TO PRINTING THE REVISED CODE.

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

SECTION 1. **Edition of 6,000.** There shall be printed and published in the manner hereinafter provided, an edition of six thousand copies of the revised code, and no other acts shall be published therewith except as herein directed.

SEC. 2. **Papers to be printed.** The following papers shall be printed and bound with the code; the declaration of independence; the articles of the confederation; the ordinance of seventeen hundred and eighty-seven relative to the northwest territory; the constitution of the United States; the act establishing the territory of Michigan; the act establishing the territory of Wisconsin and extending the laws of Michigan over the same; the act to divide the territory of Wisconsin and to establish the territorial government of Iowa and the amendments to the same; the constitution of Iowa; the acts of congress relative to the admission of Iowa into the Union, and the ordinance of the convention of Iowa; the first and fifth sections of the act to provide for appointing commissioners to draft, revise, and prepare a copy of laws; the existing acts of congress relative to the naturalization of foreigners; the acts of congress relative to the authentication of statutes, records, etc., and this act.

SEC. 3. **Manner of printing.** The edition of the code hereby authorized shall be printed on good book paper, the body of the work in small pica type set solid, with marginal notes and index in brevier type, with the subjects at the head of the pages and the part, title, or chapter at the head of the margin, and shall be published in one volume of royal octavo size, full bound in sheep and lettered "Code of Iowa, 1851."

SEC. 4. **Superintendence.** William G. Woodward is hereby appointed to superintend the order of publication of the code, to prepare brief marginal notes and a full and complete index, to arrange and properly number in a convenient and suitable manner the several divisions and sub-divisions from the beginning throughout, to examine and correct the proof sheets, and cause all clerical, typographical, and grammatical errors, and errors of punctuation to be corrected.

SEC. 5. **When to take effect.** The secretary of state is directed to furnish the above person with the manuscript of the code for the purpose above mentioned, and the state printer is required to deliver [472] five hundred copies printed and bound as herein directed, to the secretary of state by the first day of June next, and they shall be distributed and published by the first day of July next, in the manner provided in the next section, and the code shall take effect on the first day of July next.

SEC. 6. **Publication—how made.** The above publication shall be made by depositing in each organized county with the board of commissioners or county clerk five copies, which shall be for the use of the existing officers of the county until an election takes place under the code, and then for the use of the county judge, the clerk of the district court, the treasurer, the supervisor of roads, and the school fund commissioner, each one.

SEC. 7. **Presumed to take effect on 1st July, 1851.** The code shall be presumed to have taken effect on the first day of July next unless the contrary appear as herein provided. In case the copies of the code are not in fact distributed to all the organized counties by the first day of July, the secretary of state shall make, sign, and file in his office, a certificate stating on what day they were deposited in the last county, and it shall take effect on the day after the day on which they are so deposited. The said certificate, or a copy thereof under the hand of the secretary and the seal of the state, shall be evidence of the fact therein stated; and immediately after filing it in his office the secretary shall publish a copy thereof for four weeks successively in six different newspapers, two of them being published at the seat of government (if such there be), which publication shall be *prima facie* evidence of the existence of such a certificate.

SEC. 8. **Distribution and sale of copies.** The work of printing and binding the said edition shall not cease but the remainder shall be completed as soon as practicable, and be disposed of as follows: The secretary shall deliver or transmit to the governor two copies, to the auditor, treasurer, superintendent of public instruction, commissioner of the state land office and each of the judges of the supreme and district courts, one copy each, and retain one in his own office, deposit twenty copies in the state library, and transmit to the secretary of state of the United States five copies and to the executive of each of the United States two copies.

SEC. 9. **Same.** Of the remainder of the edition the secretary shall divide three thousand copies among the several organized counties in proportion to their population, but giving to no county less than twenty copies, and as soon as practicable transmit to the county clerk of each county the number of copies to which his county is entitled, which the clerk is required to sell at two dollars and fifty cents a copy and pay to the treasurer of his county the amount received by him [473] for them on or before the first day of December in each year, and the treasurer shall pay the same into the state treasury at the time of making his next return. But the township trustees of each township shall be entitled to one copy free of charge for the use of their respective townships.

SEC. 10. **County clerk to account, etc.** The county clerk shall also, on or before the first day of December each year make out in writing under oath a statement of the number of copies sold by him and not before accounted for and the number remaining on hand, and the amount paid to the county treasurer, and transmit such statement to the auditor of state, who shall charge the county treasurer with such amount. And the secretary of state shall certify to the auditor the number of copies transmitted to each county clerk, and the auditor shall charge such clerk therewith, and subsequently credit him with such as may be sold or otherwise lawfully disposed of.

SEC. 11. **Officers to deliver to successors.** When the county clerk goes out of office having any of such copies remaining, he shall deliver them to his successor taking his receipt therefor which shall be his sufficient discharge therefor. And every county officer on receiving a copy shall give his receipt therefor, and shall pass the copy to his successor or deliver it in to the county clerk for the use of subsequent officers, and each shall be liable therefor on his official bond.

SEC. 12. **Remainder of edition—secretary may sell.** The remainder of the edition of the code shall be deposited in the office of the secretary of state, and he may in like manner apportion and deliver them to any counties hereafter organized. The secretary may also sell them at the rate above named, after setting apart one thousand copies for subsequent distribution, he paying the proceeds into the state treasury.

SEC. 13. **Compensation.** When the whole work is in print the said William G. Woodward will be entitled to receive the sum of four hundred dollars from any money in the treasury not otherwise appropriated.

SEC. 14. This act shall take effect from its publication in the Iowa Capitol Reporter and the Iowa Republican.

GEO. TEMPLE,
Speaker of the House of Representatives.

ENOS LOWE,
President of the Senate.

Approved February 5, 1851.
S. HEMPSTEAD.

APPENDIX

THE DECLARATION OF INDEPENDENCE

In Congress, July 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient suffrance of these [476] colonies; and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained, and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the rights of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies, at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise; the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others, to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others, to subject us to a jurisdiction, foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us:

For protecting them by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us, without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas, to be tried for pretended offenses:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress, in the

most humble terms; our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British [478] brethren. We have warned them, from time to time, of attempts, by their legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity; and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice, and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain, is, and ought to be totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things, which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

New Hampshire.—Josiah Bartlett, William Whipple, Matthew Thornton.

Massachusetts Bay.—Samuel Adams, John Adams, Robert Treat Paine, Elbridge Gerry.

Rhode Island, etc.—Stephen Hopkins, William Ellery.

Connecticut.—Roger Sherman, Samuel Huntington, William Williams, Oliver Wolcott.

New York.—William Floyd, Philip Livingston, Francis Lewis, Lewis Morris.

New Jersey.—Richard Stockton, John Witherspoon, Francis Hopkinson, John Hart, Abraham Clark.

Pennsylvania.—Robert Morris, Benjamin Rush, Benjamin Franklin, John Morton, George Clymer, James Smith, George Taylor, James Wilson, George Ross.

Delaware.—Cæsar Rodney, George Read, Thomas M'Kean.

Maryland.—Samuel Chase, William Paca, Thomas Stone, Charles Carroll of Carrollton.

[479] *Virginia.*—George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, Jun., Francis Lightfoot Lee, Carter Braxton.

North Carolina.—William Hooper, Joseph Hewes, John Penn.

South Carolina.—Edward Rutledge, Thomas Heyward, Jun., Thomas Lynch, Jun., Arthur Middleton.

Georgia.—Button Gwinnett, Lyman Hall, George Walton.

ARTICLES OF CONFEDERATION

To all to whom these presents shall come :

We, the undersigned, delegates of the states affixed to our names, send greeting :

Whereas the delegates of the United States of America in congress assembled, did on the fifteenth day of November, in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the Independence of America, agree to certain Articles of Confederation and Perpetual Union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz. :

ARTICLES OF CONFEDERATION AND PERPETUAL UNION,

between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE 1. The style of this confederacy shall be, "The United States of America."

ART. 2. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation, expressly delegated to the United States, in congress assembled.

ART. 3. The said states hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ART. 4. § 1. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively; provided that such restriction shall not extend so far as to prevent [481] the removal of property imported into any state, to any other state, of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction, shall be laid by any state on the property of the United States, or either of them.

§ 2. If any person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offense.

§ 3. Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

ART. 5. § 1. For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the legislature of each state shall direct, to meet in congress on the first Monday in November, in every year, with a power reserved to each state, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

§ 2. No state shall be represented in congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

§ 3. Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of these states.

§ 4. In determining questions in the United States in congress assembled, each state shall have one vote.

§ 5. Freedom of speech and debate in congress shall not be impeached or questioned in any court, or place out of congress, and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to, and from, and attendance on congress, except for treason, felony, or breach of the peace.

ART. 6. § 1. No state, without the consent of the United States in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any [482] king, prince, or foreign state; nor shall the United States in congress assembled, or any of them, grant any title of nobility.

§ 2. No two or more states shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

§ 3. No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

§ 4. No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the United States in congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the United States in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp-equipage.

§ 5. No state shall engage in any war without the consent of the United States in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the United States in congress assembled, can be consulted; nor shall any state grant commissions to any ships or vessels of

war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in congress assembled, shall determine otherwise.

ART. 7. § 1. When land forces are raised by any state for the common defence, all officers of or under the rank of colonel shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such [483] manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

ART. 8. § 1. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to, or surveyed for, any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in congress assembled, shall, from time to time, direct and appoint.

§ 2. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in congress assembled.

ART. 9. § 1. The United States in congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article; of sending and receiving ambassadors, entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States, shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of capture; provided, that no member of congress shall be appointed a judge of any of the said courts.

§ 2. The United States in congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more states concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority, or lawful agent of any state in controversy with another, shall present a petition to congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of congress, to the legislative or executive authority of the other state in controversy, and [484] a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the

petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as congress shall direct, shall in the presence of congress be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient; or being present, shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress, for the security of the parties concerned; provided that every commissioner, before he sits in judgment shall take an oath, to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward;" provided also, that no [state] shall be deprived of territory for the benefit of the United States.

§ 3. All controversies concerning the private right of soil, claimed under different grants of two or more states, whose jurisdictions, as they may respect such lands, and the states which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

[485] § 4. The United States in congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the states; provided that the legislative right of any state, within its own limits, be not infringed or violated; establishing and regulating post-offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same, as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

§ 5. The United States, in congress assembled, shall have authority to appoint a committee, to sit in the recess of congress, to be denominated, "A committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction: to appoint one of their number to preside; provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service

of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state, which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm and equip them, in a soldier-like manner, at the expense of the United States, and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States, in congress assembled; but if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than [486] the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped, in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip, as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States, in congress assembled.

§ 6. The United States, in congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine states assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in congress assembled.

§ 7. The congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state, on any question, shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ART. 10. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the United States, in congress assembled, by the consent of nine states, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states, in the congress of the United States assembled, is requisite.

ART. 11. Canada acceding to this confederation, and join-[487]-ing in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ART. 12. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. 13. Every state shall abide by the determinations of the United States, in congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislatures of every state.

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectfully represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union, Know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in congress assembled, on all questions which by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the states we respectively represent, and that the Union shall be perpetual. In witness whereof, we have hereunto set our hands, in congress.

Done at Philadelphia, in the State of Pennsylvania, the 9th day of July, in the year of our Lord 1778, and in the third year of the Independence of America.

On the part and behalf of the State of New Hampshire.—Josiah Bartlett, John Wentworth. Jun., (August 8, 1778.)

On the part and behalf of the State of Massachusetts Bay.—[488] John Hancock, Samuel Adams, Elbridge Gerry, Francis Dana, James Lovell, Samuel Holten.

On the part and behalf of the State of Rhode Island and Providence Plantations.—William Ellery, Henry Marchant, John Collins.

On the part and behalf of the State of Connecticut.—Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adams.

On the part and behalf of the State of New York.—James Duane, Francis Lewis, William Duer, Gouv. Morris.

On the part and behalf of the State of New Jersey.—Jno. Witherspoon, Nath. Scudder, (November 26, 1778.)

On the part and behalf of the State of Pennsylvania.—Robert Morris, Daniel Roberdeau, Jona. Bayard Smith, William Clingan, Joseph Reed, (July 22, 1778.)

On the part and behalf of the State of Delaware.—Thomas M'Kean, (February 12, 1779), John Dickinson, (May 5, 1779), Nicholas Van Dyke.

On the part and behalf of the State of Maryland.—John Hanson, (March 1, 1781,) Daniel Carroll (March 1, 1781.)

On the part and behalf of the State of Virginia.—Richard Henry Lee, John Banister, Thomas Adams, Jno. Harvie, Francis Lightfoot Lee.

On the part and behalf of the State of North Carolina.—John Penn, (July 21, 1778,) Corns. Harnett, Jno. Williams.

On the part and behalf of the State of South Carolina.—Henry Laurens, William Henry Drayton, Jno. Matthews, Richard Hutson, Thos. Heyward, Jun.

On the part and behalf of the State of Georgia.—Jno. Walton, (July 24, 1778.) Edwd. Telfair, Edward Langworthy.

AN ORDINANCE

FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES, NORTH-
WEST OF THE RIVER OHIO.

Be it ordained by the United States in congress assembled:

One district. That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of congress, make it expedient.

Descent of estates—dower—wills—conveyances—saving to the French their laws of descent and conveyances. Be it ordained by the authority aforesaid, that the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grandchild, to take a share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate, shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half-blood; saving, in all cases, to the widow of the intestate her third part of the real estate for life, and one third part of the personal estate; and this law relative to descents and dower shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws, as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed them-[490]-selves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Governor. Be it ordained by the authority aforesaid, that there shall be appointed, from time to time, by congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

Secretary—court. There shall be appointed from time to time, by congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings every six months, to the secretary of congress. There shall

also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

Governor and judges to adopt laws. The governor and judges, or a majority of them, shall adopt and publish, in the district, such laws of the original states, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to congress from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

Governor—commander. The governor for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by congress.

Governor to appoint officers—until it is organized. Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of peace and good order in the same. After the general assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, [491] shall, during the continuance of this temporary government, be appointed by the governor.

Counties, townships, etc. For the prevention of crimes and injuries, the laws to be adopted or made, shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district, in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

When to elect representatives—ratio—qualification. So soon as there shall be five thousand free male inhabitants of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly. Provided, that for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five. after which, the number and proportion of representatives shall be regulated by the legislature; provided, that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; provided, also, that a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold, and two years residence in the district shall be necessary to qualify a man as an elector of a representative.

Term of representative. The representative thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

General assembly—how constituted—legislative council—powers of general assembly—bills. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress; any three of whom to be a quorum. And the members of the council shall be nominated and appointed in the following manner, to-wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, [492] residents in the district, and each possessed of a free-hold in five hundred acres of land, and return their names to congress; five of whom congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to congress; one of whom congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of the council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to congress; five of whom congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when in his opinion it shall be expedient.

Oath of office—delegate in congress. The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation, of fidelity and of office; the governor before the president of congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a right of debating, but not of voting, during this temporary government.

Preamble. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws, and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in the said territory; to provide also for the establishment of states, and permanent governments therein, and for their admission to share in the federal councils, on an equal footing with the original states, at as early periods as may be consistent with the general interest.

Articles of compact. It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact between the original states, and the people and states in the said territory, and forever remain unalterable, unless by common consent, to-wit:

ARTICLE 1. Religion. No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory.

ART. 2. Common law rights secured. The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and trial by jury; of a proportionate representation of the people in the legislature,

and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

ART. 3. Education—the Indians. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent, and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars, authorized by congress; but laws, founded in justice and humanity, shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. 4. Territory to remain part of the confederacy—the soil—taxes—navigable waters. The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted, or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress, according to the same common rule and measure by which apportionments [494] thereof shall be made on the other states; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of those districts or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ART. 5. New state may be formed—when to be admitted into the union. There shall be formed, in the said territory, not less than three, nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to-wit: The western state in the said territory shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line

drawn due north from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania and the said territorial line; provided, however, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States, on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government: provided, the constitution and government so to be formed, shall be [495] republican, and in conformity to the principles contained in these articles; and so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

ART. 6. Slavery. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted. Provided, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service, as aforesaid.

Repeal. Be it ordained by the authority aforesaid, that the resolutions of the twenty-third of April, one thousand seven hundred and eighty-four, relative to the subject of this ordinance, be, and the same are hereby repealed, and declared null and void.

Done by the United States, in congress assembled, the thirteenth day of July, in the year of our Lord, one thousand seven hundred and eighty-seven, and of their sovereignty and independence the twelfth.

William Grayson, Chairman.

Charles Thompson, Secretary.

THE CONSTITUTION OF THE UNITED STATES

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.(a)

ARTICLE 1. § 1. **Legislative powers.** All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.(b)

§ 2. **Members of house of representatives—how chosen.** The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Qualifications of. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years [497] a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representation and taxation—census. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand,

(a) *Martin, heir at law of Fairfax, v. Hunter's Lessee*, 1 Wheat. 304; 3 Cond. Rep. 575. *Briscoe et al v. the Bank of the Commonwealth of Kentucky*, 11 Peters, 257. *McCulloch v. the State of Maryland*, 4 Wheat., 316; 4 Cond. Rep., 466. *Gibbons v. Ogden*, 9 Wheat., 1. *Barron v. The Mayor and City Council of Baltimore*, 7 Peters, 243. *Marberry v. Madison*, 1 Cranch, 237; 1 Cond. Rep., 267. *United States v. Smith*, 5 Wheat., 153; 4 Cond. Rep., 619. *Owing v. Norwood*, 5 Cranch, 344; 2 Cond. Rep., 275.

(b) The object of the constitution was to establish three great departments of government: The legislative, the executive, and the judicial departments. The first was to pass laws; the second to approve and execute them; the third to expound and enforce them. *Martin, heir at law of Fairfax, v. Hunter's Lessee*, 1 Wheat., 304; 3 Cond. Rep., 575.

The constitution unavoidably deals in general language. It did not suit the purpose of the people in framing this great charter of our liberties to provide for minute specifications of its powers, or to declare the means by which those powers were to be carried into execution. It was foreseen that that would be a perilous and difficult, if not impracticable task. The instrument was not intended merely to provide for the exigencies of a few years, but was to endure through a long lapse of ages; the events of which were locked up in the inscrutable purpose of Providence. It could not be foreseen what new changes and modifications of power might be made indispensable to effectuate the general objects of the charter; and restrictions and specification which at present might seem salutary, might in the end prove the overthrow of the system itself. Hence its powers are expressed in general terms; leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mould and remodel the exercise of its own powers as its own wisdom, and the public interests should require. *Martin etc., v. Hunter*, 1 Wheat., 304; 3 Cond. Rep., 575.

but each state shall have at least one representative, and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three. Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.(a)

Vacancies. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Officers—impeachment. The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

§ 3. **Senate.** The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Senators classed. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-[498]-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Qualifications of senators. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not when elected, be an inhabitant of that state for which he shall be chosen.

Vice-President. The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

Senate to choose its officers. The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

To try impeachments. The senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment on impeachment. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

(a) South Carolina adopted the Constitution by a convention called in November, 1789. Rhode Island, by a convention held in May, 1790, assented to the Constitution. Kentucky was admitted into the Union, June 1, 1792. Vermont was admitted into the Union, March 4, 1791. Tennessee was admitted into the Union, June 1, 1796. Ohio was established as a state of the Union, by act of April 30, 1802. Louisiana was admitted into the Union, April 30, 1812. Indiana was admitted into the Union, December 11, 1816. Mississippi was admitted into the Union, December 10, 1817. Illinois was admitted into the Union, December 3, 1818. Alabama was admitted into the Union, December 14, 1819. Maine was admitted into the Union by an act of Congress, passed March 3, 1820. Missouri was admitted into the Union, March 2, 1821. Arkansas was admitted into the Union, June 15, 1836. Michigan was admitted into the Union, January 26, 1837. North Carolina became a member of the Union, before June 4, 1790. Iowa and Florida were authorized to become states of the Union by act of March 3, 1845, chap. 48.

§ 4. **Election of members of congress.** The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations except as to the places of choosing senators.

Congress to meet annually. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

§ 5. **Elections—how judged—quorum.** Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Rules. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Journals. Each house shall keep a journal of its proceedings, and [499] from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Adjournment. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more [than] three days, nor to any other place than that in which the two houses shall be sitting.

§ 6. **Compensation—privileges.** The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

Exclusion from office. No senator or representative shall during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

§ 7. **Bills for revenue.** All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Bills—the formality of their passage. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him,

the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

[500] **Resolutions, etc., to be approved.** Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

§ 8. **Powers of congress.** The congress shall have power:(a)

Taxes. To lay and collect taxes, duties, imposts and excises,(b) to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;(c)

Borrowing. To borrow money on the credit of the United States;

(a) Congress must possess the choice of means, and must be empowered to use any means, which are in fact conducive to the exercise of a power granted by the Constitution. *United States v. Fisher, et al.; Assignees of Blight, 2 Cranch's Rep., 358; 1 Cond. Rep. 421.*

The powers granted to congress are not exclusive of similar powers existing in the states, unless where the constitution has expressly, in terms, given an exclusive power to congress; or the exercise of a like power is prohibited to the states; or there is a direct repugnancy, or incompatibility in the exercise of it by the states. The example of the first class is to be found in the exclusive legislation delegated to congress over places purchased by the consent of the legislature of the state in which the same shall be located for forts, arsenals, dock-yards, etc.; of the second class, of the prohibition of a state to coin money, or emit bills of credit; of the third class, the power to establish a uniform rule of naturalization, and the delegation of admiralty and maritime jurisdiction. In all other cases the states retain concurrent authority with congress. *Houston v. Moore, 5 Wheat., 1; 4 Cond. Rep., 589.*

An act of congress repugnant to the constitution cannot become the law of the land. *Marbury v. Madison, 1 Cranch, 137; 1 Cond. Rep., 267.*

The mere grant of power to congress does not imply a prohibition on the states to exercise the same power. Whenever the terms in which such a power is granted to congress require that it should be exercised exclusively by congress, the subject is as completely taken from the state legislatures, as if they had been expressly forbidden to act upon it. *Sturges v. Crowninshield, 4 Wheat., 122; 4 Cond. Rep., 409.*

(b) The power of congress to levy and collect taxes, duties, imposts, and excises, is co-extensive with the territory of the United States. *Loughborough v. Blake, 5 Wheat., 317; 4 Cond. Rep., 660.*

The power of congress to exercise exclusive legislation, in all cases whatever, within the district of Columbia, includes the power of taxing it. *Ibid.*

The authority of congress to lay and collect taxes, does not interfere with the power of the states to tax for the support of their own governments; nor is the exercise of that power by the states, an exercise of any portion of the power that is granted to the United States. *Gibbons v. Ogden, 9 Wheat., 1; 5 Cond. Rep., 562.*

(c) The constitutional provision that direct taxes shall be apportioned among the several states, according to their respective numbers, to be ascertained by a census, was not intended to restrict the power of imposing direct taxes to states only. *Loughborough v. Blake, 5 Wheat., 317; 4 Cond. Rep. 660.*

Commerce. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;(d)

[501] **Naturalization.** To establish a uniform rule of naturalization, (a) and uniform laws on the subject of bankruptcies throughout the United States; (b)

Coinage. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

Counterfeiting. To provide for the punishment of counterfeiting the securities and current coin of the United States;

Postoffice. To establish postoffices and post roads;

Copy right. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

Inferior courts. To constitute tribunals inferior to the supreme court;

(d) An act of congress, laying an embargo for an indefinite period of time, is constitutional and valid. *The United States v. The William*, 2 Hall's Am. Law Jour., 255.

The power of regulating commerce extends to the regulation of navigation. *Gibbons v. Ogden*, 9 Wheat., 1; 5 Cond. Rep., 562.

The power to regulate commerce extends to every species of commercial intercourse between the United States and foreign nations, and among the several states. It does not stop at the external boundary of a state; but it does not extend to a commerce which is completely internal. *Ibid.*

The power to regulate commerce is general, and has no limitations but such as are prescribed by the Constitution itself. This power, so far as it extends, is exclusively vested in congress, and no part of it can be exercised by a state. *Ibid.*

The power of regulating commerce extends to navigation carried on by vessels employed in transporting passengers. *Ibid.*

All those powers which relate to merely municipal legislation, or which may be properly called internal police, are not surrendered (by the states) or restrained, and consequently in relation to those the authority of a state is complete, unqualified, and exclusive. *The city of New York v. Miln*, 11 Peters, 102.

The act of the legislature of New York passed February 1824, entitled, "An Act concerning passengers in vessels arriving in the port of New York," is not a regulation of commerce, but of police; and being so, it was passed in the exercise of a power which belonged to that state. *Ibid.*

The power to regulate commerce, includes the power to regulate navigation, as connected with the commerce with foreign nations and among the states. It does not stop at the mere boundary line of a state, nor is it confined to acts done on the waters, or in the necessary course of the navigation thereof. It extends to such acts done on the land, which interfere with, obstruct or prevent the due exercise of the powers to regulate commerce and navigation with foreign nations, and among the states. Any offense which thus interferes with, obstructs, or prevents such commerce and navigation, though done on land, may be punished by congress, under its general authority to make all laws necessary and proper to execute their delegated constitutional powers. *The United States v. Lawrence Coombe*, 12 Peters, 72.

Persons are not the subjects of commerce, and not being imported goods, they do not fall within the meaning founded upon the constitution, of a power given to congress, to regulate commerce, and the prohibition of the states for imposing a duty on imported goods. *Ibid.*; *Gibbons v. Ogden*, 9 Wheat., 1; 5 Cond. Rep., 562.

(a) Under the constitution of the United States, the power of naturalization is exclusively in congress. *Chirac v. Chirac*, 2 Wheat., 259; 4 Cond., Rep., 111; *Houston v. Moore*, 5 Wheat., 1; 4 Cond. Rep., 589.

(b) The powers of congress to establish uniform laws on the subject of bankruptcy throughout the United States, does not exclude the right of the states to legislate on the same subject, except when the power is actually exercised by congress, and the state laws conflict with those of congress. *Ogden v. Saunders*, 12 Wheat., 213; 6 Cond. Rep., 523; *Sturges v. Crowninshield*, 4 Wheat., 122; 4 Cond. Rep., 409.

Since the adoption of the constitution of the United States, a state has authority to pass a bankrupt law, provided such law does not impair the obligation of contracts; and provided there be no act of congress in force to establish a uniform system of bankruptcy, conflicting with such law. *Sturges v. Crowninshield*, 4 Wheat., 122; 4 Cond. Rep., 409.

[502] **Piracy.** To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; (a)

War. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

Army. To raise and support armies; but no appropriation of money, to that use, shall be for a longer term than two years;

Navy. To provide and maintain a navy;

Rules for. To make rules for the government and regulation of the land and naval forces;

Militia and its organization. To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress; (b)

Exclusive authority over district. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; and

General authority. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.(c)

§ 9. **Limitation of powers—importation of persons.** The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Habeas corpus. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.(d)

(a) The act of the 3d March, 1819, chap. 76, sec. 5, referring to the law of nations for a definition of the crime of piracy, is a constitutional exercise of the power of congress to define and punish that crime. *United States v. Smith*, 5 Wheat., 153; 4 Cond. Rep., 619. See also *United States v. Palmer*, 3 Wheat., 610; 4 Cond. Rep., 352.

(b) The act of congress of Feb. 28, 1795, to provide for the calling out the militia to execute the laws of the Union, suppress insurrections, and repel invasions, is within the constitutional powers of congress. *Martin v. Mott*, 12 Wheat., 19; 6 Cond. Rep., 410.

(c) Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the constitution. *United States v. Fisher et al*, 2 Cranch, 358; 1 Cond. Rep., 421. *Van Horne's Lessee v. Dorrance*, 2 Dall., 304; *Marbury v. Madison*, 1 Cranch, 137; 1 Cond. Rep., 267, 268. *The United States v. Bevans*, 3 Wheat 336; 4 Cond. Rep., 275. *McCulloch v. Maryland*, 4 Wheat., 316; 4 Cond. Rep., 466. *United States v. Tingey*, 5 Peters, 115. *Anderson v. Dunn*, 6 Wheat., 204. *Dugan v. The United States*, 3 Wheat., 172; 4 Cond. Rep., 223. *The Exchange*, 7 Cranch, 116; 2 Cond. Rep., 439. *Osborn v. The Bank of the United States*, 9 Wheat., 738; 5 Cond. Rep., 741. *Harrison v. Sterry*, 5 Cranch, 289; 2 Cond. Rep., 260. *Postmaster General v. Early*, 12 Wheat., 136; 6 Cond. Rep., 480.

(d) *Ex parte Burford*, 3 Cranch, 448. *Ex parte Bollman*, 4 Cranch, 75; 2 Cond. Rep., 33. *Ex parte Kearney*, 7 Wheat., 38; 5 Cond. Rep., 225. *Ex parte Tobias Watkins*, 3 Peters, 193. *Ex parte Milburn*, 9 Peters, 704. *Martin v. Mott*, 12 Wheat., 19; 6 Cond. Rep., 410.

[503] **Attainder, etc.** No bill of attainder or *ex post facto* law, shall be passed. (a)

Direct tax. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Commercial duties and preferences. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

Money—how drawn. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Titles of nobility. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

§ 10. **Limitation on the states.** No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; (b) pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.(c)

Of commerce, war, etc. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to [504] the revision and control of the congress. (a) No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time

(a) The prohibition of the federal constitution of *ex post facto* laws extends to penal statutes only, and does not extend to cases affecting only the civil rights of individuals. *Calder et al. v. Bull*, 3 Dall., 386; 1 Cond. Rep., 172. *Fetcher v. Peck*, 6 Cranch, 87; 2 Cond. Rep., 308. *Ogden v. Saunders*, 12 Wheat., 213; 6 Cond. Rep., 523.

(b) *Briscoe v. The Bank of the Commonwealth of Kentucky*, 11 Peters, 257. *Craig v. The State of Missouri*, 4 Peters, 431. *Sturges v. Crowninshield*, 4 Wheat., 122; 4 Cond. Rep., 409. *Ogden v. Saunders*, 12 Wheat., 213; 6 Cond. Rep., 523. *Cooper v. Telfair*, 4 Dall., 14; 1 Cond. Rep., 211.

(c) If any act of the legislature is repugnant to the constitution, it is, ipso facto, void; and it is the duty of the court so to declare it. *Vanhorne's Lessee v. Dorrance*, 2 Dall., 304.

The constitution fixes the limits to the exercise of legislative authority, and prescribes the orbit in which it must move. Whatever may be the case in other countries, yet here there can be no doubt that any act of the legislature repugnant to the constitution is absolutely void. *Ibid.* *Fletcher v. Peck*, 6 Cranch, 87; 2 Cond. Rep., 308.

The legislature of a state can pass no *ex post facto* law. An *ex post facto* law is one which renders an act punishable, which was not punishable when it was committed. *Ibid.* *Houston v. Moore*, 5 Wheat., 1; 4 Cond. Rep., 589.

The invalidity of a state law, as impairing the obligation of contracts, does not depend on the extent of the change which the law affects in the contract. *Green v. Biddle*, 8 Wheat., 1; 5 Cond. Rep., 369. *Briscoe v. the Bank of the Commonwealth of Kentucky*, 11 Peters, 257. *New Jersey v. Wilson*, 7 Cranch, 164; 2 Cond. Rep., 457. *Terrett v. Taylor*, 9 Cranch, 43; 3 Cond. Rep., 254. *Trustees of Dartmouth College v. Woodward*, 4 Wheat., 518; 4 Cond. Rep., 526. *The proprietors of the Charles River Bridge v. The Proprietors of the Warren Bridge*, 11 Peters, 420. *Sturges v. Crowninshield*, 4 Wheat, 122; 4 Cond. Rep., 409. *Hawkins v. Barney's Lessee*, 5 Peters, 456. *Mason v. Haile*, 12 Wheat., 370; 6 Cond. Rep., 535; *Farmers' and Mechanics' Bank v. Smith*, 6 Wheat., 131; 5 Cond. Rep., 35. *Satterlee v. Matthewson*, 2 Peters, 380. *Wilkinson v. Leland*, 2 Peters, 627.

(a) *Brown v. The State of Maryland*, 12 Wheat., 419; 6 Cond. Rep., 554.

of peace, enter into any agreement or compact with another state, or with a foreign power or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ART. 2. § 1. **The executive.** The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Electors of. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

And proceedings in the choice of president. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have [505] an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president. (a)

Meeting of electors. The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Qualification for presidency. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Vice-president—when to act. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may, by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall [act] accordingly, until the disability be removed, or a president shall be elected.

Compensation of president. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished

(a) By an amendment to the constitution, a substitute for this paragraph was adopted. Amendment, Art. 12, § 1. This amendment was proposed in October 1803, and was ratified before September 1804. See the amendment, *post*.

during the period for which he shall have been elected, and he shall not receive during that period any other emolument from the United States or any of them.

Oath of office. Before he enter upon the execution of his office, he shall take the following oath or affirmation:

“I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States.”

§ 2. **Powers of the president—commander—pardons.** The president shall be commander-in-chief of the [506] army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Treaties—appointment of officers. He shall have power, by and with the advice and consent [of] the senate, to make treaties, provided two-thirds of the senators present concur; (a) and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments. (b)

Fill vacancies. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

§ 3. **Give information to congress, etc.** He shall from time to time, give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

§ 4. **Impeachment.** The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ART. 3. § 1. **Judicial power—tenure.** The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall [507] hold their offices during good behavior; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office. (a)

(a) The decisions of the supreme court of the United States on the powers and duties of the president of the United States have been the following: *Marbury v. Madison*, 1 Cranch, 137; 1 Cond. Rep., 267; 1 Peters, 296; 12 Peters, 524. *Williams v. The Suffolk Ins. Co.*, 13 Peters, 415.

(b) *Am. Ins. Co. v. Canter*, 1 Peters, 511, 517; with Mr. Justice Johnson's opinion. *Ex parte Duncan N. Hennen*, 13 Peters, 230.

(a) The decisions of the supreme court of the United States on the 1st and 2d sections of the 3d article of the constitution have been: *The State of Rhode Island v. The State of Massachusetts*, 12 Peters, 657-72. *McBride v. Hoey*, 11 Peters, 167. *Marbury v. Madison*, 1 Cranch, 137; 1 Cond. Rep., 267. *Ex parte Crane*, 5 Peters, 190. *Ex parte Mil-*

§ 2. **Extent of judicial power.** The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects.

Jurisdiction of supreme court. In all cases affecting ambassadors, other public ministers and consuls, (b) and those in which a state shall be a party, the supreme court shall have original jurisdiction. (c) In all [508] the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make. (a)

Trial by jury. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as congress may by law have directed.

§ 3. **Treason.** Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

burn, 9 Peters, 704. *Town of Pawlet v. Clark et al.*, 9 Cranch, 292; 3 Cond. Rep., 408. *Ex parte Kearney*, 7 Wheat., 38; 5 Cond. Rep., 225. *McClunney v. Silliman*, 2 Wheat., 369; 4 Cond. Rep., 162. *The United States v. Bevans*, 3 Wheat., 336; 4 Cond. Rep., 275. *United States v. Hamilton*, 3 Dall., 17. *Ex parte Bollman*, 4 Cranch, 75; 2 Cond. Rep., 33. *Ex parte Tobias Watkins*, 3 Peters, 193. *Cherokee Nation v. The State of Georgia*, 5 Peters, 1. *Cohens v. the State of Virginia*, 6 Wheat., 264. *Osborn v. The Bank of the United States*, 9 Wheat., 728; 5 Cond. Rep., 741. *The United States v. Ortega*; 11 Wheat., 467; 6 Cond. Rep., 394. *Fowler v. Lindsey et al.*, 3 Dall., 411. *The United States v. Goodwin*, 7 Cranch, 108; 2 Cond. Rep., 434.

The third article of the constitution of the United States enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such form that the judicial power is capable of acting on it. That power is capable of acting, only when the subject is submitted to it by a party who asserts his rights in a form prescribed by law. It then becomes a case.

Osborn et al. v. The Bank of the United States, 9 Wheat, 738; 5 Cond. Rep., 741.

(b) An indictment under the crimes act of 1790, chap. 9, sec. 28, for infracting the law of nations by offering violence to the person of a foreign minister, is a case "affecting ambassadors and other public ministers, or consuls," within the second section of the third article of the constitution of the United States. *The United States v. Ortega*, 11 Wheat., 467; 6 Cond. Rep., 394.

(c) On the original jurisdiction of the supreme court, the following cases have been decided. *Ex parte Kearney*, 7 Wheat., 38; 5 Cond. Rep., 225. *McCluney v. Sullivan*, 2 Wheat., 369; 4 Cond. Rep., 162. *The Columbian Insurance Company v. Wheelwright*, 7 Wheat., 534; 5 Cond. Rep., 334. *United States v. Hamilton*, 3 Dall., 17. *Ex parte Tobias Watkins*, 3 Peters, 193. *Ex parte Crane et al.*; 5 Peters, 190. *United States v. Ravara*, 2 Dall., 297. *Cherokee Nation v. The State of Georgia*, 5 Peters, 1. *The State of New Jersey v. The State of New York*, 5 Peters, 294. *Ex parte Juan Madrazzo*, 7 Peters, 627. *The State of Rhode Island v. The State of Massachusetts*, 12 Peters, 657-755. *Cohens v. The State of Virginia*, 6 Wheat., 264; 5 Cond. Rep., 90. *Osborn v. The Bank of the United States*, 9 Wheat., 738; 5 Cond. Rep., 741. *Fowler et al. v. Lindsey et al.*, 3 Dall., 411.

(a) Upon the appellate powers of the supreme court, the following cases have been decided: *United States v. Goodwin*, 7 Cranch, 108; 2 Cond. Rep., 434. *Wiscart v. Dauchy*, 3 Dall., 321; 1 Cond. Rep., 144. *United States v. Moore*, 3 Cranch, 159. 1 Cond. Rep., 480. *Osborn v. The Bank of the United States*, 9 Wheat., 738; 5 Cond. Rep., 741. *Owings v.*

Attainder. The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ART. 4. § 1. **Acts, records, etc., of states.** Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof. (b)

§ 2. **Citizenship.** The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Fugitives from justice. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Fugitive slaves. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service [509] or labor, but shall be delivered up on claim of the party to whom such service or labor may be due. (a)

§ 3. **New states.** New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Territory of U. S. The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

§ 4. **Republican government.** The United States shall guarantee to every

Norwood's Lessee, 5 Cranch, 344; 2 Cond. Rep., 275. *Martin v. Hunter's Lessee*, 1 Wheat., 304; 3 Cond. Rep., 575. *Gordon v. Caldeleugh*, 3 Cranch, 268; 1 Cond. Rep., 524. *Ex parte Kearney*, 7 Wheat., 38; 5 Cond. Rep., 225. *Inglee v. Coolidge*, 2 Wheat., 363; 4 Cond. Rep., 155. *Gelston et al., v. Hoyt*, 3 Wheat., 246; 4 Cond. Rep., 244. *Nicholls et al., v. Hodges' Ex'r*, 1 Peters, 562. *Buel v. Van Ness*, 8 Wheat., 312; 5 Cond. Rep., 445. *Miller v. Nicholls*, 4 Wheat., 311; 4 Cond. Rep., 465. *Matthews v. Zane et al.*, 7 Wheat., 164; 5 Cond. Rep., 265. *Houston v. Moore*, 3 Wheat., 438; 4 Cond. Rep., 286. *Williams v. Norris*, 12 Wheat., 117; 6 Cond. Rep., 462. *Montgomery v. Hernandez*, 12 Wheat., 129; 6 Cond. Rep., 475. *Gibbons v. Ogden*, 6 Wheat., 448; 5 Cond. Rep., 134. *Weston et al. v. The City Council of Charleston*, 2 Peters, 449.

(b) *Mills v. Duryee*, 7 Cranch, 481; 2 Cond. Rep., 578. *Hampton v. McConnel*, 3 Wheat., 234; 4 Cond. Rep., 243. See act of May 26, 1790, chap. 11. Act of March 27, 1804, chap. 56.

(a) *Prigg v. The Commonwealth of Pennsylvania*, 16 Peters, 539. The clause in the constitution relating to fugitives from labour, manifestly contemplates the existence of a positive, unqualified right on the part of the owner of the slave, which no state law or regulation can in any way qualify, regulate, control, or restrain. Any law or regulation which interrupts, limits, delays, or postpones the rights of the owner to the immediate command of his service or labour, operates pro tanto, a discharge of the slave therefrom. The question can never be how much he is discharged from; but whether he is discharged from any service by the natural and necessary operation of the state laws, or state regulations. The question is not one of quantity and degree, but of withholding or controlling the incidents of a positive right.

The owner of a fugitive slave has the same right to take him in a state to which he has escaped or fled, that he had in the state from which he escaped; and it is well known that this right to seizure or recapture is universally acknowledged in all the slave-holding states. *Ibid.*

state in this union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ART. 5. Amendments to the constitution. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or other mode of ratification may be proposed by the congress; provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ART. 6. Former debts recognized. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid [510] against the United States, under this constitution, as under the confederation.

Supreme law. This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

Oath of office—religious test. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ART. 8. Ratification. The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, PRESIDENT, and
Deputy from Virginia

New Hampshire—John Langdon, Nicholas Gilman.

Massachusetts—Nathaniel Gorham, Rufus King.

Connecticut—Wm. Samuel Johnson, Roger Sherman.

New York—Alexander Hamilton.

New Jersey—William Livingston, David Breardly, William Patterson, Jonathan Dayton.

Pennsylvania—Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.

Delaware—George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom.

Maryland—James M'Henry, Daniel of St. Thomas Jenifer, Daniel Carroll.

Virginia—John Blair, James Madison, Jr.

North Carolina—William Blount, Richard Dobbs Spaight, Hugh Williamson.

South Carolina—John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.

Georgia—William Few, Abr. Baldwin.

Attest,

WILLIAM JACKSON, Secretary.

AMENDMENTS TO THE CONSTITUTION (a.)

[511] **ART. 1. Religion, speech, press, and petition.** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ART. 2. Bearing arms. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ART. 3. Quartering of soldiers. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ART. 4. Unreasonable searches and seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.(b)

ART. 5. Criminal proceedings—private property taken, etc. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offense, to be twice put in jeopardy of life or limb;(c) nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ART. 6. Trial by jury in criminal proceedings. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

ART. 7. Same—in suits at common law. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury shall be oth-[512]-erwise re-examined in any court of the United States, than according to the rules of the common law.(d)

(a) The first ten of these amendments were proposed by congress, (with others which were not ratified by three-fourths of the legislatures of the several states,) by resolution of 1789, and were ratified before 1791. The eleventh amendment was proposed by congress by resolution of the year 1794, and was ratified before 1796. The twelfth article was proposed by congress by resolution of October, 1803, and was ratified before September, 1804.

(b) Ex parte Burford, 3, Cranch, 448; 1 Cond. Rep., 594.

(c) United States v. Haskell and Francis, 4 Wash. C. C. R. 402. United States v. Gilbert, 2 Summer's C. C. R. 19.

(d) The amendments to the constitution of the United States, by which the trial by jury was secured, may, in a just sense, be well construed to embrace all suits which are not of equity or admiralty jurisdiction, whatever may be the form they may assume to settle legal rights. Parsons v. Bedford, et al., 3 Peters, 433.

ART. 8. **Excessive bail.** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ART. 9. **Rights retained by the people.** The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ART. 10. **Powers not delegated, reserved.** The powers not delegated to the United States by the constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ART. 11. **States not to be sued.** The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.(e)

ART. 12. § 1. (f) **Manner of choosing president—electors—house of representatives—vice president to act when no choice.** The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majori-[513]-ty of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

§ 2. **Senate to elect vice-president.** The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum, for that purpose, shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

§ 3. **Eligibility.** But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

(e) The amendment to the constitution by which the judicial power was declared not to extend to any suit commenced or prosecuted by a citizen or citizens of another state, or by foreign subjects against a state, prevented the exercise of jurisdiction in any case past or future. *Hollingsworth v. The State of Virginia*, 3 Dall., 378; 1 Cond. Rep. 169.

(f) This amendment was proposed in October, 1803, and was ratified before September 1804.

ORGANIC LAW OF MICHIGAN

AN ACT to divide the Indiana Territory into two separate governments

Be it enacted by the senate and house of representatives of the United States of America in congress assembled:

SECTION 1. **Michigan set off.** That from and after the thirtieth day of June next, all that part of the Indiana territory, which lies north of a line drawn east from the southerly bend or extreme of Lake Michigan, until it shall intersect Lake Erie, and east of a line drawn from the said southerly bend through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States, shall, for the purpose of temporary government, constitute a separate territory, and be called Michigan.

SEC. 2. **Its government.** And be it further enacted, that there shall be established within the said territory, a government in all respects similar to that provided by the ordinance of congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory of the United States, northwest of the river Ohio; and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled "An act to provide for the government of the territory northwest of the river Ohio;" and the inhabitants thereof shall be entitled to, and enjoy all and singular the rights, privileges, and advantages granted and secured to the people of the territory of the United States, northwest of the river Ohio, by the said ordinance.

SEC. 3. **Powers and compensation of officers as in Indiana.** And be it further enacted, that the officers for the said territory, who by virtue of this act shall be appointed by the president of the United States, by and with the advice and consent of the senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations, as by the ordinance aforesaid and the laws of the United States, have been provided and established for similar officers in the Indiana territory; and the duties and emoluments of superintendent of Indian affairs, shall be united with those of governor.

SEC. 4. **Indiana not affected.** And be it further enacted, that nothing in this act contained, shall be construed so as, in any manner, to affect the government now in force in the Indiana territory, further than to prohibit the exercise thereof within the said territory [515] of Michigan, from and after the aforesaid thirtieth day of June next.

SEC. 5. **Suits pending.** And be it further enacted, that all suits, process, and proceeding, which, on the thirtieth day of June next, shall be pending in the court of any county, which shall be included within the said territory of Michigan; and also all suits, process, and proceedings, which on the said thirtieth day of June next, shall be pending in the general court of the Indiana territory, in consequence of any writ of removal or order for trial at bar, and which had been removed from any of the counties included within the limits of the territory of Michigan aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana territory had remained undivided.

SEC. 6. **Seat of government.** And be it further enacted, that Detroit shall be the seat of government of the said territory, until congress shall otherwise direct.

Approved January 11, 1805.

ORGANIC LAW OF WISCONSIN

AN ACT establishing the territorial government of Wisconsin.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled.

SECTION 1. What country shall constitute the Wisconsin territory—proviso. That from and after the third day of July next, the country included within the following boundaries shall constitute a separate territory, for the purpose of temporary government, by the name of Wisconsin; that is to say: bounded on the east by a line drawn from the northeast corner of the state of Illinois, through the middle of Lake Michigan, to a point in the middle of said lake, and opposite the main channel of Green Bay, and through said channel and Green Bay to the mouth of the Menomonie river; thence through the middle of the main channel of said river, to that head of said river nearest to the Lake of the Desert; thence in a direct line to the middle of said lake; thence through the middle of the main channel of the Montreal river, to its mouth; thence with a direct line across Lake Superior, to where the territorial line of the United States last touches said lake northwest; thence on the north, with the said territorial line, to the White-earth river, on the west, by a line from the said boundary line following down the middle of the main channel of White-earth river, to the Missouri river, and down the middle of the main channel of the Missouri river to a point due west from the northwest corner of the state of Missouri; and on the south, from said point, due east to the northwest corner of the state of Missouri; and thence with the boundaries of the states of Missouri and Illinois, as already fixed by acts of congress. And after the said third day of July next, all power and authority of the government of Michigan in and over the territory hereby constituted, shall cease: provided, that nothing in this act contained shall be construed to impair the rights of person or property now appertaining to any Indians within the said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or anywise to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, or law, [517] or otherwise, which it would have been competent to the government to make if this act had never been passed: provided, that nothing in this act contained shall be construed to inhibit the government of the United States from dividing the territory hereby established into one or more other territories, in such manner, and at such times, as congress shall, in its discretion, deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States.

SEC. 2. Appointment and powers of governor. And be it further enacted, that the executive power and authority in and over the said territory shall be vested in a governor, who shall hold his office for three years, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve of all laws passed by the legislative assembly before they shall take effect; he may grant pardons for offenses

against the laws of said territory, and reprieves for offences against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

SEC. 3. Secretary—his duties. And be it further enacted, that there shall be a secretary of the said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings on or before the first Monday in December in each year, to the president of the United States; and at the same time, two copies of the laws to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or necessary absence, of the governor from the territory, the secretary shall have, and he is hereby authorized and required to execute and perform all the powers and duties of the governor during such vacancy or necessary absence.

SEC. 4. Legislature—how constituted and elected. And be it further enacted, that the legislative power shall be vested in a governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue four years. [518] The house of representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue two years. An apportionment shall be made, as nearly equal as practicable, among the several counties, for the election of the council and representatives, giving to each section of the territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the said members of the council and house of representatives shall reside in and be inhabitants of the district for which they may be elected. Previous to the first election, the governor of the territory shall cause the census or enumeration of the inhabitants of the several counties in the territory to be taken and made by the sheriffs of the said counties, respectively, and returns thereof made by said sheriffs to the governor. The first election shall be held at such time and place, and be conducted in such manner as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties is entitled under this act. The number of persons authorized to be elected having the greatest number of votes in each of the said counties for the council shall be declared, by the said governor to be duly elected to the said council; and the person or persons having the greatest number of votes for the house of representatives, equal to the number to which each county may be entitled, shall also be declared, by the governor, to be duly elected: provided, the governor shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place on such day as he shall appoint; but, thereafter, the time, place and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties to the council and house of representatives, according to population, shall be prescribed by law, as well as the day of the annual commencement of the session of the said legislative assembly; but no session, in any year, shall exceed the term of seventy-five days.

SEC. 5. **Who shall be eligible to office—proviso.** And be it further enacted, that every free white male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant of said territory at the time of its organization, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters at all subsequent elections shall be such as shall be determined by the [519] legislative assembly: provided, that the right of suffrage shall be exercised only by citizens of the United States.

SEC. 6. **Powers of the legislature.** And be it further enacted, that the legislative power of the territory shall extend to all rightful subjects of legislation; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the governor and legislative assembly shall be submitted to, and, if disapproved by the congress of the United States, the same shall be null and of no effect.

SEC. 7. **What officers are to be elected by the people.** And be it further enacted, that all township officers and all county officers, except judicial officers, justices of the peace, sheriffs, and clerks of courts, shall be elected by the people, in such manner as may be provided by the governor and legislative assembly. The governor shall nominate, and, by and with the advice and consent of the legislative council, shall appoint, all judicial officers, justices of the peace, sheriffs, and all militia officers, except those of the staff, and all civil officers not herein provided for. Vacancies occurring in the recess of the council shall be filled by appointments from the governor, which shall expire at the end of the next session of the legislative assembly; but the said governor may appoint, in the first instance, the aforesaid officers, who shall hold their offices until the end of the next session of the said legislative assembly.

SEC. 8. **Disqualifications for office.** And be it further enacted, that no member of the legislative assembly shall hold or be appointed to any office created or the salary or emoluments of which shall have been increased while he was a member, during the term for which he shall have been elected, and for one year after the expiration of such term; and no person holding a commission under the United States, or any of its officers, except as a militia officer, shall be a member of the said council, or shall hold any office under the government of the said territory.

SEC. 9. **Judiciary—proviso.** And be it further enacted, that the judicial power of the said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate judges, any two of whom shall be a quorum, and who shall hold a term at the seat of government of the said territory, annually, and they shall hold their offices during good behavior. The said territory shall be divided into three judicial districts; and a district court or courts shall be held in each of the three districts, by one of the judges of the supreme court, at such times and places as may be prescribed by law. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law: provided, however, that justices of the peace shall not have jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or where the debt or sum claimed exceeds fifty dollars. And the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court shall appoint its clerk, who shall keep his office at the place

where the court may be held, and the said clerks shall also be the registers in chancery; and any vacancy in said office of clerk happening in the vacation of said court, may be filled by the judge of said district, which appointment shall continue until the next term of said court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases, from the final decisions of the said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court, shall a trial by jury be allowed in said court. The supreme court may appoint its own clerk, and every clerk shall hold his office at the pleasure of the court by which he shall have been appointed. And writs of error and appeals from the final decisions of the said supreme court shall be allowed and taken to the supreme court of the United States, in the same manner, and under the same regulations, as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States. And the first six days of every term of the said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws. And writs of error, and appeals from the final decisions of the said courts, in all such cases, shall be made to the supreme court of the territory, in the same manner as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerk of the district court of the United States in the northern district of the state of New York receives for similar services.

SEC. 10. Attorney to be appointed—marshal. And be it further enacted, that there shall be an attorney for the said territory appointed, who shall continue in office four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the Michigan territory. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the northern district of the state of New York; and shall, in addition, be paid the sum of two hundred dollars, annually, as a compensation for extra services.

SEC. 11. Governor, etc., to be approved by the senate—salaries—contingent expenses. And be it further enacted, that the governor, secretary, chief justice and associate judges, attorney, and marshal, shall be nominated, and by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary, to be appointed as aforesaid, shall before they act as such respectively take an oath or affirmation before some judge or justice of the peace in the existing territory of Michigan, duly commissioned and qualified to administer an oath or affirmation, to support the constitution of the United States, and for the faithful discharge of the duties of their respective offices; which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken, and such certificate shall be received and recorded by the said secretary among the executive proceedings. And afterwards the chief justice and associate judges, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the territory who may be duly commissioned

and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand five hundred dollars for his services as governor and as superintendent of Indian affairs. The said chief justice and associate judges shall each receive an annual salary of eighteen hundred dollars. The secretary shall receive an annual salary of twelve hundred dollars. The said salaries shall be paid quarterly, at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each per day, during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning [522] from the said sessions, estimated according to the nearest usually traveled route. There shall be appropriated, annually, the sum of three hundred and fifty dollars, to be expended by the governor to defray the contingent expenses of the territory, and there shall also be appropriated annually, a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws and other incidental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 12. Rights, etc., under the territorial compact of July, 1787, extended to Wisconsin—and also those secured to Michigan. And be it further enacted, that the inhabitants of the said territory shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people of the territory of the United States northwest of the river Ohio, by the articles of the compact contained in the ordinance for the government of the said territory, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven; and shall be subject to all the conditions and restrictions and prohibitions in said articles of compact imposed upon the people of the said territory. The said inhabitants shall also be entitled to all the rights, privileges, and immunities, heretofore granted and secured to the territory of Michigan, and to its inhabitants, and the existing laws of the territory of Michigan shall be extended over said territory, so far as the same shall not be incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed, by the governor and legislative assembly of the said territory of Wisconsin; and further, the laws of the United States are hereby extended over, and shall be in force in said territory, so far as the same, or any provisions thereof may be applicable.

SEC. 13. Legislative sessions, when held. And be it further enacted, that the legislative assembly of the territory of Wisconsin shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said session, or as soon thereafter as may by them be deemed expedient, the said governor and the legislative assembly shall proceed to locate and establish the seat of government for said territory, at such place as they may deem eligible, which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly. And twenty thousand dollars, to be paid out of any money in the treasury, not otherwise appropriated, is hereby given to the said territory, which shall be applied by the governor and legislative as-[523]-sembly to defray the expenses of erecting public buildings at the seat of government.

SEC. 14. Delegate to the house of representatives of the United States. And be it further enacted, that a delegate to the house of representatives of the United States, to serve for the term of two years, may be elected by the voters

qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as have been granted to the delegates from the several territories of the United States to the said house of representatives. The first election shall be held at such time and place or places, and be conducted in such manner, as the governor shall appoint and direct. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given to the person so elected.

SEC. 15. Provision respecting undetermined suits. And be it further enacted, that all suits, process, and proceedings, and all indictments and informations which shall be undetermined on the third day of July next, in the courts held by the additional judge for the Michigan territory, in the counties of Brown and Iowa; and all suits, process and proceedings, and all indictments and informations which shall be undetermined on the said day of July, in the county courts of the several counties of Crawford, Brown, Iowa, Dubuque, Milwaukie, and Des Moines, shall be transferred to be heard, tried, prosecuted, and determined, in the district courts hereby established, which may include the said counties.

SEC. 16. And be it further enacted, that all causes which shall have been or may be removed from the courts held by the additional judge for the Michigan territory, in the counties of Brown and Iowa, by appeal or otherwise, into the supreme court for the territory of Michigan, and which shall be undetermined therein on the third day of July next, shall be certified by the clerk of the said supreme court, and transferred to the supreme court of said territory of Wisconsin, there to be proceeded in to final determination, in the same manner that they might have been in the said supreme court of the territory of Michigan.

SEC. 17. Five thousand dollars for the purchase of a library. And be it further enacted, that the sum of five thousand dollars be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated to be expended by and under the direction of the legislative assembly of said territory, in the purchase of a library for the accommodation of said assembly, and of the supreme court hereby established.

Approved, April 20, 1836.

ORGANIC LAW OF IOWA

AN ACT to divide the territory of Wisconsin and to establish the territorial government of Iowa.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled:

SECTION 1. **Iowa, July 4, 1838—rights and powers reserved.** That from and after the third day of July next, all that part of the present territory of Wisconsin which lies west of the Mississippi river, and west of a line drawn due north from the head waters or sources of the Mississippi to the territorial line, shall, for the purposes of temporary government, be and constitute a separate territorial government, by the name of Iowa; and that, from and after the said third day of July next, the present territorial government of Wisconsin shall extend only to that part of the present territory of Wisconsin which lies east of the Mississippi river. And after the said third day of July next, all power and authority of the government of Wisconsin, in and over the territory hereby constituted shall cease: provided, that nothing in this act contained shall be construed to impair the rights of person or property now appertaining to any Indians within the said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to impair the obligations of any treaty now existing between the United States and such Indians, or to impair or anywise to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, or law, or otherwise, which it would have been competent to the government to make, if this act had never been passed: provided, that nothing in this act contained, shall be construed to inhibit the government of the United States from dividing the territory hereby established into one or more other territories, in such manner, and at such times, as congress shall, in its discretion deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States.

SEC. 2. And be it further enacted, that the executive power and authority in and over the said territory of Iowa, shall be vested in a governor, who shall hold his office for three years, unless sooner removed by the president of the United States. The governor shall reside within the said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve of all laws passed by the legislative assembly before they shall take effect; he may grant pardons for offences against the laws of said territory, and reprieves for offenses against the law of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, and shall take care that the laws be faithfully executed.

SEC. 3. **Secretary—to transmit laws—to act as governor.** And be it further enacted, that there shall be a secretary of the said territory, who shall reside therein, and hold his office for four years, unless sooner removed by the president of the United States, he shall record and preserve all the laws and proceedings of the legislative assembly hereinafter constituted, and all the

acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings, on or before the first Monday in December in each year, to the president of the United States; and, at the same time, two copies of the laws to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorized and required to execute and perform all the powers and duties of the governor during such vacancy or necessary absence, or until another governor shall be duly appointed to fill such vacancy.

SEC. 4. Legislative power—council—house of representatives—census—elections, etc., to be regulated by law. And be it further enacted, that the legislative power shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for the members of the council, and whose terms of service shall continue one year. An apportionment shall be made as nearly equal as practicable among the several counties, for the election of the council and representatives, giving to each section of the territory representation in the ratio of its population, Indians excepted, as nearly as may be. And the said members of the council and house of representatives shall reside in, and be inhabitants of the district for which they may be elected. Previous to the first election, the governor of the territory shall cause the census or enumeration of the inhabitants of the several counties in the territory to be taken and made by the sheriffs of the said counties respectively, unless the same shall have been taken within three months previous to the third day of July next, and returns thereof made by said sheriffs to the governor. The first election shall be held at such time and place, and be conducted in such manner as the governor shall appoint and direct; and he shall at the same time, declare the number of members of the council and house of representatives to which each of the counties or districts are entitled under this act. The number of persons authorized to be elected having the greatest number of votes in each of the said counties or districts for the council, shall be declared by the said governor to be duly elected to the said council; and the person or persons having the greatest number [of] votes for the house of representatives, equal to the number to which each county may be entitled, shall also be declared by the governor to be duly elected: provided, the governor shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place and on such day as he shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties to the council and house of representatives, according to population, shall be prescribed by law, as well as the day of the annual commencement of the session of the said legislative assembly; but no session in any year shall exceed the term of seventy-five days.

SEC. 5. Rights of suffrage. And be it further enacted, that every free white male citizen of the United States, above the age of twenty-one years, who shall have been an inhabitant of said territory at the time of its organization shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters, at all subsequent elections shall be such as shall be determined by the legislative assembly: provided, that the right of suffrage shall be exercised only by citizens of the United States.

SEC. 6. **Legislative powers, extent of.** And be it further enacted, that the legislative power of the territory shall extend to all rightful subjects of legislation; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws of the governor and legislative assembly shall be submitted to, and if disapproved by the congress of the United States, the same shall be null and of no effect.

SEC. 7. **Elective officers—judicial, etc.** And be it further enacted, that all township officers, [527] and all county officers except judicial officers, justices of the peace, sheriffs, and clerks of courts, shall be elected by the people, in such manner as is now prescribed by the laws of the territory of Wisconsin, or as may, after the first election, be provided by the governor and legislative assembly of Iowa territory. The governor shall nominate, and, by and with the advice and consent of the legislative council, shall appoint all judicial officers, justices of the peace, sheriffs, and all militia officers, except those of the staff, and all civil officers not herein provided for. Vacancies occurring in the recess of the council shall be filled by appointments from the governor, which shall expire at the end of the next session of the legislative assembly; but the said governor may appoint, in the first instance, the aforesaid officers, who shall hold their offices until the end of the next session of the said legislative assembly.

SEC. 8. **Ineligibility.** And be it further enacted, that no member of the legislative assembly shall hold, or be appointed to, any office created, or the salary or emoluments of which shall have been increased whilst he was a member, during the term for which he shall have been elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, or any of its officers, except as a militia officer, shall be a member of the said council or house of representatives, or shall hold any office under the government of the said territory.

SEC. 9. **Judicial power—districts, and the courts thereof—jurisdiction—at common law and in chancery—clerks—writs of error.** And be it further enacted, that the judicial power of the said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate judges, any two of whom shall be a quorum, and who shall hold a term at the seat of government of the said territory annually; and they shall hold their offices during the term of four years. The said territory shall be divided into three judicial districts; and a district court or courts shall be held in each of the three districts, by one of the judges of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointment, respectively, reside in the districts which shall be assigned to them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law; provided, however, that justices of the peace shall not have jurisdiction of any matter of controversy, when the title or boundaries of land may be in dispute, or where the debt or sum claimed exceeds fifty dollars. And the said supreme and district courts, respectively, shall possess a [528] chancery as well as a common law jurisdiction. Each district court shall appoint its clerk, who shall keep his office at the place where the court may be held, and the said clerks shall also be the registers in chancery; and any vacancy in said office of clerk, happening in the vacation of said court, may be filled by the judge of said district, which appointment shall continue until the next term of said court. And writs of error, bills of exception, and appeals in chancery causes, shall be allowed in all cases, from the final decisions

of the said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case, removed to the supreme court, shall trial by jury be allowed in said court. The supreme court may appoint its own clerk, and every clerk shall hold his office at the pleasure of the court by which he shall have been appointed. And writs of error and appeals from the final decisions of the said supreme court shall be allowed and taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, shall exceed one thousand dollars. And each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States. And the first six days of every term of the said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws. And writs of error and appeals from the final decisions of the said courts, in all such cases, shall be made to the supreme court of the territory, in the same manner as in other cases. The said clerk shall receive in all such cases, the same fees which the clerks of the district courts of Wisconsin territory now receives for similar services.

SEC. 10. **Attorney—marshal.** And be it further enacted, that there shall be an attorney for the said territory appointed, who shall continue in office four years, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Wisconsin. There shall also be a marshal for the territory appointed, who shall hold his office for four years, unless sooner removed by the president, who shall execute all process issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of [529] the district court of the United States for the present territory of Wisconsin; and shall, in addition, be paid the sum of two hundred dollars annually as a compensation for extra services.

SEC. 11. **Appointments by president—oath of office—salary of governor, judges, and secretary—pay of members of legislature.** And be it further enacted, that the governor, secretary, chief justice and associate judges, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the senate, appointed by the president of the United States. The governor and secretary, to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation, before some judge or justice of the peace in the existing territory of Wisconsin, duly commissioned and qualified to administer an oath or affirmation, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and for the faithful discharge of the duties of their respective offices; which said oaths, when so taken, shall be certified by the person before whom the same shall have been taken, and such certificate shall be received and recorded by the said secretary among the executive proceedings. And, afterwards, the chief justice and associate judges, and all other civil officers in said territory, before they act as such, shall take a like oath, or affirmation, before said governor, or secretary, or some judge or justice of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall [be] certified and transmitted, by the person taking the same, to the secretary, to be by him recorded as aforesaid; and, afterwards, the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall

receive an annual salary of fifteen hundred dollars as governor, and one thousand dollars as superintendent of Indian affairs. The said chief judge and associate justices shall each receive an annual salary of fifteen hundred dollars. The secretary shall receive an annual salary of twelve hundred dollars. The said salaries shall be paid quarter yearly, at the treasury of the United States. The members of the legislative assembly shall be entitled to receive three dollars each, per day, during their attendance at the session thereof, and three dollars each for every twenty miles traveled in going to, and returning from the said sessions, estimated according to the nearest usually traveled route. There shall be appropriated annually the sum of three hundred and fifty dollars to be expended by the governor to defray the contingent expenses of the territory; and there shall also be appropriated annually a sum sufficient to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of [530] the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws and other incidental expenses; and the secretary of the territory shall annually account to the secretary of the treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 12. Fundamental rights—laws of Wisconsin. And be it further enacted, that the inhabitants of the said territory shall be entitled to all the rights, privileges, and immunities heretofore granted and secured to the territory of Wisconsin, and to its inhabitants; and the existing laws of the territory of Wisconsin shall be extended over said territory, so far as the same be not incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed by the governor and legislative assembly of the said territory of Iowa; and, further, the laws of the United States are hereby extended over, and shall be in force in said territory, so far as the same, or any provisions thereof, may be applicable.

SEC. 13. Sessions of legislature. And be it further enacted, that the legislative assembly of the territory of Iowa shall hold its session at such time and place, in said territory as the governor thereof shall appoint and direct; and at said session, or as soon thereafter as may by them be deemed expedient, the said governor and legislative assembly shall proceed to locate and establish the seat of government for said territory, at such place as they may deem eligible, which place, however, shall thereafter be subject to be changed by the governor and legislative assembly. And the sum of twenty thousand dollars, out of any money in the treasury not otherwise appropriated, is hereby granted to the said territory of Iowa, which shall be applied by the governor and legislative assembly thereof, to defray the expenses of erecting public buildings at the seat of government.

SEC. 14. Delegate to congress. And be it further enacted, that a delegate to the house of representatives of the United States, to serve for the term of two years, may be elected by the voters qualified to elect members of the legislative assembly who shall be entitled to the same rights and privileges as have been granted to the delegates from the several territories of the United States to the said house of representatives. The first election shall be held at such time and place or places, and be conducted in such manner as the governor shall appoint and direct. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given to the person so elected.

SEC. 15. Legal proceedings pending. And be it further enacted, that all suits, process, and proceedings, and all indictments and informations which [531] shall be undetermined on the third day of July next, in the district courts

of Wisconsin territory, west of the Mississippi river, shall be transferred to be heard, tried, prosecuted and determined in the district courts hereby established, which may include the said counties.

SEC. 16. Officers to continue in office. And be it further enacted, that all justices of the peace, constables, sheriffs, and all other executive and judicial officers, who shall be in office on the third day of July next, in that portion of the present territory of Wisconsin, which will then, by this act, become the territory of Iowa, shall be, and are hereby authorized and required to continue to exercise and perform the duties of their respective offices, as officers of the territory of Iowa, temporarily, and until they or others shall be duly appointed to fill their places by the territorial government of Iowa, in the manner herein directed: provided, that no officer shall hold or continue in office by virtue of this provision, over twelve months from the said third day of July next.

SEC. 17. Causes pending in supreme court of Wisconsin transferred to supreme court of Iowa. And be it further enacted, that all causes which shall have been or may be removed from the courts held by the present territory of Wisconsin, in the counties west of the Mississippi river, by appeal or otherwise, into the supreme court for the territory of Wisconsin, and which shall be undetermined therein on the third day of July next, shall be certified by the clerk of said supreme court, and transferred to the supreme court of said territory of Iowa, there to be proceeded in to final determination, in the same manner that they might have been in the said supreme court of the territory of Wisconsin.

SEC. 18. Appropriation for library. And be it further enacted, that the sum of five thousand dollars be, and the same is hereby, appropriated out of any money in the treasury not otherwise appropriated, to be expended by, and under the direction of the governor of said territory of Iowa, in the purchase of a library, to be kept at the seat of government, for the accommodation of the governor, legislative assembly, judges, secretary, marshal, and attorney of said territory, and such other persons as the governor and legislative assembly shall direct.

SEC. 19. Re-organization of legislature of Wisconsin. And be it further enacted, that from and after the day named in this act for the organization of the territory of Iowa, the term of the members of the council and house of representatives of the territory of Wisconsin, shall be deemed to have expired, and an entirely new organization of the council and house of representatives of the territory of Wisconsin, as constituted by this act, shall take place as follows: As soon as practicable, after the passage of this act, the governor of the territory of Wisconsin shall apportion the [532] thirteen members of the council, and twenty-six members of the house of representatives among the several counties or districts comprised within said territory, according to their population, as nearly as may be, (Indians excepted). The first election shall be held at such time as the governor shall appoint and direct, and shall be conducted, and returns thereof made in all respects according to the provisions of the laws of said territory, and the governor shall declare the person having the greatest number of votes to be elected, and shall order a new election when there is a tie between two or more persons voted for, to supply the vacancy made by such tie. The persons thus elected shall meet at Madison, the seat of government, on such day as he shall appoint, but thereafter, the apportioning of the representation in the several counties to the council and house of representatives, according to population, the day of their election, and the day for the commencement of the session of the legislative assembly shall be prescribed by law.

SEC. 20. **Temporary arrangements in Iowa.** And be it further enacted, that temporarily, and until otherwise provided by law of the legislative assembly, the governor of the territory of Iowa may define the judicial districts of said territory, and assign the judges who may be appointed for said territory, to the several districts, and also appoint the time for holding courts in the several counties in each district, by proclamation to be issued by him; but the legislative assembly, at their first, or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times of holding the courts, or any of them.

Approved, June 12, 1838.

AMENDMENTS TO THE ORGANIC LAW

AN ACT to alter and amend the organic law of the territories of Wisconsin and Iowa.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled:

SECTION 1. Acts to be approved by governor, etc. That every bill which shall have passed the council and house of representatives of the territories of Iowa and Wisconsin shall, before it becomes a law, be presented to the governor of the territory; if he approve he shall sign it, but if not, he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two thirds of that house it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays: and the names of the persons voting for and against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly by adjournment prevent its return, in which case it shall not be a law.

SEC. 2. Power of congress not affected. And be it further enacted, that this act shall not be so construed as to deprive congress of the right to disapprove of any law passed by the said legislative assembly, or in any way to impair or alter the power of congress over laws passed by said assembly.

Approved, March 3d, 1839.

AN ACT to authorize the election or appointment of certain officers in the territory of Iowa and for other purposes..

Be it enacted by the senate and house of representatives of the United States of America in congress assembled:

SECTION 1. Certain officers may be elected. That [534] the legislative assembly of the territory of Iowa, shall be, and are hereby authorized to provide by law for the election or appointment of sheriffs, judges of probate, justices of the peace, and county surveyors, within the said territory, in such way or manner, and at such times and places as to them may seem proper: and after a law shall have been passed by the legislative assembly for that purpose, all elections or appointments of the above named officers thereafter to be had or made shall be in pursuance of such law.

SEC. 2. Term of the delegate. And be it further enacted, that the term of service of the present delegate for said territory of Iowa shall expire on the twenty-seventh day of October, eighteen hundred and forty; and the qualified electors of said territory may elect a delegate to serve from the said twenty-seventh day of October to the fourth day of March thereafter, at such time and place as shall be prescribed by law by the legislative assembly, and thereafter a delegate shall be elected, at such time and place as the legislative assembly may direct, to serve for a congress, as members of the house of representatives are now elected.

Approved, March 3d, 1839.

FORT MADISON, BURLINGTON, Etc.

AN ACT for laying off the towns of Fort Madison and Burlington, in the county of Des Moines, and the towns of Belleview, Dubuque, and Peru, in the county of Dubuque, territory of Wisconsin, and for other purposes.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled:

SECTION 1. Towns of Fort Madison, Burlington, Belleview, Dubuque and Peru, Wisconsin territory—proviso. That the tracts of land in the territory of Wisconsin, including the towns of Fort Madison and Burlington, in the county of Des Moines; Belleview, Dubuque, and Peru, in the county of Dubuque; and Mineral Point in the county of Iowa, shall, under the direction of the surveyor general of public lands, be laid off into town lots, streets, avenues and the lots for public use called the public squares, and into out-lots having regard to the lots and streets already surveyed, in such manner and of such dimensions as he may think proper for the public good and the equitable rights of the settlers and occupants of the said towns: provided, the tracts of land so to be laid off into town lots, etc., shall not exceed the quantity of one entire section, nor the town lots one-half of an acre; nor shall the out-lots exceed the quantity of four acres each. When the survey of the lots shall be completed, a plat thereof shall be returned to the secretary of the treasury, and within six months thereafter the lots shall be offered to the highest bidder, at public sale, under the direction of the president of the United States, and at such other times as he shall think proper; provided, that no town lot shall be sold for a sum less than five dollars. And provided further, that a quantity of land of proper width, on the river banks, at the towns of Fort Madison, Belleview, Burlington, Dubuque and Peru, and running with the said rivers the whole length of said towns, shall be reserved from sale (as shall also the public squares) for public use, and remain forever for public use, as public highways, and for other public uses.

SEC. 2. Surveyor to class the lots—Proviso. And be it further enacted, that it shall be the duty of the said surveyor to class the lots already surveyed in the said towns of Fort Madison, Burlington, Belleview, Dubuque, Peru and Mineral Point, into three classes, according to the relative value thereof, on account of situation and eligibility for business, without regard however to the improvements made thereon; and previous to the sale of said lots as afore-[536]-said, each and every person or persons, or his, her, or their legal representatives, who shall heretofore have obtained from the agent of the United States a permit to occupy any lot or lots in the said towns, or who shall have, by building or enclosure, actually occupied or improved any lot or lots in the said towns, or within the tracts of land hereby authorized to be laid off into town lots, shall be permitted to purchase such lot or lots by paying therefor, in cash, if the same fall within the first class as aforesaid, at the rate of forty dollars per acre; if within the second class, at the rate of twenty dollars per acre and if within the third class at the rate of ten dollars per acre: provided, that no one of the persons aforesaid shall be permitted to purchase, by authority of this section, more than one acre of ground to embrace improvements already made.

SEC. 3. Surveying. And be it further enacted, that the sum of three thousand dollars be, and the same is hereby appropriated, to be paid out of any money in the treasury not otherwise appropriated, to defray the expenses of

surveying the lands covering the said towns of Fort Madison, Burlington, Belleview, Dubuque, Peru and Mineral Point.

Approved, July 2, 1836.

AN ACT to amend an act entitled "An act for laying off the towns of Fort Madison and Burlington, in the county of Des Moines, and the towns of Belleview, Dubuque and Peru, in the county of Dubuque, and Mineral Point, in the county of Iowa, territory of Wisconsin, and for other purposes," approved July second, eighteen hundred and thirty-six.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled:

SECTION 1. Commissioners to be appointed by the president, etc.—proviso. That all acts and duties required to be done and performed by the surveyor for the territory of Wisconsin, under the act to which this is an amendment, shall be done by a board of commissioners of three in number, any two of whom shall be a quorum to do business; said commissioners to be appointed by the president of the United States, and shall, previous to their entering upon the discharge of their duties, take an oath or affirmation to perform the same faithfully and impartially: provided, that the action of the commissioners appointed under the present act shall not interfere with any of the acts performed by the surveyor general, prior to the time of the passage hereof, in pursuance of instructions under the act to which this is amendatory.

SEC. 2. The commissioners to have power to determine all claims to lots, etc. And be it further enacted, that the said commissioners [537] shall have power to hear evidence and determine all claims to lots arising under the act to which this is an amendment; and for this purpose, the said commissioners are authorized to administer all oaths that may be necessary, and reduce to writing all the evidence in support of claims to pre-emption presented for their consideration; and when all the testimony shall have been heard and considered, the said commissioners shall file with the proper register and receiver for the district within which the towns are situated respectively, the testimony in each case, together with a certificate in favor of each person having the right of pre-emption under the provisions of the act of which this is amendatory; and upon making payment to the proper receiver of public moneys for the lot or lots to which such person is entitled, the receiver shall grant a receipt therefor, and the register issue certificates of purchase, to be transmitted to the commissioner of the general land office, as in other cases of the sale of public lands.

SEC. 3. Public sale of lots. And be it further enacted, that the proper register and receiver of public moneys, after the board of commissioners have heard and determined all the cases of pre-emption under the act to which this is an amendment, shall expose the residue of the lots to public sale to the highest bidder, after advertising the same in three public newspapers at least three months prior to the day of sale, in the same manner as is provided for the sale of public lands in other cases; and after paying the commissioners the compensation hereafter allowed them, and all other expenses incident to the said survey and sale, the receiver of the land office shall pay over the residue of the money he may have received from the sale of lots aforesaid, by pre-emption as well as at public auction, into the hand of the trustees of the respective towns aforesaid, to be expended by them in the erection of pub-

lic buildings, the construction of suitable wharves, and the improvement of the streets in the said towns of Fort Madison, Burlington, Belleview, Dubuque, Peru and Mineral Point.

SEC. 4. **Commissioners pay.** And be it further enacted, that the commissioners appointed to carry this act into effect, shall be paid by the receiver of public moneys, of the proper land district, six dollars each, per day, for their services, for every day they are necessarily employed.

Approved, March 3, 1837.

ADMISSION OF IOWA

AN ACT for the admission of the states of Iowa and Florida into the Union.

Preamble—act of March 3, 1845, ch. 75, and ch. 76. Whereas, the people of the territory of Iowa did, on the seventh day of October, eighteen hundred and forty-four, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and state government; and whereas, the people of the territory of Florida did, in like manner, by their delegates, on the eleventh day of January, eighteen hundred and thirty-nine, form for themselves a constitution and state government, both of which said constitutions are republican; and said conventions having asked the admission of their respective territories into the Union as states, on equal footing with the original states:

Be it enacted by the senate and house of representatives of the United States of America in congress assembled:

SECTION 1. Iowa and Florida admitted. That the states of Iowa and Florida be, and the same are hereby, declared to be states of the United States of America, and are hereby admitted into the Union on equal footing with the original states, in all respects whatsoever.

SEC. 2. Boundaries of Iowa. And be it further enacted, that the following shall be the boundaries of the said state of Iowa, to-wit: beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato, or Blue Earth river, thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington city, thence due south to the northern boundary line of the state of Missouri, thence eastwardly following that boundary to the point at which the same intersects the Des Moines river, thence by the middle of the channel of that river to the place of beginning.

SEC. 3. Iowa to have concurrent jurisdiction on the Mississippi and other rivers. And be it further enacted, that the said state of Iowa shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the said state of Iowa, so far as the said rivers shall form a common boundary to said state, and any other state or states now or hereafter to be formed or bounded by the same: such rivers to be common to both: and that the said river Mississippi, and the [539] navigable waters leading into the same, shall be common highways, and forever free as well as to the inhabitants of said state, as to all other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said state of Iowa.

SEC. 4. Assent of people of Iowa to this act necessary. And be it further enacted, That it is made and declared to be a fundamental condition of the admission of said state of Iowa into the Union, that so much of this act as relates to the said state of Iowa shall be assented to by a majority of the qualified electors at their township elections, in the manner and at the time prescribed in the sixth section of the thirteenth article of the constitution adopted at Iowa City the first day of November, *anno Domini* eighteen hundred and forty-four, or by the legislature of said state. And so soon as such assent shall be given, the president of the United States shall announce the

same by proclamation; and therefrom without further proceedings on the part of congress the admission of the said state of Iowa into the Union, on an equal footing in all respects whatever with the original states, shall be considered as complete.

SEC. 5. **Boundaries of Florida.** And be it further enacted, that said state of Florida shall embrace the territories of East and West Florida, which by the treaty of amity, settlement and limits between the United States and Spain, on the twenty-second day of February, eighteen hundred and nineteen, were ceded to the United States.

SEC. 6. **Each one representative in congress.** And be it further enacted, that until the next census and apportionment shall be made, each of said states of Iowa and Florida shall be entitled to one representative in the house of representatives of the United States.

SEC. 7. **Not to interfere with or tax the public lands—ordinance of the convention of Iowa not obligatory on United States.** And be it further enacted, that said states of Iowa and Florida are admitted into the Union on the express condition that they shall never interfere with the primary disposal of the public lands lying within them, nor levy any tax on the same whilst remaining the property of the United States: provided, that the ordinance of the convention that formed the constitution of Iowa, and which is appended to the said constitution, shall not be deemed or taken to have any effect or validity, or to be recognized as in any manner obligatory upon the government of the United States.

Approved, March 3, 1845.

AN ACT supplemental to the act for the admission of the states of Iowa and Florida into the Union.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled:

SECTION 1. **Application of United States laws to Iowa.** [540] That the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the state of Iowa as elsewhere within the United States.

SEC. 2. **District Court—jurisdiction—act of Sept. 24, 1789, ch. 20, sec 10.** And be it further enacted, that the said state shall be one district, and be called the district of Iowa; and a district court shall be held therein, to consist of one judge, who shall reside in the said district, and be called a district judge. He shall hold, at the seat of government of the said state, two sessions of the said district court annually, on the first Monday in January, and he shall, in all things, have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky district, under an act entitled "An act to establish the judicial courts of the United States." He shall appoint a clerk for the said district, who shall reside and keep the records of the said court at the place of holding the same; and shall receive, for the services performed by him, the same fees to which the clerk of the Kentucky district is by law entitled for similar services.

SEC. 3. **Compensation of the judge.** And be it further enacted, that there shall be allowed to the judge of the said district court the annual compensation of fifteen hundred dollars, to commence from the date of his appointment, to be paid quarterly at the treasury of the United States.

SEC. 4. **U. S. attorney to be appointed.** And be it further enacted, that there shall be appointed in the said district, a person learned in the law, to

act as attorney for the United States; who shall, in addition to his stated fees, be paid annually by the United States two hundred dollars, as a full compensation for all extra services; the said payment to be made quarterly, at the treasury of the United States.

SEC. 5. **U. S. marshal to be appointed—compensation.** And be it further enacted, that a marshal shall be appointed for the said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed and allowed to marshals in other districts; and shall, moreover, be entitled to the sum of two hundred dollars annually, as a compensation for all extra services.

SEC. 6. **Propositions to be submitted to the legislature of Iowa.** And be it further enacted, that in lieu of the propositions submitted to the congress of the United States, by an ordinance passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates at Iowa City, assembled for the purpose of making a constitution for the state of Iowa, which are hereby rejected, the following propositions be, and the same are hereby, offered to the legislature of the state of Iowa, for their acceptance or rejection; which, if accepted, under the authority conferred on the said legislature, by the convention which framed [541] the constitution of the said state, shall be obligatory upon the United States.

1. *Grant of lands for the use of schools.* That section numbered sixteen in every township of the public lands, and, where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the state for the use of schools.

2. *Grant of lands for the use of a university—Act of July 20, 1840, ch. 90.* That the seventy-two sections of land set apart and reserved for the use and support of a university, by an act of congress approved on the twentieth day of July, eighteen hundred and forty, entitled "An act granting two townships of land for the use of a university in the territory of Iowa." are hereby granted and conveyed to the state, to be appropriated solely to the use and support of such university, in such manner as the legislature may prescribe.

3. *Grant of lands for completing the public buildings.* That five entire sections of land to be selected and located under the direction of the legislature, in legal divisions of not less than one-quarter section, from any of the unappropriated lands belonging to the United States within the said state, are hereby granted to the state for the purpose of completing the public buildings of the said state, or for the erection of public buildings at the seat of government of the said state, as the legislature may determine and direct.

4. *Salt springs granted to the state—proviso—further proviso.* That all salt springs within the state, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the said state for its use; the same to be selected by the legislature thereof, within one year after the admission of said state, and the same, when so selected, to be used on such terms, conditions, and regulations, as the legislature of the state shall direct: provided, that no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section be granted to said state: and provided, also, that the general assembly shall never lease or sell the same, at any one time, for a longer period than ten years, without the consent of congress.

5. *Five per cent. of net proceeds of public lands appropriated for roads and canals—proviso—Iowa not to interfere with disposal of public lands, etc. U. S. lands not to be taxed—non-residents not to be taxed higher than residents—bounty lands exempt from taxation for three years.* That five per

cent. of the net proceeds of sales of all public lands lying within the said state, which have been or shall be sold by congress, from and after the admission of said state, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said state, as the legislature may direct: provided, that the five foregoing propositions herein offered are on the condition that the legislature of the said state, by virtue of the powers conferred upon it by the convention which framed the constitution of the said state, shall provide by an [542] ordinance, irrevocable without the consent of the United States, that the said state shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations congress may find necessary for securing the title in such soil to the *bona fide* purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the state, whether for state, county, township, or any other purpose, for the term of three years from and after the date of the patents, respectively.

Approved March 3, 1845.

CONSTITUTION OF THE STATE OF IOWA

Preamble. We, the people of the territory of Iowa, grateful to the Supreme Being for the blessings hitherto enjoyed, and feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of the State of Iowa, the boundaries whereof shall be as follows:

Boundaries. Beginning in the middle of the main channel of the Mississippi river, at a point due east of the middle of the mouth of the main channel of the Des Moines river; thence up the middle of the main channel of the said Des Moines river, to a point on said river where the northern boundary line of the state of Missouri—as established by the constitution of that state, adopted June 12, 1820—crosses the said middle of the main channel of the said Des Moines river; thence westwardly along the said northern boundary line of the state of Missouri, as established at the time aforesaid, until an extension of said line intersect the middle of the main channel of the Missouri river; thence up the middle of the main channel of the said Missouri river to a point opposite the middle of the main channel of the Big Sioux river, according to Nicollet's map; thence up the main channel of the said Big Sioux river, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east along said parallel of forty-three degrees and thirty minutes until said parallel intersects the middle of the main channel of the Mississippi river; thence down the middle of the main channel of said Mississippi river to the place of beginning.

ARTICLE 1.

BILL OF RIGHTS.

1. **Rights of persons.** All men are, by nature, free and independent, and have certain unalienable rights—among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.

2. **Political power.** All political power is inherent in the people. Government is instituted for the protection, security, and benefit of [544] the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it.

3. **Religion.** The general assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister or ministry.

4. **Religious test.** No religious test shall be required as a qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion.

5. **Dueling.** Any citizen of this state who may hereafter be engaged, either directly or indirectly, in a duel, either as principal or accessory before the fact, shall forever be disqualified from holding any office under the constitution and laws of this state.

6. **Laws uniform.** All laws of a general nature shall have a uniform operation.

7. **Liberty of speech and the press.** Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury, and if it appear to the jury that the matter charged as libelous was true, and was published with good motives and for justifiable ends, the party shall be acquitted.

8. **Personal security.** The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the papers and things to be seized.

9. **Trial by jury.** The right of trial by jury shall remain inviolate; but the general assembly may authorize trial by a jury of a less number than twelve men in inferior courts.

10. **Rights of persons accused.** In all criminal prosecutions, the accused shall have a right to a speedy trial by an impartial jury; to be informed of the accusation against him; to be confronted with the witnesses against him; to have compulsory process for his own witnesses, and to have the assistance of counsel.

11. **Indictment.** No person shall be held to answer for a criminal offense, unless on presentment or indictment by a grand jury, except in cases cognizable before a justice of the peace, or [545] arising in the army or navy, or in the militia, when in actual service, in time of war or public danger.

12. **Twice tried—bail.** No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great.

13. **Habeas corpus.** The writ of *habeas corpus* shall not be suspended, unless in case of rebellion or invasion the public safety may require it.

14. **Military.** The military shall be subordinate to the civil power. No standing army shall be kept up by the state in time of peace; and in time of war, no appropriation for a standing army shall be for a longer time than two years.

15. **Quartering soldiers.** No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

16. **Treason.** Treason against the state shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

17. **Bail—punishments.** Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishments shall not be inflicted.

18. **Property.** Private property shall not be taken for public use without just compensation.

19. **Imprisonment for debt.** No person shall be imprisoned for debt in any

civil action, on mesne or final process, unless in case of fraud; and no person shall be imprisoned for a militia fine in time of peace.

20. **Petition.** The people have the right freely to assemble together to counsel for the common good; to make known their opinions to their representatives, and to petition for a redress of grievances.

21. **Attainder.** No bill of attainder, *ex post facto* law, or law impairing the obligation of contracts shall ever be passed.

22. **Aliens hold property.** Foreigners who are or who may hereafter become residents of this state, shall enjoy the same rights in respect to the possession, enjoyment and descent of property, as native born citizens.

23. **Slavery.** Neither slavery nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this state.

24. **Reservation.** This enumeration of rights shall not be construed to impair or deny others, retained by the people.

[546] ARTICLE 2.

RIGHT OF SUFFRAGE.

1. **Electors.** Every white male citizen of the United States of the age of twenty-one years, who shall have been a resident of the state six months next preceding the election, and the county in which he claims his vote twenty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law.

2. **Privilege.** Electors shall, in all cases except treason, felony or breach of the peace be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

3. **Same.** No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

4. **"Resident."** No person in the military, naval or marine service of the United States, shall be considered a resident of this state by being stationed in any garrison, barrack, or military or naval place or station within this state.

5. **Exception.** No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector.

6. **Ballot.** All elections by the people shall be by ballot.

ARTICLE 3.

OF THE DISTRIBUTION OF POWERS.

1. **Departments of the government.** The powers of the government of Iowa shall be divided into three separate departments—the legislative, the executive, and the judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

LEGISLATIVE DEPARTMENT.

1. **Legislative authority.** The legislative authority of this state shall be vested in a senate and house of representatives, which shall be designated the General Assembly of the State of Iowa; and the style of their laws shall com-

mence in the following manner: "Be it enacted by the general assembly of the state of Iowa."

2. **Sessions.** The sessions of the general assembly shall be biennial, and shall commence on the first Monday of December next ensuing the election of its members; unless the governor of the state shall, in the interim, convene the general assembly by proclamation.

3. **Members of the house of representatives.** The members of the house of representatives shall [547] be chosen every second year, by the qualified electors of their respective districts, on the first Monday in August; whose term of office shall continue two years from the day of the general election.

4. **Eligibility.** No person shall be a member of the house of representatives who shall not have attained the age of twenty-one years; be a free white male citizen of the United States, and have been an inhabitant of this state or territory one year next preceding his election; and at the time of his election, have an actual residence of thirty days in the county or district he may be chosen to represent.

5. **Senators.** Senators shall be chosen for the term of four years, at the same time and place as representatives; they shall be twenty-five years of age, and possess the qualifications of representatives as to residence and citizenship.

6. **Same—and classed.** The number of senators shall not be less than one-third, nor more than one-half the representative body; and at the first session of the general assembly, after this constitution takes effect, the senators shall be divided by lot, as equally as may be, into two classes; the seats of the senators of the first class shall be vacated at the expiration of the second year, so that one-half shall be chosen every two years.

7. **Same.** When the number of senators is increased, they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as practicable.

8. **Elections determined.** Each house shall choose its own officers and judge of the qualification, election, and return of its own members. A contested election shall be determined in such manner as shall be directed by law.

9. **Quorum.** A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

10. **Authority of the houses.** Each house shall sit upon its own adjournments, keep a journal of its proceedings, and publish the same; determine its rules of proceedings, punish members for disorderly behavior, and with the consent of two-thirds, expel a member, but not a second time for the same offense; and shall have all other powers necessary for a branch of the general assembly of a free and independent state.

11. **Protest.** Every member of the general assembly shall have the liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals; and the yeas and nays of the members of either [548] house on any question, shall, at the desire of any two members present, be entered on the journals.

12. **Privilege.** Senators and representatives, in all cases, except treason, felony, or breach of the peace, shall be privileged from arrest during the session of the general assembly, and in going to and returning from the same.

13. **Vacancies.** When vacancies occur in either house, the governor, or the person exercising the functions of governor, shall issue writs of election to fill such vacancies.

14. **Doors open.** The doors of each house shall be open, except on such occasion as, in the opinion of the house, may require secrecy.

15. **Adjournments.** Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

16. **Bills.** Bills may originate in either house, except bills for revenue, which shall always originate in the house of representatives, and may be amended, altered, or rejected by the other; and every bill having passed both houses, shall be signed by the speaker and president of their respective houses.

17. **To be approved, etc.** Every bill which shall have passed the general assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it with his objections, to the house in which it originated, which shall enter the same upon the journal and proceed to reconsider it; if, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two-thirds of the members of each house present, it shall become a law notwithstanding the governor's objections. If any bill shall not be returned within three days after it shall have been presented to him, Sunday excepted, the same shall be a law in like manner as if he had signed it, unless the general assembly, by adjournment, prevent such return.

18. **Receipts, etc.** An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws, at every regular session of the general assembly.

19. **Impeachment.** The house of representatives shall have the sole power of impeachment, and all impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

20. **Who liable to—and judgment.** The governor, secretary of state, auditor, treasurer, and judges of the supreme and district courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, [549] and disqualification to hold any office of honor, trust, or profit, under this state; but the party convicted or acquitted shall nevertheless be liable to indictment, trial and punishment, according to law. All other civil officers shall be tried for misdemeanors in office in such manner as the general assembly may provide.

21. **Members not appointed to office.** No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

22. **Disqualification.** No person holding any lucrative office under the United States, or this state, or any other power, shall be eligible to the general assembly; provided, that offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or postmasters whose compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

23. **Same.** No person who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the general assembly, or be eligible

to any office of trust or profit under this state, until he shall have accounted for and paid into the treasury all sums for which he may be liable.

24. **Money drawn.** No money shall be drawn from the treasury but in consequence of appropriations made by law.

25. **Compensation of members.** Each member of the general assembly shall receive a compensation to be fixed by law, for his services, to be paid out of the treasury of the state. Such compensation shall not exceed two dollars per day for the period of fifty days from the commencement of the session, and shall not exceed the sum of one dollar per day for the remainder of the session; when convened in extra session by the governor, they shall receive such sums as shall be fixed for the first fifty days of the ordinary session. They shall also receive two dollars for every twenty miles they travel, in going to and returning from their place of meeting, on the most usual route: provided, however, that the members of the first general assembly under this constitution shall receive two dollars per day for their services during the entire session.

26. **Laws.** Every law shall embrace but one object, which shall be expressed in the title.

27. **Published.** No law of the general assembly, of a public nature, shall take effect until the same shall be published and circulated in the several counties of this state, by authority. If the general assembly shall deem any law of immediate im-[550]-portance, they may provide that the same shall take effect by publication in newspapers in the state.

28. **Divorce.** No divorce shall be granted by the general assembly.

29. **Lotteries.** No lottery shall be authorized by this state; nor shall the sale of lottery tickets be allowed.

30. **Oath of members.** Members of the general assembly shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear, or affirm, (as the case may be,) that I will support the constitution of the United States, and the constitution of the state of Iowa, and that I will faithfully discharge the duties of senator, (or representative, as the case may be,) according to the best of my ability." And members of the general assembly are hereby empowered to administer to each other the said oath or affirmation.

31. **Census—apportionment.** Within one year after the ratification of this constitution, and within every subsequent term of two years, for the term of eight years, an enumeration of all the white inhabitants of this state shall be made, in such manner as shall be directed by law. The number of senators and representatives shall, at the first regular session of the general assembly, after such enumeration, be fixed by law, and apportioned among the several counties according to the number of white inhabitants in each; and [the general assembly] shall also, at every subsequent regular session, apportion the house of representatives; and every other regular session the senate, for eight years; and the house of representatives shall never be less than twenty-six, nor greater than thirty-nine, until the number of white inhabitants shall be one hundred and seventy-five thousand; and after that event, at such ratio that the whole number of representatives shall never be less than thirty-nine nor exceeding seventy-two.

32. **Districts.** When a congressional, senatorial, or representative district shall be composed of two or more counties, it shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a congressional, senatorial, or representative district.

33. **Election by general assembly.** In all elections by the general assembly, the members thereof shall vote *viva voce*, and the votes shall be entered on the journal.

34. **Salaries.** For the first ten years after the organization of the government, the annual salary of the governor shall not exceed one thousand dollars; secretary of state five hundred dollars; treasurer four hundred dollars; auditor six hundred dollars; judges of the supreme and district courts, each one thousand dollars.

[551] ARTICLE 4.

EXECUTIVE DEPARTMENT.

1. **Governor.** The supreme executive power of this state shall be vested in a chief magistrate, who shall be styled the governor of the state of Iowa.

2. **Election and term.** The governor shall be elected by the qualified electors at the time and place of voting for members of the general assembly, and shall hold his office four years from the time of his installation, and until his successor shall be qualified.

3. **Eligibility.** No person shall be eligible to the office of governor, who has not been a citizen of the United States, and a resident of the state two years next preceding the election, and attained the age of thirty years, at the time of said election.

4. **Returns of election.** The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in presence of both houses of the general assembly. The person having the highest number of votes shall be governor; but in case any two or more have an equal and the highest number of votes, the general assembly shall, by joint vote, choose one of said persons so having an equal and the highest number of votes, for governor.

5. **Commander.** The governor shall be commander-in-chief of the militia, the army and navy of this state.

6. **Duties.** He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the executive department, upon any subject relating to the duties of their respective offices.

7. **Same.** He shall see that the laws are faithfully executed.

8. **Vacancies.** When any office shall, from any cause, become vacant, and no mode is provided by the constitution and laws for filling such vacancy, the governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the general assembly, or at the next election by the people.

9. **Convening assembly.** He may, on extraordinary occasions, convene the general assembly, by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

10. **Message.** He shall communicate by message to the general assembly at every session, the condition of the state, and recommend such matters as he shall deem expedient.

11. **Adjournment.** In case of disagreement between the two houses, with respect to the time of adjournment, the governor shall have power to adjourn

the general assembly to such time as he [552] may think proper, provided it be not beyond the time fixed for the meeting of the next general assembly.

12. **Disqualification.** No person shall, while holding any other office under the United States, or this state, execute the office of governor, except as hereinafter expressly provided.

13. **Pardons, etc.** The governor shall have power to grant reprieves and pardons, and commute punishments after conviction, except in cases of impeachment.

14. **Compensation.** The governor shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished during the time for which he shall have been elected.

15. **Seal of state.** There shall be a seal of this state, which shall be kept by the governor, and used by him officially, and shall be called the great seal of the state of Iowa.

16. **Commissions, etc.** All grants and commissions shall be in the name and by the authority of the people of the state of Iowa sealed with the great seal of this state, signed by the governor and countersigned by the secretary of state.

17. **Secretary, auditor and treasurer.** A secretary of state, auditor of public accounts, and treasurer, shall be elected by the qualified electors, who shall continue in office two years. The secretary of state shall keep a fair register of all the official acts of the governor, and shall, when required, lay the same, together with all papers, minutes, and vouchers relative thereto, before either branch of the general assembly, and shall perform such other duties as shall be assigned him by law.

18. **Secretary acts as governor.** In case of the impeachment of the governor, his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the secretary of state, until such disability shall cease, or the vacancy be filled.

19. **Farther vacancies provided for.** If, during the vacancy of the office of governor, the secretary of state shall be impeached, displaced, resign, die, or be absent from the state, the powers and duties of the office of governor shall devolve upon the president of the senate; and should a vacancy occur by impeachment, death, resignation, or absence from the state of the president of the senate, the speaker of the house of representatives shall act as governor till the vacancy be filled.

ARTICLE 5.

JUDICIAL DEPARTMENT.

1. **Courts.** The judicial power shall be vested in a supreme court, district courts, and such inferior courts as the general assembly may from time to time establish.

[553] 2. **Supreme Court.** The supreme court shall consist of a chief justice and two associates, two of whom shall be a quorum to hold court.

3. **Judges elected—jurisdiction.** The judges of the supreme court shall be elected by joint vote of both branches of the general assembly, and shall hold their courts at such time and place as the general assembly may direct, and hold their offices for six years, and until their successors are elected and qualified, and shall be ineligible to any other office during the term for which they may be elected. The supreme court shall have appellate jurisdiction only

in all cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may by law prescribe. The supreme court may have power to issue all writs and process necessary to do justice to parties, and exercise a supervisory control over all inferior judicial tribunals, and the judges of the supreme court shall be conservators of the peace throughout the state.

4. **District judge elected—jurisdiction of district court.** The district court shall consist of a judge, who shall [be] elected by the qualified voters of the district in which he resides, at the township election, and hold his office for the term of five years, and until his successor is elected and qualified, and shall be ineligible to any other office during the term for which he may be elected. The district court shall be a court of law and equity, and have jurisdiction in all civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law. The judges of the district courts shall be conservators of the peace in their respective districts. The first session of the general assembly shall divide the state into four districts, which may be increased as the exigencies require.

5. **Prosecuting attorney—clerk of district court.** The qualified voters of each county shall at the general election elect one prosecuting attorney and one clerk of the district court, who shall be residents therein, and who shall hold their several offices for the term of two years and until their successors are elected and qualified.

6. **Style of process.** The style of all process shall be "The State of Iowa," and all prosecutions shall be conducted in the name and by the authority of the same.

ARTICLE 6.

MILITIA.

1. **Who constitute.** The militia of this state shall be composed of all able bodied white male citizens between the ages of eighteen and forty-five years, except such as are or may hereafter be exempt by the laws of the United States, or of this state, and shall be armed, equipped, and trained, as the general assembly may provide by law.

[554] 2. **Qualification.** No person or persons conscientiously scrupulous of bearing arms shall be compelled to do militia duty in time of peace: provided, that such person or persons shall pay an equivalent for such exemption in the same manner as other citizens.

3. **Officers.** All commissioned officers of the militia (staff officers excepted) shall be elected by the persons liable to perform military duty, and shall be commissioned by the governor.

ARTICLE 7.

STATE DEBTS.

1. **Limitation of state indebtedness.** The general assembly shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of one hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single

object or work to be distinctly specified therein; which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years of the time of the contracting thereof, and shall be irrevocable until the principal and the interest thereon shall be paid and discharged; but no such law shall take effect, until at a general election it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one newspaper in each judicial district, if one is published therein, throughout the state, for three months preceding the election at which it is submitted to the people.

ARTICLE 8.

INCORPORATIONS.

1. **Banking prohibited.** No corporate body shall hereafter be created, renewed or extended, with the privilege of making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The general assembly of this state shall prohibit, by law, any person or persons, association, company or corporation from exercising the privileges of banking, or creating paper to circulate as money.

2. **Corporations.** Corporations shall not be created in this state by special laws, except for political or municipal purposes; but the [555] general assembly shall provide by general laws for the organization of all other corporations, except corporations with banking privileges, the creation of which is prohibited. The stockholders shall be subject to such liabilities and restrictions as shall be provided by law. The state shall not directly or indirectly become a stock holder in any corporation.

ARTICLE 9.

EDUCATION AND SCHOOL LANDS.

1. **Superintendent of public instruction.** The general assembly shall provide for the election by the people of a superintendent of public instruction, who shall hold his office for three years, and whose duties shall be prescribed by law, and who shall receive such compensation as the general assembly may direct.

2. **School fund.** The general assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral and agricultural improvement. The proceeds of all lands that have been or hereafter may be granted by the United States to this state, for the support of schools, which shall hereafter be sold or disposed of, and the five hundred thousand acres of land granted to the new states, under an act of congress distributing the proceeds of the public lands among the several states of the Union, approved A. D. 1841, and all estates of deceased persons, who may have died without leaving a will or heir; and also such per cent. as may be granted by congress on the sale of lands in this state, shall be and remain a perpetual fund, the

interest of which, together with all the rents of the unsold lands, and such other means as the general assembly may provide, shall be inviolably appropriated to the support of common schools throughout the state.

3. **System of common schools.** The general assembly shall provide for a system of common schools, by which a school shall be kept up and supported in each school district, at least three months in every year; and any school district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

4. **Fines, etc., appropriated.** The money which shall be paid by persons as an equivalent for exemption from military duty, and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, shall be exclusively applied, in the several counties in which such money is paid or fine collected, among the several school districts of said counties, in the proportion to the number of inhabitants in such districts, to the support of common schools, or the establishment of libra-[556]-ries, as the general assembly shall, from time to time, provide by law.

5. **University fund.** The general assembly shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this state, for the use of a university; and the funds accruing from the rents or sale of such lands, or from any other source, for the purpose aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said university, with such branches as the public convenience may hereafter demand, for the promotion of literature, the arts, and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the general assembly, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said university.

ARTICLE 10.

AMENDMENTS TO THE CONSTITUTION.

1. **Amendments.** If at any time the general assembly shall think it necessary to revise or amend this constitution, they shall provide by law for a vote of the people for or against a convention, at the next ensuing election for members of the general assembly. In case a majority of the people vote in favor of a convention, said general assembly shall provide for an election of delegates to a convention, to be held within six months after the vote of the people in favor thereof.

ARTICLE 11.

MISCELLANEOUS.

1. **Jurisdiction of justices of the peace.** The jurisdiction of justices of the peace shall extend to all civil cases, (except cases in chancery, and cases where the question of title to any real estate may arise,) where the amount in controversy does not exceed one hundred dollars, and by the consent of parties may be extended to any amount not exceeding five hundred dollars.

2. **Counties.** No new county shall be laid off hereafter, nor old county reduced to less contents than four hundred and thirty-two square miles.

3. **Settlers on public lands.** The general assembly shall not locate any of the public lands which have been or may be granted by congress to this state, and the location of which may be given to general assembly, upon lands actually settled, without the consent of the occupant. The extent of the claim of such occupant, so exempted, shall not exceed three hundred and twenty acres

[557] ARTICLE 12.

SCHEDULE.

1. **Legal process not affected.** That no inconvenience may arise from the change of a territorial government to a permanent state government, it is declared that all writs, actions, prosecutions, contracts, claims and rights shall continue as if no change had taken place in this government; and all process which may, before the organization of the judicial department under this constitution, be issued under the authority of the territory of Iowa, shall be as valid as if issued in the name of the state.

2. **Laws remain in force.** All the laws now in force in this territory, which are not repugnant to this constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the general assembly of this state.

3. **Fines go to state.** All fines, penalties and forfeitures accruing to the territory of Iowa, shall accrue to the use of the state.

4. **Prosecutions, recognizance, bonds, etc., remain.** All recognizances heretofore taken, or which may hereafter be taken, before the organization of the judicial department under this constitution, shall remain valid, and shall pass to and may be prosecuted in the name of the state. And all bonds executed to the governor of this territory, or to any other officer in his official capacity, shall pass over to the governor of the state, or other proper state authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions which may have arisen, or may arise, before the organization of the judicial department under this constitution, and which shall then be pending, may be prosecuted to judgment and execution in the name of the state.

5. **Officers continue.** All officers, civil and military, now holding their offices and appointments in this territory, under the authority of the United States, or under the authority of this territory, shall continue to hold and execute their respective offices and appointments until superceded under this constitution.

6. **First general election.** The first general election under this constitution shall be held at such time as the governor of the territory, by proclamation, may appoint, within three months after its adoption, for the election of a governor, two representatives in the congress of the United States, (unless congress shall provide for the election of one representative,) members of the general assembly, and one auditor, treasurer, and secretary of state. Said election shall be conducted in accordance with the existing laws of this territory; and said governor, representatives in the congress of the United States, auditor, treasurer, and secretary of state, duly elected at said election, shall continue to discharge the duties of their respective offi-[558]-ces for the time prescribed by this constitution, and until their successors are elected and qualified. The returns of said election shall be made in conformity to the existing laws of this territory.

7. **Apportionment of members of general assembly.** Until the first enumeration of the inhabitants of this state, as directed by this constitution, the following shall be the apportionment of the general assembly:

The county of Lee shall be entitled to two senators and five representatives:

The county of Van Buren, two senators and four representatives:

The counties of Davis and Appanoose, one senator and one representative, jointly;

The counties of Wapello and Monroe, one senator jointly, and one representative each;

The counties of Marion, Polk, Dallas, and Jasper, one senator and two representatives jointly;

The county of Des Moines, two senators and four representatives;

The county of Henry, one senator and three representatives;

The county of Jefferson, one senator and three representatives;

The counties of Louisa and Washington, one senator jointly, and one representative each;

The counties of Keokuk and Mahaska, one senator jointly, and one representative each;

The counties of Muscatine, Johnson, and Iowa, one senator and one representative jointly, and Muscatine one representative, and Johnson and Iowa one representative jointly;

The counties of Scott and Clinton, one senator jointly, and one representative each;

The counties of Cedar, Linn, and Benton, one senator jointly; the county of Cedar one representative, and the counties of Linn and Benton one representative jointly;

The counties of Jackson and Jones, one senator and two representatives;

The counties of Dubuque, Delaware, Clayton, Fayette, Buchanan, and Blackhawk, two senators and two representatives jointly;

And any country attached to any county for judicial purposes shall, unless otherwise provided for, be considered as forming part of such county, for election purposes.

8. **First session.** The first meeting of the general assembly under this constitution shall be at such time as the governor of the territory may by proclamation appoint, within four months after its ratification by the people, at Iowa City, in Johnson county, [559] which place shall be the seat of government of the state of Iowa until removed by law.

Done in convention, at Iowa City, this eighteenth day of May, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States of America the seventieth.

In testimony whereof, we have hereunto subscribed our names:

ENOS LOWE, President.

Thomas Dibble, Erastus Hoskin, David Galland, Sulifand S. Ross, Shepherd Leffler, Curtis Bates, Wm. G. Coop, John Ronalds, Samuel A. Bissell, Socrates H. Tryon, Wareham G. Clark, William Hubbel, John J. Selman, George Berry, John Conrey, Josiah Kent, Joseph H. Hedrick, Sylvester G. Matson, S. B. Shelledy, James Grant, George Hobson, H. P. Haun, Stewart Goodrell, Sanford Harned, David Olmstead, G. W. Bowie, Alvin Saunders, William Steele, T. McCraney, F. K. O'Ferrall, J. Scott Richman.

Attest, Wm. Thompson, Secretary.

ACCEPTING PROPOSITIONS OF CONGRESS

AN ACT AND ORDINANCE accepting the propositions made by Congress on the admission of Iowa into the Union as a State

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

SECTION 1. **Propositions of congress accepted—proviso.** That the propositions to the state of Iowa on her admission into the Union, made by the act of congress, entitled “An act supplemental to the act for the admission of the states of Iowa and Florida into the Union,” approved March 3, 1845, and which are contained in the sixth section of that act, are hereby accepted in lieu of the propositions submitted to congress by an ordinance, passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates which assembled at Iowa City on the first Monday of October, eighteen hundred and forty-four, for the purpose of forming a constitution for said state, and which were rejected by congress: provided, the general assembly shall have the right, in accordance with the provisions of the second section of the tenth article of the constitution of Iowa, to appropriate the five per cent. of the net proceeds of sales of all public lands lying within the state which have been or shall be sold by congress from and after the admission of said state, after deducting all expenses incident to the same, to the support of common schools.

SEC. 2. **State not to interfere with the primary disposal of soil.** And be it further enacted and ordained, as conditions of the grants specified in the propositions first mentioned in the foregoing section, irrevocable and unalterable without the consent of the United States, that the state of Iowa will never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations congress may find necessary for securing the title in such soil to the *bona fide* purchasers thereof; and that no tax shall be imposed on lands, the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war with Great Britain, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the state, whether for state, county, township, or other purposes, for the term of three years from and after the dates of the patents respectively.

[561] SEC. 3. **Duty of secretary.** It is hereby made the duty of the secretary of state, after the taking effect of this act, to forward one copy of the same to each of our senators and representatives in congress, who are hereby required to procure the consent of congress to the diversion of the five per cent. fund indicated in the proviso to the first section of this act.

SEC. 4. **Take effect.** This act shall take effect from and after its publication in the weekly newspapers printed in Iowa City.

Approved, January 15, 1849.

NATURALIZATION OF ALIENS

SECTION 1. **Act of 14th April, 1802, as affected by subsequent acts.** Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

1. *Previous declaration of alien.* That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court, of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts, (1) two (2) years at least, before his admission; that it was *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof such alien may, at the time, be a citizen or subject.

2. *Renunciation of allegiance.* That he shall, at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatsoever, and particularly, by name the prince, potentate, state or sovereignty whereof he was a citizen or subject; which proceedings shall be recorded by the clerk of the court.

3. *Residence, etc.* That the court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same: provided, that the oath of the applicant shall, in no case, be allowed to prove his residence.

Exception as to residents in United States before 29th Jan., 1795. Any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five. [563] may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years at least, within and under the jurisdiction of the United States, and one year at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath, or affirmation, that he will support the constitution of the United States and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court, that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, shall have borne any hereditary

(1) Act May 26th, 1824, sec. 3.

(2) *Ibid.*, sec. 4.

title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission; all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof.

Provision relating to the foregoing. Any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States, at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without a compliance with the first condition specified in the first section of the act, entitled "an act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on that subject." (3)

Residents between 18th June, 1798, and 14th April, 1802. Nothing in the first section of the act 22d of March, 1816,* shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of in-[564]-tention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to act 26th of March, 1804. Whenever any person without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. (4)

Provision as to residents between 14th April, 1802, and 15th June, 1812. Any alien, being a free white person, who was residing within the limits, and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen: provided, that whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and

(3) Act of March 26th, 1804, section 1.

*The first section of the act 22d March, 1816, was repealed by act of 24th of May, 1828.

(4) Act 22d March, 1816, sec. 2.

twelve, and has continued to reside within the same, or he shall not be so admitted; and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses, and such continu-[565]-ed residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.(5)

Minors. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted to a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of the first section of the act to which this is in addition three years previous to his admission: provided, such alien shall make the declaration required therein at the time of his or her admission; and shall further declare on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the *bona fide* intention of such alien to become a citizen of the United States; and shall, in all other respects, comply with the laws in regard to naturalization.(6)

In case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: provided, that no alien, who shall be a native citizen, denizen, or subject of any country, state, or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States.

SEC. 3. (7) **What courts competent.** And whereas doubts have arisen whether certain courts of record in some of the states are included within the description of district or circuit courts: be it further enacted, that every court of record within any individual state having [566] common law jurisdiction, and a seal and clerk or prothonotary, shall be considered as a district court within the meaning of this act: and every alien who may have been naturalized in any such court, shall enjoy, from and after the passing of this act, the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.

SEC. 4. **Children of citizens and persons naturalized.** The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the said states, under the laws thereof, being under the age of twenty-one years, at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United

(5) Act May 24, 1828, sec. 2.

(6) Act May 26, 1824, sec. 1.

(7) Sec. 2 was repealed by the act of May 24, 1828. It provided for the registry of aliens

States; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: the rights of citizenship shall not descend to persons whose fathers have never resided within the United States: And no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen without the consent of the legislature of the state in which such person was proscribed. Children of persons naturalized before the fourteenth of April, 1802, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, 1802, to be considered as citizens of the United States.

Widow and children of aliens. When any alien who shall have complied with the first condition specified in the first section of the said original act [of 14th April, 1802], and who shall have pursued the directions prescribed in the second (8) section of the said act, may die before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law. (9)

Continued residence of five years. No person who shall arrive in the United States after February the seventeenth, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years, next preceding his admission, have resided within the United States, without being at any time during [567] the said five years, out of the territory of the United States. (10)†

(8) Repealed by act of 24th May, 1828.

(9) Act of 26th March 1804, sec. 2.

(10) Act March 3, 1813, sec. 12.

†The oath of naturalization, when taken, confers the rights of a citizen. It is not necessary that there should be an order of court admitting the alien to become a citizen. *Campbell v. Gordon and al.* 6 Cr. 176. Nor that it should appear by the record of naturalization that all the requisites presented by law for the admission of aliens have been complied with. *Starke v. Chesapeake Ins. Com.*, 7 Cr. 520.

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. Con. art. 4, sec. 2.

Citizens of the United States have a right to expatriate themselves in time of war as well as of peace, until restrained by congress. Such right is subject to the control of the legislature, and to render the exercise of it valid, there must be an entire departure from the United States for a purpose which is not illegal, nor in fraud of the duties at home of the emigrant. *Talbot v. Janesen*, 3 Dall., 133. *Santissima Trinidad*, 7 Wheat., 548. See *U. S. v. Williams*, 4 Hall's Law Journal, 461. *U. S. v. Gillies*, 1 Pet., 161.

A citizen of the United States by becoming a citizen of another country, does not thereby cease to be a citizen of the United States, nor is he absolved from his original allegiance, *Ibid*, *ibid*. He may acquire in a foreign country the commercial privileges attached to his domicile, and be exempted from the operation of commercial acts embracing only persons resident in the United States or under its protection. *Murray v. Charming Betsy*, 2 Cranch, 120.

AUTHENTICATION OF ACTS, RECORDS, Etc.

AN ACT to prescribe the mode in which the public acts, records and judicial proceedings in each state, shall be authenticated so as to take effect in every other state.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled:

Legislative acts, records and judicial proceedings of the several states how to be authenticated; and the effect thereof. That the acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto; that the records and judicial proceedings of the courts of any state, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken. (a)

Approved May 26, 1790.

[569] AN ACT supplementary to the act entitled "An act to prescribe the mode in which the public acts, records and judicial proceedings in each state shall be authenticated so as to take effect in every other state."

Be it enacted by the senate and the house of representatives of the United States of America in congress assembled:

SECTION 1. Authentication of office records. That from and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office of any state, not appertaining to a court, shall be

(a) Art. 4, sec. 1, Constitution of the United States.—The decisions of the courts of the United States upon this statute, and on the introduction of evidence of the "acts, records, and judicial proceedings of the states," have been:

Under the fourth article and first section of the constitution of the United States, and the act of 26th May, 1790, if a judgment has the effect of record evidence in the courts of the state from which it is taken, it has the same effect in the courts of every other state; and the plea of nil debet is not a good plea to an action brought upon such judgment in a court of another state. *Mills v. Duryee*, 7 Cranch, 483; 2 Cond. Rep., 578. See *Leland v. Wilkinson*, 6 Peters, 317. *United States v. Johns*, 4 Dall., 412. *Ferguson v. Harwood*, 7 Cranch, 408; 2 Cond. Rep., 548. *Drummond's adm'rs v. Magruder's trustees*, 9 Cranch, 122; 3 Cond. Rep., 303.

Under the act of May 26, 1790, prescribing the mode in which the public records in each state shall be authenticated, so as to take effect in every other state, copies of the legislative acts of the several states, authenticated by having the seal of the state affixed thereto, are conclusive evidence of such acts in every other state. No other formality is required, than the annexation of the seal, and in the absence of all contrary proof, it must be presumed to have been done by an officer having custody thereof, and competent authority to do the act. *United States v. Amedy*, 11 Wheat., 392; 6 Cond. Rep., 362.

The record of a judgment in one state is conclusive in another, although it appears that the suit in which it was rendered was commenced by an attachment of property, the defendant having afterwards appeared and taken defense. *Mayhew v. Thatcher*, 6 Wheat., 129; 5 Cond. Rep., 34.

In an action upon a judgment, in another state, the defendant cannot plead any fact in bar which contradicts the record on which the suit is brought. *Field v. Gibbs*, Peters' C. C. R. 155. See *Green v. Sarmiento*, Peters' C. C. R. 74. *Blount v. Darrah*, 4 Wash. C. C. R. 657. *Turner v. Washington*, 3 Wash. C. C. R. 126.

proved or admitted in any other court or office in any other state, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept; or of the governor the secretary of state, the chancellor or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be farther authenticated by the clerk or prothonotary of the said court, who shall certify under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the governor, the secretary of state, the chancellor or keeper of the great seal, it shall be under the great seal of the state in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the state from whence the same are, or shall be taken.

SEC. 2. To what acts the provisions of this law shall apply. And be it further enacted, that all the provisions of this act, and the act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, courts and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts and offices of the several states.

Approved March 27, 1804.

INDEX

A

	Section	Page	Reprint Page
ABANDONMENT OF WIFE OR CHILD,			
In case of, court may order property siezed.....	799, 803	125	93
What authority wife may obtain, and how.....	1456, 1459	220	162
ABATEMENT,			
Of actions, not by death, marriage, etc., of either party	1698	249	184
Not for formal defects	1735, 1755-1758	256	187
Of proceedings in courts, not by absence of judges	1554, 1584-1586	235	173
Of nuisances	2762-2766	384	286
ABDUCTION,			
Punished	2588	352	262
ABOLITION,			
Of private seals	974- 976	153	114
ABSENCE OF JUDGES,			
Proceedings,	1553, 1581-1586	234	173
Etc., of county judge, his place filled	111	23	18
ABSENT DEFENDANT,			
In relation to the commencement of actions.....	1664-1665	246	181
ABSTRACTS,			
Of elections, by county canvassers.....	271- 276	46	36
In districts	298- 300	53	39
By state canvassers	289	51	38
To show who elected	289, 275	49	37
Of votes at April election	315, 318	55	41
Of property assessed, for auditor.....	480	82	61
ABUSE OF CHILD,			
Punished	2589, 2584, 2585	351	262
ACCEPTANCE,			
Of bribes by officers, punished.....	2648-2649	363	270
By jurors, referees, etc., punished.....	2653	364	271
Of reward, corruptly, punished	2651	363	271
Of challenge	2574	350	261
Of the propositions of congress		560	417
ACCESSORIES	2928-2929	406	302
ACCOMPLICE,			
Testimony of	2998	414	309
ACCOUNT,			
Money of, and interest	943- 946	148	110
Open, limitation of	1662	246	181
Of fees, kept by county officers.....	212	39	29
Examination of	215	40	30
ACCOUNT BOOK,			
When evidence	2406	324	241

	Section	Page	Reprint Page
ACCOUNTS,			
Assignable	952	150	111
And receipts of school fund commissioner....1072,	1094-1096	172	128
Of collectors and receivers of county money, who settles	106	21	16
With county treasurer kept by judge.....	106	21	16
County, who keeps	106	22	17
Of county treasurer	156- 158	31	23
Who settles	106	21	16
With road tax	607- 608	100	74
Of supervisor of roads returned to county court, when, etc.,	580	90	72
Public, in what money to be kept.....	943	148	110
Of guardians of minors.....	1510	226	166
ACCOUNTING,			
Officer of county, judge is.....	106	21	16
By county treasurer	157- 158	31	23
By treasurer of state, with auditor.....	67	15	12
By executor and administrator.....	1422-1434	216	159
ACKNOWLEDGMENTS,			
And oaths, who may take.....71, 84, 110,	979- 980	154	114
And proof of deeds	1217-1231	193	142
ACCUSED, see defendant.			
ACQUITTAL,			
Former	2821	392	292
ACTIONS, CIVIL,			
Limitation of	1659-1674	245	181
Parties to	1675-1700	247	182
Place of bringing	1701-2705	249	184
Change of venue in	1706-1713	250	185
Manner of commencing	1714-1732	251	185
Pleadings in	1733-1760	253	187
Trial and its incidents.....	1761-1823	256	189
Judgment by default	1824-1836	262	193
By confession	1837-1842	263	194
Controversies submitted without	1843-1845	264	195
Attachment and garnishment in.....	1846-1884	264	195
Execution	1885-1952	269	199
Proceedings supplemental to.....	1953-1959	276	205
Writ of error coram nobis.....	1960-1964	278	206
of certiorari	1965-1972	278	206
Appeals from the district to the supreme court....	1973-1993	279	207
Before justices of the peace, where to be brought...	2263-2268	310	230
How commenced	2270-2277	311	231
Not to abate for the death, marriage, etc. of either party	1698-1699	249	184
Failure of, effect on their limitation.....	1668	246	182
Technical forms of abolished	1733	253	187
Joinder of causes of.....	1751-1752	255	188
In relation to the public lands, the limitation does not apply to	1674	247	182
May be brought where there is an agent.....	1705	250	184
Subject of may be submitted to arbitration.....	2098-2115	292	216
Pending at the time of the death of the party.....	1368	210	154
Ex delicto survive	2502	336	250
Commenced, how proceeded in under this statute.33,	2514-2515	337	251
Rules for, to be followed in other proceedings.....	2516	338	251
Authority of governor in relation to.....	40- 41	9	7
For a county, who institutes.....	106	22	17
By county on an instrument heretofore given in name of the state.....	97	20	15
By county for relief of poor, against his kindred...	807	127	94
For trespass by animals	913	143	106
For mechanics' liens	984- 987	155	115
No negotiable instrument, by whom.....	948	149	111
On attachment bond	1854	265	196
For land purchased for taxes.....	506- 508	88	66

INDEX

427

	Section	Page	Reprint Page
ACTIONS, CIVIL,			
For landlord's lien	1271	200	147
Against heirs and devisees.....1351-1353,	1440-1441	217	160
To settle adverse claims	1700	249	184
On bond or note, and on mortgage, plaintiff must elect	2086	290	215
For trespass may be maintained by heir, remainderman, reversioner and purchaser under judicial sale	2139-2141	296	220
Proceedings to enjoin	2194	302	224
Forcible detainer not joined with another.....	2373	320	238
Severed in justice's court.....	2289	313	232
On attachment bond	1854	265	196
On official securities, and for fines and forfeitures..	2145-2150	297	220
ACTIONS AGAINST BOATS			
Boats when and for what liable	2116	293	218
What claims constitute liens, and the order thereof.	2117-2118	294	218
When the lien attaches	2120	294	218
Limitation of	2119	294	218
Proceedings and sale	2130, 2121-2127	294	218
Purchaser's right	2127	295	219
Appeal and bond	2128	295	219
This proceeding cumulative	2129	295	219
ACTIONS CRIMINAL,			
See Criminal Action	2811	391	291
ACTIONS for the recovery of real property.....			
By and against whom brought.....2025-2027, 2002	2002-2027	283	209
Landlord substituted	2003	283	210
Service on agent	2004	283	210
Answer	2005	283	210
Continuances	2006	283	210
Possession, when not proved.....	2007	283	210
Damages	2024, 2016, 2008	283	210
Writ of possession	2009	283	210
Judgment for damages only	2010	283	210
Discontinuance in part	2011	283	210
Judgment, how conclusive	2012-2013	283	210
New trial	2014-2017	283	210
Writ of restitution	2017	284	210
Third person, how affected	2015	284	210
Judgment vs. tenant, when conclusive vs. landlord..	2018-2019	284	210
Recovery on what title.....	2020	284	211
Entry on the land may be ordered.....	2021-2022	284	211
Set-off of improvements	2023	284	211
Reversioner may maintain	2025-2026	284	211
By one in possession vs. one claiming title.....	2025-2026	284	211
When brought for dower	2027	285	211
By tenant in common or joint tenant vs. co-tenant.	2027	285	211
ACTS,			
Of General Assembly. See statutes.....	16-	26	4
Original deposited with secretary.....	19	5	4
Existing how effected by this statute.....	30	8	7
Local not repealed	29	9	6
Of the session when the code passed.....	36	9	7
Repeal of by the Code.....	27-	35	8
Of incorporation, how proved in criminal trials...	2643	362	269
Generally, what are misdemeanors	2675	367	274
Of officers rendering elections void, punished.....	2703	373	277
"A. D.", what equivalent to.....	26	7	6
ADDITIONAL SECURITY,			
And the discharge of sureties.....	418-	428	69
When required	418	69	51
How given	419	69	51
Effect of	420	69	51
Surety petitioning, and proceedings in.....	421-	425	69
Order and effect thereof.....	424	69	52
Failure to give.....	425	70	52

	Section	Page	Reprint Page
ADDITIONAL SECURITY,			
When proceedings relate to justice of the peace . . .	426	70	52
Who may require	418	69	51
His powers	427	70	52
Officer consenting to give	428	70	52
When required of school fund commissioner	1058	167	124
ADDITION,			
To town or village plats, how made	638- 642	103	77
ADJOINING LANDS,			
Owner of, when liable for trespass of animals	914	143	106
ADJOURNMENT,			
Of Justice's court	2281-2283	312	231
Of sheriff's sale	1909	272	201
Of canvass	288- 261	47	35
Of course, of Supreme court	1553	232	171
Of district court	1582-1586	235	173
ADMINISTRATION,			
Of estate of the deceased, generally	1272-1446	201	147
Of an estate, how it may be controlled by will	1326	205	151
Not granted after five years	1325	205	151
ADMINISTRATOR,			
See Executor	1301-1327	203	149
Included in the word "executor," in this statute	1301	203	149
Who entitled to be	1311-1315	204	150
May compound with debtor	1336	207	152
Interested in a claim	1369	210	154
Failing to make payments, proceedings against	1387-1389	212	156
His accounting	1422-1434	217	159
His deed presumptive of regularity	1355	209	153
Appointed abroad	1309-1310	204	150
His compensation	1429-1430	216	159
ADMISSION,			
Takes a promise out of the limitation	1670	246	182
Into the poor house	837	131	98
Of Iowa into the Union		538	400
ADULTERATION,			
Of food, liquors, drugs, etc., punished	2726-2727	377	281
ADULTERY,			
Punished	2705	373	278
ADVANCEMENT			
	1419-1420	215	158
ADVERSE,			
Possession	1203	191	140
Claim, action to settle	1700	249	184
ADVERTISEMENTS,			
Fees for	2558	348	258
Destruction of, punished	2688	370	276
AFFIDAVIT,			
Defective, not to vitiate proceedings	2511	337	251
Fees for drawing and certifying	2523	340	252
False, making, punished	2756	382	285
May be taken by commissioners abroad	71	16	12
AFFINITY OF JUDGE,			
Justice, or juror	2986-1595	236	174
"AFFIRMATION,"			
Included in "oath"	26	7	6
Equivalent to oath	980	154	114
AFFIXING FICTITIOUS SIGNATURE,			
Punished	2637	361	269
AFFRAYS,			
Punished	2738	379	282
AGE OF MAJORITY			
	1487	224	165
Of marriage	1464	221	162
AGENT,			
Service on, when good	1705	250	184
Of county, judge is	106	21	16
AGENTS,			
To select school lands	1063-1068	168	124
Appointed to demand fugitives from justice	3282	458	341

INDEX

429

	Section	Page	Reprint Page
AGRICULTURAL SOCIETIES,			
How formed	708	114	85
AGREEMENT,			
For Judgment	1821	261	193
AID,			
To officers, persons when authorized to give.....	2777	386	288
In duelling, punished	2573-2574	350	261
ALIENS,			
May hold real estate		545	406
ALIENATION,			
See Conveyance	1211-1232	192	141
ALIMONY AND DIVORCE.....	1480-1486	223	164
ALLOTMENT,			
Of sixteenth section	1044	164	122
ALLOWANCE,			
To minor orphans from estate of parent.....	1338	207	152
To widow and children from decedent's estate....	1371	210	154
To administrator or executor	1430	216	159
To poor person	822	129	96
Of injunction, and the bond	2192-2195	302	224
ALTERATION,			
Of marks, brands, etc., punished.....	2749	381	284
AMENDMENTS	1755-1759	256	188
New parties made by.....	1683	248	183
AMICABLE,			
Suit	1843-1845	264	195
ANIMALS,			
Estray	883	138	103
Not permitted to run at large.....	894	140	104
Trespassing, proceedings in relation to.....	913- 919	143	106
Marks of	920- 923	144	107
ANNUITIES TAXED	466, 456	77	59
ANNULLING LETTERS PATENT,			
Proceedings for	2175	300	223
ANSWER,			
In actions	1737-1744	254	187
Effect of on the limitation of actions.....	1661	246	181
In real actions	2005	283	210
In partition	2032	285	211
In mandamus	2187	301	223
And pleadings under habeas corpus.....	2241-2246	307	228
Of garnishee	1864-1867	267	197
APPEAL,			
From district to supreme court.....	1973-1993	279	207
Within what time taken.....	1973	279	207
In what district taken.....	1549	231	170
How taken	1974	279	207
Rules of court concerning.....	1557	232	171
Transcript, and what constitutes the record.....	1975-1977	280	207
Notice of appeal.....	1978	280	207
Part of several co-parties appealing.....	1979-1981	280	207
Death no abatement	1982	280	208
Supersedeas and bond.....	1983-1985	280	208
On part of a judgment.....	1985	281	208
Judgment of supreme court	1986, 1989-1993	281	208
Versus principal and sureties.....	1986	281	208
Damages may be awarded.....	1990	281	208
Remanding the cause or otherwise.....	1991	281	208
Writ of restitution	1992	281	208
Purchasers not affected by reversal.....	1993	281	208
None from an order punishing contempt.....	1606	238	175
From an order removing an attorney.....	1626	241	177
On writ of certiorari.....	1972	279	207
On an award	2112	293	217
From County Court—			
To the people on questions of license, and the pro- ceedings therein	739- 745	118	88
On order to support poor.....	798	125	93

			Reprint
		Page	Page
APPEAL,	Section		
Generally	131- 134	26	20
Failure to take without fault.	134	27	21
None on order appointing special administrator.	1321	205	151
From Justice's Court	2328-2348	316	235
When and how allowed by clerk of district court.	2329-2332	316	235
In forcible entry and detainer.	2375	321	238
In criminal actions, and proceedings thereon.	3358-3365	468	338
In sale of boat, under proceedings vs. boats.	2128	295	219
Bond	2333	316	235
APPEARANCE,			
Of parties in justices court.	2278-2289	312	231
Authority of agent or attorney may be called for.	2278, 1617	240	177
APPLICATION,			
For relief as a poor person.	820	129	96
APPOINTEE TO CIVIL OFFICE,			
Qualification of	440	72	54
May be removed by person appointing.	441	72	54
APPOINTMENT,			
To civil office in case of vacancy.	436- 441	72	53
To supply place of accused officer.	407	67	50
Of notaries public	78	17	13
Of administrators	1301	203	149
Of clerk of supreme court.	1564	233	171
And powers of referees	1650-1655	244	180
Of receivers	1656-1658	244	180
APPORTIONMENT,			
Of rent	1267	200	147
Of school money by fund commissioner.	1098-1099	173	128
By superintendent	1080	170	126
Of members of the general assembly.		550	409
APOTHECARIES			
To label poisons punishment for neglect.	2728	377	281
APPRAISERS			
Of damage by trespassing animals.	916	143	106
Fees of	2550	347	258
APPRAISEMENT			
Presumptive for or against administrator.	1426	216	159
APPRENTICE AND MASTER			
See Master and Apprentice.	1516-1542	227	167
APRIL ELECTION			
Defined	237	42	32
What officers to be elected at.	239	43	32
In 1852	240	44	33
In 1854	240	44	33
Conduct of	313- 318	55	41
Poll books, when furnished.	313	55	41
Abstract of votes	315, 318	55	41
Tie for township office.	316	55	41
APPROPRIATION FOR NORMAL SCHOOLS,	1182	185	137
Of lost property, punished.	2617	357	265
APPROVAL,			
Of acts of general assembly.	16	4	4
Of official bonds	330	57	42
ARABIC FIGURES,			
How to be taken	26	8	6
ARBITRATION,	2098-2115	292	216
All subjects of action may be submitted to.	2098	292	216
Matter of a suit may be, by order of court.	2102	292	217
The award	2106-2111	292	217
Appeal from judgment of court.	2112	293	217
Costs when there is no provision.	2113	293	217
These provisions do not take away right of action.	2115	293	217
ARBITRATOR,			
See Referees	1794, 1650-1655	244	180
ARMED FORCE,			
Regulation of when called out.	2802	390	290
ARRAIGNMENT,			
Of an accused	2931-2942	406	303

INDEX

431

	Section	Page	Reprint Page
ARREST,			
What is and how made.....	2837-2839	395	303
Warrant of	2824-2836	393	302
By an officer with and without a warrant... 2798,	2837-2845	395	303
By private person	2846-2849	396	304
And retaking after escape.....	2850-2851	396	304
And surrender by bail	3226-3238	450	334
Of person charged by verdict on coroner's inquest..	195	36	27
Of judgment and new trial.....	1808-1810	260	192
In criminal actions	3054-3057	422	314
In justice's courts, none allowed.....	2304	314	233
ARSON,			
See Burning	2598-2605	353	263
ARTICLES,			
Of confederation		480	356
Of incorporation	675	109	81
ASSAULT,			
With intent to murder, punished.....	2591	352	262
To commit rape, punished.....	2592	352	262
To maim, rob, steal, etc., punished.....	2593	352	262
To inflict injury, punished.....	2594	353	263
To commit any felony, punished.....	2595	353	263
And battery, where no other punishment is pre- scribed	2597	353	263
ASSEMBLY GENERAL,			
See General Assembly	4-15	2	2
ASSEMBLIES,			
Unlawful, punished	2739	379	282
How suppressed	2797-2802	389	290
ASSESSMENT,			
Of damages by clerk.....	1828	262	194
By the court	1830	262	194
Roll	478- 479	81	61
Error in name of person taxed.....	491	85	64
Of property for taxation.....	465- 477	78	58
When to be made	465	78	58
Credits how assessed	466	79	59
Deduction from money and credits.....	467	79	59
Of merchants, how made.....	468	79	59
Of manufacturers, how made.....	469	79	59
ASSESSOR,			
Sheriff is	180- 182	34	26
One bond	180	34	26
His assistant	180	34	26
To make plats of townships.....	181	34	26
Expenses of his office.....	182	34	26
His duties generally	465- 478	79	58
To leave notices	470	80	59
To assess all property, except.....	477	81	61
His oath	479	82	61
ASSETS,			
Of estate of deceased, what are not.....	1329-1330	206	151
A mortgage is.....	1337	207	152
Concealed, discovery of	1334-1335	207	152
ASSIGNABLE INSTRUMENTS,			
And rights of assignee.....	949	149	111
May be made negotiable.....	950	150	111
ASSIGNEE,			
Of assignable paper, his rights.....	949	149	111
ASSIGNMENT,			
Of instruments when prohibited, effect.....	951	150	111
Of an account	952	150	111
For benefit of creditors.....	977- 978	154	114
General, must be pro rata.....	977	154	114
Assent of creditors to, when presumed.....	978	154	114
ASSIGNOR,			
Of an instrument, how chargeable.....	954- 956	150	111

	Section	Page	Reprint Page
ASSISTANCE,			
To officers, refusal of, punished.....	2670	367	273
ASSISTANT,			
Assessor	180	34	26
Counsel with prosecuting attorney	168	32	24
ASSISTING,			
To escape, punished	2664-2666	366	272
ASSOCIATIONS,			
For banking prohibited	2731-2734	378	281
ASSUMING,			
Falsely to be an officer.....	2671	367	273
ATTACHED PROPERTY,			
To be delivered by sheriff to successor.....	178	34	25
ATTACHMENT AND GARNISHMENT	1703, 1846-1884	264	195
In what actions allowed	1846	264	195
Prerequisites	1847-1853	264	195
For debts not due	1852	265	196
When not on contract, how allowed.....	1851	265	196
In other counties	1855-1858	265	196
Selection of property	1857	266	196
Mode of attachment	1860	266	197
Perishable property	1881-1882	269	199
Garnishment, process of	1861-1879	266	197
Action on attachment bond	1854	265	196
These proceedings apply in a justice court	2358-2361, 1883-1884	269	199
When allowed a landlord.....	1271	200	147
ATTEMPT,			
To suborn, punished	2646	362	270
To corrupt jurors, referees, etc., punished.....	2654	364	271
ATTENDANCE OF WITNESSES,			
How procured	2415-2422	325	242
How in criminal cases	3168-3176	441	328
ATTESTATION,			
Of wills	1281	201	148
ATTORNEYS AND COUNSELORS,	1609-1629	238	176
Duties of	1614	239	176
When disbarred	1620, 1615	239	176
Authority of	1616	239	176
Lien of	1618	240	177
License revoked or suspended, causes for and pro- ceedings thereon	1621-1626	240	177
When not to be a witness.....	2393-2394	323	240
County judge not to act as, when.....	109	23	17
Judges not to act as.....	1587	235	173
Prosecuting	163- 169	32	24
Election of	239- 240	43	32
Constitutional provision concerning		553	412
To be notified of habeas corpus.....	2240	307	228
Specially appointed to defend criminal.....	2561-2563	348	259
ATTORNTMENT,			
When void	1269	200	147
AUDITING,			
Of claims against the state, by whom.....	106	21	16
Against a county by whom.....	106	21	16
AUDITOR OF STATE,	49- 60	11	9
Election and term	239- 240	43	32
Salary	49	11	9
Constitutional provision		552	411
To keep and settle all accounts of the state.....	50	11	9
Duty in relation to warrants	50- 51	12	9
Of what he has the custody.....	50	12	9
May call on officers for information.....	52	12	10
May call officers to account	54- 58	13	10
To settle accounts of officers	54- 58	13	10
Duty when officers fail to pay money	55	13	10
To report to general assembly.....	50	12	10
To be furnished with abstract of property assessed in each county	480	82	61

INDEX

	Section	Page	433 Reprint Page
AUGUST ELECTION,			
Defined	237	42	32
What officers to be elected at.....	239	43	32
In 1851	240	43	32
In 1853	240	44	33
Governed by provisions relating to the general election	238	43	32
AUTHENTICATION,			
Of statutes	16-	19	4
Of acts of sister states, judicial proceedings, records, etc.		569	422
AUTHORITY,			
Joint, how construed	26	6	5
Of governor in relation to actions.....	40	9	7
Of district court in relation to a franchise sold under execution	700	112	84
Of an attorney	1616	239	176
He may be required to show.....	1617	240	177
In justice's court	2278	312	238
Of referees	1654	244	180
Granted by probate court may be revoked.....	1275	201	147
Special in the Court relative to closing up the estate of a decedent.....	1327	206	151
AVOIDING,			
Tolls by travelers	750	119	89
AVOIRDUPOIS WEIGHT,			
	937	147	109
AWARD AND ARBITRATION			
	2098-2115	292	216
BAIL,			
In what cases it may be given.....	3209-3215	446	332
Upon being held to answer, before indictment....	3216-3226	447	333
Upon indictment, before conviction.....	3227-3229	449	334
On writ of error	3230-3231	449	334
Deposit of money instead of.....	3232-3235	450	335
Forfeiture of	3239-3242	451	336
Recommitment after giving	3243-3247	452	336
Surrender of defendant by.....	3236-3238	450	335
Qualifications of	3220-3226	448	333
Justification of	3221-3223	448	333
May be required from a fugitive from justice....	3285-3289	458	341
On hearings before magistrates..... 2874, 2857, 2833-2834		394	294
BALLOT BOXES,			
To be provided	254	46	34
BALLOTS,			
At elections, and what to contain..... 302, 269,	256-	257	46
The canvassing of	262-	265	47
BANK BILLS,			
Limitation of actions does not apply to.....	1669	246	182
And things in action, how levied upon and sold 1914, 1904, 1893		270	200
BANKING ASSOCIATIONS.			
Punished	2731-2734	378	281
Notes, etc., given to, void.....	2733	378	282
BASTARD,			
See Illegitimate Children	848-	856	133
BATTERY,			
Punished	2597	353	263
BAWDY HOUSE,			
See House of Ill Fame.....	2710	374	278
BEASTS,			
Malicious injuries to, punished.....	2678	368	274
Cruelty to, punished	2716	375	279
BELLEVIEW,			
Acts of congress relative to laying of town plat... ..		535	397
BETTING AND GAMING,			
Punished	2723-2724	376	280
Contracts, void	2724	376	280
BIAS,			
Defined, etc.	2985-2986	412	307

	Section	Page	Reprint Page
BIGAMY,			
Punished	2706-2708	373	278
BILL OF RIGHTS		543	404
BILLS,			
Formalities of passage		548	408
Returned to general assembly by governor.....	17	4	4
When not returned	18	5	4
Of exception	1805-1807	260	192
In criminal cases	3046-3049	420	313
To circulate as money, issuing of, punished.....	2734	378	282
Of lading, etc., making of false, punished.....	2755	382	284
And notes	947- 965	149	111
Damages on	965	151	112
BINDING OUT,			
Children of poor house.....	839	131	98
Minors and others	1516-1542	227	167
BLANKS,			
For county officers, to be furnished by judge.....	255	347	34
BLIND,			
Deaf and dumb	1186-1189	186	138
BOAR,			
At large, an estray	894	140	104
BOARD,			
Census. See Census Board.....1190, 481,	454, 614	101	75
Of equalization	481- 483	82	61
County, to correct assessment roll.....	484	83	62
Of commissioners, business pending before.....	140	28	21
Actions on instrument given to.....	97	20	15
BOATS,			
Liable for what, and actions against. See Actions..	2116-2130	293	218
Houses, etc., destroying or injuring riotously, pun- ished	2743	380	283
fraudulent destruction of and injury to, pun- ished	2681, 2603, 2601,	2753-2754	382 284
BODIES,			
Dead, exposure of, punished.....	2714	375	279
"BONDS,"			
Does not imply a seal.....	26	7	6
BOND,			
Official. See Qualifications for Office.....	319- 338	56	41
General provision concerning	323- 337	56	42
To the public, by whom action to be brought on..	1693	249	183
Of executor and administrator.....	1316-1319	205	150
In probate matters to be approved by judge.....	1276	201	147
And proceedings of guardian of minor.....	1496-1515	225	165
The general mode of giving security, and to whom..	2505-2506	336	250
In replevin	1996	282	209
On injunction	2203, 2193-2195	302	224
On judges order	2212	304	225
And supersedeas on appeal from district court....	1983-1985	280	208
On appeal in proceedings against boats.....	2128	295	219
On appeal from justice.....	2333	317	235
In criminal actions	3359	468	348
And mortgage, judgment on bond is a lien on mort- gaged property, and same may be sold.....	2087	290	215
Penal, in actions on, what the petition to set forth..	1818	261	193
Of matrimony, causes for dissolution.....	1482	223	164
BOND OF OFFICE,			
Who need not give	324	56	42
One bond for all, its substance.....	324	56	42
To whom given	325	57	42
In what penal sums	326- 327	57	42
Sureties in	328- 329	57	42
Approval of	330	57	42
Where filed	333	58	43
Not to be held void.....	337	58	43
Of deputies	411	68	51
Of requiring additional security on.....	418	69	51

INDEX

435

	Section	Page	Reprint Page
BOND OF OFFICE,			
Surety in, when he may be discharged.....	421- 425	69	51
Obligor in, consenting to give new security.....		428	70
Of state librarian		446	73
Actions on		2148	297
Of school district officers.....		1144	180
BOOKS,			
Of county court	128,	106	22
As a court of probate.....		139	28
Of district court office		145	28
Poll. See poll books.			
Papers, etc., of county, control of.....		106	21
Of science or art, evidence.....		2402	324
Of account, when evidence		2406	324
And papers, how produced on trial.....	2423-2426		327
Of supervisor of roads	601, 599,	595	98
False, by corporations, consequences.....		691	111
Of corporations, what to show.....		692	111
Production of, in court, by corporations.....		701	113
And accounts of school fund commissioner to be examined by superintendent		1072	169
BOOKS AND PRINTS,			
Obscene, selling, etc., punished.....		2717	375
BOUNDARIES,			
Of the state		1	2
Defined by constitution			543
When common with other states.....		3	2
Injuring monuments of, punished.....		2690	370
Of counties		91	19
Of townships	219-	220	40
Of school districts, changed and effect of.....	1170-	1171	183
BRANCH OF UNIVERSITY,			
At Fairfield	1029-	1040	162
At Dubuque	1041-	1043	163
BRANDS,			
Altering and counterfeiting, falsely using, etc., pun- ished		2749-2751	381
And marks of animals		920- 923	144
BREAKING,			
Doors, etc. ....3298, 3176, 2851, 2848, 2843			395
And entering with intent to commit felony, pun- ished		2611	355
Malicious mischief by, punished.....		2682-2683	369
BRIBERY,			
And acceptance of bribes, punished....2699, 2691, 2647-2654			363
BRIDGES. See Tolls.			
Are part of the highways.....		517	90
Width of		517	90
Penalties for fast driving over.....	733,	518	90
Special tax for		569	95
Licenses for constructing, how obtained, and pro- visions concerning	726-	734	116
Subject to mechanics' liens		1010	159
"BUILDING,"			
Its meaning in relation to mechanics' liens	1010,	982	155
BUILDINGS,			
Malicious injury to, punished	2686-	2687	370
For manufacture of powder, when a nuisance.....		2760	383
Liable under provisions relating to sale of liquors..		932	145
BULL,			
At large, an estray.....		894	140
BURGLARY,			
Punished	2608-	2610	355
BURIAL,			
Of deceased, by coroner.....		200	37
BURLINGTON,			
Acts of congress relative to laying off town plat...			535

	Section	Page	Reprint Page
BURNING,			
Property maliciously, punished	2598-2605	353	263
To injure insurers, punished	2606	354	264
Prairie, punished	2607	355	264
BUSHEL,			
Contents of	937	147	109
How construed in contracts	940	147	109
Of certain grain, seed, etc., of what weight to consist	940	147	109
BUSINESS,			
County, pending, how proceeded in	140	28	21
Transacting without license, when license is required, punished	2737	379	282
BY-LAWS,			
Of corporations	684	110	82
CALENDAR,			
Of causes in court	1761	256	189
CANCELLATION,			
Of a will	1289	202	148
CANCELED,			
Auditor's warrants	67	15	12
CANVASS,			
By judges of election in townships	262- 269	47	35
County	270- 284	48	36
By districts	298- 300	53	39
State	307, 306	285- 295	51
May be adjourned	288, 261	47	35
CANVASSERS,			
Of election to declare who elected	288, 275	49	37
CANALS, ETC.,			
License to construct, how obtained	712- 758	114	85
CARNAL KNOWLEDGE,			
By producing stupor, etc., punished	2583	351	261
CAUSE,			
Of action may be submitted to the court without action	1843-1845	264	195
CAUSES,			
In court, when tried	1763	256	189
When apportioned	1762	256	189
For removal from office	397	66	49
For contesting elections	339	59	43
Of divorce	1482	223	164
CENSUS,			
Of the state	613- 620	100	75
Provision of the constitution		550	409
Duty of secretary in relation to	619- 620	101	76
CENSUS BOARD,			
Created	614	101	75
Authority in relation to taxes	454, 481- 483	82	61
In relation to roads	609	100	75
In relation to part first of this statute	1190	187	138
CERTIFICATE,			
Of secretary as to acts taking effect	21- 24	5	4
Of elections. See General Assembly	6- 8	2	2
Of the elections of officers	291, 292, 294, 277- 280	49	37
Of election of county judge to be signed by clerk	279	50	37
Of secretary, as to criminal returns	149	29	22
Of supervisor of roads	604, 602, 596	98	73
When receivable at county treasury	604, 602	99	74
Of acknowledgment of deeds	1219	193	142
Of probate of will	1300	203	149
Of service of jurors	1649	241	179
To justice as successor of another	2381	321	239
Of marriage	1473	225	163
Of conviction	3351	467	347
Of public officers, when evidence	2433-2436	328	244
Fees for making	2523	340	252

INDEX

437

	Section	Page	Reprint Page
CERTIORARI,			
Writ of	1965-1972	278	207
Lies to an order punishing for contempt.....	1606	238	175
Appeal lies from a decision of district court on.....	1972	279	207
CHALLENGE			
Giving and accepting, etc., punished	2573-2575	350	261
Of an elector	258- 259	46	34
Of jury in criminal cases	2972-2990	411	308
In criminal cases before a justice	3338	466	347
CHANCERY,			
Jurisdiction of district court	1576	234	172
Provision of constitution		556	414
CHANGE,			
Of venue	1706-1713	250	185
In criminal cases	3270-3277	456	339
Of names	2256-2260	309	229
Of towns, how effected	668	107	80
Of boundaries of school districts, effect of	1170-1171	183	136
Of homestead	1256	199	146
CHARGE,			
Of court to jury	1791	259	191
CHARTERS,			
Of self-incorporated cities and towns, what powers they may assume	662- 672	105	79
Existing, for ferries, not affected by this statute....	725	116	86
CHARTS,			
When evidence	2402	324	240
CHASTITY,			
Morality, and decency, offenses against, punished..	2705-2724	373	280
CHEATS,			
By false pretenses and gross frauds, punished....	2744-2758	380	283
And frauds at common law punished	2752	381	284
CHILD,			
Under twelve years, enticing away, punished.....	2585	351	262
CHILDREN,			
Posthumous, inherit	1284-1285	202	148
Allowance to, from decedent's estate.....	1371	210	154
Order concerning, on divorce	1485	223	164
Of poor person to support him	787	124	93
Illegitimate	848- 856	133	99
When they inherit	1415-1418	215	158
Legitimated by marriage of parents.....	1479	222	164
CHOICE,			
Of guardian	1495	225	165
CITIES,			
Self-incorporating, what powers they may assume..	662- 672	105	79
The police of	2790-2792	388	289
And towns, authority in relation to roads	612	100	75
CIVIL,			
Remedy, not merged in case of crime.....	2500	336	250
Officers. See officers, bond, oath, and qualification for office	319- 338	56	41
CLAIMS,			
Against the state. See auditor	50	11	9
Against a county, by whom audited	106	21	16
Upon the public lands.....	1197-1198	190	140
Of money, by owner of lost goods or estrays.....	885	138	103
Of damages for laying out a road.....	566, 536	92	71
Against an estate, of filing and payments.....	1357-1389	209	153
Preferred	1370	210	154
Not due	1377, 1364	210	154
Adverse, action may be brought to settle	1700	249	184
CLAIMANT,			
Of property, becoming a party	1684-1686	248	183
Of property in replevin, third person	1999	282	209
Occupying, who is	1240	197	144
Rights of	1233-1244	196	144

	Section	Page	Reprint Page
CLERK,			
When to assess damages	1828-1830	262	194
And sheriff, suspension of by courts	408- 410	68	50
A justice is his own clerk	2386, 1884	269	239
His authority in relation to investments ordered by court	2507-2510	337	250
Of general election	248	45	33
Of District Court	141- 149	28	21
Provision of constitution		553	412
Election and salary	211, 239- 240	43	32
Fees to be charged by him	2527-2532	341	254
To be paid in cash	2554	347	258
In cases now pending	2564	348	259
He is clerk of county court and register of probate	141	28	21
His duties, generally	142	28	21
Records of his office and what constitute	142- 145	28	22
What books to keep	145	28	22
Duty as to criminal returns	148	29	22
Duty as county clerk	146	29	22
Not to be appointed, etc	147	29	22
May take acknowledgments and oaths	979	154	114
How to issue process	1592	236	174
May appoint a person to serve	185	35	26
Duty on satisfaction of a judgment	1819	261	193
When to take the official papers of a justice	2378	321	238
To take record of a notary public	85	18	14
Of Supreme Court	1564-1565	233	171
His fees	2525-2526	340	253
In cases now pending, how regulated	2564	348	259
May take acknowledgments and oaths	979	154	114
How to issue process	1592	236	174
Of the County	141- 149	28	21
Present office to cease	240	44	33
To keep a register of marriages	1476	222	163
CLERK,			
Clerk of district court is	141	28	21
Of Township. See townships	226- 228	41	31
To keep records	227	41	31
May administer oath to officers	227	41	31
Duty after election of justices	228	41	31
His compensation	2548	347	258
To record marks of animals and his fee	923, 921	144	107
"CODE,"			
What it designates	27	8	6
Effect of, upon existing statutes, rights and lia- bilities	28- 36	8	6
Appointment of commissioners to draft		470	349
Act relative to the publication of		471	350
When to take effect		471	350
Distribution and sale of copies of		472	351
CODICIL,			
Included in the term "will"	26	7	5
COIN,			
Counterfeiting, punished	2634	360	268
COLLATERAL,			
Security for mechanic's lien	1009	159	118
COLLECTION,			
Of taxes	488- 513	85	64
COLLECTOR,			
Of county. See treasurer	151	30	23
COLLEGE,			
Medical, at Keokuk	1026-1028	162	120
COLORED PERSONS,			
Not taxed for school purposes	1160	182	135
COLLUSION,			
In a judgment for a penalty or forfeiture—no bar.	2150	297	221

INDEX

489

	Section	Page	Reprint Page
COMMENCEMENT,			
Of actions, what is	1663	346	181
Manner of	714- 732	251	85
Before justices of peace, where	2263-2268	310	230
COMMISSIONERS,			
In other states	71- 77	16	12
Their qualification, oath, seal, etc.....	73	16	12
May take oaths acknowledgments, affidavits, and depositions	71	16	12
Their signature and seal, effect of.....	74	16	13
Their fees	75	16	13
Those heretofore appointed	76	16	13
Appointed by other states in this state	77	16	13
County, former business before, how disposed of..	140	28	21
Their office to cease	240	44	32
To view and lay out roads	523- 534	91	68
Of school fund. See schools	1089-1107	172	127
Their compensation	1174-1177	184	136
COMMISSION MERCHANT,			
When considered owner for taxation	459	77	34
COMMISSIONS,			
Who to issue		552	411
To executors and administrators	1319	205	150
COMMITMENT,			
For contempt	1605	238	175
After judgment	3075-3078	425	317
COMMITTEES,			
Of general assembly may, administer oaths.....	10	3	3
COMMON,			
Road. See roads	26, 514- 612	90	75
Tenancy in, how created	1206	191	140
Law, rule of construction	2503	336	250
Schools. See schools	1044-1185	164	122
COMMUTATION,			
And pardons	3278-3281	457	340
COMPANIES,			
Mutual insurance, privileges under general incor- poration law	706	113	84
COMPELLING,			
To marry, etc., punished	2582	351	261
COMPENSATION,			
Of members of general assembly	11	3	3
Of civil officers	211-217, 2522-2564	339	259
No fees to be taken unless allowed by law....	2522	339	252
General provision relating to certificates, copies, etc.	2523	340	252
Of secretary of state	2524	340	253
Of clerk of supreme court	2525-2526	340	253
Of clerk of district court	2527-2532	341	253
To be paid in advance unless security be given.	2528-2529	341	253
By whom paid	2530	341	254
Of county judge. See salaries	2533, 211- 217	38	29
Of recorders. See salaries	2534-2535, 211- 217	38	29
Of prosecuting attorney	169	32	25
Of sheriff	2536-2538	342	255
Of coroner	2539	344	255
Of constable	2540-2541	344	256
Of notary public	2542	345	256
Of justice of the peace	2543	345	256
Of school fund commissioner	1174-1176	184	136
Of jurors	2545	346	257
Of county surveyors	2546	346	257
Of supervisor of roads	2547	347	257
Of township officers	2548	347	258
Of prosecuting attorney, appointed specially	2561-2563	347	259
In certain cases,			
Of witnesses	2544	346	257
An attorney or officer attending on court....	2544	346	257

	Section	Page	Reprint Page
COMPENSATION,			
One subpoenaed in several cases	2544	346	257
What not allowed for	2544	346	257
In criminal cases	2544	346	257
Of appraiser of property	2550	347	258
Of executors and administrators	1429-1430	216	159
Of guardians of minors	1515	227	167
For marrying	2551	347	258
For taking depositions	2552	347	258
For advertisements	2558	348	258
In cases now pending	2564	348	259
Payment of on rendering service	2557	348	258
Fees, when to be sworn to	2553	347	258
Receipts to be given when required	2549	347	258
Fees to be paid in cash	2554	347	258
Table of fees to be kept posted	2559	348	258
COMPETENCY,			
Of witnesses	2388-2398	322	240
COMPILATION the chapters relating to education are.			
Note		185	137
COMPLAINT,			
For unlawful sale of liquor	930	145	107
Of illegitimacy	848	133	99
By master against apprentice	1530-1535	228	168
By apprentice, against master	1524-1529	228	168
When coroner's warrant amounts to	198	37	28
COMPLETE RECORD	145, 1817	261	193
COMPOUNDING,			
With debtor by administrator	1336	207	152
Public offenses	2930, 2659-2660	365	272
COMPUTATION,			
Of time	2513	337	251
CONCURRENT,			
Jurisdiction of the state	3	2	2
CONDITIONAL,			
Pardons	3278-3279	457	340
CONFEDERATION,			
Articles of		480	356
CONFESSION,			
Judgment by, without action, proceedings therefor.	1837-1842	263	194
On a power heretofore given	1842	264	195
CONFIDENCE,			
Professional, not to be disclosed in testimony	2393-2394	323	240
CONFINEMENT,			
Of insane persons	862	135	100
CONGREGATIONS,			
Worshipping, disturbance of, punished	2718-2720	375	279
CONGRESS,			
Election of representative to	239- 240	43	32
Propositions of, accepted		560	417
CONGRESSIONAL DISTRICTS	88	18	14
CONSANGUINITY,			
Of judge, justice, or juror	2986, 1595	236	174
CONSENT,			
To marriage	1469, 1466	221	162
To binding out minors and paupers	1518-1519	227	167
To establishment of road	553	94	70
CONSERVATORS OF THE PEACE,			
Who are	2823, 2797, 2778, 2776, 173	33	25
CONSIDERATION,			
Is implied in written contracts	975	153	114
Failure or want of, may be shown	976	153	114
CONSIGNEE,			
when considered owner for taxation	459	77	58
CONSPIRACY,			
Punished	2757-2758	382	285

INDEX

441

	Section	Page	Reprint Page
CONSTABLES,			
Election	221	40	30
Office and duties	229- 230	41	31
Not to act as attorney	175	33	25
Not to purchase at sales	176	33	25
In justice's court	2385, 2383	321	239
Special, in district court	174	33	25
Their fees	2540-2541	344	256
CONSTITUTION,			
Of the United States		496	368
Of the state of Iowa		543	404
CONSTRUCTION,			
Of statutes	26	6	5
Of this statute, to be liberal	2503	336	250
Of the chapter relating to the sale of liquor	927	144	107
Of official bonds	336	58	43
CONTEMPT,			
Of general assembly, what is, and punishment.	12- 15	3	3
Of court. 3192, 3174, 2787, 2202-2205, 2174,	1598-1608	236	174
Disobedience of process is	190, 171	33	25
CONTESTING ELECTIONS			
Of county officers	339- 396	59	43
Of certain state officers	339- 367	59	43
Of members of the general assembly	368- 379	62	46
Of members of the general assembly	380- 386	64	47
Of governor	387- 396	65	48
CONTINGENT,			
Claims against an estate	1365	210	154
Interest in cases of partition	2069	289	214
CONTINUANCE,			
Of causes in court. 2006, 1982, 1756, 1720,	1764-1769	256	189
Of course, of business in supreme court.	1554	232	171
Of business in the district court.	1584-1586	235	173
CONTRACTS,			
How construed in relation to weights and measures.	940	147	109
Sealed, seal of no effect	974	153	114
In writing, import a consideration	975	153	114
Of married women	1453-1454	219	161
Marriage is a contract	1463	221	162
Of minors	1488-1490	224	165
For sale of land treated as mortgages and fore- closed	2094-2095	291	216
What evidence of, must be in writing	2409-2413	324	241
How executed by county judge	108	22	17
For the support of the poor	847, 825	130	97
Existing, how affected by the limitation of actions.	1671-1673	247	182
CONTROL,			
Of property, how long it may be suspended.	1191	189	139
CONTROVERSIES,			
Submitting without action	1843-1845	264	195
CONVEYANCE,			
Of real property	1211-1232	192	141
What it passes	1201	191	140
Of recording	1211-1216	192	141
When constructive notice	1214	192	141
The record books	1213-1216	192	141
Of acknowledging and proving deeds.	1217-1225	193	142
Revocation of powers	1226	194	143
Instruments recorded, when evidence	1227	194	143
Record and copy, when evidence.	1228-1230	194	143
This provision retrospective	1229	195	143
By county judge, how executed	108	22	17
Past acts not invalidated	1231	195	143
Forms of deeds of	1232	195	143
By an administrator	1354-1355	209	153
In partition	2055-2058	287	213
Of the homestead	1247	197	145
Fraudulent, punished	2745	380	283

	Section	Page	Reprint Page
CONVICTION,			
May be of a lower degree of offense, than charged . .	2918	405	301
CONVICTS,			
Poor, the liberation of	3268-3269	455	339
COPIES,			
Officers, bound to give	2433	328	244
Of surveyor's plat or record, evidence	207	38	28
From county court, who may certify	136	27	21
Of record of deed, when evidence	1228-1230	194	143
Of a will, when evidence	1300	203	149
Of instrument on which action is founded	1750	255	188
Of lost paper	1760	256	189
Fees for	2523	340	252
CORAM NOBIS,			
Writ of error	1960-1964	278	206
CORNERS,			
To be established by county surveyor	206	38	28
CORONER,	183- 202	34	26
Election and term	239- 240	43	32
Not to act as assessor	183	34	26
When to serve legal process	184	34	26
When none, nor other proper officer, clerk appoints.	185	35	26
Inquests by, and proceedings therein	186- 202	35	26
Arrest of person charged, and warrant therefor	195- 198	36	27
Return to district court	199	37	28
Burial of the deceased	200	37	28
May call a surgeon, etc	202	37	28
Justice, when to act as	201	37	28
Not to act as attorney	175	33	25
Not to purchase at his sales	176	33	25
His fees	2539	344	255
CORPORATE,			
Towns and cities	649- 672	105	78
Bodies, school districts are	1108	179	129
Bodies, counties are	93	19	15
CORPORATIONS,			
General law for creating	673- 711	108	81
Now existing, may organize under this statute	705	113	84
Not affected by this statute	707	114	85
What powers may be assumed, and proceedings to create	674- 679	109	81
Change in their articles	680	110	82
Duration of	681	110	82
Dissolution of	682- 683	110	82
By-laws to be posted	684	110	82
Fraud, what constitutes, and consequences of	686- 687	110	82
Individual liability	689, 695- 697	112	83
Forfeiture, causes of	690	111	83
False books, the keeping, a misdemeanor	691	111	83
Transfer of shares	692	111	83
Non-user of franchise	693	111	83
Sale of franchise under judgment	700	112	84
Individuals may incorporate themselves	702	113	84
Presumption in favor of	703	113	84
Organization, legal, want of, no defense	704	113	84
When subject to the courts of this state	2517	338	251
Foreign and domestic may sue	1695	249	184
Proceedings against by information	2151-2175	297	221
Their property by whom listed for taxation	458	77	57
For internal improvements, how taxed	462	78	58
Other than those for pecuniary profit	708- 711	114	85
CORPORATORS,			
Individual, whose property is taken for corporate liability, indemnity to	698	112	84
Cannot destroy the franchise, when it has been sold under execution	700	112	84

INDEX

448

	Section	Page	Reprint Page
CORRECTION,			
Of assessment roll, by county board.....	484	83	62
Of the records of the district court.....	1577-1580	234	172
CORRUPTING,			
Various officers and persons	2647-2656	363	270
COSTS,			
Generally	2556, 1811	260	192
Of retaxing	1813	261	192
In cases of removal from office	406	67	50
In contested elections	364	62	46
In trespass for entering to survey	778	123	91
Against executors and administrators.....	1433	217	159
In actions against heirs and devisees	1440	217	160
In partition	2031, 2067	288	214
In arbitrations	2113	293	217
On appeal from justices	2345-2346	318	236
COUNSELORS AND ATTORNEYS,	1609-1629	241	176
When not to be witness	2393-2394	323	240
Judges, not to act as	109, 1587	235	173
Sheriffs and constables not to act as.....	175	33	25
COUNSELING,			
To vote illegally	2696	371	277
COUNTERFEITING,			
And forgery, punished	2626-2643	358	267
Marks, brands, etc., of another	2749-2751	381	284
COUNTIES,			
Constitutional provision		556	414
Generally	91- 102	19	15
Their rights and liabilities	92	19	15
Are bodies corporate, their powers, and seal.....	93- 94	19	15
Their jurisdiction	95	20	15
Actions by, on instruments heretofore given.....	97	20	15
Unorganized	98	20	15
New, first election in, township officers, etc.....	99- 101	20	16
For what officers electors may vote	102	21	16
To be divided into townships	219	40	30
Claims against, audited by judge	106	21	16
Accounts of kept by judge	106	22	17
Fiscal affairs superintended by judge	106	22	17
Finances of, accounts kept by treasurer	158	31	23
Business of, former, how disposed of	140	28	21
Property of, who has the care	106	21	16
Receipts and expenditures, statement of.....	106	22	17
Maps and plats of	112- 113	23	18
Expense of offices	2555, 106	22	17
"Oldest county" defined	297	53	39
Board for correction of assessment roll	484	83	62
Salaries, and how increased	211- 217	40	29
Suits by, to be instituted by judge.....	106	22	17
May recover for relief of poor	806	126	94
Liable for support of their poor	815	128	95
Commissioners in, their office to cease	240- 242	44	33
COUNTY COURT,			
See county judge	103- 140	21	16
Generally	125- 140	25	19
When open, and what sessions	125- 126	25	19
What matters heard in session	127	26	20
Records, what constitute	128	26	20
Trials in	130	26	20
When by jury	137	27	21
See support of the poor	805	126	94
Illegitimate children	851	133	99
Insane persons	859	134	100
Jury in, how many	137	27	21
Appeals from	131- 134	26	20
Failure to make, without fault	134	27	21
Executions from, and transcripts	135	27	21

	Section	Page	Reprint Page
COUNTY COURT,			
Copies of record and papers of, by whom may be certified	136	27	21
Jurisdiction in relation to the poor	786- 847	124	92
To illegitimate children	848- 856	133	99
To insane persons	857- 875	134	100
To master and apprentice	1516-1542	227	167
To roads	514- 612	90	67
To towns and village plats	632- 648	103	77
To the incorporation of villages and towns...	649- 672	105	78
To granting licenses for works of internal improvements	712- 758	114	85
Jurisdiction in relation to estates of decedents. See estates of decedents	1272-1446	201	147
May regulate travel over public bridges	518	90	67
May submit questions to vote of the people.....	740- 745	118	88
To divide county into townships	219	40	30
To levy taxes, what, and when	1152-1154, 485, 454	75	56
COUNTY OFFICERS	96	20	15
Certain ones to keep accounts of fees	212	39	29
Their salaries	211- 217	38	29
COUNTY JUDGE	103- 140	21	16
Election and term	239- 240, 103	21	16
His office, and when open	104	21	16
Jurisdiction and duties generally	105- 106	21	16
His official style	105	21	16
Accounting officer, and general agent of county...	106	21	16
To draw and seal warrants	106	21	16
To settle accounts of officers	106	21	16
To keep accounts with treasurer	106	21	17
Books, what, to keep	106	22	17
Duty as to county warrants	107, 106	22	17
Record of orders and decisions	106	22	17
To institute actions for county	106	22	17
Expenses of offices and of district court.....	106	22	17
Deeds, etc., how executed by him	108	22	17
When not to act as attorney	109	23	17
May take acknowledgments and oaths.....	110	23	17
Vacancy in his office, interest or inability	111	23	18
To procure field notes, maps and plats	112- 113	23	18
May submit questions to the people, and the manner thereof	114- 124	23	18
His salary	211	38	29
To provide for the expense of county offices	2555, 208	143, 106	22
To notify trustees or clerk when a justice's office is declared vacant	426	70	52
To fill vacancies	436	72	53
To approve bonds of county officers	330	57	42
Authority in relation to marriages	1465-1471	221	162
May solemnize marriage	1472	222	163
Fees to be charged by him	2533	342	254
COUNTY CLERK,			
See clerk of district court	141- 147	28	21
Present office to cease	240	44	32
Recorder. See recorder	150- 162	30	23
Treasurer. See treasurer	150- 162	30	23
Collector. See treasurer	151	30	23
Attorney. See prosecuting attorney	163- 169	32	24
Sheriff. See sheriff	170- 182	33	25
Coroner. See coroner	183- 20?	34	26
Surveyor. See surveyor	203- 210	37	29
COURTS,			
General provisions	1587-1597	235	173
Judges to report to the legislature	1588	235	173
When disqualified to act	1595	236	174
Not to act as attorneys	1587	235	173
Supreme and district, may adopt rules and supply defects	1589-1591	236	173

INDEX

445

	Section	Page	Reprint Page
COURTS,			
Process of, how issued	1592	236	174
Proceedings to be public.....	1593	236	174
May administer oaths	1594	236	174
Not to be open on Sunday, except	1596	236	174
Where to sit	1597	236	174
When they have jurisdiction over corporations....	2517	338	251
Inferior, presumption in favor of	2512	337	251
Court house, when none provided	1573-1574	234	172
Contempt of	1598-1608	236	174
When to try facts	1823, 1793, 1772	257	190
Charge of, to the jury	1791	259	191
Instructions of, to jury	1792	259	191
Sitting as a jury, what provisions applicable to....	1823	261	193
Payment of money into	2490, 2492	335	249
Supreme. See supreme court	1543-1563	231	170
District. See district court	1566-1586	233	172
Justices. See justice of the peace.....	3322-3367, 2261-2387	310	230
Of probate. See county court	138- 140	28	21
And estates of decedents	1272-1446	201	147
CREATION,			
Of trusts, how executed	1205	191	140
CREDIT,			
On the sale of decedent's property	1350	208	153
The term, how used in relation to taxation	457	77	57
And, money, deduction from in taxation	466- 467	79	59
CREDITOR,			
When a surety may require him to sue the principal.	970	153	113
Consequence of refusal	971	153	113
Redeeming under mechanics' lien law	999-1002	157	117
His lien thereon	1001	158	117
His right of redeeming land of his debtor sold under execution.....	1924-1946	273	202
His right in partition	2030-2031	285	211
A married woman may become one, of her hus- band's estate	1448	219	161
Assignment for benefit of creditors	977- 978	154	114
Their assent, when presumed	978	154	114
CRIMES AND PUNISHMENTS,	2565-2772	349	260
Offenses against the sovereignty of the state....	2565-2567	349	260
Against the lives and persons of individuals...	2568-2597	349	260
Against property	2598-2611	353	263
Larceny, and receiving stolen goods	2612-2625	356	265
Forgery, and counterfeiting	2626-2643	358	267
Offenses against public justice	2644-2677	362	270
Malicious mischief, and trespass on property	2678-2690	368	274
Offenses against the right of suffrage	2691-2704	371	276
Against chastity, morality and decency	2705-2724	373	278
Against public health	2725-2729	377	281
Against public policy	2730-2737	378	281
Against the public peace	2738-2743	379	282
Cheating by false pretenses, gross frauds, and con- spiracy	2744-2758	380	283
Nuisances, and the abatement thereof.....	2759-2766	383	285
Libel	2767-2772	385	287
CRIMINAL PROCEDURE,	2773-3167	386	287
The prevention of crimes	2773-2775	386	287
The intervention of public officers to prevent the commission of crime	2776-2777	386	288
Security to keep the peace	2778-2789	387	288
Police in cities, and their attendance at exposed places	2790-2792	388	289
Resistance of process, and suppression of riots.....	2793-2802	389	289
The local jurisdiction of crimes	2803-2810	390	290
The time of commencing criminal actions	2811-2815	391	291
Definitions and general provisions as to crimes....	2816-2821	392	292
Informations and magistrates	2822-2823	393	292
Warrant of arrest	2824-2836	393	293

	Section	Page	Reprint Page
CRIMINAL PROCEDURE,			
Arrest by an officer under a warrant, and without a warrant	2837-2845	395	294
Arrest, by a private person	2846-2849	396	295
Arrest, and retaking after escape	2850-2851	396	295
Examination by a magistrate.....	2852-2880	397	295
Impaneling grand jury	2881-2896	400	298
Powers and duty of grand jury	2897-2909	402	299
Finding and presentment of indictments	2910-2914	403	300
Forms and requisites of indictments	2915-2930	404	301
Arraignment of the defendant	2931-2942	406	303
Setting aside the indictment	2943-2949	408	304
Demurrer	2950-2956	409	304
Pleas to indictment	2957-2963	409	305
Formation of trial jury	2964-2971	410	305
Challenging the jury	2972-2990	411	306
The trial	2991-3020	414	308
Conduct of jury after the cause is submitted to it..	3021-3028	417	311
Verdict	3029-3045	418	312
Bills of exceptions	3046-3049	420	313
New trials	3050-3053	421	314
Arrest of judgment	3054-3057	422	314
Judgment	3058-3073	422	315
The execution	3074-3087	425	317
Writs of error, when allowed, and how taken....	3088-3096	427	318
Judgment upon writ of error	3097-3102	428	319
Imprisonment for public offenses, and the discipline of prisons	3103-3116	428	319
The penitentiary of the state, and the government and discipline thereof	3117-3155	431	321
Impeachments	3156-3167	439	327
Miscellaneous provisions relating to criminal proceedings—			
Compelling the attendance of witnesses.....	3168-3176	441	328
Examination of witnesses conditionally.....	3177-3192	442	329
Examination of witnesses on commission.....	3193-3208	444	330
In what cases the defendant may be admitted to bail	3209-3215	446	332
Bail upon being held to answer before indictment..	3216-3226	447	333
Bail upon an indictment before conviction.....	3227-3229	449	334
Bail on writ of error.....	3230-3231	449	334
Deposit of money instead of bail.....	3232-3235	450	335
Surrender of defendant	3236-3238	450	335
Forfeiture of the undertaking of bail, or of the deposit of money	3239-3242	451	336
Recommitment of defendant, after giving bail....	3243-3247	452	336
Dismissal of criminal actions for want of prosecution	3248-3252	453	337
Disposal of property stolen or embezzled.....	3253-3258	453	337
Inquiry into the insanity of the defendant, before trial or after conviction.....	3259-3267	454	338
Liberation of poor convicts.....	3268-3269	455	339
Changing venue in criminal cases.....	3270-3277	456	339
Pardons and commutations of punishments.....	3278-3281	457	340
Fugitives from justice	3282-3290	458	341
Search warrant and proceedings thereon.....	3291-3309	459	342
Vagrants	3310-3321	462	344
Proceedings before justices of the peace, for offenses within their jurisdiction	3322-3367	464	345
Defendant may be convicted of lower degree than is charged	2918	405	301
CRUELTY,			
To animals, punished	2716	375	279
COURTESY,			
Estate by, abolished	1421	215	158
DAMAGES,			
On bills of exchange.....	965	151	112
In actions generally	1788, 1800	259	191
When assessed by the clerk.....	1828	262	194
In actions when assessed by the court.....	1830	262	194

INDEX

447

	Section	Page	Reprint Page
DAMAGES,			
On appeal from district court.....	1990	282	208
In replevin	2001	283	209
In actions for real property.....2024,	2016, 2008	283	210
In waste and trespass.....	2134-2137	295	219
On injunction	2209	303	225
On appeal from justice for delay.....	2348	318	236
On taking private property for works of internal improvement	782, 763- 775	121	90
For laying roads on private property...566, 548,	536- 543	92	69
For trespass for entering to survey, etc.....	778	123	91
For entering on another's land to remove improve- ments put there by mistake.....	907	142	105
DAYS,			
Of grace allowed on bills only.....	957	150	112
Work on the road, what is.....	593	98	73
DEAF, DUMB, AND BLIND.....	1186-1189	186	138
DEATH,			
The infliction of	3079-3086	426	317
Does not abate actions.....2502,	1982, 1699	249	184
No cause of continuance, unless.....	1769	257	190
Effect of, on limitation of actions.....	1667	246	182
Of insane person, proceedings.....	873	136	101
Of husband or wife, as it affects the homestead....	1263	199	146
DEBTS,			
Imprisonment for, abolished		545	405
And contracts of married women.....	1453-1454	219	161
Of a decedent, from what and how paid.1340-1356,	1370-1389	210	154
Due a defendant may be paid to sheriff, on execution	1894	270	200
DECEDENTS,			
Estates of. See Estates of decedents.....	1272-1446	201	147
Property of sold, when.....	1341-1356	207	152
Sale, how prevented	1351-1353	208	153
Entries by, etc., when evidence.....	2405	324	241
DECENCY,			
Morality and chastity, offenses against, punished..	2705-2724	373	278
DECLARATION,			
Of independence		475	353
Of rights		543	404
Of trusts, how made.....	1205	191	140
DECREEs,			
And judgment, interest on.....	945- 946	149	110
DEDUCTION,			
From money and credits in taxation.....	466- 467	79	59
DEEDS,			
The term does not imply a seal.....	26	7	6
Of conveyance. See conveyance.....	1211-1232	192	141
Forms of	1232	195	143
Of trust, treated as mortgages.....	2096	291	216
Of sheriff, imply regularity.....	1948	276	204
How executed by county judge.....	108	22	17
Of treasurer on sale of land for taxes.....	503	88	66
DEFACING,			
Buildings, notices, advertisements, etc.....	2687-2688	370	276
DEFAULT,			
Judgment by	1824-1836	262	193
In vacation	1825	262	193
When, and how set aside.....	1827	262	194
When defendant not personally served.....	1834-1836	262	194
Under petition for divorce.....	1484	223	164
On arbitration	2105	292	217
And non-suit in justice's court.....	2291-2295	313	232
DEFAULTER,			
In relation to school money.....	1172	184	136
In relation to other public money.....	2618	357	265
DEFECTS,			
In this statute, when remedied by rules of court....	1589	235	173
Of pleadings	1735	254	187
In bonds, etc., not to vitiate proceedings.....	2511	337	251

	Section	Page	Reprint Page
DEFENDANT,			
Defined	1675	247	182
New, when substituted	1685-1686	248	183
Name of, when not known	1694	249	183
When he may withdraw his set-off	1802	260	192
His right under a default	1831	262	194
May be examined under execution as to his property—proceedings therefor	1953-1959	276	205
His presence on arraignment	2932	407	303
On judgment	3059	422	315
His re-commitment after giving bail	3243-3247	452	336
His statement when under criminal charge	2861-2864	397	296
DEFINITIONS,			
Of words in the statute	26	6	5
DEGREE,			
Of murder, how determined	2571	350	260
Of offense, accused may be convicted of one lower than charged	2918	405	301
DELINQUENT TAXES,			
What interest they draw	495	86	65
How proceeded with	495- 509	86	65
DEMAND,			
When time of performance is not fixed	959	151	112
Of fees on subpoena	2417	326	242
Of taxes not necessary	492	86	64
Against an estate, of filing and payment	1357-1389	209	156
Not due	1377, 1364	210	154
Contingent	1365	210	154
DEMURRER 1771, 1755, 1754, 1737,	1735, 1749	254	188
To an indictment	2950-2956	409	305
DENOMINATIONS,			
Particular, in relation to marriages	1477-1478	222	163
DEPOSIT,			
Of money in court	2490-2492	335	249
Instead of bail	3232-3235	450	335
Forfeiture of	3239-3242	451	336
Of a will to be kept	1290-1292	202	148
DEPOSITIONS,			
When taken, and the proceedings	2445-2466	329	243
How taken for a justice's court	2465-2466	332	247
In criminal cases, when and how taken	3177-3208	442	329
Fees for taking	2552	347	258
DEPUTIES,			
Of civil officers	411- 417	68	51
By whom to be appointed, the manner, and bond	411	68	51
Duties of	412	68	51
Disqualification for	413	68	51
Oath of	416	69	51
Allowance to	417	69	51
Of supervisor of roads and duties	590- 592	98	73
Of sheriff to serve process	170	33	25
Are conservators of the peace	173	33	25
Not to act as attorney	175	33	25
Not to purchase at sales	176	33	25
DESCENT,			
Of property 1394, 1390,	1408-1421	214	157
Of the homestead	1264	199	146
DESTRUCTION,			
Fraudulent, of boats, etc., punished	2753-2754	382	284
Or injury, of houses, etc., riotously	2743	380	283
DETENTION,			
Forcible, of real property	2362-2376	319	237
DEVISE,			
Of the homestead	1266	200	146
"DEVISEE,"			
Includes legatee, and "devised" includes bequeathed	1286	202	148

INDEX

449

	Section	Page	Reprint Page
DIRECTORS,			
Of poor house	830- 833	130	97
Of banking associations, punished	2732	378	282
DISBURSEMENTS, ETC.,			
Of county, treasurer to keep account of	157	31	23
DISCHARGE,			
Of sureties on official bonds	418- 428	69	51
Of administrator	1434	217	159
Of apprentice	1533	229	168
From poor house	840	132	98
DISCONTINUANCE,			
Of actions	1716	252	187
Of proceedings in court not for absence of judges	1553, 1584-1586	235	173
In part, of actions for real property	2011	283	210
DISCOVERY,			
Of assets when concealed	1334-1335	207	152
DISFIGURING,			
A person, punished	2577	350	261
DISMISSAL,			
Of criminal actions	3248-3252	453	337
DISOBEDIENCE,			
Of an injunction	2201	303	225
Of a writ of habeas corpus	2252, 2238-2239	307	228
DISORDERLY,			
Conduct at elections	253	46	34
DISPOSITION,			
Of the real estate of an intestate	1394-1421	213	156
Of liquor to Indians or persons intoxicated	2735	379	282
DISQUALIFICATION,			
Of a judge or justice	1595	236	174
As a juror in criminal cases	2986	412	307
For the office of county treasurer	162	31	24
As a deputy of an officer	413	68	51
DISSOLUTION,			
Of an injunction	2198, 2206	303	225
Of corporations	682	110	82
Of indentures	1536	229	168
DISTRESS,			
For taxes	492- 493	86	64
Of animals trespassing	915, 913	143	106
proceedings therein	913- 919	143	106
distrainer acquires no property	917	143	106
DISTRIBUTION,			
Of the personal property of intestates	1390-1393	212	156
Of the real property	1408-1421	214	157
And sale of copies of the code		472	351
DISTRICTS,			
Unorganized, attached	98	20	15
Congressional, judicial and legislative	88- 90	18	14
Constitutional provision		550	409
Of the district court—constitution		553	412
Election of senators and representatives by	296- 300	52	39
Canvass in	298- 300	53	39
Of the supreme court	1543	231	170
School. See school districts	1108-1118	174	129
DISTRICT COURT,			
Creation and Organization of—			
Provision of the constitution		553	412
Organization of	1566-1586	231	172
Judges, election and term of	239- 240	43	32
When disqualified to act	1595	236	174
Judges may interchange	1575	234	172
Are conservators of the peace		553	412
Seal, and the keeper thereof	142	28	21
Records, the correction and approval thereof	1577-1580	234	172
Clerk of. See Clerk of District Court	141- 149	28	21

	Section	Page	Reprint Page
DISTRICT COURT,			
Its terms remain	1556	233	171
When no term is fixed.....	1567-1568	233	172
Special terms	1569-1571	234	172
Issue terms	1572	234	172
When no court house is provided.....	1573-1574	234	172
Jurisdiction and supervisory power of.....	1576	234	172
Special authority when a corporate franchise has been sold under execution.....	700	112	84
Miscellaneous Provisions—			
Absence of judges not to abate proceedings.....	1581-1586	234	173
The course of procedure in. See actions.....	1659-1972	245	181
Certain forms for procedure in.....	2518-2519	338	251
Transcripts filed in.....	135	27	21
When adjourned of course.....	1582-1586	235	173
Appeals from, to the supreme court.....	1973-1993	279	207
Charge of the court to the jury.....	1791	259	191
Instructions to jury	1792	259	191
Bills of exceptions	1805-1807	260	192
Sheriff to attend	174	33	25
Criminal returns from.....	148	29	22
Rules prescribed for, applied to other tribunals....	2516	338	251
DISTURBANCE,			
At elections	253	46	34
Of worshipping congregations	2718-2720	375	279
The exciting of, punished	2742	381	283
DIVIDENDS,			
Of the estate of a deceased insolvent.....	1379	211	155
DIVISION,			
In opinion of supreme court.....	1552	232	171
Of fences, recorded	905	141	105
DIVORCE AND ALIMONY,			
Jurisdiction of causes of.....	1480-1486	223	164
Causes for	1480	223	164
Order, concerning minor children.....	1482	223	164
Provision of constitution.....	1485	223	164
Provision of constitution.....	550	409	
DOCKET,			
See Calendar	1761	256	189
Of a justice of the peace, how to be kept and what to show	2269	310	230
DOCUMENTARY EVIDENCE,			
See Evidence	2427-2444	327	243
DOMESTIC,			
Relations	1447-1452	218	161
Animals, astray	883	138	103
Marks of	920- 923	144	107
DOWER,			
And proceedings to obtain.....	1421, 1394-1407	213	156
Action for	2027	285	211
DRAWING,			
Of jurors	1640-1642	242	179
DRUGS AND MEDICINES,			
Adulteration of, punished.....	2727	377	281
Poisonous to be labeled, and penalty for neglect....	2728	377	281
DUBUQUE,			
Act of congress laying off		535	397
Branch of the university.....	1041-1043	163	121
DUELING,			
And aiding therein, punished.....	2805, 2572-2575	350	261
Provision of the constitution.....		544	405
DURATION,			
Of franchises	735, 729, 712, 681	110	82

INDEX

	Section	Page	Reprint Page
EDUCATION,			
Generally	1011-1089	159	118
Provision of constitution.....		555	413
The University. See University.....	1011-1043	159	118
Medical department	1026-1028	162	120
Branch at Fairfield.....	1029-1040	162	120
Branch at Dubuque	1041-1043	163	121
Common schools. See Schools.....	1044-1178	164	122
School lands and fund	1044-1075	164	122
Superintendent of public instruction.....	1076-1088	170	126
School fund commissioner	1089-1107	172	127
School districts	1108-1118	174	129
Election, powers and duties of district officers..	1119-1151	176	131
Miscellaneous provisions relating to.....	1152-1178	181	134
Normal schools	1179-1185	184	137
The foregoing chapters a compilation. Note...		185	137
The deaf, dumb and blind	1186-1189	186	138
EFFECT,			
The taking effect of statutes and acts. See statutes	20- 23	5	4
ELECTIONS,			
Offices, vacancies, etc.....	237- 443	42	32
Officers, and terms of office.....	237- 243	42	32
What are regular elections.....	237	42	32
“General election” defined	237	42	32
“August election” defined.....	237	42	32
“April election” defined.....	237	42	32
“Special” elections defined.....	237	42	32
The manner of conducting the general election, gov- erns in the April election.....	238	43	32
What officers are elective, and at what elections elected	239	43	32
What at the general election.....	239	43	32
What at the August election.....	239	43	32
What at the April election.....	239	43	32
In what years the several officers are chosen, and their terms of office	240	43	32
What at the August Election, 1851	240	43	32
At the April election, 1852	240	44	33
At the general election, 1852	240	44	33
At the August election, 1853	240	44	33
At the April election, 1854	240	44	33
At the general election, 1854	240	44	33
General provision relative to the tenure of office..	241	44	33
Existing statutes, relative to offices, and officers, con- tinue until, etc.....	242	44	33
Justices of the peace and constables, considered county officers	243	44	33
The general election, conduct of, canvass, etc.....	244- 295	45	33
In unorganized counties	244	45	33
Polls, the opening and closing, where and when....	251, 245	45	33
Judges of and vacancies	246- 247	45	33
Clerks of	248	45	33
Oath of officers	249	45	33
Disturbances and the attendance of constables....	252- 253	46	34
Ballot box	254	46	34
Poll books	255	46	34
Ballots, what to designate	264, 256	46	34
Manner of voting.....	257	46	34
To vote in township	257	46	34
Challenge and proceedings thereon	258- 259	46	34
Poll books, how kept	260	47	35
Adjournment	261	47	35
Canvass by the judges of election	261- 269	47	35
Double ballots	262	47	35
Ballots exceeding voters, in number	263	47	35
Ballot to name the office	264	47	35
Containing too many names	265	47	35
Tally lists	266	48	35

	Section	Page	Reprint Page
ELECTIONS,			
Return and form	267- 268	48	35
Poll books, disposition of	268	48	36
Ballots preserved	269	48	36
County canvass	270- 284	48	36
Who are canvassers	271	49	36
Abstracts, provisions relating to	271- 276	49	36
Who to be declared elected	273	49	36
Abstracts to declare who elected	275	49	37
The "election book"	276	49	37
Certificate of election	277- 280	49	37
Tie vote, proceedings	281- 282	50	37
Returns to secretary of state	283- 284	50	38
State canvass	285- 295	51	38
Returns of abstracts	285	51	38
Abstracts, when opened	286, 288	51	38
To be made	289	51	38
The "election book"	290	52	38
Certificate of election	291- 294	52	38
Messengers' pay	295	52	39
Of senators and representatives by districts	296- 300	52	39
General direction	296	52	39
"Oldest county," what is	297	53	39
The canvass	298	53	39
The abstracts	299	53	39
Certificate of election	300	53	39
Of electors of president and vice president	301- 312	53	40
The time thereof	301	53	40
The ballots	302	53	40
Conduct of the election	303	53	40
The returns	304- 305	54	40
The state canvass	306- 307	54	40
Certificate of election	308	54	40
Vacancies	309	54	40
Notice of election	310	54	41
The election	311	54	41
Compensation of electors	312	55	41
The April election. See April election	313- 318	55	41
Poll books, when provided	313	55	41
Proceedings and duty of officers	314- 315	55	41
Tie vote for township office	316	55	41
Notice to persons elected	317	55	41
Abstracts	318	55	41
Township. See April election	313- 318	55	41
Special. See vacancies and special elections	429- 444	70	52
In school districts	1119	176	131
Of superintendent of public instruction	1070, 239- 240	43	32
Of school fund commissioner. See schools	1089	172	127
The first in unorganized counties	99	20	16
In new townships	231- 235	41	31
Of contesting. See contesting elections	339- 396	59	43
The "election book"	290, 276	49	37
Certificates of	300, 294, 292, 291, 277- 280	49	37
Offenses relating to. punished	2691-2704	371	276
ELECTORAL,			
Purposes, counties, etc., attached to others for	98	20	15
ELECTORS,			
Who are	257	46	34
Provision of the constitution	546	406	406
Of president and vice president	301- 312	53	40
EMBEZZLEMENT,			
By officers and others, punished	2618-2620	357	265
Of assets	1334-1335	207	152
Property embezzled, how disposed of	3253-3258	453	337
EMPLOYMENT,			
Of the poor	827, 836	131	98
Of prisoners in jails	3107	429	320

INDEX

453

	Section	Page	Reprint Page
ENTERING,			
On another's enclosure, to remove improvements, placed there by mistake	907	142	105
ENTICING,			
Away female under fifteen years, etc., punished....	2584	351	262
Child under twelve years	2585	351	262
Females to houses of ill-fame, punished.....	2713	374	279
ENTRIES,			
What to be made in justice's docket.....	2269	310	230
Of a deceased, when evidence	2405	324	241
On land, by order of court	2021-2022	284	211
False, the making by officers, punished.....	2677	368	274
Forcible entry and detainer	2362-2376	319	237
EQUALIZATION,			
Board of	481- 483	82	61
EQUITY,			
See chancery	1576	234	172
Of redemption. See execution	1926-1940	274	203
ERASURES,			
And obliterations, fraudulent, punished	2638	361	269
ERROR,			
Writ of, coram nobis	1960-1964	278	206
To a justice of the peace	2349-2356	317	236
In criminal actions	3088-3096	427	318
Judgment upon	3097-3112,	428	319
In assessment roll or in tax list, in name of per- son taxed	491	85	64
ESCAPE,			
From prison or an officer, punished	2667-2668	366	273
From the penitentiary	3147	438	326
And retaking	2850-2851	396	295
Suffering, or assisting therein, punished	2661-2668	365	272
ESCHEATS,			
To be paid into the school fund	1057	167	124
The escheat of estates	1414	215	158
Proceedings in relation thereto.....	1443-1446	218	160
ESTABLISHMENT,			
Of roads	557- 566	94	70
ESTATE,			
Real estate, what the term includes	26	7	5
The conveyance of what passes by.....	1201	191	140
Actions for the recovery of	2002-2027	283	209
In futuro, may be created	1204	191	140
In trust, how created	1205	191	140
In common, how created	1206	191	140
At will, when presumed	1208	191	140
By courtesy, abolished	1421	215	158
Real, of decedents, sale of	1342-1356	208	152
Real, of intestate, disposition of	1394-1421	213	156
ESTATES OF DECEDENTS,	1272-1446	201	147
General provisions	1272-1276	201	147
Jurisdiction of, in the county court	1272	201	147
In the court of what county	1274	201	147
The word "executor" includes administrator in this statute	1301	203	149
Of wills,			
Who may make	1277	201	148
Verbal wills, when allowed	1279	201	148
All others to be in writing	1281	201	148
Witness to take no benefit, except	1282-1283	202	148
Pothumous children	1284-1285	202	148
Revocation of	1288	202	148
Cancellation, how made	1289	202	148
Deposit of, for keeping	1290-1292	202	148
Probate of	1293-1300	202	148
Foreign wills	1296	203	149
Executors	1301-1327	203	149

	Section	Page	Reprint Page
ESTATES OF DECEDENTS,			
The term is applied in this statute to one who administers upon the estate of a decedent, whether appointed by will or otherwise.....	1301	203	149
Married women may be	1304	204	149
What minors may be	1305	204	149
Non-resident executors	1309-1310	204	150
Who is entitled to the office of	1311-1315	204	150
Their qualification	1316-1319	205	150
Special executor, powers and duties.....	1320-1324	205	150
Limitation of the grant of administration	1325	205	151
The above provisions may be modified by will	1326	205	151
Special authority of the court, to continue an intestate's business	1327	206	151
Inventory and collection of the effects of a decedent..	1328-1337	206	151
What are not assets	1329-1330	206	151
Life insurance, not assets	1330	206	151
Appraisalment of the property	1331-1332	206	152
Discovery of assets	1334	207	152
Persons suspected of embezzling	1334	207	152
Executor may compound with a debtor	1336	207	152
ESTATE,			
A mortgage is assets	1337	207	152
Disposition to be made of the property,			
Of a decedent	1338-1356	207	152
Allowance to minor child	1338	207	152
Of giving security in order to sustain a will	1339	207	152
Sale of the personal property	1341-1356	207	152
Sale of the real property	1342-1356	208	152
Sale, how prevented	1351-1353	208	153
Private sale, when allowed	1347-1349	208	153
Conveyances of real estate by executors	1354-1356	209	153
Presumption in favor of	1355	209	153
Filing claims against an estate	1357-1369	209	153
Notice of executor's appointment	1357-1358	209	153
Claims presented and proved	1359-1362	209	154
Where prosecuted	1363	209	154
Contingent claims	1365	210	154
Demands not due	1364	210	154
Unsatisfied judgments	1367	210	154
Suits pending, how disposed of	1368	210	154
Executor interested	1369	210	154
Payment of claims against an estate	1370-1389	210	154
Allowance to widow and children	1371	210	154
Order of payment and preferred claims.....	1370, 1372-1379	210	155
Incumbrances may be paid off	1380	211	155
Legacies, how paid	1381-1386	211	155
Executor failing to make payments, ordered	1387-1389	212	156
Distribution of personal property	1390-1393	212	156
Disposition of real property	1394-1421	213	156
Dower	1421, 1394-1407	213	156
Descent	1408-1421	214	157
Illegitimate children, of their inheriting	1415-1418	215	158
Advancement	1419	215	158
The executor's accounting	1422-1434	216	159
At what times he shall account	1422	216	159
Profit and loss, how accounted for	1427	216	159
Accounts, contested	1431	216	159
Compensation of executor	1429-1430	216	159
His discharge	1434	217	159
Miscellaneous provisions	1435-1446	217	160
Specific performance	1435-1437	217	160
Executor of executor	1438	217	160
Executor in his own wrong	1439	217	160
Action against an heir	1440-1441	217	160
Receipts by one executor not to charge the other..	1442	218	160
Escheats	1443-1446	218	160
ESTRAYS,			
Proceedings in relation to them. See lost goods...	876- 894	137	102

INDEX

455

	Section	Page	Reprint Page
EVASIONS,			
Of the law relating to sale of intoxicating liquors...	929	145	107
Of tolls by travelers	750	119	89
EVICTION,			
When a consequence of waste	2135	296	219
EVIDENCE			
Miscellaneous provisions,	2388-2484	322	239
Who is a competent witness	2408, 2388	322	239
Of facts heretofore rendering incompetent	2389	322	240
Interest in a witness	2390	322	240
Husband and wife	2391-2392	322	240
Professional confidence	2393-2394	323	240
Public officers	2395	323	240
Subjecting to civil liability	2396	323	240
To ignominy	2397	323	240
Previous conviction	2398	323	240
The whole of a subject to be given	2399	323	240
Writing and printing in same instrument	2400	323	240
Understanding of the parties	2401	323	240
Historical works, maps, etc.	2402	324	240
Subscribing witness	2403	324	240
Hand-writing	2404	324	241
Entries, etc., of one deceased	2405	324	241
Books of account	2406	324	241
Private writings	2407	324	241
Judge, competent	2408	324	241
Written evidence only admissable in what cases (provisions of Stat. of Frs.)	2409-2413	324	241
Notarial protest	2414	325	242
In treason	2567	349	260
When an instrument recorded, is	1227-1230	194	143
When pleadings are	1745	255	189
Existing rules of evidence	2484	334	248
How testimony is to be procured	2415-2426	325	242
Of subpoenas, their service, demand of fees, etc. ...	2415-2420	325	242
A party subpoenaed, not appearing	2421-2422	326	243
The production of books and papers	2423-2426	327	243
Documentary evidence	2427-2444	327	243
Publications in newspapers	2427	327	243
Of the posting or service of notices and papers, and of other facts	2428-2430	327	243
Field notes and plats of survey	2431	328	244
Copies from public offices	2432-2433	328	244
Certificates of public officers	2434-2436	328	244
Judicial records (including those of justices and foreign countries)	2437-2440	328	244
Executive and legislative proceedings	2441-2442	329	244
Laws, statute and unwritten	2443-2444	329	245
Depositions, when and how taken	2445-2466	329	245
In a justice's court	2465-2466	332	247
Perpetuating evidence, proceedings for, and when allowed	2467-2483	332	247
EVIDENCES,			
Of debt circulating as money; the limitation of ac- tions does not apply to	1669	246	182
EXAMINATIONS,			
By magistrates on criminal charges	2852-2880	397	295
EXCEEDING,			
Authority by officers, penalty	2672	367	273
EXCEPTIONS,			
Bill of	1805-1807	260	192
In criminal cases	3046-3049	420	313
EXCITING,			
Disturbances, punished	2742	380	283

	Section	Page	Reprint Page
EXECUTION,	1885-1952	269	199
Within what time issued	1886-1887	269	199
Sent to other counties	1888-1889	269	199
Against husband and wife	1891	270	199
How levied on stocks, bank bills, things in action and debts due defendant	1892-1894	270	199
Money, notes, bills, etc., how applied	1914	272	202
Public property, exempt	1895-1897	270	200
Private property, exempt	1898-1902	270	200
Homestead exempt	1245	197	145
"Family" defined	1900	271	200
Amount levied upon	1903	271	201
How executed	1904-1910	271	201
When a defendant is surety	1915	273	202
In case of joint ownership	1917	273	202
In case of judgment against an executor	1918-1922	273	202
Mutual judgments set off	1923	273	202
The sale of property, and the notices thereof	1905-1915	271	201
May be adjourned	1909	272	201
Sale of real property when absolute	1924	273	202
Of the redemption of real property sold	1924-1946	273	202
The mode of redeeming	1940-1941	275	204
Certificate of purchase	1925	274	202
Of the sheriff's deed	1946-1948	276	204
It implies regularity	1948	276	204
Of recording the same	1947	276	204
Redemption from sales heretofore made	1950	276	204
The provisions of this chapter, how far applied to justices' courts	1952	276	205
Defendant may be examined on execution, relative to his property—proceedings thereon	1953-1959	276	205
Proceedings supplemental to execution	1953-1959	276	205
From the county court	135	27	21
From the court for the trial of contested elections ..	377, 365	62	46
When a franchise has been sold under, corporators cannot destroy the franchise	700	112	84
Rights of the purchaser	700	112	84
Sale under, of franchise of a road, bridge, ferry, etc.	752- 756	119	89
Proceedings under, in actions for mechanics' liens.	989- 994	155	115
For costs, v. executor or administrator	1433	217	159
Recalled on appeal	1987-1988	281	208
Purchaser under, not affected by reversal of judg- ment	1993	281	208
From justices' court, and proceedings thereon	2322-2327	316	234
Renewable, and how	2325-2327	316	234
Issued by justice's successor	2379	321	239
How renewed	2387	322	239
Of judgment, in criminal cases	3074-3087	425	317
Of criminal process, refusal of, by officers	2657	365	271
Of process, refusing to assist officers in	2670	367	273
Resistance of, punished	2669	367	273
EXECUTIVE,			
Acts, how proved	2441	329	244
EXECUTOR. See administrator,			
The term includes administrator	26, 1301	203	149
Who entitled to be	1311-1315	204	150
See "Estates of decedents"	1301-1327	203	149
Appointed abroad	1309-1310	204	150
May compound with debtor	1336	207	152
Interested in a claim	1369	210	154
Failing to make payments, proceedings against	1387-1389	212	156
His accounting	1422-1434	217	159
Of executor, has no authority	1438	217	160
In his own wrong	1439	217	160
Receiving money, alone chargeable	1442	218	160
Judgment against, how to reach real estate of de- cedent	1918-1922	273	202

INDEX

457

	Section	Page	Reprint Page
EXEMPLIFICATION	2437-2438	328	244
EXEMPT,			
From execution, what property is	1895-1903	270	200
From taxation, what property is	455	75	56
What persons are	455	76	56
From service on a jury, who is	1631	242	178
EXERCISING,			
Office, without authority, etc.....	2672	367	273
EXHIBITIONS,			
And shows, authority of towns, in relation to.....	672	108	81
EXISTING,			
Acts of legislature, how affected by this statute	30	8	7
Rights and liabilities, how affected by this statute..	31- 32	8	7
Contracts, how affected by the limitation of actions..	1671-1672	247	182
Licenses and charters for ferries, not affected by this statute	725	116	86
Corporations not affected by this statute	707	114	85
May be organized under this statute	705	113	84
Rules of evidence how far affected	2484	334	248
EXPENDITURES, ETC.,			
Of county, statement of to be made	157	31	23
Accounts of, to be posted	106	22	17
EXPENSES,			
Of the state offices.....70,	60, 45	10	8
Of the county offices .....2555,	143, 106	22	17
Of the supreme court	1548	231	170
Of the district court	106	22	17
Of the governor, in actions	41	9	8
In relation to fugitives from justice	41	9	8
Of roads	563, 521-- 522	91	68
Of the poor and the poor house	844, 821	129	96
Of building a poor house	829	130	97
Of jails	3116	430	321
Of the abatement of nuisances	2766	384	286
Common, of a family, whose property liable for....	1455	220	162
Of a burial by a coroner	200	37	28
EXPOSURE,			
Of a child, with intent to abandon it	2589	352	262
Of dead bodies, punished	2714	375	279
EXTORTION,			
Punished	2560, 2658	365	272
Threats for the purpose of, punished	2590	352	262
FACTS,			
When to be tried by court.....	859, 851, 805, 137, 130, 1823, 1793, 1772	257	190
FAILURE,			
Or want of consideration in a written contract may be shown	976	153	114
FAIRFIELD,			
Branch of the university	1029-1040	162	120
FALSE,			
Books by corporations, consequences of	691	111	83
Entries by clerk of election, punished	2701	372	277
Pretenses, cheating by, punished.....	2744-2758	380	283
Weights and measures, the using with intent, etc., punished	2747-2748	381	284
Bills of lading, affidavits, protests, etc., the making of, punished	2755-2756	382	284
Assuming falsely to be an officer, punished	2671	367	273
FAMILY,			
Head of, who is.....	1246	97	145
Whom, the word does not include.....	1900	271	200

	Section	Page	Reprint Page
FATHER,			
Of a poor person to support him, and to be supported by him	787	124	93
May maintain an action for the seduction of his daughter	1697	249	184
Of illegitimate child, when they inherit one from the other	1415-1418	215	158
FEE BOOK,			
Of the district court	145	29	22
FEEES,			
Account of, to be kept by county officers	212	39	29
Certain, appropriated to salaries	213	39	29
Of officers generally. See compensation of officers..	2522-2564	339	252
Certain to be paid in advance	2528	341	253
Of prosecuting attorney specially appointed	2561	348	259
For marrying	2551	347	258
For taking depositions	2552	347	258
Of appraisers	2550	347	258
For advertisements	2558	348	258
When to be sworn to	2553	347	258
When to be paid in cash	2554	347	258
When to be posted	2559	348	258
Receipts for, to be given when required	2549	347	258
Taking, other than those allowed, penalty	2560	348	258
In cases now pending, how regulated	2564	348	259
In proceedings on lost goods and estrays	893	139	104
Of township clerk for recording marks of animals..	923	144	107
Of witnesses	2417, 2544	346	257
Of jurors	2545	346	257
FELONY,			
Definition of	2817	392	292
The compounding of, punished	2659-2660	365	272
When a person charged with, may be searched	3309	461	343
FEMALE,			
When of age	1487	224	165
Under fifteen years, enticement of punished	2584	351	262
Female line in descent of property	1412	215	158
FENCES,			
Provision concerning	895-	912	140
Or other improvement made on another's land, by mistake	907	142	105
Viewers, township trustees are	224	41	30
Are appraisers of damages by trespassing ani- mals	916	143	106
FERRY,			
Licenses how obtained, and provisions concerning.	712-	725	114
The revocation of	724	116	86
Existing, not affected by this statute	725	116	86
Tolls. See tolls.			
Free ferries	757	120	89
FICTITIOUS,			
Signatures, the affixing, punished	2637	361	269
FIELD NOTES,			
To be procured by county judge	112	23	18
County surveyor may obtain	205	38	28
Of survey of new roads	533	92	69
When evidence	2431	328	244
FILING,			
Claims against a decedent's estate	1357-1369	209	153
FINANCES,			
Of a county, account of to be kept by treasurer...	158	31	23
FINDER,			
Of lost goods and estrays, his proceedings and rights	876	137	102
Of property, appropriating it punished	2617	257	265

INDEX

459

	Section	Page	Reprint Page
FINES,			
And forfeitures how appropriated 1158,	1157, 2148	297	220
Provision of constitution		555	414
Actions for	2145-2150	297	220
For contempt of general assembly	12- 14	4	3
For contempt of court	2174, 1600	237	175
To whom paid	3355-3357	467	348
Pardons and commutations of	3278-3281	457	340
Imprisonment for	3349	466	347
FIRST,			
Part of this statute, provision relating to	1190	187	138
FISCAL,			
Concerns of the state, auditor to superintend	50	11	9
Of the county, judge superintends	106	22	16
FOOD,			
Mingling poison with, punished	2596	353	263
Adulterating articles of, fraudulently, punished	2726	377	281
FOOTMEN,			
To pass toll gates on roads free of charge	758	120	89
FORCIBLE,			
Entry and detainer	2362-2376	319	237
FORECLOSURE,			
Of mortgage	2071-2097	289	214
By the mortgagee on notice and sale	2071-2082	289	214
The notice and service	2072-2075	289	214
Sale, by whom and how made	2077-2081	289	215
When the right to so foreclose is contested	2082	290	215
By judicial proceedings	2083-2097	290	215
General execution	2085	290	215
When separate suits on bond or note, and mortgage, plaintiff to elect	2086	290	215
Under judgment on the bond the mortgaged property may be sold	2087	290	215
Junior incumbrancers right to assignment	2089-2090	290	216
Of other liens	2090	291	216
Sale, costs, and satisfaction	2093	291	216
Contracts of sale treated as mortgages 2097,	2094-2095	291	216
Deeds of trust treated as mortgages	2096	291	216
Agreements not interfered with	2097	291	216
FOREIGN,			
Laws how proved	2444	329	245
Wills, proceedings in relation to	1296	203	149
Administrators	1309-1310	204	150
Guardian of minors	1512-1514	226	167
Paupers may be sent to their state	811	127	95
FOREIGNERS,			
May hold real estate		545	406
FORFEITURE, See fines,			
Of franchise by a corporation	693, 690	111	83
Of road, bridge, and ferry licenses, what creates	749	119	88
In waste	2135	296	219
Of bail or of the deposit	3239-3242	451	336
FORGERY,			
And counterfeiting, punished	2626-2643	358	267
FORMATION,			
Of a jury in civil cases	1773-1777	257	190
In criminal cases	2964-2971	410	305
FORMER CONVICTION	2821	392	292
FORMS,			
Technical of actions, abolished	1733	253	187
Of an original notice in district court	2518	338	251
In a justice's court	2520-2521	339	252
Of a petition in district court	2518	339	252
A general direction	2519	339	252
And requisites of indictments	2915-2930	404	301
Of writ of habeas corpus	2213-2219	304	226
Of mittimus	2875	399	297
Of conveyances	1232	195	143

	Section	Page	Reprint Page
FORMS,			
For taxation to be furnished assessor, by census board	473	81	60
To be furnished by superintendent	1083	171	127
To be distributed by fund commissioner	1097	173	128
FORT MADISON,			
Act of congress laying off		535	398
FRAUDS,			
Statute of	2409-2413	324	241
By corporations, and what constitute it	686- 688	110	82
Gross, and cheating, punished	2744-2756	380	283
And cheats at common law, punished	2752	381	284
FRAUDULENT,			
Conveyances, punished	2745	380	283
Destruction of boats, etc., punished	2753-2754	382	284
Obliterations a forgery, punished	2638	361	269
FRANCHISE,			
Proceedings against by information	2151-2175	297	221
Of corporations how forfeited	693, 690	111	83
When sold under execution, cannot be destroyed by corporators	700	112	84
Rights of the purchaser	700	112	84
Sale of, on execution, proceedings	752- 755	119	89
FREE FERRIES	757	120	89
FUGITIVES,			
From justice, provisions concerning	3282-3290	458	341
Expenses relating to	41	9	8
FUND,			
Of schools. See schools	1044-1075	164	122
Defaulter, in relation to	1172	184	136
University	1018, 1017, 1012-1013	159	118
Commissioner of schools	1089-1107	172	127
Sinking, corporations may establish	699	112	84
FUTURE,			
Estates may be created	1204	191	140
GAMBLING,			
Houses, the keeping of, punished, and search warrant against	2721-2722	376	280
Are nuisances	2761	383	286
And betting, punished	2723	376	280
Contracts void	2724	376	280
GARNISHMENT,			
And attachment	1846-1884	264	195
Proceedings in garnishment	1861-1879	266	197
Under mechanics' lien law	1006	158	117
Under execution	1892	270	199
In a justice's court	2358-2361	319	237
Garnishee's answer when taken by sheriff	1864-1866	267	197
When taken by constable	2360	319	237
Answer controverted	1872	268	198
GENDER,			
Words in the masculine may be extended to the feminine	26	6	5
GENERAL ASSEMBLY,			
Organization of	4- 16	2	2
Sessions of, when and where	5- 8	2	2
Members not to be questioned for speech	4	2	2
Compensation of members	9	3	3
Contempt of	11	3	3
Election and term of members	12- 15	3	3
Contesting the election of members	239- 240	43	32
Contesting the election of members	380- 386	64	47
GENERAL,			
Agent of county, judge is	106	21	16
Provisions relating to property	1191-1192	189	139
Relating to courts	1587-1597	235	173
To civil rights and remedies	2500-2517	336	250
To part first of this statute	1190	187	138
Assignment for creditors must be pro rata	977	154	114
Election. See election	244- 295	45	33

INDEX

461

	Section	Page	Reprint Page
GOVERNOR	37- 41	9	7
Provision of the constitution		551	410
His salary	37	9	7
His office how filled, in case of vacancy	39	9	7
His official term	38	9	7
When, and where he may convene the general assembly	4	2	2
His authority in relation to actions	40- 41	9	7
To the militia	621- 631	101	76
To commission judges	332	56	43
His election and term	239- 240	43	32
His qualification for office	320	56	41
Contesting the election of	387- 396	65	48
GRACE,			
Days of, allowed on bills only	957	150	112
GRANDCHILD,			
And grand parent of poor person, to support him...	787	124	93
GRAND JURORS,			
Jury. See jury	1646, 1639-1642	242	179
GUARANTOR,			
Who is	953	150	111
How chargeable	954- 955	150	111
GUARDIANS,			
Jurisdiction in matters of	1273	201	147
Of minors	1491-1515	224	165
Natural, who is	1491	224	165
How removed	1537-1542	229	169
Of choosing	1495	225	165
Appointment and proceedings of	1496-1515	225	165
Testamentary may be appointed	1492	224	165
Foreign	1512-1514	226	167
Ad litem	1688-1689	248	183
Of the insane	858	134	100
HABEAS CORPUS	2213-2255	304	226
Petition and proceedings	2240-2246, 2213-2229	304	226
Form of writ	2219	305	226
Service of	2224-2229	305	227
Warrant, when to issue, and proceedings thereon..	2230-2233	306	227
Disobedience to writ of	2252, 2238-2239	307	228
Papers where filed	2255	308	229
HAND WRITING,			
May be proved by comparison	2404	324	241
HEAD,			
Of a family, who is	1246	197	145
HEALTH,			
Offenses against, punished	2725-2729	377	281
"HEIR,"			
Or other word of inheritance not necessary in deeds of conveyance	1200	191	140
An heir may maintain an action for waste, and trespass	2139	296	220
HEREAFTER,			
And heretofore, meaning of the terms in this statute.	35	9	7
HIGHWAY,			
See roads	26, 514- 612	90	67
HISTORICAL,			
Works, books of science, and maps and charts, when evidence	2402	324	240
HOLDER,			
Of instrument for money, absent, how paid	958	150	112
HOLDING OVER,			
By tenant	1268	200	147
When by a civil officer, he must qualify anew.....	338	58	43

	Section	Page	Reprint Page
HOMESTEAD	1462, 1245-1266	197	145
Exempt from judicial sale	1245	197	145
Exception	1249	197	145
Who is head of a family	1246	197	145
Conveyance of	1247	197	145
Liable for taxes	1248	197	145
For past debts	1249	197	145
How made liable to future debts	1249	197	145
What constitutes it	1250-1253	198	145
How selected and defined	1254-1255	198	145
May be changed	1256	199	146
Liability of the new	1257	199	146
Disagreements as to	1258-1262	199	146
In case of death how disposed of	1263	199	146
It descends	1264	199	146
When it may be sold for debts	1265	200	146
It may be devised	1266	200	146
Its relation to dower	1406, 1395	213	156
How to be set off on sale of that, or adjacent land, for taxes	501	87	65
Is subject to mechanic's lien	1248	197	145
"Homestead Book"	1255	198	146
HOMICIDE			
Made civilly liable	2501	336	250
HOUSE OF REPRESENTATIVES, How organized. See general assembly	5- 8	2	2
HOUSE,			
Court when none is provided	1573-1574	234	172
Gambling, the keeping of, punished, and search war- rant against	2721-2722	376	280
A nuisance, and the abatement thereof	2761-2766	383	286
Of ill fame, the keeping of, punished	2710-2712	374	278
A nuisance, and the abatement thereof	2761-2766	383	286
Boats, etc., riotously injuring or destroying, pun- ished	2743	380	283
"HUNDRED WEIGHT,"			
Defined	938	147	109
HUSBAND AND WIFE,	1447-1462	218	161
Her rights of property	1447-1452	218	161
Her property not liable for husband's debts	1453	219	161
Her separate debts, husband not liable for	1453	219	161
Her separate contracts	1454	219	162
Expenses in common	1455	220	162
Wife abandoned, what powers she may obtain, and how	1462, 1456-1460	220	162
The homestead	1462	220	162
What authority he may obtain as to her property ..	1461	220	162
Their rights in dower and descent reciprocal	1421	215	158
Execution against them, jointly or severally	1891	270	199
When they may be witnesses, one for the other	2391-2392	322	240
IDIOT,			
Included in the term "insane." See insane	26, 857	134	100
IGNOMINY,			
When to excuse from testifying	2397-2398	323	240
ILLEGAL,			
Toll, the taking at ferries, bridges, roads, etc., penalty	748	119	88
Fees, the taking punished	2560, 2658	365	272
ILLEGITIMATE,			
Children inherit from their mother, and she from them	1415-1418	215	158
When from the father, and he from them	1416-1417	215	158
Legitimated by the marriage of their parents	1479	222	164
Proceedings to charge the father	848- 856	133	99
ILL FAME,			
House of. See House	2710-2712	374	278

INDEX

463

	Section	Page	Reprint Page
IMPEACHMENT,			
Proceedings in	3156-3167	439	327
Provision of the constitution		548	408
IMPRISONMENT,			
For debt, abolished		545	405
For contempt of the general assembly	12- 14	4	3
For public offenses	3103-3116	428	319
For non-payment of fines	3349	467	347
IMPROVEMENTS,			
Internal, as roads, bridges, and ferries, licenses for how obtained, and provisions concerning	712- 758	114	85
Of taking private property for	759- 785	120	90
On another's inclosure by mistake	907	142	105
Set off of, in actions for real estate	2023	284	211
INCORPORATION,			
General law of	673- 711	108	81
Articles of	705, 675	109	81
Acts of, how proved in criminal cases.....	2643	362	269
Of villages and towns	649- 672	105	79
Of a village into a town, proceedings therefor.....	649- 669	105	79
Powers which may be assumed.....	663- 668	106	79
Ordinances to be promulgated	667	107	80
Of a town into a city	662, 669- 672	107	80
Powers which may be assumed	669- 672	107	80
Changing the name of a town or city	668	107	80
Powers assumed in relation to licenses of shows, etc	672	108	81
INCUMBENT,			
Of office, re-elected or holding over, is to qualify anew	338	58	43
INCUMBRANCE,			
May be paid off by an administrator	1380	211	155
How disposed of in proceedings in partition. 2068,	2045-2052	286	212
Junior incumbrancers rights in relation to prior mortgages	2088	290	215
INDEMNITY,			
To individual corporator whose property has been taken for corporate liability	698	112	84
INDENTURES,			
The term does not imply a seal	26	7	6
Of minors and others	1517-1521	227	167
INDEPENDENCE,			
Declaration of		475	353
INDIANS,			
The disposing of liquor to, punished	2735	379	282
INDICTMENT,			
The finding and presentment of	2910-2914	403	300
Form and requisites of	2915-2930	404	301
Setting aside	2943-2949	408	304
Demurrer to	2950-2956	409	304
Pleas to	2957-2963	409	305
To be found by twelve jurors	2910	403	300
For libel, requisites of.....	2924	405	302
Perjury, requisites of	2926	405	302
Alleging intent to defraud	2927	406	302
For the unlawful sale of liquor	930	145	107
INDIVIDUALS,			
May become incorporated	702	113	84
Liability of, as corporators	689, 695- 697	112	83
INDORSEE,			
Of negotiable paper, his right of action	948	149	111
See notes and bills	947- 965	149	111
INDORSER,			
And sureties, etc., made parties together	1681-1683	248	183
Notice to	955	150	111
And Indorsement. See notes and bills	947- 965	149	111

	Section	Page	Reprint Page
INDUCING,			
To vote by false representations	2697	371	277
INFERIOR,			
Tribunals, presumption in favor of	2512	337	251
INFORMATION,	2151-2175	297	221
When and by whom filed	2151-2153	297	221
On private relation	2164	299	222
Proceedings on	2154-2161	298	221
Judgment on	2158, 2162-2163	298	221
Trustees, when appointed, and their powers and duties	2166-2172	299	222
Officers of a corporation, when liable to	2173	299	222
Patents may be annulled by this proceeding	2175	300	223
And magistrates	2822-2823	393	292
Before a justice in criminal cases	3323-3326	464	334
For unlawful sale of liquor	930	145	107
IN FUTURO,			
Estates in, may be created	1204	191	140
INHERITANCE,			
Words of, not necessary in conveyances	1200	191	140
INJUNCTIONS AND ORDERS	2189-2212	301	224
INJURY,			
Malicious, and trespass on property punished	2678-2690	368	274
To monuments of the dead, punished	2715	375	279
To houses, boats, etc., riotously, punished	2743	380	283
By trespassing animals, proceedings	913	143	106
INQUEST,			
By coroner	186- 202	35	26
INQUIRY,			
Of insanity	859	134	100
INSANE,			
What the term includes	26	6	5
Persons, jurisdiction over, and proceedings in re- lation to	857- 875	134	100
Inquiry of insanity	859	134	100
INSOLVENT,			
Assignment by	977	154	114
INSPECTION,			
Of weights and measures	942	148	110
INSPECTORS,			
Of jails, and their duties	3110-3114	429	320
INSTRUCTION,			
Superintendent of. See schools	1076-1088	170	126
INSTRUCTIONS,			
Of superintendent, to school officers	1082-1083	171	126
Of the court to the jury	1792	259	191
INSTRUMENTS,			
Hitherto given to county officers	97	20	15
How executed by county judge	108	22	17
For property or labor, assignable, and rights of assignee	949	149	111
Assignable, how made negotiable	950	150	111
When the assignment of is prohibited, effect	951	150	111
For payment of money, how paid when holder is absent	958	150	112
Tender of	967	152	113
To be recorded	1211-1212	192	141
Recorded, when evidence	1227	194	143
In writing, all parties liable may be joined	1681-1683	248	183
To the public, by whom actions on may be brought. For counterfeiting, etc., the making or having in possession, punished	1693	249	183
For counterfeiting, etc., the making or having in possession, punished	2640, 2633	360	269
INSURANCE,			
Companies, how taxed	464	78	58
Mutual, not taxed	455	76	57
Premium notes of, how made a lien	706	113	84
Privileges of, under the incorporation law	706	113	84
Life, avails of not assets	1330	206	151

INDEX

465

	Section	Page	Reprint Page
INSURER,			
Burning property, to injure, punished	2606	354	264
Fraudulent destruction of boats, etc., to injure, punished	2753-2754	382	284
INTEREST,			
Rate allowable in different cases	945	149	110
By contract, not restricted	943- 946	149	110
On judgments and decrees	945- 949	149	110
On open account	945	149	110
After settlement	945	149	110
On school money, failure to pay, consequences....	1052, 1075	169	126
After acquired—in land, when it passes	1202	191	140
Of judge or justice	1595	236	174
Absence, or inability of county judge	111	23	18
In a witness	2390	322	240
Contingent, in cases of partition	2069	289	214
In an executor or administrator	1369	210	154
INTERNAL,			
Improvement, works of. See improvement	712- 758	114	85
INTERPLEADER,			
Proceedings in the nature of	1685-1686	248	183
INTERVENTION,			
Of officers to prevent public offenses.....	2776-2802	386	288
INTESTATE,			
Estates. See estates of decedents	1272-1446	201	147
INTOXICATING,			
Liquor, the sale of	924- 936	144	107
Merchandise in, not prohibited	924	144	107
What traffic and places prohibited	925- 926	144	107
Liability for the unlawful sale of	928- 934	145	107
Disposing of to intoxicated person, or an Indian, punished	2735	379	282
Authority heretofore given to grant licenses, re- pealed	936	146	108
INVENTORY,			
And collection of the effects of a decedent. See estates of decedents	1322, 1328-1337	206	151
By guardian of minor	1497	225	165
Of the estate of an insane person	866	135	101
INVESTMENTS,			
When ordered by the courts, general provision as to making, and the management thereof	2507-2510	337	250
IN WRITING,			
What the phrase includes	26	7	6
IOWA,			
Territory, organic law of		524	389
Admitted into the Union		538	400
Constitution of		543	404
ISSUE,			
What the term includes	26	6	5
Terms, in the district court	1572	234	172
ISSUING,			
Bills to circulate as money, prohibited	2734	378	282
JACK,			
Running at large, is an estray	894	140	104
JAILS,			
Are in the keeping of the sheriff	172	33	25
The keeping and management of them	3103-3116	428	319
For what they may be used	3103	428	319
Of labor in them	3319-3321	463	345
JEWS,			
Protected in the observance of the seventh day...	2504	336	250
JOINDER,			
Of causes of action	1751	255	188
Of parties to an action	1678-1680	247	182

	Section	Page	Reprint Page
JOINT,			
Authority, how construed	26	6	5
Tenant, bringing a real action against his co-tenant.	2927	285	211
Ownership, in the case of sheriff's proceedings under execution	1917	273	202
JUDGES,			
Of the Supreme and district courts,			
To be commissioned by the governor	322	56	42
Not to act as attorneys, nor give advice	1587	235	173
To report [to] the legislature imperfections in this statute	1588	235	173
When disqualified to act from interest or consanguinity	1595	236	174
May take oaths and acknowledgments	979	154	114
Are conservators of the peace	2778	387	288
May solemnize marriage	1472	222	163
Absence of, proceedings	1553, 1581-1586	234	173
Temporary, may be selected by the parties, when..	1797	259	191
Of the district court,			
May interchange	1575	234	172
May issue orders to officers	2210-2212	303	225
May suspend clerks and sheriffs	408- 410	68	50
Of the county court. See county judge.....	103- 140	21	16
Of the probate court, county judge is	138	28	21
This office as heretofore existing, to cease	240	44	32
JUDGMENT,			
How rendered, and other provisions relating thereto.	1814-1816	261	192
By agreement	1821	261	193
In vacation	1822	261	193
And decrees, interest on	945- 946	149	110
In actions for mechanic's lien	987	155	115
Under process of garnishment	1873	268	198
In replevin	2000-2001	282	209
In actions for real property..... 2019, 2018, 2010,	2012-2013	283	210
In foreclosure of mortgage	2084	290	215
In partition, and its effect in evidence	2037, 2059-2062	288	214
On a bond secured by mortgage, is a lien on the mortgaged property, and the same may be sold.	2087	290	215
In informations	2158, 2162-2163	298	221
In mandamus	2188	301	224
On official bond for one delinquency, is no bar for another	2147	297	220
By collusion, for a penalty, is no bar	2150	297	221
Against a deceased	1367	210	154
For costs against an executor or administrator....	1433	217	159
Mutual, set off	1923	273	202
Against principal and sureties in supreme court....	1986	281	208
Arrest of, and new trial	1808-1810	260	192
How enforced	1885	269	199
Of supreme court on appeal	1989-1993	281	208
In criminal cases	3058-3073	422	315
Arrest of	3054-3057	422	314
The execution of	3074-3087	425	317
Upon writ of error	3097-3102	428	319
"Judgment docket" of district court, what and how kept	145	29	22
Lien by judgment	2485-2488	334	248
By default	1824-1836	262	193
When rendered	1824	262	193
When entered in vacation	1825	262	193
What proof requisite	1826	262	193
How set aside	1835, 1827	262	194
When clerk may assess damages	1828	262	194
When the court.....	1828	262	194
Defendants rights in such case	1831	262	194
Referees	1829	262	194
In proceeding in equity	1833	262	194

INDEX

467

	Section	Page	Reprint Page
JUDGMENT,			
When defendant not personally served	1834-1835	262	194
Rights of third persons, how affected	1836	263	194
By confession, without action	1837-1842	263	194
When allowed	1837	263	194
For what allowed	1838	263	194
Proceedings	1839-1840	263	194
Upon an authority heretofore given	1842	264	195
When in a justice's court	1841	263	195
Of the county court,			
How made a lien	135	27	21
Of justice of the peace. See justice of the peace.			
JUDICIAL,			
Districts	89	19	14
Purposes for, counties, etc., attached	98	20	15
Proceedings to be public	1593	236	174
Records, including those of foreign countries, and of justices, how proved	2437-2440	328	244
Sale. See execution	1885-1952	260	199
Homestead exempt from	1245	197	145
Exception	1249	197	145
JUNIOR,			
Incumbrancer, his rights in relation to prior mort- gages	2088	290	215
JURISDICTION,			
Of the state	1- 3	2	2
Of the supreme court	1555-1557	232	171
Provision of the constitution		553	411
Of the district court	1576	234	172
Provision of the constitution		553	412
Of divorce and alimony	1480	233	164
Of the county court	129	26	20
Of estates of decedents	1272, 138	28	21
Of minors and others requiring guardians....	138	28	21
Of master and apprentice	1516-1542	227	167
Of insane persons	857, 138	28	21
In cases of illegitimacy	848	133	99
Of the poor	830, 786	124	92
Of roads	514, 129	26	20
Of licenses for works of internal improvement.	712	114	85
In relation to town and village plats	632- 648	103	77
To the incorporation of villages and towns	649- 672	105	78
Of justices of the peace	2261-2262	310	230
Provision of the constitution		556	414
In criminal cases	3322	464	345
Local, of public offenses	2803-2810	390	290
JURORS			
Who are competent	1630-1649	241	178
Who are exempt	1630	241	178
Who is exempt	1631	242	178
Who is excusable	1632	242	178
Jury list	1633-1634	242	178
How selected and drawn	1635-1642	242	178
Period of service	1646, 1642, 1639	242	179
Their number	1642	243	179
Summoning them	1643	243	179
Juror failing to attend	1645	243	179
Their fees	2545	346	257
JURY,			
Demand and selection of, in the district court....	1772-1776	257	190
Provisions relating to, applicable to the court, when trying the facts	1823	261	193
Of trials, the formation of	1773-1777	257	190
In criminal cases	2964-2971	410	305
Challenge of	1774-1775	257	190
In criminal cases	2972-2990	411	306
Charge of the court to	1791	259	191
Instructions of the court	1792	259	191
To determine law and fact, in cases of libel.....	2772	385	287

	Section	Page	Reprint Page
JURY,			
When to have a view	1779	258	190
Receiving evidence without authority, punished ...	2655	364	271
Proceedings of, after the cause is submitted to them, in criminal cases	3021-3028	417	311
For assessment of damages for property taken for internal improvements	763- 774	121	90
Struck jury, may be required, when	765, 1776	257	190
Grand jury,			
Their number and period of service	1642	243	179
Their oath	2893	401	299
The impanneling	2881-2896	400	298
Their powers and duty	2897-2909	402	299
In the county court, when allowed	137	27	21
In cases of insane persons	859	134	100
Of illegitimate children	851	133	99
Of support of poor persons	805	126	94
Of how many to consist	137	27	21
In a justice's court,			
Their number	2302	314	233
In criminal cases, and the manner of selection.	3333-3342	465	346
Their fees	2300, 2545	346	233
JUSTICE,			
Offenses against the public	2644-2677	362	270
Fugitives from, proceedings in relation to	3282-3290	452	341
Expenses therein	41	9	8
JUSTICE OF THE PEACE,			
His election	239- 240	43	32
To be certified by township clerk	228	41	31
He is a county officer	243	44	33
Qualification for office	324- 334	56	42
Bond and its penalty	327, 324	56	42
When his office is declared vacant, county judge to notify trustees	426	70	52
May take oaths and acknowledgments	979	154	114
May solemnize marriage	1472	222	163
He is his own clerk, and the term "clerk" applies to him in some proceedings	1884	269	199
The chapter relating to executions applies to his proceedings	1952	276	205
When disqualified to act, from interest or con- sanguinity	1595	236	174
His authority in cases coming from the coroner...	197- 201	37	28
When he acts as coroner	201	37	28
His authority in relation to the abatement of nui- sances	2763-2766	384	286
Form of an original notice in a justice's court....	2520-2521	339	252
His fees	2543	345	256
The court of a justice of the peace,			
Course of proceedings therein	2261-2387	310	230
Jurisdiction	2261-2262	310	230
Provision of the constitution		556	414
Where suit may be brought	2263-2268	310	230
The justice's docket	2269	310	230
Actions how to be brought	2270-2277	311	231
And see Actions.			
The appearance of parties, the pleadings, adjourn- ments, etc.	2278-2289	312	231
An agents authority	2278	312	231
One hour given	2279	312	231
Set-offs	2295, 2285	312	232
Title pleaded	2287-2288	312	232
Causes of action severed	2289	313	232
The trial	2290-2305	313	232
Whether by justice or jury	2300, 2290	313	232
Non-suit and default	2291-2296	313	232
Judgments when set aside	2296	313	233
New trial and costs therein	2297-2298	313	233

INDEX

469

JUSTICE OF THE PEACE,	Section	Page	Reprint Page
Motion in arrest, or to set aside a verdict, cannot be entertained	2304	314	233
The jury and their fees.....2545,	2300-2303	314	233
The verdict	2305	314	233
Judgment and proceedings incident thereto...	2306-2319	314	233
When to be rendered.....	2306	314	233
When the sum found exceeds the jurisdiction of the justice	2307-2308	314	233
Mutual judgments set off.....	2309-2319	314	233
Filing transcripts in the district court.....	2320-2321	315	234
Execution and proceedings thereon	2322-2327	316	234
To be issued within five years.....	2322	316	234
Renewable, and how	2325-2327	316	234
The chapter relating to executions applies....	1952	276	205
Appeals	2328-2348	316	235
When allowed, and proceedings therefor.....	2328-2334	316	235
When allowed by clerk of district court.....	2330-2332	316	235
If execution has issued.....	2335	317	235
Return to the district court.....	2336-2340	317	236
Notice of appeal	2341-2342	318	236
Effect of an appeal.....	2343-2344	318	236
Costs on appeal	2345-2346	318	236
Of obtaining a more or less favorable judgment on appeal	2345-2346	318	236
Sureties, judgments against	2347	318	236
Damages for taking appeal for delay.....	2348	318	236
Writs of error, when allowed and proceedings therefor	2349-2356	318	236
Replevin, proceedings in	2357	319	237
Attachment and garnishment	2358-2361	319	237
Of the constable taking the answer of garnishee	2360	319	237
Forcible entry and detainer.....	2362-2376	319	237
When this remedy allowed.....	2362-2363	319	237
Who entitled to	2364	320	238
Notice to quit	2365	320	238
Where brought	2367	320	238
Time for appearance, and adjournments.....	2368-2369	320	238
Judgment	2370	320	238
Title, not to be investigated.....	2371	320	238
Thirty days possession, a bar	2372	320	238
No joinder of actions nor set-off.....	2373	320	238
Warrant for removal	2374	321	238
Appeal	2375	321	238
Restitution	2376	321	238
General provisions, relative to justices' proceedings.	2377-2387	321	238
Papers to be delivered to successor or to clerk of district court	2377-2378	321	238
Successor, may issue execution.....	2379	321	239
Renew execution	2387	322	239
Successor, how ascertained	2380-2381	321	239
Justices may interchange	2382	321	239
Special constables	2383	321	239
Process limited	2384	322	239
Constable's authority	2385	322	239
Records of a justice how proved in evidence...	2439	328	244
Procedure in criminal case within the jurisdiction of a justice	3322-3367	464	345
His jurisdiction therein	3322	464	345
Information, its form, requisites, etc.....	3323-3326	464	345
Warrants, service and appearance.....	3327-3329	464	346
The pleadings	3330	465	346
Trial, by whom	3331-3332	465	346
Jury, and impanneling the same.....	3333-3341	465	346
Oath and proceedings of jury.....	3342-3347	466	347
Imprisonment for fine	3349	467	347
Certificate of conviction	3351-3353	467	347
Fines to whom paid, and receipt therefor.....	3355-3357	467	348

	Section	Page	Reprint Page
JUSTICE OF THE PEACE,			
Appeal and proceedings thereon	3358-3365	468	348
Writ of error	3366-3367	469	349
KEEPING,			
House of ill fame, punished	2710	374	278
Gambling house, punished	2710	374	278
Both the above are nuisances, and the abatement of them	2761-2766	383	286
KEOKUK,			
Medical college at	1026-1028	162	120
KIDNAPPING,			
Etc., punished	2588	352	262
KINDRED,			
Who to support their poor relatives	786- 788	124	92
Who may recover therefor, and from whom	807	127	94
LABOR,			
On roads for taxes, when allowed	588	97	73
Who to be allowed	589	97	73
Wages for	586	97	73
In prisons	3319-3321, 3107	429	320
Or property, instruments for, are assignable	949	149	111
LANDS PUBLIC,			
Rights of the United States, reserved	2	2	2
Claims on them	1197-1198	190	140
Settlers on, when not liable as trespassers	2144	296	220
The limitation does not apply to actions concerning	1674	247	182
Of the university	1018, 1017, 1013, 1012	159	118
Of schools	1044-1075	164	122
Settlers' privileges	1045	165	122
LAND,			
What the term includes	26	7	5
Seizin of	1199	190	140
Conveyance of, and what passes by	1211, 1201	191	140
An after-acquired interest in, when it passes	1202	191	140
Actions for	2002-2027	283	209
Heretofore sold under execution, redemption of	1950	276	204
Redemption of, hereafter sold under execution	1924-1946	273	202
Sold for taxes	496- 509	86	65
Redemption of	505	88	66
Action for	506- 508	88	66
Purchaser's lien	506	88	66
Entering on another's, to remove improvements put there by mistake	907	142	105
See Real Property	1199-1232	190	140
LANDLORD AND TENANT,	1267-1271	200	147
Of holding over by tenant	1268	200	147
Landlord's lien	1270	200	147
How effected	1271	200	147
Landlord substituted for tenant, in actions for land	2003	283	210
Actions for land may be brought against	2002	283	209
Judgment against in real action, when con- clusive	2018-2019	284	210
LARCENY,			
And receiving stolen goods, punished	2612-2625	356	265
LAWS,			
See Statutes	16- 26	4	4
To be uniform		544	405
Published		549	409
Statute and unwritten, how proved	2443-2444	329	245
Law and fact, in libel, jury to determine	2772	385	287
LEASE,			
When to be in writing	2410	325	241
Property under, who is owner, for taxation	458	77	57
For keeping a house of ill fame, void	2712	374	279
To a person convicted of, void, when	2711	374	279
LEGACIES,			
When and how paid	1381-1387	211	155

INDEX

471

	Section	Page	Reprint Page
LEGAL,			
Process to be served by the sheriff.....	177,	170	33
Settlements of the poor.....	808-	818	127
Incorporation, presumed in favor of persons acting as such under the general law.....	703		113
Organization as a corporation, want of, no defense to either party.....	704		113
LEGISLATIVE,			
Districts.....	90		19
Proceedings, how proved.....	2443		329
LETTERS TESTAMENTARY.....	1319		205
LEWDNESS,			
Punished.....	2709		374
LIABILITY,			
Civil, not to excuse from testifying.....	2396		323
Of boats for contracts and damages.....	2116-	2130	293
Of whom, and what, for the sale of intoxicating liquors.....	928-	934	145
Of new homestead.....	1257		199
LIBEL,			
Definition and punishment.....	2767-	2772	385
The truth may be given in evidence.....	2769		385
What is a publication.....	2771		385
Jury, to determine law and fact.....	2772		385
LIBERATION,			
Of poor convicts.....	3268-	3269	455
LIBRARY,			
Of the state.....	445-	453	73
Librarian how appointed, and term.....	445		73
His bond.....	446		73
Of what he has the charge.....	447		74
Room, and when open.....	448-	449	74
Rules of.....	451		74
Governor and librarian may make.....	452		74
LICENSES,			
For marriage.....	1465-	1471	221
Of an attorney.....	1610-	1613	238
How revoked.....	1620-	1626	240
To pedlars.....	511		89
For shows, etc., authority of towns in relation to..	672		108
For sale of liquors, authority to grant, repealed... But those existing, not affected.....	936		146
Penalty for transacting business without, when a license is required.....	2737		379
For works of internal improvement.....	712-	758	114
County court has authority to grant.....	735,	726,	712
Ferry licenses, and their duration.....	712		114
To fix rates of ferriage.....	713		115
How far exclusive.....	714		115
Proceedings to obtain.....	714-	720	115
Preference to whom.....	715		115
What court, when the shores are in different counties.....	716		115
When but one shore in this state.....	716		115
Order of court and the conditions.....	719		115
Bond to be given.....	719		115
Expresses to be transported at all times.....	721		116
List of rates to be posted.....	722		116
Penalty for neglect.....	723		116
Ferryman's duty.....	721-	723	116
Revocation of license.....	724		116
Existing licenses not affected.....	725		116
Bridge licenses.....	726-	734	116
County court grants.....	726		116
Preference, to whom.....	726		116
Navigable streams.....	727		116
From what county obtained.....	728		116
Duration.....	729		116
Rates of toll, made unalterable for what time.	729		116

	Section	Page	Reprint Page
LICENSES.			
Exclusive, how far.....	730	117	87
Notice of application.....	731	117	87
Rates of toll, posted.....	732	117	87
Regulations of travel, by proprietor.....	733	117	87
Hours of passing.....	734	117	87
Road and canal licenses.....	735-	736	117
County court grants.....	735	117	87
Duration.....	735	117	87
Maximum rate of tolls may be fixed.....	736	117	87
May be made unalterable, for what time.....	736	117	87
Rates posted.....	728	118	87
Miscellaneous provisions,			
Appeal to the people from the court, on grant-			
ing or refusing a license, and proceedings			
thereon.....	739-	745	118
Court may put applications for licenses to vote.	740	118	88
Bond required in all the above licenses.....	746	118	88
What bonus may be required.....	747	118	88
Taking unlawful toll.....	748	119	88
Forfeiture of franchise, what creates.....	749	119	88
Evading tolls.....	750	119	89
Regulation of travel.....	751	119	89
Sale of franchise on execution.....	752-	755	119
Purchaser's liability for injury, without fault.	756	120	89
Free ferries, when allowable at the same places	757	120	89
Owners of mills, exception with regard to....	758	120	89
LIEN,			
By judgment.....	2485-2489	334	248
On mortgaged property, beside the mortgage—in			
case of foreclosure.....	2090	291	216
Of an attorney.....	1618	240	177
Of a landlord.....	1270	200	147
How effected.....	1271	200	147
Of mechanics. See Mechanics' liens.....	981-1010	154	115
On property, tendered.....	964	151	112
Taxes are, on land.....	495	86	65
Of purchaser, at tax sale.....	503	88	66
By transcript from court for trial of contested elec-			
tions.....	377, 365	62	46
On boats and their order.....	2117-2118	294	218
An action against a putative father is.....	850	133	99
LIFE,			
Offenses against, punished.....	2568-2576	349	260
Insurance, avails of, not assets.....	1330	206	151
LIMITATION, —			
Of actions, civil.....	1659-1674	245	181
Effect of the answer.....	1661	246	181
Open account.....	1662	246	181
Commencement of action, what is.....	1663	246	181
Non-residents.....	1664-1665	246	181
Minors.....	1666	246	181
Death, the effect of.....	1667	246	182
Failure of action, effect of.....	1668	246	182
Not to apply to bank bills.....	1669	246	182
Admission, effect of.....	1670	246	182
Existing contracts, how affected.....	1671-1673	247	182
Public lands, not affected.....	1674	247	182
Of criminal actions.....	2811-2815	391	291
As to granting administration.....	1325	205	151
As to claims against decedent's estates.....	1373	211	155
Of relief to a plaintiff.....	1820	261	193
Of actions against boats.....	2119	294	218
Of mechanics' liens.....	984	155	115
LINE,			
The female in descent of property.....	1412	215	158
Of adjoining inclosure, putting improvements be-			
yond, by mistake.....	907	142	105

INDEX

473

	Section	Page	Reprint Page
LIQUOR,			
Intoxicating, sale of.....	924-	936	144
What traffic and places prohibited.....	925-	926	144
Liability for unlawful sale.....	928-	924	145
Authority to grant licenses, repealed.....	936		146
Merchandize in, not prohibited.....	924		144
Adulterating, fraudulently, punished.....	2726		377
LISTING,			
Property, for taxation, by whom, where and in what manner	458-	477	77
Tax list	486		83
The list for taxation.....	465-	476	79
LOAN,			
Of school money	1100,	1104	173
LOCAL,			
Jurisdiction of the district court.....	1701-	1705	249
Of justices of the peace.....	2261		310
Of public offenses	2803-	2810	390
LORD'S DAY,			
No court open on, except.....	1596		236
When the last day of a period prescribed.....	2513		337
LOST,			
Goods and estrays, provisions relating thereto and proceedings thereon	876-	894	137
Paper, copy of, when substituted.....	1760		256
LOTTERIES,			
Establishment of, and sale of tickets, prohibited...	2730		378
LUNATIC,			
See insane	26,	857	134
MAGISTRATES,			
Who are, and their powers and duties..2778-2789,	2822-	2826	393
Examination by	2852-	2880	397
May issue warrants for arrest of fugitives from justice	3284-	3289	458
MAIMING,			
And disfiguring, punished	2577		350
MAJORITY,			
Age of	1487		224
MAKING,			
And repairing roads	573-	594	96
Instruments for counterfeiting, etc., punished.....	2640		361
False entries, returns, etc., by officers, punished...	2677		368
False bills of lading, etc., punished.....	2755		382
False affidavits, protests, etc., punished.....	2756		382
False entries, etc., by judge or clerk of election....	2701		372
MALICIOUS,			
Threats to extort, punished.....	2590		352
Mischief, and trespass on property, punished.....	2678-	2690	368
To beasts of another.....	2678		368
To dams, mills, machinery, etc.....	2679		368
To bridges, roads, telegraphs, etc.....	2680		368
Letting loose boats, rafts, etc.....	2681		368
To trees, fences, etc.....	2682		369
To monuments, mile stones, signs, etc.....	2683		369
To buildings, goods, etc.....	2685		370
By defacing public buildings.....	2687		370
And destroying notices, advertisements, etc....	2688		370
Trespass by cutting, digging, carrying away, etc...	2684		369
On gardens, orchards, crops, etc.....	2685		369
By taking cord-wood, etc.....	2689		370
Injury to monuments of the state boundary.....	2690		370
MANDAMUS	2179-	2188	300
MANSLAUGHTER,	2576		350
One may be convicted of, under an indictment for murder	2918		405

	Section	Page	Reprint Page
MANUFACTURER,			
Who is, in reference to taxation.....	469	79	59
How assessed	469	79	59
Manufacture of gunpowder, when a nuisance.....	2760	383	285
MAPS,			
Or charts, when evidence.....	2402	324	240
Of counties, to be prepared.....	112	23	18
Of roads, to be prepared.....	573	96	71
MARKS,			
On new roads	531	91	68
Of animals	920- 923	144	107
And brands, falsely altering, punished.....	2749	381	284
Counterfeiting, punished	2750	38	284
Of another, using with intent to defraud, punished.....	2751	38	284
MARRIAGE,			
1463-1479		221	162
What marriages valid	1464	221	162
License and proceedings in relation thereto.....	1465-1471	221	162
Consent of parents, etc.....	1469	221	163
Who may solemnize, etc.....	1472-1476	222	163
Particular denominations	1477-1478	222	163
Illegitimates, how affected by marriage of parents..	1479	222	164
Makes majority	1487	224	165
Presumptive evidence of, for dower.....	1394	213	156
Does not abate an action.....	1699	249	184
No cause of continuance of action.....	1769	257	190
Compelling to, punished.....	2582	351	261
A bar to prosecution for seduction.....	2587	352	262
Marrying one already married, punished.....	2708	374	278
Fees for	2551	347	258
MARRIED WOMAN,			
See husband and wife.....	1447-1462	218	161
May hold separate property.....	1447-1452	218	161
When a creditor of husband's estate.....	1447-1449	218	161
May make separate contracts.....	1454	220	162
Her property liable for what.....	1453-1455	219	161
Abandoned, may obtain authority to act as sole....	1456-1460	220	162
Rights in the homestead.....	1462	220	162
May receive gifts from her husband.....	1192	189	139
May convey her land.....	1207	191	140
May be administrator.....	1304	204	149
When sued with her husband.....	1687	248	183
Her property, by whom listed for taxation.....	458	77	57
Certain provisions of the criminal code to apply to..	2605	354	264
MASTER AND APPRENTICE,			
1516-1542		227	167
Of binding minors, and the indentures.....	1516-1523	227	167
Paupers	1519	227	167
Complaint against master, and proceedings.....	1524-1529	228	168
Against apprentice	1530-1535	228	168
Dissolution of indentures.....	1536	229	168
Natural guardian removed	1537-1541	229	169
Treatment of minor.....	1542	230	169
MATRIMONY,			
Causes for the dissolution of the bonds of.....	1482	223	164
MAYHEM,			
Punished	2577	350	261
MAYORS,			
Of cities, are magistrates.....	2823	393	292
Are conservators of the peace.....	2823, 2797, 2791	388	289
May solemnize marriage	1472	222	163
MEASURE,			
See weights and measures.....	937- 942	147	109
Of value of property stolen, under indictment for larceny	2625	358	260
False, use of with intent, etc., punished.....	2747	381	284

INDEX

475

	Section	Page	Reprint Page
MECHANICS' LIENS,	981-1010	154	115
Who is entitled to.....	981	154	115
The terms "owner" and "building".....	1010, 982	154	115
Sub-contractor, his rights.....	983, 1005-1007	158	117
Amount of land held.....	995, 987	155	115
In case of a town lot.....	988	155	115
Manner of setting out the two acres.....	989- 994	157	115
Several petitioners may join.....	996	157	116
Redemption after sale.....	1000-1002	157	117
Redeeming creditor's lien.....	1001	158	117
Release of the property from lien.....	1008	159	118
Taking collateral security.....	1009	159	118
The provisions of this chapter extend to works of internal improvement.....	1010	159	118
MEDICAL,			
Department of the university.....	1026-1028	162	120
MEDICINES,			
And drugs, adulterating fraudulently, punished....	2727	377	281
MEETINGS,			
Of school districts.....	1150, 1129, 1114	175	130
Notice of.....	1129	178	131
Directors of school districts.....	1121	177	131
MEMORANDUM,			
Of county warrants issued.....	107	22	17
MERCHANT,			
Who is, in taxation.....	468	79	59
Mode of assessing.....	468	79	59
Commission, when considered owner, for taxation..	459	77	58
MERGER,			
Of the civil remedy in a public offense, does not take place.....	2500	336	250
MESSAGES,			
Sent by telegraph, provisions concerning.....	783- 785	123	92
MESSENGERS,			
Sent with election returns, compensation of.....	295	52	39
MICHIGAN,			
Organic law of.....		514	382
MILE-STONES,			
Posts and guide boards, injury to punished.....	2683	369	275
MINORS,	1487-1490	224	165
Age of majority.....	1487	224	165
Their contracts.....	1488-1490	224	165
Payment to, under contract with.....	1490	224	165
Guardianship of. See guardianship of minors.....	1491-1515	224	165
Of their marrying.....	1464-1469	221	162
How bound out.....	1516-1542	227	167
The treatment of.....	1542	230	169
Orphans, allowance to, from estate of parent.....	1338	207	152
When they may be executors.....	1305	204	149
Their property, by whom listed for taxation.....	458	77	57
How to sue and defend.....	1688-1689	248	183
How affected by the limitation of actions.....	1666	246	181
MISCHIEF,			
Malicious, and trespass on property, punished.....	2678-2690	368	274
MISDEMEANOR,			
Definition of.....	2818	392	292
What acts are, generally.....	2675	367	274
Punishment of, when not otherwise provided.....	2676	368	274
MISPRISION,			
Of treason.....	2566	349	260
MITTIMUS,			
Form of.....	3074, 2875	399	297
MONEY,			
Of account and interest.....	943- 946	148	110
None paid from state treasury but on warrant.....	65	15	12
Nor from county treasury.....	152	30	23
And credits, deduction from in taxation.....	466- 467	79	59
Deposit of instead of bail.....	3232-3235	450	335
Arising from sale of lost goods or estrays when			

	Section	Page	Reprint Page
MONEY,			
claimed by owner.....	885	138	103
To be applied on execution.....	1914	272	202
Of schools, loaned.....	1100-1104	173	128
Defaulter in	1172	184	136
Apportioned by superintendent.....	1080	170	126
Apportioned by fund commissioner.....	1098-1099	173	128
MONTH,			
Meaning of the word.....	26	7	5
MONUMENTS,			
Of the dead, injury to, punished.....	2715	375	279
Of state boundary, injury to, punished	2690	370	276
MORALITY,			
Offenses against	2705-2724	373	278
MORTGAGE,			
Possession under	1210	191	141
Of personal property	1193-1196	189	137
Is assets	1337	207	152
Foreclosure of. See foreclosure.....	2071-2097	289	214
By mortgage without action.....	2071-2082	289	214
Satisfaction to be entered.....	2093	291	216
Mortgaged property, who owner of for taxation....	458	77	57
MOTHER,			
Of destitute person to support him.....	787	124	93
Of illegitimate, inherits from him and he from her.	1415	215	158
MURDER,			
Its degrees and punishment.....	2568-2571	349	260
Under indictment for, one may be convicted of man- slaughter	2918	405	301
Assault with intent to, punished.....	2591	352	262
MUTUAL,			
Judgments, set off.....	2309-2319, 1923	273	202
Insurance companies, not taxed.....	455	76	57
Premium notes of made a lien.....	706	113	84
Their privileges under the general incorporation law	706	113	84
NAME,			
Of defendant, when not known.....	1694	249	183
Change of	2256-2260	309	229
Of town, how changed.....	668	107	80
NATURAL GUARDIAN,			
Who is	1491	224	165
Of minors, removed	1537-1541	229	169
NATURALIZATION,			
Laws of.....		562	418
NEGLECT,			
Of duty by public officers, when no special provision is a misdemeanor.....	2674	367	274
NEGOTIABLE INSTRUMENTS,			
What are	947	149	111
All parties liable on, may be joined.....	1681-1683	248	183
NEW,			
Parties in an action, how made.....	1683	248	183
Trials	1808-1810	260	192
In real actions.....	2014-2019	284	210
In a justice's court.....	2297-2299	313	233
In criminal actions	3050-3053	421	314
In district court, after appeal in criminal action	3364-3367	469	349
Process to be directed to new sheriff.....	179	34	26
Township, how organized, etc.....	231-236	41	31
NOLLE PROSEQUI	3251-3252	453	337
NON-COMPOS,			
See insane	26, 857	134	100
NON-RESIDENT,			
In relation to the commencement of actions.....	1664-1665	246	181
Executors or administrators.....	1309-1310	204	150
NON-SUIT,	1801-1804	260	192
In vacation	1822	261	193
Effect on the limitation of action.....	1668	246	182
And default in a justice's court.....	2291-2295	313	232

INDEX

477

	Section	Page	Reprint Page
NON-USER,			
Of franchise by corporation.....	693	111	83
Of property, taken for works of internal improve- ments	776	122	91
NORTHWEST,			
Territory, ordinance relating to.....		489	363
NORMAL SCHOOLS	1179-1185	184	137
NOTARY PUBLIC,	78- 87	17	13
Appointment, duties, and qualification.....	79- 86	17	13
Record, and when evidence, and seal.....	81- 83	17	13
May take oaths and acknowledgments.....	979, 84	17	14
His protests	2414	325	242
His fees	2542	345	256
Vacancy, disposition of records, copies, etc.....	85- 87	18	14
NOTES,			
Field, to be procured by county judge.....	112	23	18
Of county surveyor to be recorded.....	204	37	28
NOTES AND BILLS,	947- 965	149	111
What are negotiable.....	947- 948	149	111
What are assignable.....	949	149	111
May be made negotiable.....	950	150	111
When assignment prohibited, effect.....	951	150	111
An account is assignable.....	952	150	111
Guarantor, and how charged.....	953- 954	150	111
Of notice to indorsers, etc.....	955- 956	150	111
Days of grace.....	957	150	112
When holder is absent.....	958	150	112
Demand on paper not negotiable, when time of per- formance is not fixed.....	959	151	112
The place of payment.....	960- 964	151	112
Of tender, and of lien on the property.....	960- 964	151	112
Damages on bills.....	965	151	112
May be levied on, and sold under execution..1904,	1914, 1893	270	200
Given to banking associations, void.....	2733	378	282
For gaming and betting, void.....	2724	376	280
"NOT FOUND,"			
Return of	1731, 1725	252	186
NOTICE,			
Original, in actions, and the service thereof.....	1714-1732	251	185
Substance of the form of.....	2518-2521	338	251
Sheriff to note time of delivery of.....	1717	252	186
Copy of, when required.....	1722	252	186
In replevin	1997	282	209
In action against boats.....	2122	294	218
In a justice's court.....	2273-2276	311	231
Form of.....	2520-2521	339	252
On appeal from district court.....	1978	280	207
From a justice.....	2341-2342	318	236
To quit, to tenant at will.....	1209	191	141
In forcible detainer.....	2365	320	238
Notices and the service of papers, general provision	2493-2499	335	249
In the foreclosure of a mortgage without action...	2072-2073	289	214
On the sale of property on execution.....	1905-1907	271	201
Conveyances, when notice.....	1214	192	141
The posting of, and of papers, how proved.....	2428-2430	327	243
To indorser, guarantor and assignor.....	954- 956	150	111
To be left by the assessor.....	470	80	59
Of the sale of land for taxes.....	498	87	65
To persons elected.....	310, 293	52	39
Of presenting petition for road.....	519	90	68
Of school district meetings.....	1129	178	131
To officers, to account, by auditor.....	58	14	11
NOTORIOUS,			
Thief, who is.....	2622	357	266
NUMBER,			
Words in the singular or plural, how construed....	26	6	5
Of jurors, grand and petit.....	1633, 1642	243	179

	Section	Page	Reprint Page
NUISANCE,			
Waste and trespass.....	2131-2144	295	219
Definition of nuisance.....	2759, 2131	295	219
Action and remedy for.....	2132-2133	295	219
Punishment for, and abatement.....	2759-2766	383	286
Places where unlawful traffic in liquor is carried on, are	935	146	108
OATH,			
Affirmation is equivalent to.....	980	154	114
May be administered, and acknowledgments taken by each judge of the supreme, district, and county courts, each clerk of same, each justice of the peace and notary public.....84,	110, 979	154	114
By commissioners abroad.....	71	16	12
When may be administered by school fund commis- sioner	1104	173	128
By members of the general assembly.....	10	3	3
By prosecuting attorney	979	154	114
When by courts.....	1594	236	174
Official, general	331- 332	57	43
Of the governor	320	56	41
Of members of the general assembly.....	321	56	42
Judges of the supreme and district courts....	322	56	42
Of the school fund commissioner.....	1090	72	127
Of commissioners abroad.....	73	16	12
Of the assessor.....	479	82	61
Of officers at elections.....	240- 250	45	32
Of voter, when challenged.....	259	46	34
Of deputies	416	69	51
Of officers settling with auditor.....	57	13	11
Of executor or administrator.....	1317	205	150
Of guardian	1496	225	165
To pleadings in actions.....	1744-1748	254	188
Of attorney and counsellor.....	1613	239	176
Of grand jury.....	2892	401	299
Of jury, before a coroner.....	189	35	27
In criminal cases, before a justice.....	3342	466	347
OBLIGORS,			
All liable, may be sued jointly or severally.....	1682	248	183
OBLITERATIONS,			
And erasures, fraudulent, punished.....	2638	361	269
OBSCENE,			
Books, pictures, etc., the selling, etc., punished....	2717	375	279
OCCUPYING CLAIMANTS,			
Their rights, and proceedings to effect.....	1233-1244	196	144
Who is one, and what is color of title.....	1233-1238	196	144
Who is one, and what is color of title.....	1239-1240	196	144
If occupant has committed waste.....	1241	197	144
These provisions retrospective.....	1244	197	145
OFFENSES,			
See crimes and punishments.....	2565-2772	349	287
Repetition of certain, how punished.....	2639, 2632	360	269
Under indictment for, defendant may be convicted of lower degree than charged.....	2918	405	301
OFFER,			
In writing, equivalent to a tender.....	966	152	113
OFFICES,			
What to cease, and when.....	242, 240	43	32
Qualification for, generally.....	319- 338	56	41
Removal from, causes, by whom and proceedings....	397- 407	66	49
Vacancies, what creates	429- 430	70	52
Vacant, when and how filled.....	431- 443	71	53
Who takes possession of.....	444	73	54
Exercising without authority, punished.....	2671--2672	367	273
State, expenses of.....	70, 60, 45	10	8
County, expenses of	2555, 143, 106	22	16

INDEX

479

	Section	Page	Reprint Page
OFFICERS CIVIL,			
Existing, how affected by this statute.....	34	8	7
Hold till successor qualifies.....	241	44	33
Existing statutes relating to, continue until.....	242	44	33
Generally, their election and terms of office.....	237- 243	42	32
What are elective, and at what elections.....	239	43	32
In what years chosen and their term of office.....	240	43	32
Not to enter on their duties till qualified.....	319	56	41
Of their qualification for office.....	319- 338	56	41
Of their giving additional security.....	418- 428	69	51
To be elected in unorganized counties.....	99- 102	20	16
In townships.....	221	40	30
Refusing to serve.....	225	41	31
Of school districts generally.....	1112, 1119	176	129
Of county, who receive a salary.....	169, 211	38	29
Of contesting their election.....	339- 396	59	43
What to appoint deputies.....	411	68	51
Of removing them from office.....	397- 407	66	49
Their accounting1094, 1072, 580, 158, 157,	106, 67, 50	11	9
Certain ones to keep accounts of fees.....	212	39	29
Accounting with the auditor.....	54- 57	13	10
Failing to pay over money.....	55- 57	13	10
May be called to account.....	58	14	11
Certificate of, when evidence.....	2433-2436	328	244
Bound to give copies.....	2433	328	244
When not to be witnesses.....	2395	323	240
Presumption in favor of.....	2512	337	251
Compensation of211-217,	2522-2564	348	259
Taking other fees than allowed.....	2560	348	258
Information against one holding unlawfully.....	2151	297	221
Embezzlement by.....	2618-2619	357	265
Refusing to execute process.....	2557	365	258
Exceeding their authority.....	2672	367	273
Person exercising office without authority.....	2672	367	273
Person refusing to assist them.....	2670	367	273
Neglect of duty by.....	2674	367	274
Making false entries, returns, etc.....	2701, 2677	368	274
Their intervention to prevent crime.....	2776-2802	386	288
Arrest by, with or without warrant.....	2837-2845	395	294
Justices and constables are county officers.....	243	44	33
OFFICIAL,			
Bond of civil officers, generally.....	319- 332	56	41
Of school fund commissioner.....	1090	172	127
Oath, general.....	319- 332	56	41
Of fund commissioner.....	1090	172	127
See Qualification for Office.			
Securities, actions on.....	2145-2150	297	220
Style of the county judge.....	105	21	16
OLDEST COUNTY,			
What is.....	297	53	39
OMISSION,			
Of testimony on trial, how cured.....	1778	258	190
Of property, in taxation.....	491	85	64
OPINIONS,			
Of the supreme court.....	1552, 1560-1562	232	171
ORDER,			
Of payment of claims from a decedent's estate....	1372-1378	210	155
Of trial in actions.....	1770	257	190
Concerning children, in divorce.....	1485	223	164
Of judge to an officer, in vacation.....	2210-2212	303	225
Of discharge of defendant on giving bail.....	3225	448	334
Orders and injunctions.....	2189-2219	301	224
To be preserved at elections.....	252	46	34
ORDINANCE,			
Of 1787.....		489	363
Of towns to be promulgated.....	667	107	80

	Section	Page	Reprint Page
ORGANIC LAW,			
Of Michigan		514	382
Of Wisconsin		516	383
Of Iowa		524	389
ORGANIZATION,			
Of the general assembly.....	5- 8	2	2
Of the supreme and district courts.....	1543-1568	231	170
Of counties	99- 102	20	16
Of new townships.....	231- 236	41	31
ORIGINAL,			
Notice in the district court.....	1715	251	185
Form of one.....	2518	338	251
In a justice's court.....	2272-2276	311	231
Form of one.....	2520	339	252
ORPHAN,			
Minor, allowance to from estate of parent.....	1338	207	152
OVERSEERS,			
Of poor, township trustees are.....	224	41	30
OWNER,			
Meaning of the term, in relation to mechanic's liens.	982	155	115
Of property, who is, for purposes of taxation in cer- tain cases	458- 459	77	57
Of mills—an exception in relation to ferry and bridge licenses.....	758	120	89
Of lost goods or estrays, claiming money.....	885	138	103
Of estrays, who is, how settled.....	890	139	103
Of adjoining land, when liable for trespass of ani- mals	914	143	106
PAPERS,			
Books, etc., of counties, by whom kept and provided	106	21	16
From county court, who may certify.....	136	27	21
In habeas corpus, where filed.....	2255	308	229
And books, how produced on trial.....	2423-2426	327	243
Notices, etc., how proved.....	2428-2430	327	243
Paper circulating as money, the statute of limita- tions does not apply to.....	1669	246	182
Negotiable and assignable.....	947- 950	149	111
General provisions concerning the service of, etc....	2493-2499	335	249
PARDONS,			
And commutations of punishments.....	3278-3281	457	340
Provision of the constitution.....		552	411
May be conditional	3278	457	340
PARENT,			
To consent to marriage of minors.....	1469, 1466	221	163
PART,			
First of this statute, general provision relating to..	1190	187	138
Of an instrument, counterfeiting.....	2636	361	268
PARTIES TO ACTIONS,			
In whose name actions may be brought.....	1676-1677	247	182
Joinder of	1678-1682	247	182
One suing for all.....	1680	247	183
Indorsers, sureties, etc., how may be sued.....	1681-1682	248	183
New, how made.....	1683	248	183
To an action on official bond.....	2146	297	220
In a justice's court.....	2270	311	231
Claimant of property becoming party.....	1684-1686	248	183
Substitution of new defendant.....	1685-1686	248	183
Husband and wife.....	1687	248	183
Minors how to sue and defend.....	1688-1689	248	183
Partners suing and sued.....	1690-1691	248	183
All liable, may be joined.....	1681-1683	248	183
In actions to settle adverse claims.....	1700	249	184
In an action for seduction.....	1696-1697	249	184
When action is on written instrument.....	1692	249	183
On security given to the public.....	1693	249	183
When name of defendant is not known.....	1694	249	183
Part of, may appeal from district court.....	1979-1981	280	207
The understanding of, in contracts.....	2401	323	240

INDEX

481

	Section	Page	Reprint Page
PARTIES TO ACTIONS,			
Appearance of, in justice's court	2278-2289	312	231
As witnesses, and consequence of not obeying sub- poena	2421-2422	326	243
In interpleader, proceedings in the nature of	1684-1686	248	183
Corporations, foreign may be	1695	249	184
Death of either, action not to abate for	1698-1699	249	184
PARTITION,			
Petition and pleadings	2028-2070	285	211
Creditors having liens made parties	2030-2031	285	211
Proof of title	2035	286	212
Referees and partition	2059-2062, 2038-2040	286	212
Order of sale	2062, 2040-2058	286	212
Incumbrances	2068, 2045-2051	286	212
Life estates	2052	287	213
Conveyances	2055-2058	287	213
A party married	2057	287	213
Judgment and its effect as evidence	2237, 2064-2066	288	214
Costs	2031, 2067	288	214
Contingent interests	2069	289	214
Absent owners	2070	289	214
PARTNERS,			
How they may sue or be sued	1690-1691	248	183
The property of the firm, by whom listed for taxation	458	77	58
PATENT,			
Letters vacated by proceeding by information	2175	300	223
PAUPERS,			
See poor	786- 847	124	92
Bringing within the state, punished	2736	379	282
PAYMENT,			
Of officers. See Compensation and Fees.			
Of messengers of elections	295	52	39
Of school fund commissioner	1174-1176	184	136
Of taxes, may be made until when	497	86	65
By county treasurer into the state treasury, when made	513	89	67
Of road tax, how made	588	97	73
Of instrument for money, when holder absent	958	150	112
Of claims against a decedent's estate	1370-1389	210	154
To a minor, under contract with him	1490	224	165
Of money into court	2490-2492	335	249
PEACE,			
Public offenses against	2738-2743	379	283
Officers, who are	2830	394	293
And see Conservators.			
Security to keep	2778-2789	387	288
PEDLER,			
Tax on	510- 512	89	67
License to	511	89	67
Penalty for peddling without license	512	89	67
PENAL,			
Sums in official bonds	326- 327	57	42
Bonds, actions on, what petitions to set forth	1818	201	193
PENALTY,			
For marrying, otherwise than directed	1474-1475	222	163
For unlawful sale of liquor	930	145	107
For fast traveling over bridges	518	90	67
For peddling, without license	512	89	67
PENITENTIARY,			
And the government and discipline thereof	3117-3155	431	321
PERCH,			
Defined	930	147	107
PERFORMANCE,			
Specific, by executor or administrator	1435-1437	217	160
Specific by executor	1435-1437	217	160
Place of in contracts, when none expressed	960- 962	151	112

	Section	Page	Reprint Page
PERJURY,			
Punished	2644	362	270
Subornation of	2645	362	270
Attempt to	2645	362	270
PERPETUATION,			
Of evidence	2467-2484	332	247
Of the proofs of various facts	2430	327	243
Of estates	1191	189	139
PERSON,			
What the term includes	26	7	6
Colored, not liable to school tax	1160	182	135
Doing business in different counties, property where taxed	463	78	58
Individual may become incorporate	702	113	84
Those acting as a corporation under the general law, presumed legally incorporated	703	113	84
Insane, jurisdiction over	857	134	100
Charged with felony, when he may be searched	3309	461	343
PERSONAL PROPERTY,			
What the term includes	26	7	6
Of the transfer of	1193-1196	189	139
Sale or mortgage of, when to be in writing and re- corded	1193	189	139
Mortgage of the foreclosure	2071	289	214
Of a decedent, the sale of	1341	207	152
The distribution of	1390-1393	212	156
Where listed for taxation	460	77	58
What exempt from taxation	455	75	56
Subject to	456	76	57
Of a married woman, does not vest at once in her husband	1447	218	161
What liable to execution	1892-1893	270	199
Exempt from execution	1898-1899	270	200
Action to recover possession of	1994	282	209
PERSONATING,			
Another, fraudulently, punished	2616	356	265
PETITION,			
Original in actions	1736	254	187
Forms of	2518-2521	338	251
When necessary in a justice's court	2272	311	231
For habeas corpus	2213-2219	304	226
For divorce	1481-1486	223	164
And proceedings in forcible entry and detainer	2366-2376	320	238
For the production of books and papers	2423-2426	327	243
For sale of minor's property	1501	225	166
To obtain private property for works of internal improvement	760- 761	121	90
In relation to roads	519	90	68
Of a wife abandoned, for power to act as sole	1457	220	162
Of surety on official bond, for discharge	421	69	51
In cases of illegitimacy	848	133	99
In an action for a mechanic's lien	985	155	115
For change of name	2257	309	229
Of occupying claimant	1234	196	144
Of a party, in the nature of interpleader	1686	248	183
See original petition.			
PHRASES,			
In statutes, how construed	26	6	5
PHYSICIAN,			
When not to be a witness	2393	323	240
May be called by coroner	202	37	28
PLACE,			
Of bringing suit	2263-2268, 1701-1705	249	184
Criminal actions	2803-2810	390	290
PLAINTIFF,			
The term defined	1675	247	182

INDEX

483

	Section	Page	Reprint Page
PLATS,			
Of township to be obtained by county judge.....	113	23	18
To be made by assessor.....	181	34	26
Of new roads.....	533	92	69
Of villages and towns, the laying out and vacating..	632- 648	103	77
Of survey, and copies, as evidence.....	2431	328	244
Of county surveyor, when evidence and what to show	209, 207, 204	37	28
PLEADINGS,			
In actions	1733-1760	258	187
In a justice's court.....	2284-2288	312	232
Technical forms abolished.....	1733	258	187
What sufficient	1755, 1754, 1743, 1742, 1734	254	187
Petition	1736	254	187
Demurrer	1737-1739	254	187
Answer and other pleadings.....	1737-1742	254	187
When to be sworn to.....	1744-1748	254	188
When evidence	1745	255	188
When taken as true.....	2422	327	243
Supplemental	1749	255	188
Set-off	1740	254	187
Amendments	1755-1759	256	188
Copies annexed	1750	255	188
Joinder of causes of action.....	1751	255	188
In partition	2028-2034	285	211
In habeas corpus	2241-2246, 2213-2214	304	226
PLEADINGS,			
In criminal cases	2950-2963	409	304
Before a justice	3330	465	346
Plea to an indictment	2957-2963	409	305
POISON,			
Mingling with food, etc., punished	2596	353	263
Neglect to label, by druggists.....	2728	377	281
POLICE,			
In cities and towns	2790-2792	388	289
POLICY,			
Public, offenses against	2730-2737	378	281
POLL,			
Books, at elections	268, 260, 255	46	34
Polls at elections	251, 245	45	33
Tax	454	75	56
For roads	567	95	71
POOR,			
The support of, by their kindred.....	786- 847	124	92
Of legal settlements	786- 807	124	92
Of their relief where there is no poor house.....	808- 818	127	94
Where there is no poor house.....	819- 827	129	96
Where there is a poor house.....	828- 847	130	97
Directors of	830- 833	130	97
Overseers of, trustees of township are.....	224	41	30
Convicts, the liberation of.....	3268	455	339
POSSE,			
Comitatus, when to be called out.....	2796, 2793, 173	33	25
POSSESSION,			
Of vacant office, who to take.....	444	73	54
Under a mortgage, who entitled to.....	1210	191	141
When to be proved in real action.....	2007	283	210
Writ of	2009	283	210
In forcible entry and detainer.....	2372	320	238
Extent of, under claims on public land.....	1198	190	140
Adverse	1203	191	140
Of personal property when sold or mortgaged.....	1193	189	139
Of tools for counterfeiting.....	2633	360	268
Of counterfeit coin	2635	360	268
Constructive, of real property.....	1199	190	140
POSTHUMOUS,			
Children, inherit	1284-1285	202	148

	Section	Page	Reprint Page
POSTING,			
Of notices, papers, etc., how proved.....	2428-2430	327	243
For not accepting a challenge, punished.....	2575	350	261
POWER,			
To convey, how revoked.....	1226	194	143
Granted by probate court, may be revoked.....	1275	201	147
Supervisory of supreme court.....	1563	223	171
PRACTICE,			
See Actions, District Court, Justice of the Peace, Supreme Court.			
PREEMPTION,			
Of school lands	1061, 1074	169	125
PREFERENCE,			
Of claims against an estate.....	1370	210	154
Of claims against boats.....	2118	294	218
PRESENTMENT,			
And finding of indictments.....	2910-2914	403	300
PRESUMPTION,			
In favor of officers and inferior tribunals.....	2512	337	251
In favor of persons acting as a corporation under the general law	703	113	84
In favor of an administrator's deed.....	1355	209	153
Of sheriff's deed	1948	276	204
Of collector's deed	503	88	66
PRETENSES,			
False, cheating by	2744-2758	380	283
PREVENTION,			
Of public offenses	2773-2777	386	287
From voting, by force or threats, punished.....	2698	372	277
PRIEST,			
Of any denomination, when not to be witness.....	2393-2394	323	240
PRINTING,			
Included in writing.....	26	7	6
Controlled by writing, when in same instrument...	2400	323	240
The acts of the general assembly.....	46	10	8
For assessor, how paid for.....	182	34	26
PRISONERS,			
Escaping, punished	2667-2668	366	273
Refractory, how dealt with.....	3115	430	321
Of the United States, where they may be confined..	3103, 3119	431	319
PRISONS,			
And the discipline thereof	3103-3116	428	319
Of the state. See penitentiary.....	3117-3155	431	321
PRIVATE,			
Property, proceedings for taking, for works of in- ternal improvement	759- 785	120	90
Seals, abolished	974- 976	153	114
Sale of a decedent's property.....	1347	208	153
Property exempt from execution.....	1898-1903	270	200
PROBATE,			
Judge, present office of, to cease.....	240	44	32
Court, the county court is.....105,	138- 140	28	21
County seal, to be seal of.....	94.	19	15
And see Estates of Decedents.....	1272	201	147
PROCEEDINGS,			
Supplemental to execution.....	1953-1959	276	205
Commenced, how continued under this statute....	2514-2515	337	251
Of legislative and executive bodies, how proved....	2441-2442	329	245
Judicial, to be public.....	1593	236	174
In the courts not abated by absence of judges..1553,	1584-1586	235	173
By informations against corporations.....	2151-2175	297	221
To annul patents	2175	300	223
In mandamus	2179-2188	300	223
Not vitiated by defective bonds, affidavits, etc....	2511	337	251
PROCEDURE,			
In district and supreme court.....	1659-1993	245	181
See Actions Civil, District Court. Supreme Court.			

INDEX

485

	Section	Page	Reprint Page
PROCESS,			
Supreme court may issue all requisite.....	1558	232	171
Of supreme and district courts, how issued.....	1592	236	174
When served on an agent.....	1705	250	184
By whom served, in vacancy of sheriff's office.....	177	34	25
New, directed to new sheriff.....	179	34	26
PRODUCTION,			
Of books and papers on trial.....	2423-2426	327	243
By corporations.....	701	113	84
PROHIBITION,			
Of assignment of instrument, effect of.....	951	150	111
PROMISES,			
What must be in writing.....	2409-2413	324	241
PROMISSORY NOTES,			
See Notes and Bills.....	947- 965	149	111
PROOF,			
Of service of papers.....	1732	253	187
Of a deed for want of acknowledgment.....	1220-1221	193	142
Of claims against an estate.....	1632	209	178
Of various facts, perpetuated.....	2430	327	243
Of executive and legislative proceedings.....	2441-2442	329	244
Of judicial records.....	2437-2440	328	244
Of laws, statute and unwritten.....	2443-2444	329	245
Acts of congress concerning.....		568	422
PROPERTY,			
What exempt from taxation.....	455	75	56
Subject to taxation.....	456	76	57
By whom, and how listed and assessed.....	458- 477	77	57
Who owner, in certain cases.....	458- 459	77	57
Personal, where listed for taxation.....	460	77	58
Of persons doing business in different counties, where and how taxed.....	463	78	58
Omitted in taxation.....	491	85	64
Attached, delivered by sheriff, to successor.....	178	34	25
In trespassing animals, does not vest in distrainer..	917	143	106
Or labor, instruments for, assignable.....	949	149	111
Tender of.....	967	152	113
Ponderous, where to be tendered.....	961	151	112
Of taking, for works of internal improvement.....	759- 785	120	90
What dispositions of, void.....	1191	189	139
In relation to married women.....	1192, 1447-1455	218	161
What passes in a conveyance.....	1201	191	140
Claimant of, becoming party to action.....	1684	248	183
Public, exempt from execution.....	1895-1897	270	200
Private, exempt.....	1898-1903	270	200
Offenses against.....	2598-2611	353	263
Stolen, or embezzled, disposal of.....	3253-3258	453	337
Taken on search warrant, when restored.....	3305	461	343
Finding, and appropriating, punished.....	2617	357	265
PROSECUTING ATTORNEY,	163- 169	32	24
Provision of the constitution.....		553	412
Election and term.....	239- 240	43	32
Compensation.....	169, 214	39	25
When he may take oaths and acknowledgments....	979	154	114
To be notified of habeas corpus.....	2240	307	228
When to supply the place of county judge.....	111	23	18
PROSECUTION,			
Conspiracy for, punished.....	2757	382	285
PROTEST,			
Of notary public, is evidence.....	2414	315	242
PUBLIC,			
Bridges, penalty for fast traveling over.....	518	90	67
Offenses. See Crimes.....	2565	349	260
Lands. See Lands Public.			
Accounts. See Auditor.....	49	11	9
Instruction. See Superintendent.....	1076-1088	170	126
Property, exemption from execution.....	1895-1897	270	200
Officers. See Officers.			

	Section	Page	Reprint Page
PUBLIC,			
Worship, disturbance of, punished.....	2718-2720	375	279
Securities, the forging of, punished.....	2628	359	267
Forged, uttering as true, punished.....	2631-2632	359	268
PUBLICATION,			
Of acts of the general assembly.....	21- 24	5	4
Of the code, act in relation to.....		471	350
In the newspapers, how proved.....	2427	327	243
PUNISHMENT,			
For misdemeanors, when not otherwise prescribed.....	2676	368	274
Pardon and commutation of.....	3278-3281	457	340
And crimes. See Crimes.....	2565-2772	349	260
PURCHASER,			
Under judicial sale, not affected by reversal of judgment.....	1993	281	208
When he may maintain action for waste and trespass.....	2141-2143	296	220
Under foreclosure of mortgage.....	2076	289	215
Under proceedings against boats.....	2127	295	219
Under judicial sale, what officers not to be.....	176	33	25
Of franchise, sold under execution, his rights.....	700	112	84
Of franchise of road, bridge, ferry, etc.....	753- 755	119	89
Of land sold for taxes.....	501	87	65
His lien.....	503	88	66
His action.....	506	88	66
QUALIFICATION,			
For office.....	319- 338	56	41
No officer to enter on his duties until qualified.....	319	56	41
By the governor.....	320	56	41
Members of the general assembly.....	321	56	42
Judges of the courts.....	322	56	42
County judge and township officers, not to give bonds.....	324	56	42
Every officer except, etc., to give bond.....	324	56	42
Official bonds, to whom given.....	325	57	42
Penal sum in the respective bond.....	326	57	42
In bond of recorder and treasurer, sheriff, jus- tices and constables, to be fixed by county judge.....	327	57	42
Number of sureties required in the bonds.....	328	57	42
To be freeholders, except.....	329	57	42
Approval of bond.....	330	57	42
Oath of office generally.....	331- 332	57	43
In certain cases.....	322, 321, 320	56	41
Bond and oath, where filed.....	333	58	43
Time within which to qualify, respectively.....	334- 335	58	43
Legal effect of the bond.....	336	58	43
No bond to be held void.....	337	58	43
When an incumbent is re-elected or holds over, to qualify anew.....	338	58	43
Of commissioners abroad.....	73	16	12
Of notaries public.....	80	17	13
Of appointee, in case of a vacancy.....	440	72	54
Of superintendent of public instruction (former sta- tute).....	1077	170	126
Of school fund commissioner.....	1090	172	127
Of school district officers.....	1120, 1113	175	129
QUARRELS,			
The stirring up, punished.....	2673	367	273
QUESTIONS,			
May be submitted to court, without action.....	1843-1845	264	195
How submitted to the people by county judge.....	114- 124	23	18
On licenses for works of improvement, put to vote of the people.....	740- 745	118	88
QUIETING,			
Title, action for, may be brought by one out of possession.....	2025-2026	284	211

INDEX

487

	Section	Page	Reprint Page
QUIT,			
Notice, to, in case of tenant at will.....	1209	191	141
In forcible entry and detainer.....	2365	320	238
QUO WARRANTO,			
Information in the nature of. See Information....	2171-2175	297	222
RAM,			
At large, an estray.....	894	140	104
RAPE,			
Punished	2581	351	261
Assault with intent to commit.....	2592	352	262
Evidence under an indictment for.....	2997	414	309
REAL ACTIONS,			
See actions for the recovery of real property.....	2002-2027	283	209
REAL ESTATE,			
What the term includes.....	26	7	5
See Real Property.			
REAL PROPERTY,			
Perpetuity of estates, prohibited.....	1191	189	139
Who is deemed seized	1199	190	140
Words of inheritance, not necessary to create es- tates in fee simple	1200	191	140
What interest, a conveyance of, passes.....	1201	191	140
An interest subsequently acquired, may pass.....	1202	191	140
Adverse possession, does not prevent the conveyance of an interest.....	1203	191	140
Estates, in future, may be created.....	1204	191	140
Trust estates, how executed.....	1205	191	140
Conveyance to two, creates a tenancy in common, unless	1206	191	140
A married woman, may convey her interest.....	1207	191	140
Tenancy at will, when presumed.....	1208	191	140
What notice requisite to terminate.....	1209	191	141
The right of possession, presumed, in mortgagor of —but in the mortgagee, of personal property..	1210	191	141
The conveyance of. See Conveyance of Real Prop- erty	1211-1232	192	141
Occupying claimants, the rights of.....	1233-1244	196	144
The homestead	1245-1266	197	145
Of landlord and tenant	1267-1271	200	147
Of a decedent, when and how to be sold.....	1342-1346	208	152
The descent of.....	1394-1421	213	156
Of dower	1421, 1394-1407	213	156
Escheat	1414	215	158
The disposition of, by will.....	1277-1300	201	148
Of a decedent, how reached under a judgment against an executor	1918-1922	273	202
Of minors, the sale of.....	1500-1508	225	166
Actions for the recovery of. See Actions, etc.....	2002-2027	283	209
RECEIPTS,			
To be given by state treasurer.....	64	15	11
And disbursements of the state, to be kept by treas- urer	62	14	11
Of county, to be kept, etc.....	157, 106	22	17
By one executor, not to charge to executor.....	1442	218	160
May be demanded, on making tender.....	968	152	113
Of fees, to be given, when required.....	2549	347	258
RECEIVERS,			
May be appointed by court.....	1656	244	180
Their qualifications and powers.....	1657-1658	244	180
Of public moneys, with whom to account.....	106, 50	11	9
Of stolen property, may be tried, though principal not convicted	2624	358	266
RECEIVING,			
Stolen goods, punished	2621-2624	357	266
RECOGNIZANCE,			
See Bond, Undertaking.....	3210, 26	7	6

	Section	Page	Reprint Page
RECORD AND RECORDS,			
Of supreme court	1546	231	170
Of district court, of their correction and approval	1577-1580,	144- 145	28 22
"Record book" what, and how kept.....	145	28	22
Of the county court.....	128	26	20
Of township boundaries	220	40	30
Of superintendent of public instruction.....	1078	170	126
Of school fund commissioner.....	1047	165	122
Of notaries public	81	17	13
Of county surveyor	209	38	29
Complete, and when to be made.....	1817, 145	29	22
Of roads	564, 550	93	70
Of licenses, to marry	1468	221	163
Of articles of incorporation.....	675- 676	109	81
Forgery of	2626	358	267
Of conveyances	1211-1216	192	141
Manner of keeping	1213-1216	192	141
When evidence	1228-1230	194	143
Of sale, or mortgage, of personal property.....	1193-1196	189	139
Of married woman's separate property.....	1451	219	165
Judicial and official, authenticated	2437-2440	328	244
Acts of congress relative to authentication of records, etc.		568	422
On appeal from the district court.....	1975-1977	280	207
RECORDER,			
Of the county	150- 162	30	23
Office and duties	150	30	23
Who disqualified to be.....	162	31	24
Election and term.....	239- 240	43	32
Salary	211- 217	38	29
To keep account of fees.....	212	39	29
He is treasurer. See Treasurer.....	151	30	23
To appoint a deputy.....	411	68	51
Fees to be charged by him.....	2534-2535	342	254
RECOVERY,			
Of reason, by an insane person.....	872	136	101
Of real property, actions for. See Actions for, etc..	2002-2027	283	209
REDEMPTION,			
Of land, sold under execution and mode thereof... 1924-1946	273	202	
By the defendant.....	1926-1927	274	203
By creditors	1927-1939	274	203
Terms of redemption	1930	274	203
Mode of redeeming.....	1940-1941	275	204
The certificate, and its assignment.....	1942, 1925	274	204
May be, by parcels.....	1943	275	204
Interest in common, may be redeemed separately	1944	276	204
Right of redemption, transferable.....	1945	276	204
Of land, heretofore sold under execution.....	1950	276	204
Of land, sold under mechanic's lien.....	999-1002	157	117
Redeeming creditor's lien.....	1001	158	117
Of land sold for taxes.....	505	88	66
REFEREES,			
Appointment and powers	1650-1655	244	180
Submission of pending actions.....	1829, 1794-1796	259	191
In proceedings for partition.....	2038-2040	286	212
REFUSING,			
To serve in township office.....	225	41	31
Unlawfully to permit elector to vote.....	2702	372	277
To assist officers, punished.....	2670	367	273
REGISTER,			
Of probate, county clerk is.....	141	28	21
Of marriages, county clerk to keep.....	1476	222	163
A copy thereof is evidence.....	1476	222	163

INDEX

489

	Section	Page	Reprint Page
REGULATIONS,			
Of state library	451-	453	74
Of travel on private road, bridges and ferries, may be made	751	119	89
By census board, in relation to part first of this statute	1190	187	138
RELATIVES,			
Who to support their poor kin.....	787	124	93
RELEASE,			
Of an apprentice	1533	229	168
Of property, liable under the law relating to the sale of liquor	934	146	108
Of property, subject to a mechanic's lien.....	1008	159	118
Of boats, under process against them.....	2124	294	218
Of property, attached	1876	268	198
Of poor convicts	3268	455	389
RELIEF,			
To a plaintiff, what.....	1820	261	193
Of the poor. See Poor.....	786-	847	124
REMAINDERMAN,			
May maintain action for waste and trespass.....	2139	296	220
REMEDY,			
Civil, not merged in a public offense.....	2500	336	250
When none under this statute, how to proceed....	2515	337	251
REMOVAL,			
Of county officers, from office	397-	407	66
Causes	397	66	49
By whom	398	66	49
Proceedings	399-	407	66
Suspension of officers	404	67	50
Appointment in their place	407	67	50
Of notaries public	86	18	14
Of appointee, by appointer	441	72	54
Of natural guardian	1537-	1542	229
Of an executor, or administrator	1306	204	149
Of the poor	824,	816,	811
128	128	95	95
RENEWAL,			
Of executions, by justices.....	1287	322	148
RENT,			
May be apportioned	1267	200	147
Landlord's lien for	1270	200	147
And profits, what recovered in real actions	2008	283	210
REPAIRING ROADS. See roads	573-	594	96
REPEAL,			
Of statutes, effect of	26	6	5
Of acts, herein revised	27-	34	8
Of authority to grant licenses, for the sale of liquor.	936	146	108
REPETITION,			
Of certain offenses, how punished	2639,	2632	360
282	282	209	209
Petition	1994-	1995	282
Bond	1996	282	209
Writ, and notice	1997-	1998	282
Third person claimant	1999	282	209
Judgment	2000-	2001	282
In a justice's court	2357	319	237
REPLICATION,			
In actions	1741	254	187
In partition	2033	285	212
REPORT,			
Of the judges, to the legislature, etc.....	2515,	1588	235
Of superintendent of public instruction.....	1086	171	127
Of school fund commissioner	1107,	1092	172
Of the auditor	50	12	10
Of state treasurer	68	15	12
Of school district officers	1136	178	132
Of directors of the poor house.....	843	132	98
Of inspectors of the penitentiary.....	3123	432	322

	Section	Page	Reprint Page
REPORTER,			
Of the supreme court.....	1559	232	171
REPRESENTATION,			
In the descent of property.....	1409, 1411	214	158
REPRESENTATIVES,			
In general assembly, apportionment of.....	90	19	15
Certificate of their election.....	278	50	37
And senators, election of by districts.....	296- 300	52	39
In congress, their election.....	239- 240	43	32
REPRIEVE,			
In capital cases.....	3281	457	340
REQUISITES,			
Of pleading.....	1743, 1742, 1734	254	187
REQUISITION,			
From abroad, for fugitives from justice.....	3283	458	341
RESCUE,			
Punished.....	2664	366	272
Retaking after rescue.....	2850	396	284
RESIDENT,			
The not applicable to certain persons, in elections.....		546	406
RESIGNATION,			
By civil officers, to whom tendered.....	430	71	52
Consequences of.....	437	72	53
RESISTANCE,			
Of process, and the suppression of riots.....	2793-2802	389	289
To the execution of process, punished.....	2669	367	273
To the collector of taxes, penalty.....	494	86	65
To a crime, by whom and when it may be made....	2773-2775	386	287
RESOLUTIONS,			
Of the general assembly.....			
See Statutes.....	21- 25	5	4
RESTITUTION,			
Writ of, from supreme court.....	1992	281	208
And removal in forcible entry and detainer.....	2376	321	238
RETURN,			
Of original notice.....	1719, 1723	252	186
Of "not found".....	1731, 1725	252	187
Of elections, from county, to secretary.....	283- 284	50	38
When opened.....	286, 288	51	38
Of elections from townships.....	305, 304, 267- 268	48	35
Of county treasurer, to state treasury, when.....	513	89	67
Of marriages, to county clerk.....	1478, 1475	222	163
Of coroner, to district court.....	199	37	28
Criminal, from district court.....	148	29	22
Of poll books, in time, neglect of, punished.....	2704	373	278
False, by officers, punished.....	2677	368	274
REVENUE,			
Purposes, counties, etc., attached to others for....	98	20	15
The auditor has the supervision of.....	50- 58	11	9
What taxes are to be levied and when.....	485, 454	75	56
Property, exempt.....	455	75	56
subject.....	456	76	57
"Credit," meaning of.....	457	77	57
Property by whom, where, and in what manner to be listed.....	458- 464	77	57
By whom.....	458	77	57
Where.....	460- 464	77	58
Manner of.....	465- 477	78	58
Where, when for another.....	467	77	59
Who considered owner in certain cases.....	459	77	58
Of corporations, where, and how, and by whom....	462	78	58
When owner doing business in more than one county	463	78	58
Insurance companies.....	464	78	58
Manner of listing and assessing.....	465- 477	78	58
How often.....	465	78	58
Credits, how valued.....	466	79	59
Deduction from money and credits.....	467	79	59
Merchant, who is.....	468	79	59

INDEX

491

	Section	Page	Reprint Page
REVENUE.			
Manufacturer, who is.....	469	79	59
Assessor to leave notices.....	470	80	59
List, what to contain.....	471	80	60
Census—board.....482,	481, 472	80	60
Forms to be furnished.....	473	81	60
List to be sworn to, and oath.....	474	81	60
Neglect to list, consequence.....	478, 475	81	60
Lists filed.....	476	81	60
Assessor to value all property, except.....	477	81	61
Assessment roll, the correction thereof, and the tax list.....	478- 486	81	61
Assessor's oath.....	479	82	61
Abstract to be sent to auditor.....	480	82	61
Board of equalization.....	481	82	61
Changes in the assessment, and in the rate of state tax.....	483	82	62
County board for the correction of errors.....	484	82	62
Tax list and form thereof.....	486	82	62
It is a full authority to the collector.....	487	85	64
The collection of taxes.....	488- 513	85	64
Warrants, state, county, and road when re- ceivable.....606,	602, 489	85	64
Error in the name of the person taxed.....	491	85	64
Property omitted.....	491	85	64
Demand of taxes not necessary.....	492	86	64
Distress of goods.....	493	86	64
Resistance to treasurer.....	494	86	65
Delinquent taxes, what are.....	495	86	65
Payment of, how long received.....	497	86	65
Sale of land for taxes.....	496- 509	86	67
Notice of.....	498	87	65
Adjournment.....	499	87	65
Returns of sale by treasurer.....	500	87	65
Purchase, and manner of setting off land....	501	87	65
Non-payment by purchaser.....	502	88	66
Deed of treasurer, and force of.....	503	88	66
Redemption.....	505	88	66
Action by purchaser.....	506- 508	88	66
Decree in.....	508	89	67
Jurisdiction as in chancery.....	508	89	67
Sale of land not subject to sale.....	509	89	67
Tax on pedlers.....	510- 512	89	67
License to pedlers.....	511	89	67
Treasurer, when to pay into the state treasury....	513	89	67
His mileage.....	513	89	67
REVERSAL,			
Of judgment, purchaser under judicial sale, not af- fected by.....	1993	281	208
REVERSIONER,			
May maintain a real action.....	2025	284	211
Action for trespass and waste.....	2139	296	220
REVISED,			
Acts repealed.....	27- 34	8	6
Code, act for the publication of.....		471	350
Appointment of commissioners to draft.....		470	349
REVOCATION,			
Of powers, how made.....	1226	194	143
Of a will.....	1288	202	148
Of authority, granted by probate court.....	1275	201	147
Of ferry licenses.....	724	116	86
REWARD,			
Corrupt acceptance of, punished.....	2651	363	271
RIGHTS,			
Bill of.....		543	404
Of suffrage.....		546	406
RIOT,			
Definition, and punishment of.....	2740	379	283
And unlawful assemblies, the suppression of.....	2793-2802	389	289

	Section	Page	Reprint Page
ROADS,	514-	612	90 67
General provisions	514-	518	90 67
Authority of county court		514	90 67
Width of		515	90 67
Alteration of		516	90 67
Bridges are part of		517	90 67
Width of		517	90 67
Penalty for fast driving over		518	90 67
Manner of establishing	519-	556	90 68
Petition and notice	519-	520	90 68
Security	521-	522	91 68
First hearing and appointment of commissioner View, etc.		523	91 68
Commissioner's authority		524	91 68
Report		525	91 68
Proceedings in laying out a road		527	91 68
Marks, bearing, etc.	528-	534	91 68
Plat	530-	532	91 68
Pay of commissioners and others		533	92 69
Second hearing		534	92 69
Of the claim of damages		535	92 69
Appraisers	536-	543	92 69
Report of		538	92 69
Pay of		542	93 69
Final hearing		544	93 69
Conditions of allowance		546	93 69
Damages, refunded		548	93 70
Record of		549	93 70
Opening of	550-	552	93 70
When established by consent		553	94 70
Minors and married women their interests guarded		555	94 70
When established along or across a county line		556	94 70
Establishment and alteration of state roads	557-	566	94 70
General directions	557-	559	94 70
Report		560	94 70
Plat, etc.		561	94 71
Expenses		563	94 71
Copy of plat sent to counties		564	94 71
State roads, become county roads, except		565	95 71
Claims of damages, where made and how as- sessed and paid		566	95 71
Road taxes,			
Poll		567	95 71
Property		568	95 71
Special		569	95 71
Exemption		571	95 71
Who deemed able bodied		572	95 71
Making and repairing roads	573-	594	96 71
Map of road to be provided		573	96 71
Of roads on county lines		575	96 72
Of procuring implements		576	96 72
Of the supervisor's duties and authority	577-	601	96 72
Money, how expended	577-	578	96 72
His accounts		580	96 72
To examine roads	581-	582	96 72
Extraordinary repairs	583-	586	97 72
Of taking material		587	97 73
Taxes, how paid		588	97 73
Labor on roads		589	97 73
The supervisor's deputies	590-	592	98 73
A day's work, what is		593	98 73
Obstructions in roads, removed		594	98 73
Manner of conducting the fiscal operations, connected with the road tax	595-	612	98 73
Books to be kept by supervisor	601,	599, 595	98 73
Certificates and their classes	596-	598	98 73
Entries in the books	603,	600	99 74

INDEX

493

	Section	Page	Reprint Page
ROADS,			
Certificates receivable at the treasury, and for what	602, 604	99	74
Warrants receivable, etc.	605- 607	99	74
Treasurer's account with the road tax	608	100	74
Census board, authority of.	609	100	75
County court, further authority of.	610	100	75
Supervisors office, as heretofore existing, to cease	611	100	75
Existing road districts, to cease.	611	100	75
Towns and cities, how affected by the above provisions	612	100	75
Corporations, how taxed	462	78	58
Supervisor, his election and term.	239- 240	43	32
Road, what the term is equivalent to.	26	6	5
Licenses for constructing rail, plank, and other roads, and the regulation thereof.	735- 738	117	87
ROBBERY,			
Definition and punishment of.	2578-2580	351	261
Assault with intent to commit.	2593	352	262
ROMAN,			
Numerals, how taken.	26	8	6
ROOMS,			
For what county officers, provided.	106	22	17
RULES,			
Of state library	451- 453	74	55
For appeals, may be prescribed by supreme court. .	1557	232	171
May be adopted by supreme and district courts, to supply defects in title 18th	1589	235	173
May be adopted by those courts, generally	1590-1591	236	173
And regulations in regard to the school system, may be established by the superintendent	1084	171	127
Of evidence, existing, how far affected by this statute	2484	334	248
For actions, to be followed in other proceedings . .	2516	338	251
Prescribed for the district court, are applied to other tribunals	2516	338	251
SALARIES,			
Of state officers		550	410
Of governor	37	9	7
Of the secretary of state	42	10	8
When he acts as governor	39	9	7
Treasurer	61	14	11
Auditor	49	11	9
Superintendent of instruction	1087	171	127
Of state librarian	450	74	55
Of certain county officers	169, 211- 217	38	29
How increased	216	40	30
SALE,			
Of land for taxes	496- 509	86	65
Treasurer's deed	503	88	66
Redemption from	505	88	66
Under process of law, officers not to be purchasers. .	176	33	25
Of school lands	1071, 1070, 1048-1055	165	122
Reservation from	1071	169	125
Credit on	1054, 1048-1050	165	122
Of franchise of corporation on execution, effect of. .	700	112	84
Of franchise of road, bridge, or ferry, on execution	752- 756	119	89
Of insane person's property	869- 871	136	101
Of the homestead	1247	197	145
Of property of a decedent	1341-1356	207	152
How it may be prevented	1351	208	153
May be, by private sale	1347	208	153
Of a minor's property	1500-1508	225	166
Of property on execution	1905-1915	271	201
May be adjourned	1909	272	201
Of real property on execution, when absolute.	1924	273	202
The redemption of	1924-1946	273	202
When distinct portions may be redeemed	1943	275	204

	Section	Page	Reprint Page
SALE,			
When separate interests may be redeemed	1944	276	204
Heretofore made, redemption of	1950	276	204
"Sale book" of the district court	145	29	22
Under execution, purchaser not affected by reversal of judgment	1993	281	208
Order of, in partition	2040-2062	286	212
Of mortgaged property, by mortgagee	2091, 2077-2081	289	215
Of boats, under proceedings against boats	2126	295	219
And distribution, of copies of the code		472	351
Of trespassing animals	918	143	106
Of unwholesome provisions, punished	2725	377	281
Of intoxicating liquors, provisions relating to	924- 936	144	107
Of lottery tickets, punished	2730	378	281
SATISFACTION,			
Of judgments, how entered	1819	261	193
Of mortgages, to be entered	2093	291	216
SCHOOL DISTRICTS. See schools.			
SCHOOL FUND. See schools.			
SCHOOL FUND COMMISSIONER. See schools.			
SCHOOL OFFICERS. See schools.			
SCHOOLS,			
Their funds, officers, etc.	1044-1185	164	122
Their lands and funds	1044-1075	164	122
Provision of the constitution		555	413
Sixteenth section allotted	1044	164	122
New allotments of	1046	165	122
Settler's privileges	1060-1061, 1045	165	122
Sale of the land and terms	1071, 1070, 1048-1060	165	122
Credit, on sales	1054, 1048-1050	165	122
Waste	1053, 1055	166	123
Taxes on	1177, 1173, 1059	167	124
Selection of lands	1045, 1062-1068	168	124
Reservation from sale	1071	169	125
Pre-emptions	1061, 1074	169	125
Failure to pay interest	1075	169	126
Default in relation to school moneys	1172	184	136
Superintendent of public instruction	1076-1088	170	126
His election, and term	1076, 239- 240	43	32
His salary	1087	171	127
His qualification	1077	170	126
And see qualification for office.			
His duties	1078-1088	170	126
Apportionment of funds	1080	170	126
He has a general supervision of schools	1081	171	126
Of books and instructions	1082-1083	171	126
May establish rules and regulations	1084	171	127
His report	1088, 1086	171	127
Fund commissioner, his election and term	1089	172	127
His qualification for office	1090	172	127
Vacancy, how filled	1091	172	127
His record	1047	165	122
Of his giving additional security	1058	167	124
His report	1107, 1092-1093	172	127
His accounts, and receipts	1094-1096	172	128
To distribute forms	1097	173	128
Apportionment of money	1098-1099	173	128
Of loans, and the security	1100-1104	173	128
May administer oaths	1104	173	128
To form districts	1105-1106	174	129
May unite districts	1165-1167	183	136
His compensation	1174-1177	184	136
Of school districts	1108-1118	174	129
How formed	1105-1106	174	129
May be united	1165-1167	183	136
Are bodies corporate	1108	174	129
Organization of new	1167, 1109-1113	174	129
Meetings of	1150, 1114	175	130

	Section	Page	Reprint Page
SCHOOLS,			
Powers of	1115-1118	175	130
Of levying taxes	1177, 1173, 1115-1116	175	130
Powers, in relation to schools	1115, 1117	175	130
Disputes, concerning	1155	182	134
Boundaries of, changed, and the effect.....	1170-1171	183	136
Election, powers and duties of district officers.....	1119-1151	176	131
Officers, what and when, elected	1112, 1119	176	131
Board of directors	1119	176	131
Their qualification	1113, 1120	177	131
Meetings of the board	1121	177	131
To employ teachers	1124	177	131
The president, and his duties.....	1132, 1125, 1122-1123	177	131
The secretary, and his duties	1126-1137	177	131
List of pupils	1127	177	131
His accounts	1128	177	131
Notice of meetings	1129	178	131
As to taxes	1130-1135	178	132
His report	1136-1137	178	132
Treasurer, and his duties	1138-1141	179	133
The board to make contracts	1142	180	133
To take bonds of officers	1144	180	133
Are judges of election	1145	180	133
Examine accounts	1146	180	133
To visit schools	1147	180	134
To examine teachers	1148	181	134
To audit claims	1149	181	134
To call special meetings of district	1150	181	134
Vacancies	1169, 1168, 1151	181	134
Miscellaneous subjects			
County tax, for schools	1152-1154	181	134
Suits, by or against districts	1156	182	135
Fines and forfeitures	1157-1158	182	135
What funds kept separate	1159	182	135
Colored persons	1160	182	135
Transfer of books	1164, 1161	182	135
Normal schools			
Three districts of the state	1179-1185	184	137
Trustees	1179	184	137
Their report	1185, 1180	185	137
Annual meetings	1183	185	137
Annual meetings	1184	185	137
Appropriation for	1182	185	137
SCIRE FACIAS,			
On judgment after five years	2176-2178	300	223
Against bail	1887	269	199
In cases of illegitimacy	3240-3242	451	336
	856	134	100
SEAL,			
What the term includes	26	7	6
Of counties, what, and is the seal of the county court	94	19	15
Of the county commissioners remains, until.....	94	20	15
Former, of probate continues, until	94	20	15
Of commissioners abroad, the force of.....	73- 74	16	12
Of notary public	83	17	14
Of the district court, how furnished	142, 45	10	8
Of the state		552	411
Private abolished	974- 976	153	114
SEARCH-WARRANTS,			
And proceedings thereon	3291-3309	461	342
Against a gambling house	2722	376	280
Maliciously sued out	3308	461	343
Searching a person charged with a felony	3309	461	343
SECRETARY,			
Of state	42- 48	10	8
His election and term	239- 240	43	32
Of school districts	1126-1137	177	131
SECTION,			
Sixteen, allotted	1044	164	122

	Section	Page	Reprint Page
SECURITY,			
Additional, on official bonds, when and by whom required	418— 428	69	51
On petition for roads	521	91	68
Collateral on a mechanic's lien	1009	159	118
Additional, when to be given by fund commissioner	1058	167	124
Required on loans of school money	1100—1104	173	128
Given to sustain a will	1339	207	152
To the public, actions on, by whom to be brought ..	1693	249	183
On attachment	1853	265	196
General provision in relation to	2505	336	250
Defective, not to vitiate proceedings	2511	337	251
For fees	2529	341	253
To keep the peace	2778—2789	387	288
On appeal from justice, in criminal cases	3359	468	348
Public, forgery of, punished	2628	359	267
Forged, uttering as true	2631	359	268
SEDUCTION,			
Who may sue for	1696—1697	249	184
Punished	2586	352	262
SEIZIN,			
Of lands, who has	1199	190	140
SELECTION,			
Of school lands,	1045, 1062—1068	168	124
Of the homestead	1254—1255	198	145
SENATORS,			
In the general assembly,			
Apportionment of	90	19	15
Election	239— 240	43	32
Certificate of election	278	50	37
Election of, by districts	296— 300	52	39
SEPARATE,			
Trials, when allowed in civil actions	1768	257	189
In criminal actions	2992	414	308
Property of a married woman	1447—1452	218	161
Contracts and debts of same	1453—1454	219	161
SERVICE,			
Of original notice, in actions	1718—1732	252	186
In actions in justice's courts	2276	311	231
Of process on an agent	2004, 1705	250	184
Of papers, how proved	2428, 1739	253	187
And notices, general provisions	2428, 2493—2499	335	249
Of writ in habeas corpus	2224—2229	305	227
SESSIONS,			
Of the county court, what matters to be heard in ..	125— 127	25	19
SET-OFF,			
In actions	1802, 1798, 1740	254	187
In a justice's court	2373, 2295, 2285	312	232
Of mutual judgments	1923	273	202
In a justice's court	2309—2319	314	233
Of improvements in real actions	2004	283	210
SETTING,			
Aside an indictment	2943—2949	408	304
Judgments in justice's courts	2296	313	233
Fire, with intent to burn, punished	2603	354	264
SETTLEMENTS,			
Legal	808— 818	127	94
SETTLERS,			
On the public lands, when not liable as trespassers ..	2144	296	220
On the school land, their privileges	1045	165	122
SEVENTH,			
Day, keepers of, protected	2504	336	250
SEVERANCE,			
Of causes of action, in the district court	1751	255	188
In a justice's court	2289	313	232
SHARES,			
In corporations, their transfer	692	111	83

INDEX

497

	Section	Page	Reprint Page
SIGNATURES,			
Of public officers, presumed genuine	2436	328	244
And seals of commissioners abroad, force of	74	16	13
Fictitious, the affixing, punished	2637	361	269
SIGNING,			
Of the records of the district court.....	1577-1580	234	172
SHERIFF			
To whom the term may be extended	170- 182	33	25
His election and term	1883, 26	7	6
His disobedience of process, a contempt	239- 240	43	32
Is a conservator of the peace	171	33	25
When may summon the posse	173	33	25
Not to act as attorney	173	33	25
Not to purchase at his sales	176	33	25
When out of office—how process is served	177	34	25
Newly elected, new process directed to	179	34	26
Is assessor of the county, and his duty as such....	180- 182	34	26
His deputies. See deputies	411- 417	68	51
And see assessor and revenue.			
When coroner performs his duty	183	34	26
When none, nor, etc., clerk appoints	185	35	26
His duty in relation to taking property for works of internal improvement	763- 772	121	90
What one to attend supreme court	1547	231	170
Suspension of, by the judges	408- 410	68	50
May demand indemnity in levying on doubtful prop- erty	1916	273	202
His deed implies regularity	1948	276	204
His duty in relation to jails	3104-3106	429	319
May act in a justice's court	2385	322	239
SHOWS,			
And exhibitions, authority of towns, in relation to..	672	108	81
SOLEMNIZE,			
Marriage, who authorized to	1472	222	163
SPECIAL,			
Elections, and vacancies	429- 444	70	52
Administrator	1320-1324	205	150
Constables in district court	174	33	25
Tax, for bridges	569	95	71
Terms of the supreme court	1545	231	170
Of the district court	1569-1571	234	172
Demurrers, abolished	1754	255	188
Verdict	1786-1787	258	191
SPECIFIC,			
Performance by an executor, may be decreed.....	1435-1437	217	160
Legacies	1381	211	155
STALLION,			
At large, an estray	894	140	104
STAMPS,			
And marks, altering, counterfeiting, etc., punished	2749-2751	381	284
STANDARDS,			
State, of weights and measures	937	147	109
County, of same. See weights and measures.....	941	148	110
STATE,			
The sovereignty and jurisdiction of	1- 3	2	2
Boundaries of	1	2	2
Monuments of, injury to, punished	2690	370	276
What the term state includes	26	7	6
Admission into the union		538	400
Constitution of		543	404
Acceptance by, of propositions by congress.....		560	417
Officers, certain ones	37- 87	9	7
Contesting the election of	368- 396	62	46
Roads, the establishment of	557- 566	94	70
Library	445- 453	73	55
University and its funds	1011-1043	159	118
Actions in the name of, and on instruments here- tofore given	97	20	15

	Section	Page	Reprint Page
STATEMENT,			
Of receipts and expenditures of the revenue and re- sources of the state, to be made	50	12	9
Of the counties	106	22	17
Of property for taxation. See list	471	80	60
Of a defendant under a criminal charge.....	2861-2864	397	296
STATUTES. See acts			
Formalities of their passage	16- 26	4	4
To be deposited with the secretary	16- 18	4	4
Printing and distribution of, generally.....	19	5	4
Of this statute	25, 19, 46	10	8
When they take effect, generally	471	350	350
Presumption in relation to	20- 24	5	4
Secretary's certificate	22	5	4
When this statute to take effect	23- 24	5	5
Presumption in relation to		472	351
Secretary's certificate		472	351
Distribution and sale		472	351
Construction of, and the meaning of words therein.	26	6	5
Repeal of, effect	26	6	5
The acts herein revised	27- 36	8	6
Part first of this statute, authority of census board in relation to	1190	187	138
Title eighteenth, of this statute, defects in may be supplied by rules of court	1589	235	173
This, to be liberally construed	2503	336	250
Statute laws, how proved	2443	329	245
And records, acts of congress in relation to their authentication		568	422
Of fraud, provisions in relation to written evidence.	2409-2413	324	241
Of limitations. See limitations	1659	245	181
STEALING,			
And receiving stolen goods, punished	2612-2625	356	265
STOCKS,			
Shares, etc., of a defendant, in companies, how levied upon	1892	270	199
Provision concerning investments in, where ordered by court	2507-2510	337	250
STOCKHOLDERS,			
Of corporations, how taxed	462	78	58
Whose property is taken for corporate liability, en- titled to indemnity	698	112	84
STOLEN,			
Goods, receiving, punished	1621-1624	357	177
Property, disposal of	3253-3258	453	337
STRAYS,			
See lost goods, etc.....	876- 894	137	102
STRUCK JURY,			
When it may be	1776, 765	121	90
STYLE,			
Of legal process	2820	392	292
Official, of county judge	105	21	16
SUB-CONTRACTOR,			
His rights in relation to mechanic's lien.....	.983, 1005-1007	158	117
SUBMISSION,			
Of questions to the people, by county judge	114- 124	23	18
To arbitration	2098-2115	292	216
Of cause of action to the court, without action	1843-1845	264	195
SUBORNATION,			
Of perjury, punished	2645	362	270
SUBPOENAS,			
Their issuance and provisions relating thereto.....	2415-2420	325	242
In criminal cases, and service	3168-3176	441	328
SUBSCRIBING,			
Witness, to an instrument, provision regarding....	2403	324	240
SUBSTITUTION,			
Of new defendants, in actions	1685-1686	248	183
Of the landlord, in a real action	2003	383	210

INDEX

499

	Section	Page	Reprint Page
SUCCESSOR,			
Of justice, how determine	2380	321	239
Official papers to be delivered to, or to clerk..	2377-2378	321	238
May issue execution	2379	321	239
May renew execution	2387	322	239
SUFFRAGE,			
Right of, constitution		546	406
Offenses against, punished	2691-2704	371	276
SUIT,			
Governor's authority in relation to.....	40	9	7
By surety against his principal, on permission of creditor	972	153	113
By, or against school districts	1156	182	135
The stirring up, punished	2673	367	273
See actions civil.			
SUNDAY. See Lord's Day.			
SUPERINTENDENT,			
Of public instruction, his election and term..1076,	239- 240	43	33
His qualification for office	1077, 319	56	41
See schools	1076-1088	170	126
SUPERSEDEAS,			
On an appeal from the district court.....	1982-1985	280	208
SUPERVISOR OF ROADS,			
Election and term	239- 240	43	32
The office as heretofore constituted, to cease	611	100	75
His compensation	2547	347	257
His powers and duties. See roads.....	577- 594	96	72
SUPPLEMENTAL,			
Petition, new parties made by	1683	248	183
Pleadings	1749	255	188
SUPPRESSION,			
Of a last will, fraudulently, punished	2746	381	283
Of riots and unlawful assemblies	2793-2802	389	289
SUPREME COURT,			
Provision of the constitution		553	411
Its organization, etc.....	1543-1563	231	170
The judges, their election and term		553	411
When disqualified to act	1595	236	174
Its terms, and special terms	1544-1545	231	170
Record	1546	231	170
What sheriff to attend	1547	231	170
Expenses	1548	231	170
Appeals and provisions relating thereto			
See appeals			
Decisions in vacations	1550	231	170
Quorum, and division in opinion	1551-1552	232	170
Absence of judges	1553-1554	232	171
Jurisdiction	1555-1557	232	171
Provision of the constitution		553	412
May issue all requisite process	1558	232	171
Opinions and reporter	1559-1562	232	171
Supervisory authority	1563	233	171
See appeals, courts, judges, procedure.			
SURETIES,	970- 973	153	113
When surety may require the creditor to sue the principal	970	153	113
Consequence of a refusal	971	153	113
Suit by surety	972	153	113
To whom these provisions extend	973	153	114
What required, on official bonds	328- 329	57	42
On official bonds, how discharged	418- 428	69	51
In legal proceedings, not discharged by the non- attendance of the judge	1585	235	173
Indorsers, etc., made parties together	681- 683	248	82
On appeal bonds, judgment against in supreme court	1986	281	208
On appeal bonds, from justices, judgment against..	2347	318	236

	Section	Page	Reprint Page
SURRENDER,			
Of defendant, by bail	3236-3238	450	335
SURVEYOR,			
Of the county, his duties, record, etc.....	203- 210	37	28
His election and term	239- 240	43	32
His fees	2546	346	257
SURVIVORSHIP,			
Of actions	2502, 1699	249	184
SUSPENSION,			
Of clerks and sheriffs by the judges of the district court	408- 410	68	50
Of an officer, accused of mal-administration	404	67	50
TALLY-LISTS,			
At elections	266	48	35
TAXES,			
See revenue	454- 513	75	56
What and when to be levied	485, 454	75	56
Property exempt from	455	75	56
Subject to	456	76	57
By whom, where and in what manner property is listed for taxation.....	458- 464	77	57
Corporations	462	78	58
Insurance companies	464	78	58
The manner of listing and assessing.....	465- 477	78	58
Merchant, who is.....	468	79	59
Manufacturer, who is.....	469	79	59
Of listing property for taxation.....	471- 477	80	60
Who to assess property for taxation.....	477	81	61
The assessment roll	478- 479	81	61
Board of equalization	481- 483	82	61
May change rate of tax.....	454, 482	82	61
The tax list	486- 487	83	62
Collection of taxes.....	488- 513	85	64
Warrants receivable	606, 602, 489	85	64
The citizen's duty to pay without demand.....	492	86	64
Distress on property	493	86	64
Sale of land for.....	496- 509	86	65
Treasurer's deed and redemption.....	496- 509	86	65
Purchaser's lien and action.....	503, 506	88	66
Tax on pedlers, and their license.....	510- 512	89	67
Different accounts of, to be kept by county treasurer	156	31	23
When delinquent, and what interest they draw.....	495	86	65
In school districts	1130-1135, 1115	175	130
TEACHERS,			
Of schools, by whom employed.....	1124	177	131
TELEGRAPHS,			
Authority to erect, and regulations of.....	780- 785	123	92
TENANCY,			
In common, how created.....	1206	191	140
TENANT,			
And landlord	1267-1271	200	147
Holding over	1268	200	147
At will, when presumed.....	1208	191	140
Notice to quit	1209	191	141
Real action may be brought against.....	2002	283	209
In common, bringing action v. his co-tenant.....	2027	285	211
TENDER,			
If not accepted	966- 969	152	113
Offer, in writing not accepted, equivalent to.....	966	152	113
Receipt may be demanded on making.....	967	152	113
Receipt may be demanded on making.....	968	152	113
Objections to the subject of tender.....	969	152	113
Where made, when the place is not expressed....	960- 962	151	112
Effect of	963	151	112
TERMS,			
Of office, of civil officers.....	240	43	32
Of the governor, when it commences.....	38	9	7
Of secretary, treasurer, and auditor, when they commence	334	58	43

INDEX

501

	Section	Page	Reprint Page
TERMS,			
Of supreme court	1544-1545	231	170
Of district court	1566-1572	233	172
When no time is fixed.....	1567-1568	233	172
TESTAMENTARY,			
Guardian may be appointed	1492	224	165
TESTIMONY,			
Before a coroner, how taken.....	192	36	27
Return of to district court.....	199	37	28
When omitted on trial.....	1778	258	190
Of an accomplice	2998	414	309
Of a female enticed.....	2999	414	309
Of witnesses in criminal cases, taken conditionally.	3177-3192	442	329
How procured	2415-2426	325	242
Manner of perpetuating	2467-2484	332	247
THREATS,			
With intent to extort, punished.....	2590	352	262
TIE VOTE,			
How tried in county canvass.....	281- 282	50	37
For township office	316	55	41
TIMBER,			
When taken for repair of roads.....	587	97	73
When trees not to be cut	587	97	73
TIME,			
Within which to qualify for office.....	334- 335	58	43
Allowed for appearance in justice's court.....	2279	312	231
Computation of	2513	337	251
TITLE,			
A plaintiff must recover on his own.....	2020	284	211
Action may be brought, for quieting.....	2025-2026	284	211
When pleaded in a justice's court.....	2288	312	232
Not in question in forcible entry and detainer.....	2371	320	238
Color of, what is.....	1239-1240	196	144
TOLLS,			
At ferries	720- 723, 713	115	85
At bridges	734, 732, 728- 729	116	87
On roads	758, 736- 738	117	87
Taking unlawful, penalty	748	119	88
Evading, by travelers.....	750	119	89
TON, See Tun.			
TOOLS,			
For counterfeiting, having in possession, punished..	2633	360	268
TOWNS,			
What the term includes	26	7	6
Plats of, the laying out.....	632	103	77
Self incorporated, and what powers they may assume	649- 661	105	78
How incorporated into cities, and their powers....	662- 672	105	79
And cities, their authority in relation to roads....	612	100	75
Authority heretofore given to grant licenses, repealed	936	146	108
TOWNSHIPS,			
And their officers	218- 236	40	30
Counties to be divided into.....	219	40	30
Officers	221	40	30
Trustees and their authority.....	222	40	30
Are overseers of the poor, and fence viewers...	224	41	30
Refusal to serve	225	41	31
Clerk	226- 228	41	31
Duties as to justices of the peace.....	228	41	31
Constables	229- 230	41	31
New, organization of, and first election in.....	231- 236	41	31
Of subsequent meetings.....	236	42	31
Officers, their compensation	2548	347	258
Plats of to be obtained.....	113	23	18
To be kept by assessor.....	181	34	26
Clerk, to record marks of animals.....	921- 923	144	107

	Section	Page	Reprint Page
TRANSCRIPT,			
And record on appeal from the district court.....	1975-1977	280	207
From a justice, filed in the district court office.....	2290-2305	313	232
From the county court, filed in the district court office	135	27	21
From the court for the trial of contested elections..	377, 365	62	46
TRANSFER,			
Of personal property.....	1193-1196	189	139
What, to be recorded.....	1193	189	139
Of shares in corporations.....	692	111	83
TRAVEL,			
On private roads, bridges and ferries, may be reg- ulated	751	119	89
Fast, over public bridges, may be prohibited.....	518	90	67
Of members of the general assembly.....	11	3	3
TREASON,			
Provision of the constitution.....		545	405
Punished	2565-2567	349	260
Misprision of	2566	349	260
Evidence of	2996	414	308
TREASURER,			
Of state	61- 70	14	11
His election and term.....	239- 240	43	32
His salary	61	14	11
His duty in relation to state warrants re- ceived	67, 66, 63	14	11
To give duplicate receipts.....	64	15	11
To pay out on warrants only, and in what order	65	15	12
To procure standards of weights and measures.	937	147	109
Of the county—			
The recorder is	151	30	23
To pay out on warrants only.....	152	30	23
His duty in relation to warrants received.. 160,	153- 155	30	23
What accounts he is to keep.....	161, 156	31	23
His accounts and settlements.....	157- 158	31	23
Warrants to be canceled.....	159	31	24
Disqualification for the office.....	162	31	24
His duty in the collection of taxes.....	488	85	64
To attend at his office.....	488	85	64
Disposition of warrants paid in.....	490	85	64
His deed on the sale of land for taxes.....	503	88	66
Payments into the state treasury.....	513	89	67
His account with the road taxes.....	607- 608	100	74
Of school districts. See schools.....	1138-1141	179	133
TRESPASS,			
Waste, and nuisance.....	2131-2144	296	219
Damage for wilful.....	2137	296	220
Action for may be maintained by remainderman and reversioner	2139-2140	296	220
By purchaser at a judicial sale..... 1949,	2141-2143	296	220
Settlers on the public lands, when liable for.....	2144	296	220
By entering on another's land to remove improve- ments, etc.	907	142	105
By entering to survey, etc.....	778	123	91
On property and malicious mischief, punished.....	2678-2690	368	274
Trespassing animals, proceedings in relation to....	913- 919	143	106
TRIAL,			
And its incidents in civil cases.....	1761-1823	256	189
The calendar and apportionment of causes.....	1761-1762	256	189
Continuance	1756, 1764-1769	256	189
Separate trials	1768	257	189
By the court	1823, 1793, 1772	257	190
Jury demanded and selected.....	1772-1776	257	190
Struck jury	1776	257	190
Nonsuits	1801-1804	260	192
Bill of exceptions	1805-1807	260	192
Arrest of judgment and new trials.....	1808-1810	260	192
In actions on penal bonds.....	1818	261	193

INDEX

503

	Section	Page	Reprint Page
TRIAL,			
Complete record	1817	261	193
In criminal actions.....	2991-3020	414	308
New trial in.....	3050-3053	421	314
In the county court, how.....	130	26	20
By jury, when. See county court. Jury.....	137	27	21
In a justice's court.....	2290-2305	313	232
In criminal cases	3331-3350	465	346
TRIBUNALS,			
Inferior, presumption in favor of.....	2512	337	251
TRUST,			
Estates, how created.....	1205	191	140
Deed, treated as a mortgage.....	2096	291	216
TRUSTEES,			
Of townships	221- 222	40	30
Their election	239- 240	43	32
Are judges of election.....	246	45	33
Or clerk, to be notified when a justice's office is declared vacant	426	70	52
Their authority in relation to the poor.....	819	129	96
Are fence viewers and overseers of the poor...	224	41	30
Are appraisers of damage by trespassing animals	916	143	106
Their compensation	2548	347	258
Of the University. See University.....	1011	159	118
Of normal schools. See Normal Schools.....	1179	184	137
Appointed in proceedings by information, and their powers and duties.....	2166-2172	299	222
TUN,			
Defined in quantity.....	938	147	109
UNDERSTANDING,			
Of the parties in contracts.....	2401	323	240
UNDERTAKING,			
Meaning of the term.....	3210, 26	7	6
Of bail. See Bail.			
UNION,			
Admission into the, act of.....		538	400
Of school districts	1165-1167	183	136
UNITED STATES,			
Constitution		496	368
UNIVERSITY,			
And its funds	1011-1043	159	118
Provision of the constitution.....		556	414
UNLAWFUL,			
Toll, taking at ferries, bridges, roads, etc.....	748	119	88
Assemblies, punished	2739	379	282
Dispersed	2797	389	290
UNORGANIZED COUNTIES,	98- 102	20	15
The annexation of.....	98	20	15
Deemed part of the county to which annexed.....	98	20	15
First election in....	244, 99	20	16
Organization of	99	20	16
Officers to be elected in.....	99	20	16
Townships in	99	20	16
Who to name places, and appoint judges of election.	100	20	16
Justices and constables in.....	100	20	16
Electors not to vote for certain officers.....	102	21	16
UNWRITTEN,			
Laws of other states, how proved.....	2444	329	245
USE AND OCCUPATION,			
What recovery for, in action for land.....	2008	283	210
USER,			
See Non-user	776, 693	111	83
UTTERING,			
Forged instruments, and coin as genuine...2635, 2631, 2627		359	267

	Section	Page	Reprint Page
VACANCY,			
And special elections	429- 444	70	52
What creates	429	70	52
Resignations to whom tendered.....	430	71	52
When and how filled	431- 436	71	53
By appointment	436- 441	72	53
By special elections	443, 435	71	54
Appointments by whom and how made.....	439, 436	72	53
Voluntary vacation, consequences	437- 438	72	53
Qualification of appointee	440	72	54
Removal of appointee.....	441	72	54
Of taking possession of certain offices, when vacant.	444	73	54
Provision of the constitution.....		551	410
In the office of county judge.....	111	23	18
Of notary public	85	18	14
Of judges of election.....	247	45	33
Of school-fund commissioner.....	1091	172	127
Of school district officers	1168-1169, 1151	181	134
VACATION,			
Of a town or village plat.....	643	104	78
Of letters patent, by information.....	2175	300	223
Of an injunction	2206, 2198-2200	302	224
VAGRANTS,			
And proceedings against them.....	3310-3321	462	344
VALUATION,			
Of property in taxation, who makes.....	477	81	61
VALUE,			
Measure of, in larceny.....	2625	358	266
Of lost goods and estrays, how computed.....	891	139	104
VENDOR,			
Of land, may treat the contract as a mortgage and foreclose	2094-2095	291	216
VENUE,			
Change of, in civil actions.....	1706-1713	250	185
In criminal cases	3270-3277	456	339
Prosecuting attorney's duty in case of.....	163	32	24
Of actions in the district courts.....	1701-1705	249	184
In a justice's court	2263-2268	310	230
VERBAL,			
Wills, when allowed	1279-1280	201	148
VERDICT,			
Of trial jury	1785-1790	258	191
In criminal cases	3029-3045	418	312
In a justice's court.....	2305	314	233
Not to be set aside.....	2304	314	233
When it exceeds the jurisdiction of the justice.	2307-2308	314	233
On a coroner's inquest, and when secret.....	193- 194	36	27
VIEW,			
By a jury	1779	258	190
In criminal cases	3009	416	310
To lay out road.....	523- 534	91	68
VILLAGE PLATS,			
May be laid out by the proprietor of land.....	632- 648	103	77
Manner of survey	632	103	77
Map, acknowledgment, and recording.....	633	103	77
What is a dedication to the public.....	634- 636	103	77
Additions to, vote on, returns, and order of court..	637	103	77
Additions to, incorporated town or city.....	638- 641	103	77
Vacation of, proceedings for.....	642	104	78
Villages, how incorporated and their powers.....	643- 647	104	78
	649- 672	105	78
VISITATION,			
Of poor house	842	132	98
Of jails	3110-3114	429	320
Of the penitentiary	3123	432	322
VOID,			
Dispositions of property in perpetuity, are.....	1191	189	139

INDEX

505

	Section	Page	Reprint Page
VOTE AND VOTER,			
Tie vote how tried in the county canvass.....	281-282	50	37
For township office	316	55	41
Vote of the people on questions of license.....	740-745	118	88
Concerning poor house	828	130	97
Voter challenged	259	46	34
Voting, manner of, at elections.....	257	46	34
Public offenses relating to voting and voters, punished	2691-2704	371	276
WANT,			
Of legal organization as a corporation, no defense to either party	704	113	84
Or failure of consideration in written contract, may be shown	976	153	114
WARNING,			
To depart, to prevent legal settlement.....	812	128	95
WARRANT,			
State auditor to draw.....	50	12	9
How divided	51	12	10
Treasurer's memorandum of.....	63	14	11
Record of	66	15	12
To certify those canceled.....	67	15	12
How disposed of, when paid into county treasury	489-490	85	64
County—			
Drawn by judge and sealed.....	106	21	16
How numbered	106	22	17
Memorandum of	107	22	17
Record of issuance	106	22	17
And generally. See County Judge.....	106	21	16
Treasurer's duty as to.....	153	30	23
How divided	154	30	23
Canceled	159	31	24
Returned by treasurer, how treated.....	159	31	24
Receivable for taxes.....	489	85	64
Paid into treasury, what entered on them.....	490	85	64
When canceled, not to be issued.....	490	85	64
Road, receivable for taxes.....	99, 602-607, 489	85	64
"Warrant book" kept by county treasurer.....	155	30	23
Legal—			
Of arrest	2827-2829	393	293
Under writ of habeas corpus.....	2230-2233	306	227
Search, and proceedings thereon.....	3291-3309	459	342
Of justice in criminal cases.....	3327-3328	464	346
Of commitment for contempt.....	1605	238	175
In actions against boats.....	2121	294	218
Of coroner	196-198, 187	35	26
To stand for complaint, and what to contain...	198	37	28
WASTE,			
Trespass and nuisance	2131-2144	295	219
Who liable for	2136	296	219
Forfeiture and damages	2134-2135	295	219
On school lands	1053, 1055	166	123
By occupying claimant	1241	197	144
WEIGHTS AND MEASURES,			
Treasurer of state to procure standards.....	937-942	147	109
The "hundred weight".....	937	147	109
The perch	938	147	109
The perch	939	147	109
Contracts, how construed in relation to.....	940	147	109
The bushel excepted.....	940	147	109
County, standards	941	148	110
Inspection of	942	148	110
False, using with intent to defraud, punished.....	2747-2748	381	284
WIDOW,			
And children, allowance to, from decedent's estate.....	1371	210	154
See Dower. Homestead. Estates of decedents.			
WIDTH,			
Of roads and bridges.....	517, 515	90	67

	Section	Page	Reprint Page
WIFE,			
As a witness	2391-2392	322	240
See husband and wife	1447-1462	218	161
Marriage	1463-1479	221	162
Married woman. And abandonment.			
WILL,			
The term includes codicil	26	7	6
Who may make	1277	201	148
Verbal wills	1279	201	148
How executed	1281	201	148
Property, subsequently acquired, may be devised...	1278	201	148
Witnesses take no benefit, unless	1282-1283	202	148
Copy of, when evidence	1300	203	149
When and how far a will may control the admin- istration of the estate	1326	205	151
Sustained, by giving security	1339	207	152
The fraudulent suppression of, punished	2746	381	283
See Estates of Decedents	1277-1300	201	148
WISCONSIN,			
Organic law of		516	383
WITNESS,			
Who competent	2388	322	239
Interest	2390	322	240
Husband and wife	2391-2392	322	240
Attorneys, counselors, physicians, surgeons and min- isters of the gospel, when not to be witnesses ..	2393-2394	323	240
Public officers	2395	323	240
Civil liability	2396	323	240
Exposure to ignominy, and criminal liability	2397	323	240
Previous conviction	2398	323	240
The judge may be	2408	324	241
Their fees	2417	326	242
Compelling the attendance in criminal cases	3168-3176	441	328
In civil cases	2415-2422	325	242
Examination of conditionally	3177-3192	442	329
On commission	3193-3208	444	330
To wills	1282	202	148
WOMAN, married. See Married Woman.			
WORDS,			
Definition of, as used in the statutes	26	6	5
WORKS,			
Of internal improvement, licenses for, how obtained, etc.	712- 758	114	85
Of taking private property, for	759- 785	120	90
subject to mechanics' liens	1010	159	118
Work on roads	588- 589	97	73
WORSHIPPING,			
Congregations, the disturbance of, punished	2718-2720	375	279
WRITS,			
And process, how to be issued	1592	236	174
Style of		553	412
From the supreme court	1558	232	171
Of error, coram nobis	1960-1964	278	206
In criminal cases, when allowed, and how taken	3088-3096	427	318
Judgment upon	3097-3102	428	319
To district court, in criminal case appealed from justice	3366-3367	469	349
Bail upon	3230-3231	449	334
To a justice of the peace	2349-2356	318	236
Of certiorari	1965-1972	278	206
Appeal lies from a decision of district court, on	1972	279	207
Of replevin	1997-1998	282	209
Of possession	2009	283	210
Of mandamus	2184-2185	301	223
Of injunction	2196	302	224
Of habeas corpus and form	2213-2255	304	226

INDEX

507

	Section	Page	Reprint Page
WRITTEN,			
Contracts import a consideration	975	153	114
Evidence, in what cases necessary	2409-2413	324	241
“WRITING,”			
And “written,” what the terms include	26	7	6
Writing controls printing, when in the same instru- ment	2400	323	240
Hand-writing may be proved by comparison	2404	324	241
WRITINGS,			
Of a person deceased when evidence.....	2405	324	241
YEAR,			
To what the term is equivalent	26	7	6
Years, in which the respective officers are to be chosen	240	43	32

ERRORS.

At the top of page 20 in § 94, for "court its capacities," read "court in its capacities."
On page 47, § 262, is printed 162.

[On page 156, § 1394,	"	1294.]
" 213, § 1394,	"	1294.
" 261, § 1822,	"	1222.
" 281, § 1989,	"	1889.
" 393, § 2823,	"	5823.

A few other errors in the numbers of sections, occur in a small number of the impressions.

NOTE.

The time prescribed by the act, for the printing and publication of the Code, has required the utmost industry in order to bring the work out. The making and printing of the index came so late in the period allowed, that no time was permitted for a re-examination of the references. It is hoped that this fact will afford an apology for such errors and omissions as may be discovered in them or in the matter.

The reference to the sections, in the index, has required much additional labor, but it was undertaken in the belief that that plan would make the book more convenient for common use.

When two numbers of sections are connected by a dash, it indicates that the subject matter runs through the intermediate sections and includes both the numbers given, and in such case the page given is that on which the first of the two sections begins—except in a few instances where the section is long. When the numbers of sections are not connected as above, the page refers to that number standing next to the column of pages, and which is the number in which the subject matter is either first or principally treated. The other numbers are those in which also the subject is touched upon, but without immediate connection.