Iowa Laws, statutes, etc. Index

THE CODE:

CONTAINING ALL THE STATUTES

OF THE

STATE OF IOWA,

OF A

GENERAL NATURE,

PASSED AT THE ADJOURNED SESSION

OF THE

FOURTEENTH GENERAL ASSEMBLY.

PUBLISHED BY AUTHORITY OF THE STATE.

vol 1

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ANALYSIS.

PART FIRST.

PUBLIC LAW.

TITLE I.

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

		Sections
CHAPTER 1.	The Sovereignty and Jurisdiction of the State	1-4
CHAPTER 2.	The General Assembly	5-27
CHAPTER 3.	The Statutes	28-45
CHAPTER 4.	The Code and its Operation	46-54

TITLE II.

OF THE EXECUTIVE DEPARTMENT.

CHAPTER 1.	The Governor	55-60
CHAPTER 2.	The Secretary of State	61-65
CHAPTER 3.	The Auditor of State	66-74
CHAPTER 4.	The Treasurer of State	75-82
CHAPTER 5.	The State Land Office and Register thereof	83-93
CHAPTER 6.	The State Printer	94-105
CHAPTER 7.	The State Binder	106-110
CHAPTER 8.	The Executive Council	111-120
CHAPTER 9.	Duties assigned to two or more officers jointly, and General Regulations	121-132

TITLE III.

OF THE JUDICIAL DEPARTMENT.

CHAPTER 1.	The Organization of the Supreme Court	133-145
CHAPTER 2.	The Clerk of the Supreme Court	146-149
CHAPTER 3.	The Attorney General	150-153
CHAPTER 4.	The Supreme Court Reporter	154-160

		Sections.
CHAPTER 5.	The District and Circuit Courts and Judges thereof	161-186
CHAPTER 6.	General Provisions	187-192
CHAPTER 7.	The Clerk of the District and Circuit Courts	193-204
CHAPTER 8.	The District Attorney	205-207
CHAPTER 9.	Attorneys and Counselors	208-226
CHAPTER 10.	Jurors	227-245
CHAPTER 11.	Securities and Investments	246-257
CHAPTER 12.	Notaries Public	258-266
CHAPTER 13.	Commissioners in other States	267-276
CHAPTER 14.	Administration of Oaths	277-278

TITLE IV.

OF COUNTY, TOWNSHIP, TOWN, AND CITY GOVERNMENT.

CHAPTER 1.	Of Counties	279-293
CHAPTER 2.	The Board of Supervisors	294-319
CHAPTER 3.	The County Auditor	320-326
CHAPTER 4.	The County Treasurer	327-334
CHAPTER 5.	The County Recorder	335-336
CHAPTER 6.	The Sheriff	337-348
CHAPTER 7.	The Coroner	349-368
CHAPTER 8.	The County Surveyor	369-378
CHAPTER 9.	Of Townships and Township Officers	379-420
CHAPTER 10.	Of Cities and Incorporated Towns	421-551
CHAPTER 11.	General Regulations Affecting Counties, Cities, and Towns	552-558
CHAPTER 12.	Of Plats	559-572

TITLE V.

OF ELECTIONS AND OFFICES.

CHAPTER 1.	The election of officers and their terms	573-593
CHAPTER 2.	The Registration of Voters	594-602
CHAPTER 3.	The General Election	603-658
CHAPTER 4.	Of Electors of President and Vice-President	659-669
CHAPTER 5.	Of Qualification for Office	670-691
CHAPTER 6.	Of Contesting Elections	692-745
CHAPTER 7.	Of Removal and Suspension from Office	746-765
CHAPTER 8.	Of Deputies	766-771
CHAPTER 9.	Of Additional Security and Discharge of Sureties.	772-780
CHAPTER 10.	Of Vacancies and Special Elections	781-795

TITLE VI.

OF REVENUE.

CHAPTER 1.	The Assessment of Taxes	796-853
CHAPTER 2.	The Collection of Taxes	854-907
CHAPTER 3.	Provisions for the Security of the Revenue	908-919

TITLE VII.

HIGHWAYS, FERRIES AND BRIDGES.

			Sections.
CHAPTER	1.	Of Establishing Highways	920-968
CHAPTER	2.	Of Working Highways	969-1000
CHAPTER	3.	Of Ferries and Bridges	1001-1037

TITLE VIII.

CHAPTER	1.	The Militia	1038-1057

TITLE IX.

OF CORPORATIONS.

CHAPTER	1.	Of Corporations for Pecuniary Profit	1058-1090
CHAPTER	2.	Of Corporations other than those for Pecuniary Profit	1091-1102
CHAPTER	3.	Of State and County Agricultural and Horticultural Societies	1103-1121
CHAPTER	4.	Of Insurance Companies	1122-1160
CHAPTER	5.	Of Life Insurance Companies	1161-1183
CHAPTER	6.	Of Mutual Building Associations	1184-1187

TITLE X.

OF INTERNAL IMPROVEMENTS.

CHAPTER	1.	Of Mill-Dams and Races	1188-1206
CHAPTER	2.	Of Drains, Ditches, and Water Courses	1207-1235
CHAPTER	3.	Of Water-Power Improvements	1236-1240
CHAPTER	4.	Of Taking Private Property for Works of Internal Improvement	1241-1272
CHAPTER	5.	Of Railways	1273-1323
CHAPTER	6.	Of Telegraphs	1324-1329

TITLE XI.

OF THE POLICE OF THE STATE.

CHAPTER	1.	The Settlement and Support of the Poor	1330-1382
CHAPTER	2.	The Care of the Insane	1383-1445
CHAPTER	3.	Of Domestic and Other Animals	1446-1488
CHAPTER	4.	Of Fences	1489-1508
CHAPTER	5.	Of Lost Goods	1509-1522
CHAPTER	6.	Of Intoxicating Liquors	1523-1559
CHAPTER	7.	Of Fire Companies	1560-1566
CHAPTER	8.	Of Inspection of Coal Mines	1567-1569
CHAPTER	9.	Of Quarterly Bank Statements	1570-1576

TITLE XII.

OF EDUCATION.

		Sections.
CHAPTER 1.	The Superintendent of Public Instruction	1577-1584
CHAPTER 2.	The State University	1585-1603
CHAPTER 3.	The State Agricultural College and Farm	1604-1622
CHAPTER 4.	The Soldiers' Orphans' Homes	1623-1642
CHAPTER 5.	The State Reform School	1643-1663
CHAPTER 6.	The College for the Blind	1664-1684
CHAPTER 7.	The Institution for the Deaf and Dumb	1685-1696
CHAPTER 8.	Of County High Schools	1697-1712
CHAPTER 9.	The System of Common Schools	1713-1824
CHAPTER 10.	Of School-House Sites	1825-1828
CHAPTER 11.	Of Appeals	1829-1836
CHAPTER 12.	The School Fund	1837-1884
CHAPTER 13.	The State Library	1885-1899
CHAPTER 14.	The State Historical Society	1900-1907

PART SECOND.

PRIVATE LAW.

TITLE XIII.

OF RIGHTS OF PROPERTY.

CHAPTER 1.	Of Rights of Aliens	1908-1909
CHAPTER 2.	Of Title in State or County	1910-1919
CHAPTER 3.	Of Perpetuities and Land in Mortmain	1920-1921
CHAPTER 4.	The Transfer of Personal Property	1922-1927
CHAPTER 5.	Of Real Property	1928-1940
CHAPTER 6.	The Conveyance of Real Property	1941-1975
CHAPTER 7.	Of Occupying Claimants	1976-1987
CHAPTER 8.	The Homestead	1988-2010
CHAPTER 9.	Of Landlord and Tenant	2011-2018
CHAPTER 10.	Of Walls in Common	2019-2030
CHAPTER 11.	Of Easements in Real Estate	2031-2036

TITLE XIV.

OF TRADE AND COMMERCE.

CHAPTER 1.	Of Weights, Measures, and Inspection	2037-2074
CHAPTER 2.	Money of Account and Interest	2075-2081
CHAPTER 3.	Of Notes and Bills	2082-2103
CHAPTER 4.	Of Tender	2104-2107

			Sections.
CHAPTER	5.	Of Sureties	2108-2111
CHAPTER	6.	Of Private Seals	2112-2314
CHAPTER	7.	Of Assignments for Creditors	2115-2128
CHAPTER	8.	Of Mechanic's Leins	2129-2146
CHAPTER	9.	Of Limited Partnership	2147-2170
CHAPTER	10.	Of Warehousemen and Carriers	2171-2184

TITLE XV.

OF THE DOMESTIC RELATIONS.

CHAPTER	1.	Of Marriage	2185-2201
CHAPTER	2.	Of Husband and Wife	2202-2219
CHAPTER	3.	Of Divorce, Annulling Marriages and Alimony	2220-2236
CHAPTER	4.	Of Minors	2237-2240
CHAPTER	5.	The Guardianship of Minors, Drunkards, Spendthrifts and Lunatics	2241-2279
CHAPTER	6.	Of Master and Apprentice	2280-2306
CHAPTER	7.	The Adoption of Children	2307-2311

TITLE XVI.

OF THE ESTATES OF DECEDENTS.

CHAPTER	1.	Of Probate Jurisdiction	2312-2321
CHAPTER	2.	Of Wills and Letters of Administration	2322-2369
CHAPTER	3.	The Settlement of the Estate	2370-2435
CHAPTER	4.	The Descent and Distribution of Intestate Property	2436-2468
CHAPTER	5.	Of Accounting and other Provisions	2469-2502

EXPLANATION OF ABBREVIATIONS IN MARGINAL NOTES.

R. means Revision.
§ means Section.
C. means Chapter.
G. A. means General Assembly.
L. B. E. means Laws of Board Education.

ERRATA.

On page 275, in section 1509, line 15, "clerk of the district court" should read "county auditor," and "clerk," in line 16, should read "auditor."

On page 277, in section 1514, line 15, "clerk of the district court" should read "county auditor."

On page 318, in section 1718, line 1, "or before" should be omitted.

On page 320, in section 1730, line 3, "treasurer" should be inserted after "president."

On page 368, in section 2012, line 5, "double" should precede "rental."

On page 377, in section 2075, line 3, "counts" should read "courts."

On page 399, in section 2221, line 8, "and expects to remain" should be omitted.

PART FIRST.

PUBLIC LAW.

TITLE I.

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

CHAPTER 1.

OF THE SOVEREIGNTY AND JURISDICTION OF THE STATE.

SECTION 1. The boundaries of the state of Iowa are defined in the preamble of the constitution. Boundaries of the state. R. § 1.

SEC. 2. 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. Sovereignty. R. § 2.

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

SEC. 4. Exclusive jurisdiction over all lands situate in the state now or hereafter purchased by the United States on which buildings for public uses are, or shall be erected, is hereby ceded to the United States, and the same shall be exempt from taxation so long as the same are owned by the United States. Nothing in this section shall be so construed as to prevent on such lands the service of any judicial process issued from or returnable to any court of this state or judge thereof, or to prevent such courts from exercising jurisdiction of crimes committed thereon. U. S. jurisdiction: exemption from taxation. R. § § 2167, 2168.

CHAPTER 2.

OF THE GENERAL ASSEMBLY.

Sessions of. R. § 13.

SECTION 5. The sessions of the general assembly shall be held at the seat of government, unless the governor shall convene them at some other place in times of pestilence or public danger.

Temporary organization. R. § 14.

SEC. 6. At two o'clock in the afternoon of the day on which the general assembly shall convene, and at the time of convening of the houses respectively, the president of the senate, or in his absence some person claiming to be a member, shall call the senate to order, and, if necessary, a temporary president shall be chosen from their own number by the persons claiming to be elected senators. And some person claiming to be elected a member of the house of representatives shall call the house to order, and the persons present claiming to be elected to the senate shall choose a secretary, and those of the house of representatives a clerk for the time being.

Certificates of election. R. § 15.

SEC. 7. Such secretary and clerk shall receive and file the certificates of election presented, each for his own house, and make a list therefrom of the persons who appear to have been elected members of the respective houses.

Election of temporary officers. R. § 4.

SEC. 8. The persons so appearing to be members shall proceed to elect such other officers for the time being as may be requisite; and when so temporarily organized, shall choose a committee of five, who shall examine and report upon the credentials of the persons claiming to be members.

Permanent organization. R. § 5.

SEC. 9. The members reported by the committee as holding certificates of election from the proper authority, shall proceed to the permanent organization of their respective houses by the election of officers.

Members may administer oaths. R. § 7.

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

Freedom of speech. R. § 6.

SEC. 11. No member shall be questioned in any other place for any speech or debate in either house.

Compensation of members, officers, and employes. C. 118, 14 G. A.

SEC. 12. The compensation of the members, officers, and employes of the general assembly shall be: To every member for each regular session, five hundred and fifty dollars, and for each extra session the same compensation per day while in session, to be ascertained by the rate per day of the compensation of the members of the general assembly at the preceding regular session; and for every twenty miles in going to and returning from the place where the general assembly is held, by the nearest traveled route, three dollars; but in no case shall the compensation for any extra session exceed six dollars per day exclusive of mileage. To the secretary of the senate and chief clerk of the house, seven dollars per day each; to the assistant clerks of the house and secretaries of the senate, six dollars per day each; to the engrossing and enrolling clerks, five dollars per day each; to the clerks of committees, three dollars per day each, and the necessary stationery for each of the clerks, secretaries and their assist-

ants aforesaid; to the sergeants-at-arms, door-keepers, janitors, postmasters, and mail carriers, four dollars per day each; to the messengers and paper folders, two dollars per day each; and no other or greater compensation shall be allowed such members, officers, and employes, nor shall there be any allowance of or for stationery, except as above provided, postage, newspapers or other perquisites in any form or manner or under any name or designation.

Term of office. R. § 18.

SEC. 13. The speaker of the house of representatives shall hold his office until the first day of the meeting of a regular session next after that at which he was elected. All other officers elected by either house shall hold their offices only during the session at which they were elected.

Contempt. R. § 8.

SEC. 14. Each house 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 refusal to attend, or be sworn, or 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 of such arrest; or knowingly impeding any officer of either house in the discharge of his duties as such.

Fines and imprisonment. R. § 10

SEC. 15. 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 acting secretary or clerk, running in the name of the state and directed to the sheriff or jailor of the proper county. Under such warrant, the proper officer will be authorized to commit and detain the person. Fines shall be collected by 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 from courts of record, and the proceeds paid into the state treasury.

Same. R. § § 9, 11.

SEC. 16. Imprisonment for contempt 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 is then sitting; or if there be no such jail, then in one of the nearest county jails. Punishment for contempt shall not constitute a bar to any other proceeding, civil or criminal, for the same act.

May compel attendance of witnesses. C. 3, § 1, 11 G. A.

SEC. 17. Whenever a committee of either house, or a joint committee of both, is charged with an investigation requiring the personal attendance of witnesses, any person may be compelled to appear before such committee as a witness by serving upon him, in the same manner a subpœna is required to be served in a civil action in the district court, an order, naming the time and place he

is required to appear, signed by the presiding officer of the house appointing the committee, and attested by its acting secretary or clerk; or, in case of a joint committee, signed and attested by such officers of either house.

Compensation of witnesses. Same, § 2.

SEC. 18. Witnesses shall be entitled to the same compensation for attendance under the preceding section as before the district court, but shall not have the right to demand payment of their fees in advance.

Joint conventions. R § § 674, 675.

SEC. 19. Joint conventions of the general assembly shall meet in the hall of the house of representatives for such purposes as are or shall be provided by law. The president of the senate, or, in his absence, the speaker of the house of representatives shall preside, or, in the absence of both, a temporary president shall be appointed by a joint vote.

Tellers. R. § 676.

SEC. 20. After the time for the meeting of the joint convention has been designated and prior thereto, each house shall appoint one teller, and the two shall act as judges of the election.

Record of. R. § 677.

SEC. 21. The clerk of the house of representatives shall act as secretary of the convention, and he and the secretary of the senate shall keep a fair and correct record of the proceedings of the convention, which shall be entered on the journals of each house.

Vote, how taken. R. § § 678, 679.

SEC. 22. When any officer is to be elected by joint convention, the names of the members shall be arranged in alphabetical order by the secretaries, and each member shall vote in the order in which his name stands when thus arranged. The name of the person voted for, and of the members voting, shall be entered in writing by the tellers, who, after the secretary shall have called the names of the members a second time, and the name of the person for whom each member has voted, shall report to the president of the convention the number of votes given for each candidate.

Second poll. R. § 680.

SEC. 23. If no person shall receive the votes of a majority of the members present, a second poll may be taken, and so on from time to time until some person receives such majority.

Adjournment. R. § 681.

SEC. 24. If the purpose for which the joint convention assembled is not concluded, the president shall adjourn the same from time to time as the members present may determine.

Certificates of election. R. § 682.

SEC. 25. When any person shall have received a majority of the votes as aforesaid, the president shall declare him to be elected, and shall, in the presence of the convention, sign two certificates of such election, attested by the tellers, one of which he shall transmit to the governor, and the other shall be preserved among the records of the convention and entered at length on the journals of each house. The governor shall issue a commission to the person so elected.

Election of senators. R. § 685.

SEC. 26. Joint conventions for the purpose of electing a senator in the congress of the United States, and canvassing the votes for governor and lieutenant-governor, shall be conducted according to the foregoing provisions so far as applicable.

Rules. R § 686.

SEC. 27. In the absence of other rules, those of parliamentary practice comprised in Cushing's Manual shall govern.

CHAPTER 3.

OF THE STATUTES.

SECTION 28. When the governor approves a bill, he shall set his name thereto with the date of his approval. Approval of bills. R. § 19.

SEC. 29. When a bill, having passed the general assembly, is returned by the governor with his objections, and is afterward passed as provided in the constitution, a certificate signed by the presiding officer of each house in the following form shall be endorsed thereon or attached thereto: "This bill having been returned by the governor with his objections to the house in which it originated, and after reconsideration having again passed both houses by yeas and nays by a majority of two-thirds of the members of each house, has become a law this —— day of ——." Proceedings when bill is returned by governor. R. § 20.

SEC. 30. When a bill has passed the general assembly, and is not returned by the governor within three days as provided in the constitution, it shall be authenticated by the secretary of state endorsing thereon: "This bill having remained with the governor three days (Sunday excepted), the general assembly being in session, has become a law this —— day of ——, Secretary of State." Bill retained by governor more than three days. R. § 21.

SEC. 31. The original acts of the general assembly shall be deposited with and kept by the secretary of state. Original acts deposited. R. § 22.

SEC. 32. Acts of a private nature which do not prescribe the time when they take effect, shall do so on the thirtieth day next after they have been approved by the governor, or endorsed as provided in this chapter. Of private nature. R. § 23.

SEC. 33. Acts which are to take effect by publication in newspapers, shall be published in at least two papers, one at least of them at the seat of government, and if such papers are not designated in the act, the same may be designated by the secretary of state, and the act published accordingly. All such acts 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, which certificate and the printing thereof at the foot of the act shall be presumptive evidence of the facts therein stated. Of public nature; publication. R. § 24

SEC. 34. All other acts and resolutions of a public nature passed at regular sessions of the general assembly, shall take effect on the fourth day of July following their passage. Public nature: when in force. R. § 25.

SEC. 35. Within ten days after the adjournment of each session of the general assembly, the secretary of state shall prepare a manuscript copy of all the laws, joint resolutions, and memorials passed thereat, arranging the same into chapters and dividing them into two series or parts, one of said parts to contain all the public laws of that session, and the other the private, local, and temporary laws, with the resolutions and memorials, and deliver the same to the state printer. The chapters of each part shall be numbered separately in the order of their approval and provided with marginal notes, and each part shall have a separate title page and index. Such secretary shall make and cause to be printed at Laws arranged and prepared for publication. R. § § 63. 144.

the end of each of such series or parts, a certificate that the acts, resolutions, and memorials therein contained are truly copied from the original rolls, which shall be presumptive evidence of their correctness.

Laws: how to be published.

SEC. 36. The acts of a public nature shall be numbered continuously from session to session as additional chapters of this code, and shall be printed in pages of the same size, and, as near as may be, of the same style, type, and appearance with the edition of this code to be published by the state. The private, local, and temporary acts shall be numbered in a distinct series for each session.

Secretary of state to superintend printing.

SEC. 37. The secretary of state shall superintend the printing of the laws as above directed. In the absence of any other provision, the number of copies to be printed and bound, and the time within which the same shall be completed, may be fixed by resolution of each general assembly, or, in case no such resolution is passed, shall be determined by the executive council.

Laws amending code to refer thereto.

SEC. 38. Every act of a public nature passed in amendment of or in addition to any chapter or section of this code, or in amendment of or in addition to any previous act of the same kind, shall contain in the title thereof a reference to the number and name of the chapter so amended or added to, and if such reference be omitted, the secretary of state shall, in preparing such act for publication, supply the omission.

Distribution of laws. C. 100, § 4, 14. G. A.

SEC. 39. The secretary of state shall distribute the laws aforesaid as follows: To the state library, for distribution to other states and territories, and for exchange, two hundred copies. Two copies to each state institution, to each judge of a court of record, state officer, and member of the general assembly; one copy to each officer of the general assembly and to the publisher of each newspaper or periodical in the state; ten copies to the library of the department of the state university; eighty copies to the state historical society; all the foregoing to be bound in law sheep. Eighteen thousand copies of the public laws, and four thousand copies of the private, local, and temporary laws shall be delivered to the county auditors of the several counties in proportion to the population thereof. No county shall receive a less number than ten copies of the public laws, and two copies of the private, local, and temporary laws for each organized township and incorporated town or city in such county. Upon receipt of said laws, the auditor of each county shall execute duplicate receipts therefor to the secretary of state, one of which shall be filed in the office of the auditor of state.

County auditor to distribute. Same, § 5.

SEC. 40. The county auditor shall set apart a sufficient number of copies of such general laws to furnish each county officer, and the mayor of each incorporated town or city, one copy, and one copy of the public laws to each justice of the peace, constable, township trustee, or member of a city or town council, and to each township clerk and assessor, and shall report to the auditor of state the number of copies of each part remaining in his hands.

At what price to be sold. Same, § 6.

SEC. 41. The secretary of state and county auditor shall sell the copies remaining in their hands at fifty cents a copy. The secretary of state shall report under oath to the auditor of state

the number of copies remaining on hand after the distribution aforesaid, and the auditor of state shall charge him therewith and credit him with the proceeds of all that are sold, upon payment of the same into the state treasury. The county auditor shall pay the proceeds of all copies sold by him to the county treasurer, taking his duplicate receipts therefor, one of which he shall transmit to the auditor of state.

Report to be made annually.

SEC. 42. The secretary of state and county auditors shall, on or before the fifteenth day of November in each year, report to the auditor of state the number of copies sold and the number remaining on hand, and the amount paid into the state or county treasury, and the auditor shall charge such state or county treasurer with such amount.

Copies to be delivered to successor.

SEC. 43. When the secretary of state or county auditor goes out of office having any such copies remaining, he shall deliver them to his successor, taking his duplicate receipts therefor, one of which he shall transmit to the auditor of state, who shall thereupon give such officer the proper credit and charge his successor with the copies received by him. Every officer receiving a copy of such laws shall execute a receipt therefor, and shall deliver such copy to his successor, or to the officer from whom he received it, for the use of such successor, and upon failure to do so, shall be liable on his official bond or in his individual capacity.

Compensation for the publication of laws. C. 118, § 4, 11 G. A.

SEC. 44. The compensation for the publication of laws which are ordered by the general assembly to take effect by publication, unless otherwise fixed, shall be audited and paid by the state. Such compensation shall be one-third the rates of legal advertisements allowed by law.

Construction. R. § § 29, 4121, 4123, 4124.

SEC. 45. In the construction of the statutes, 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:

Repeal of.

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

Words and phrases.

2. 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 meaning;

Number, gender.

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

Joint authority.

4. 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;

Highway, road.

5. 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;"

Insane.

6. The words "insane person" include idiots, lunatics, distracted persons, and persons of unsound mind;

Issue. 7. The word "issue," as applied to descent of estates, includes all lawful lineal descendants;

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

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

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

Month, year, A. D. 11. The word "month" means a calendar month, and the word "year," and the abbreviation "A. D.," are equivalent to the expression "year of our Lord;"

Oath, affirmation. 12. 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 "affirm;"

Person, corporation. 13. The word "person" may be extended to bodies corporate;"

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

State, territory. 15. 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;

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

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

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

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

Deed, bond, indenture, undertaking. 20. 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, and the word "undertaking" means a promise or security in any form;

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

Numerals. 22. The Roman numerals and Arabic figures are to be taken as a part of the English language;

Computing time. 23. In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday;

Consanguinity. 24. Degrees of consanguinity and affinity shall be computed according to the civil law;

Clerk. 25. The word "clerk" means clerk of the court in which the action or proceeding is brought or is pending; and the words "clerk's office" mean his office.

CHAPTER 4.

OF THE CODE AND ITS OPERATION.

SECTION 46. In the citation of the statutes, this 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. This code. R. § 30.

SEC. 47. All public and general statutes 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. Repeal of prior statutes. R. § 31.

SEC. 48. Local acts are not repealed unless it be herein so expressed, or unless the provisions of this code are repugnant thereto. Local statutes. R. § 32.

SEC. 49. This code shall take effect on the first day of September, A. D., 1873, until which time existing statutes continue in force, and nothing contained in this title in relation to the preparation and publication of the statutes shall be construed as including this code. When code takes effect.

SEC. 50. This repeal of existing statutes 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. Existing rights. R. § 34.

SEC. 51. No offense committed, and no penalty or forfeiture incurred under any statute 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. Same. R. § 35.

SEC. 52. 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. Suits or prosecutions pending. R. § 36.

SEC. 53. The terms "heretofore" and "hereafter," as used in this code, have relation to the time when this statute takes effect. Heretofore and hereafter. R. § 38.

SEC. 54. Whenever an 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. Acts in conflict with code. R. § 39.

TITLE II.

OF THE EXECUTIVE DEPARTMENT.

CHAPTER 1.

OF THE GOVERNOR.

Office of: C. 85, § 1, 10 G. A.

SECTION 55. The governor shall keep his office at the seat of government, in which shall be transacted the business of the executive department of the state, and he shall keep a secretary at said office during his absence.

Journal to be kept. Same, § 2.

SEC. 56. He shall cause a journal to be kept in the executive office, in which shall be made an entry of every official act done by him at the time when done. If, in cases of emergency, acts are done elsewhere than in such office, an entry thereof shall be made in the journal as soon thereafter as possible.

Military record. Same, § 3.

SEC. 57. He shall cause a military record to be kept, in which shall be made an entry of every act done by him as commander-in-chief.

Reward for criminals. R. § 57.

SEC. 58. Whenever the governor is satisfied that the crime of murder or arson has been committed within the state, and that the person charged therewith has not been arrested or has escaped therefrom, he may, in his discretion, offer a reward not exceeding five hundred dollars for the arrest and delivery to the proper authorities of the person so charged, which reward shall be audited upon the certificate of the governor that the same has been earned, and paid by the state.

May employ counsel. R. § 44.

SEC. 59. Whenever the governor is satisfied that an action or proceeding has been commenced which may affect the rights or interests of the state, he may employ counsel to protect such rights or interests; and when any civil action or proceeding has been or is about to be commenced by the proper officer in behalf of the state, he may employ additional counsel to assist in the cause.

How paid. R. § 45.

SEC. 60. Expenses incurred under the preceding section and in causing the laws to be executed, may be allowed by the governor and paid from the contingent fund.

CHAPTER 2.

OF THE SECRETARY OF STATE.

Office: duties. R. § 59.

SECTION 61. The secretary of state shall keep his office at the seat of government and perform all duties which may be required of him by law; he shall have charge of and keep all the acts and resolutions of the territorial legislature, and the general assembly

of the state, the enrolled copy of the constitutions of the state, and all bonds, books, records, maps, registers, and papers which now are or may hereafter be deposited to be kept in his office.

SEC. 62. All commissions 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 office, name of officer, date of commission, and tenure of office. Commissions countersigned. R. § 60.

SEC. 63. He shall report to the governor, before each regular session of the general assembly, an abstract for each year of the criminal returns received from the clerks of the several district courts, embracing all the facts contained in such returns. Report to general assembly. R. § 64.

SEC. 64. He shall furnish the library of congress two copies of all legislative journals and reports of state officers immediately upon the publication thereof. Library of congress. C. 81, 11 G. A.

SEC. 65. The secretary of state shall receive and preserve in his office all papers transmitted to him in relation to the incorporation of cities or towns, or the annexation of territory to the same, or the consolidation or the abandonment of municipal corporations, and shall keep an alphabetical list of said cities and towns in a book provided for that purpose, in which shall be entered the name of the town or city, the character of the same, whether town or city, and if a city, whether of first or second class, the county in which situated, and the date of organization. Record of cities and towns to be kept. R. § 1046.

CHAPTER 3.

OF THE AUDITOR OF STATE.

SECTION 66. The auditor shall keep his office at the seat of government. He is the general accountant of the state, and it is his duty: Powers, duties. R. § 71.

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

2. To settle the accounts of all county treasurers and receivers of state revenues payable into the state treasury, for each of their official terms separately; Make settlements.

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

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

5. To settle all claims against the treasury, and when a claim is recognized by law for which no appropriation has been made, to give the claimant a certificate thereof and report the same to the general assembly; Claims against the state.

Superintend payments of money.

6. To direct and superintend the payment of all money payable into the state treasury, and cause to be instituted and prosecuted the proper actions for the recovery of debts and other moneys so payable;

Superintend fiscal affairs. C. 173, § 8, 9 G. A.

7. To superintend the fiscal affairs of the state, and secure their management as required by law; to furnish proper instructions, directions, and forms to the county auditors and treasurers, in compliance with which they shall severally keep their accounts relating to the revenue of the state, and perform the duties of their several offices; also forms for the reports required to be made by said officers to such auditor, and of receipts to be given by such treasurers to the tax payers, and such officers shall conform in all respects to the form and directions thus prescribed;

Draw warrants.

8. To draw warrants on the treasurer for money directed by law to be paid out of the treasury as the same may become payable. Each warrant shall bear on the face thereof its proper number, date, amount, name of payee, and a reference to the law under which it is drawn, which particulars shall 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 to the treasurer;

Custody of books, papers.

9. To have the custody of all books, papers, records, documents, vouchers, conveyances, leases, mortgages, bonds, and other securities appertaining to the fiscal affairs and property of the state, which are not required to be kept in some other office;

Furnish governor information.

10. To furnish the governor on his requisition, information in writing upon any subject connected with his office, and to suggest to the general assembly, plans for the improvement and management of the public revenue and property;

Report to governor.

11. To report to the governor before each regular session of the general assembly, a complete statement of the revenue, funds, income, taxable property, and other resources and property of the state, and of the public revenues and expenditures since his last report, up to the first Monday of November preceding each regular session, with a detailed statement 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 are not, and showing the probable deficiency of any former appropriations;

Apportion school money. C. 172, § 93, 9 G. A.

12. He shall, on the first Monday of March and September of each year, apportion the interest of the permanent school fund among the several counties in proportion to the number of persons between five and twenty-one years of age in each, as shown by the last report filed with him by the superintendent of public instruction.

Divide warrants. R. § 72.

SEC. 67. When the amount due from the state to any person exceeds twenty dollars, the auditor shall, if requested, divide the amount into parcels of not less than ten dollars and issue warrants therefor.

May require information of persons having property of the state. R. § 73.

SEC. 68. The auditor may at any time require any person receiving money, securities, or property belonging to the state, or having the management, disbursement, or other disposition of the same, an account of which is kept in his office, to render state-

ments thereof, and information in reference thereto. Any such person refusing or neglecting to render such statement or information, shall forfeit twenty-five dollars, to be recovered by civil action in the name of the state.

Claims against the state: claimant examined. R. § 74.

SEC. 69. Every claim against the state shall be presented to the auditor for settlement within two years after it accrues, and if thereafter presented, the same shall not be audited. When a claim is presented, the auditor is authorized to examine the claimant and any other persons, under oath, touching such claim, or cause them to verify the same by affidavit or deposition.

Neglect to account: penalty for. R. § 75.

SEC. 70. If any officer who is accountable to the treasury for any money or property, neglects to render an account to the auditor within the time prescribed by law, or if no time is 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 of which may be recovered by an action brought on such account, or on the official bond of such officer.

Failure to pay: penalty for. R. § 76.

SEC. 71. If any such officer fails to pay into the treasury the amount received by him within the time prescribed by law, or, having settled with the auditor, fails to pay the amount found due, the auditor shall charge such officer with twenty per cent. damages on the amount due with interest on the aggregate from the time the same became due at the rate of six per cent. per annum, and the whole may be recovered by an action brought on such account, or on the official bond of such officer, and he shall forfeit his commission.

Defense of officer: costs. R. § 77.

SEC. 72. The penal provisions in the two preceding 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 two preceding sections.

Oath of any receiver of public money before credit given. R. § 79.

SEC. 73. When a county treasurer or other 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, loaned or appropriated any of the public money for his private benefit, nor for the benefit of any other person.

Requisition to officer to account. R. § 79.

SEC. 74. In those cases where the auditor is authorized to call upon persons or officers for information, or statements, or accounts, he may issue his requisition therefor in writing to the person or officer called upon, allowing reasonable time, which having been served as a notice in a civil action by the sheriff of the county in which the person or officer called upon resides, and returned to the auditor with the service endorsed thereon, shall be evidence of the making of the requisition therein expressed.

CHAPTER 4.

OF THE TREASURER OF STATE.

Office: duties. R. § 83.

SECTION 75. The treasurer shall keep his office at the seat of government, and shall keep an accurate account of the receipts and disbursements at the treasury, in books 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.

Memorandum of warrants. R. § 84.

SEC. 76. He shall enter in a book the memorandum of warrants issued as certified to him by the auditor, and receive in payment of public dues the warrants so issued in conformity with law, and redeem the same if there be money in the treasury not otherwise appropriated; and on receiving any such warrant, shall cause the person presenting it to endorse it, and shall write on the face thereof "redeemed," and enter in the book containing the auditor's memoranda in appropriate columns, the name of the person to whom paid, date of payment, and amount of interest paid.

Receipts when money is paid. § 85.

SEC. 77. When money is paid him the treasurer shall execute receipts in duplicate therefor, stating the fund to which it belongs, one of which must be delivered to the auditor in order to obtain the proper credit, and the treasurer must be charged therewith.

Pay warrants in order of issuance: interest on. C. 9, 10 G. A.

SEC. 78. He shall pay no money from the treasury but upon the warrants of the auditor, and only in the order of their issuance; or if there is no money in the treasury from which such warrant can be paid, he shall, upon request of the holder, indorse upon the warrant the date of its presentation, and sign it, from which time the warrant shall bear interest at the rate of six per cent. per annum, until the time directed in the next section.

Record of warrants kept when not paid: publication as to such. R. § 87.

SEC. 79. He shall keep a record of the number and amount of the warrants so presented and indorsed 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 to what number of warrants the funds will extend, or the number which he will pay, by three insertions in a newspaper printed at the seat of government; at the expiration of thirty days from the day of the last publication, interest on the warrants so named as being payable, shall cease.

Certify to auditor: warrants cancelled. R. § 88.

SEC. 80. Once in each week he shall certify to the auditor the number, date, amount, and payee of each warrant taken up by him, with the date when taken up, and the amount of interest allowed; 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.

Report to governor. R. § 89.

SEC. 81. 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.

Provide funds to pay interest on state bonds. C. 66, 10 G. A.

SEC. 82. When interest on any bonds of the state becomes due, the treasurer shall provide funds for the payment thereof on

the day and at the place where payable; and persons holding such bonds are required to present the same at such place within ten days from such day. At the expiration of which time, the funds remaining unexpended and vouchers for interest paid shall be returned to the treasury.

CHAPTER 5.

OF THE STATE LAND OFFICE AND REGISTER THEREOF.

Office: duties. R. § § 92, 95.

SECTION 83. The register of the state land office shall keep his office at the seat of government. The books and records of such office shall be so kept as to show and preserve an accurate chain of title from the general government to the purchaser of each smallest subdivision of land; to preserve a permanent record in books suitably indexed of all correspondence with any of the departments of the general government in relation to state lands; to preserve by proper records copies of the original lists furnished by the selecting agents of the state, and of all other papers in relation to such lands which are of permanent interest.

Separate tract books kept. R. § 94.

SEC. 84. Separate tract books shall be kept for the university lands, the saline lands, the half-million acre grant, the sixteenth sections, the swamp lands, and such other lands as the state now owns or may hereafter own, so that each description of state lands shall be kept separate from all others, and each set of tract books shall be a complete record of all the lands to which they relate.

How ruled and kept. R. § 93.

SEC. 85. Said tract books shall be ruled in a manner similar to those used in the United States land offices, so as to record each tract by its smallest legal subdivisions, its section, township, and range, to whom sold, and when, the price per acre, to whom patented, and when.

Office hours: records subject to inspection: to give certificate. C. 103, § 1, 10 G. A.

SEC. 86. The state land office shall be kept open during business hours, and shall have the personal supervision of the register; the documents and records therein shall be subject to inspection, in the presence of the register, by parties having an interest therein, and certified copies thereof, signed by said register with the seal of said office attached, shall be deemed presumptive evidence of the fact to which they relate, and on request they shall be furnished by the register for a reasonable compensation.

Patents how issued and recorded. R. § 97.

SEC. 87. Patents for lands shall issue from the state land office, shall be signed by the governor and recorded by the register; and each patent shall contain therein a marginal certificate of the book and page on which it is recorded, which certificate shall be signed by the register, and all patents shall be delivered free of charge.

When patents may issue. R. § § 98, 99.

SEC. 88. No patent shall be issued for any lands belonging to the state, except upon the certificate of the person or officer specially charged with the custody of the same, setting forth the appraised value per acre, name of the person to whom sold, date of sale, price per acre, amount paid, name of person making final pay-

ment, and of person who is entitled to the patent, and if thus entitled by assignment from the original purchaser, setting forth fully such assignment, which certificate shall be filed and preserved in the land office.

Errors may be corrected. C. 30, 11 G.A.

SEC. 89. The register is authorized and required to correct all clerical errors of his office, in name of grantee, and description of tract of land conveyed by the state found upon the records of such office; he shall attach his official certificate to each conveyance so corrected, and the reasons therefor; record the same with the record of the original conveyance, and make the necessary correction in the tract and plat books of his office. Such corrections, when made in accordance with the foregoing provisions, shall have the force and effect of a deed originally correct, subject to prior rights accrued without notice.

Receive and preserve papers, records, and maps of public surveys. C. 3, 12 G. A.

SEC. 90. The register shall receive any field notes, maps, records, or other papers relating to the public survey of this state, whenever the same shall be turned over to the state in pursuance of an act of congress, entitled "an act for the discontinuance of the office of surveyor general in the several districts as soon as the surveys therein can be completed, for abolishing land offices under certain circumstances, and for other purposes," approved June 12, 1840, and any act amendatory thereof, and shall provide for their safe keeping and proper arrangement as public records; and free access to the same by the lawful authority of the United States, for the purpose of taking extracts therefrom, or making copies thereof, shall always be granted.

When governor may relinquish title to lands patented to the state. C. 10, § 1, 12 G. A.

SEC. 91. Whenever the governor is satisfied by the commissioner of the general land office that the title to any lands which may have been certified to the state under any of the several grants, is inferior to the rights of any valid interfering preemptor or claimant, he is authorized and required to release by deed of relinquishment such color of title to the United States, to the end that the requirements of the Interior Department may be complied with, and that such tract or tracts of land may be patented by the general government to the legal claimants.

Governor may in certain cases quit claim. Same, § 2.

SEC. 92. Whenever the governor is satisfied by proper record evidence that any tract of land which may have been deeded by virtue of any donation or sale to the state, is not the land intended to have been described, and that an error has been committed in making out the transfers, in order that such error may be corrected, he is authorized to quit-claim the same to the proper owner thereof, and to receive a deed or deeds for the lands intended to have been deeded to the state originally.

Lists of lands in each county enuring to any grantee of the state to be patented.

SEC. 93. In cases where lands have been granted to the state of Iowa by act of congress, and certified lists of lands enuring under the grant have been made to the state by the commissioner of the general land office as required by act of congress, and such lands have been granted by act of the general assembly to any person or company, and such person or company shall have complied with and fulfilled the conditions of the grant, the register of the state land office is hereby authorized to prepare, on the application of the grantee, a list or lists of lands situated in each county inuring to such grantee, from the lists certified by the commis-

sioner of the general land office, as aforesaid, which shall be signed by the governor of this state and attested by the secretary of state with the state seal, and then be certified to by the register to be true and correct copies of the lists made to this state, and deliver them to such grantee, who is hereby authorized to have them recorded in the proper county; and, when so recorded, they shall be notice to all persons the same as deeds now are, and shall vest in such grantee the right of the state to the lands therein described, under the grant of congress by which the lands were certified to the state, so far as the certified lists made by the commissioner aforesaid conferred title to the state;

To be recorded: effect of.

Provided, That when the register includes lands in the list which were not intended to be included in the grant, or the grantee shall not in equity be entitled to the lands or any part thereof, then no title shall pass by said list, and the same as to those lands shall be null and void. Nor shall any title pass to lands which have been selected, set apart, or claimed by the state, or any individual under the swamp land or any other grant of congress, which may be certified or adjudged to the state under such other grant, nor to lands held or claimed under any homestead or pre-emption settlement or other entry or purchase, neither shall the right of the state to control the lands, according to the terms of the grants, at any future time be affected by anything done under this section;

When null and void.

Provided, further, That in preparing the list or lists of lands under this section, the register of the state land office shall exclude all lands selected by the state or any county under the swamp land grant, and also exclude all lands claimed under the homestead or preemption laws of the United States, and which have been sold or disposed of and the entry or preemption cancelled.

Swamp, and land selected as homesteads excluded. C. 88, 14 G. A.

CHAPTER 6.

OF THE STATE PRINTER.

SECTION 94. The state printer shall be elected at each regular session of the general assembly by a joint vote thereof, and shall hold his office for two years from the time he enters upon the duties of such office.

When, and how elected. R. § § 133, 136.

SEC. 95. The person elected shall enter upon the duties of such office on the first day of May in the year following that in which he is elected.

When enters on duties. R. § § 134, 135.

SEC. 96. He shall keep an office at the seat of government, with sufficient material, type, presses, and workmen to print the laws, journals of the two houses of the general assembly, the incidental printing thereof, and all forms and blanks of the several state officers, together with the incidental printing of the state. A failure to keep such office at said place, and promptly perform

Office: duties. R. § 147.

in a workmanlike manner all the duties required shall be deemed a resignation of said office.

Printing: how to be executed. R. §§ 138, 140.

SEC. 97. He shall print the laws, journals, forms, and blanks aforesaid as the same may be required, in a neat and workmanlike manner, and promptly perform and deliver the same, so that the public business shall not be delayed or suffer from any failure to have the work done in a reasonable and proper time.

Duty of secretary of state. R. § 141.

SEC. 98. The secretary of state, upon the completion of any printing done for the state, shall examine whether it has been properly executed according to the provisions of this chapter, and should it be thus executed, he shall give his receipt therefor, stating the same, together with the amount to which the printer is entitled for said work; and, if not so executed, he may, nevertheless, receive the same and give his receipt therefor, noting said deficiency in said receipt.

Auditor to issue warrant. R § 143.

SEC. 99. The auditor of state, on the production of the aforesaid receipt of the secretary of state, shall issue his warrant on the state treasurer for the amount therein stated; and should there be a deficiency noted on said receipt, he is hereby required to order suit to be commenced immediately against the printer and his securities on his official bond, and report the proceedings therein in his next report to the governor.

Printing ordered by general assembly. R. § 142.

SEC. 100. Whenever printing is ordered by either house of the general assembly, the secretary or chief clerk thereof shall immediately notify the secretary of state of such order, and when such printing is done, the same shall be delivered to the secretary of state for distribution The accounts for such printing shall be audited upon the receipt of the secretary of state as provided in the two preceding sections.

When copies of laws shall be furnished, and when same shall be printed. R. § 144.

SEC. 101. Within fifty days after the secretary of state shall deliver to the state printer a copy of the laws, joint resolutions, and memorials passed at any session of the general assembly, he shall print all the copies thereof that may be by law required, and the secretary of state shall, within five days after the same are printed, make out and deliver to such printer an index of the same, who shall, within ten days after receiving such index, print the same and deliver to the state binder such copies in sheets as required for binding; but this section shall not apply to this or any other revised code adopted by the general assembly.

Manner of printing. R. §§ 139, 156.

SEC. 102. The laws, journals, and all other printing in book form shall be printed in long primer type, except the head-notes and indexes, which shall be in brevier type, the pages whereof shall contain not less than seventeen hundred and fifty ems of solid matter, and all rule and figure work shall be printed either in brevier or nonpareil type, as may be ordered by the officer ordering the work. Whenever a subject is commenced, whether it be the name of a member or otherwise, the subject matter shall follow in the same line, unless such line is filled by such word. The report of each motion or resolution shall be embraced in one paragraph, and where the yeas and nays are given, each division list shall be in one paragraph, with the names run in alphabetically, and the result given in the last line.

SEC. 103. The secretary of state shall provide a "state paper receipt book," and whenever he shall deliver to the state printer paper for any kind of printing, a receipt therefor shall be entered in said book, which receipt shall describe the kind and quality of paper so delivered. Secretary of state to provide receipt book. R. § 157.

SEC. 104. Whenever any work is performed by the state printer, he shall certify, under oath, the amount of paper used in said work to the secretary of state, who, when satisfied that the same is correct, shall give a receipt to the state printer, which shall be a voucher therefor, and no work shall be paid for until such certificate shall be furnished. Paper used to be certified. R. § 158.

SEC. 105. The state printer shall have one thousand copies of each report of the state officers printed and delivered to the state binder twenty days before the meeting of the general assembly; and he shall deliver the sheets of all other work that require binding as soon as the same are printed and ready for folding; and shall take duplicate receipts therefor, one of which shall be filed in the office of the secretary of state. When copies of reports to be delivered to binder. R. § § 173, 2177, 2178.

CHAPTER 7.

OF THE STATE BINDER.

SECTION 106. The state binder shall be elected at each regular session of the general assembly by a joint vote thereof, and shall hold his office for two years from the time he enters upon the duties of such office. When, and how elected. R. § 163.

SEC. 107. The person elected shall enter upon the duties of such office on the first day of May in the year following that in which he is elected. When term begins. R. § 146.

SEC. 108. He shall keep his office at the seat of government, and bind the laws and journals, and perform the incidental binding of the two houses of the general assembly, and such as may be required by the several state officers, in a neat, substantial, and workmanlike manner, and promptly perform such work so that the public business may not be delayed, and deliver the same to the secretary of state, taking his receipt therefor; and the reports of the state officers shall be so delivered before the first day of the session of the general assembly. Office: duties. R. § § 163, 169, 173, 2178.

SEC. 109. The secretary of state, upon the completion of any binding as aforesaid, shall examine whether it has been executed according to law, and should it be thus executed, he shall give his receipt therefor, stating the same, together with the amount to which the binder is entitled for said work; and if not so executed, he may, nevertheless, receive the same and give his receipt therefor, noting said deficiency in said receipt. Duty of secretary of state. R. § 171.

SEC. 110. The auditor of state, upon the production of the aforesaid receipt, shall issue his warrant on the state treasurer for the amount therein stated; and should there be a deficiency noted in said receipt, he is hereby required to order suit to be com- Auditor to issue warrant. R. § 172.

menced immediately against the binder and his securities on his official bond, and report the proceedings thereon in his next report to the governor.

CHAPTER 8.

OF THE EXECUTIVE COUNCIL.

Who composes. R. § 993.

SECTION 111. The governor, auditor, secretary, and treasurer of state, or any three of them, shall constitute the executive council.

Duties in relation to census. R. § 995.

SEC. 112. The executive council must prepare and cause to be printed suitable blank forms for the purpose of taking the census, which, together with such printed directions as will be calculated to secure uniformity in the returns, must be furnished to the respective county auditors, and by them to the township assessors, on or before the first Monday in January of the year in which the census is to be taken.

Census: how to be taken. R. § 991.

SEC. 113. The township assessor of each township shall, at the time of assessing property in the year eighteen hundred and seventy-five, and every ten years thereafter, take an enumeration of the inhabitants in his township.

Duty of assessor. R. § 992.

SEC. 114. Said assessor shall make a return on or before the first day of June of such enumeration to the auditor of the county, who shall make and forward to the secretary of state on or before the first day of September in the current year, an abstract of said census return, showing:

The total number of males;

The total number of females;

The number of persons entitled to vote;

The number of militia;

The number of foreigners not naturalized;

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

The number of families and the number of dwelling-houses;

The number of acres of improved and unimproved lands;

An enumeration of agriculture, mining and manufacturing statistics, including the value of the products of the farm, herd, orchard, and dairy, each, and the value of manufactured articles, and of minerals sold, the year preceding the census;

The number of miles of railway finished and unfinished;

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

Other matters enumerated. R. § 994.

SEC. 115. The executive council may require such other matters to be ascertained and returned as they deem expedient.

Secretary of state to preserve: publication. R. § 996.

SEC. 116. The secretary of state shall file and preserve in his office the abstracts received from the county auditors, and cause an abstract thereof to be recorded in a book to be by him prepared for that purpose, and published in such manner as the executive council may direct.

SEC. 117. When any township assessor fails to make an accurate return of the census as herein provided, the county auditor may appoint some suitable person to take the census according to the provisions of this chapter, at as early a day as practicable; which shall be done at the expense of the county in which the service is performed. Remedy when assessor fails to return. R. § 997.

SEC. 118. The executive council may require any auditor failing to make returns as herein provided, to send up the returns as soon as practicable at the expense of the delinquent county. Returns sent at expense of county. R. § 999.

SEC. 119. The secretary of state shall keep a journal in which shall be entered all acts of the executive council. Journal kept.

SEC. 120. The executive council shall have the charge, care, and custody of the property of the state when no other provision is made, and shall procure for the several offices of the governor, secretary of state, auditor, and treasurer of state, register of the state land office, superintendent of public instruction, attorney-general, and state librarian, and clerk of the supreme court, fuel, lights, blank books, furniture, and any other thing necessary to enable such officers to promptly and efficiently perform the duties of their several offices; the accounts for any expenditures under this section shall be audited upon the certificate of such council, and the warrants drawn therefor shall state on their face, "for allowance by executive council," and paid by the treasurer of state. The executive council shall report to each regular session of the general assembly, the amounts expended, and, in general terms, what for, and how much for each office. Care and custody of state property: make provision for state officers.

CHAPTER 9.

OF DUTIES ASSIGNED TO TWO OR MORE OFFICERS JOINTLY; AND GENERAL REGULATIONS.

SECTION 121. The executive council shall make estimates of all the paper needed for the public printing, and of all the stationery necessary for the general assembly, the public offices, and the supreme court; and the auditor shall advertise for sealed proposals of the quantity, quality, and kinds thereof which may be needed, in two newspapers at the seat of government, and in such other newspapers as they may deem expedient, requiring a delivery of the articles at least ninety days before the same will be wanted, and bids for the same shall be opened by said executive council, at such time as may be fixed by said advertisement; and they shall award the contracts for furnishing such stationery, paper, etc., to the lowest responsible bidders therefor, who shall give security, to be approved by them, for the performance of their contracts; and upon the delivery of the articles contracted for at the office of the secretary of state, in compliance with the terms of said contracts, and presenting receipts therefor, signed by the secretary to the auditor of state, he shall issue to the contractors his warrants on the treasurer for the amount due, which Executive council to advertise for stationery. R. § 2169.

shall be paid out of any money in the treasury not otherwise appropriated.

Secretary of state to take charge of paper. R. § 2170. C. 22, § 12, 10 G. A.

SEC. 122. The secretary of state shall take charge of said articles, and furnish the public printer all the paper required for the various kinds of public printing in such quantities as may be needed for the prompt discharge of his duties; and he shall supply the governor, secretary of state, auditor, treasurer, judges of the supreme court and clerk thereof, attorney general, supreme court reporter, superintendent of public instruction, register of the state land office, general assembly and clerks or secretaries thereof, such quantities as may be required for the public use and necessary to enable them to perform their several duties as required by law, taking receipts of the proper officers therefor.

Contingent fund of any officer: how accounted for. R. § § 2172, 2173.

SEC. 123. Where an appropriation shall be made as a contingent fund for any office or officer, or for any other purpose to be expended for the state, the officer or person having charge of such fund shall keep an account therewith, showing when, to whom, and for what, any portion of said fund has been expended, and to take and preserve receipts for all amounts expended.

Report of contingent fund to be made. R. § § 2174, 2175, 2176.

SEC. 124. Such officer or person shall, on or before the first day of November preceding each regular session of the general assembly, report to the auditor of state, stating in detail in what manner such funds have been expended, and shall not be credited with any expenditure unless the same has been done in the manner contemplated by the law making the appropriation, nor unless he has preserved and filed with such auditor proper receipts and vouchers for each sum expended. All funds not properly accounted for may be recovered by the state from the person or officer charged therewith, with fifty per cent. damages on the same. The auditor shall, in his report to the governor, state the condition in detail of each of the appropriations referred to in this and the preceding section.

Reports of officers: when to be made. R. § § 214, 215.

SEC. 125. The auditor and treasurer of state, register of state land office, superintendent of public instruction, and all regents, trustees, principals, directors, inspectors, and wardens of any charitable school, university, or asylum, or proper officer of any other state institution, except the trustees of the Iowa state agricultural college and farm, shall, on or before the fifteenth day of November preceding each regular session of the general assembly, transmit to the governor a detailed report showing the expenditure of all public moneys placed or coming into their hands, with each voucher or duplicate voucher for all expenditures they have made.

Officers to take an oath: form of. R § 2180.

SEC. 126. Every person appointed or elected a regent, trustee, manager, commissioner, or inspector, or a member of any board of regents, trustees, managers, commissioners, or inspectors, now or hereafter created or provided by law for the government, control, management, or inspection of any public building, improvement, or institution whatever, owned, controlled, or managed, in whole or in part, by or under the authority or direction of this state, shall, before entering upon the discharge of his duties as such regent, trustee, manager, commissioner, or in-

spector, take and subscribe an oath, in substance and form as follows: "I, (here insert affiant's name) do solemnly swear that I will support the constitution of the United States, and of the state of Iowa; that I will honestly and faithfully discharge the duties of (here describe the nature of the office, trust, or position as regent, trustee, manager, commissioner, or inspector, as the case may be,) according to the laws that now are, or that may hereafter be in force regulating said institution, and prescribing the duties of regents, trustees, managers, commissioners, or inspectors thereof, (as the case may be); that I will, in all things conform to the directions contained in said law or laws, and that I will not, directly or indirectly, as such regent, trustee, manager, commissioner, or inspector, (as the case may be) make, or enter into, or consent to any contract or agreement, expressed or implied, whereby any greater sum of money shall be expended or agreed to be expended than is expressly authorized by law at the date of such contract or agreement.

When prohibited from contracting. R. § 2181.

SEC. 127. Any officer who shall be empowered to expend any public moneys, or to direct such expenditures, is hereby prohibited from making any contract for the erection of any building, or any other purpose which shall contemplate any excess of expenditures, beyond the terms of the law under which said officer was appointed.

Oaths: where filed: penalty. R. § 2183.

SEC. 128. Oaths required by this chapter shall be filed in the office of the auditor of state, and he shall not draw any warrant on the state treasury for the purposes for which said officers are appointed, until such oaths are so filed.

Fiscal term of certain institutions. C. 114, 10 G. A. C. 144, § 2, 13 G. A.

SEC. 129. The biennial fiscal term for all institutions required to report to the governor or general assembly, except the trustees of the Iowa state agricultural college and farm, shall commence on the first day of November next preceding the regular session of the general assembly; and the several officers of all such institutions shall commence their reports on that day, and close them on the day preceding.

Governor to cause reports to be printed: mode of distribution. C. 93, 12 G. A.. C. 114, § 2, 10 G. A. C. 144, § 2, 13 G. A

SEC. 130. The governor shall cause to be printed of each of said reports, except that of the trustees of the agricultural college and farm, three thousand copies; twenty-five hundred to be bound in paper, and distributed as follows: one thousand copies equally among the members of the general assembly; one thousand copies to the officers making the same, for distribution by them; five hundred copies to remain with the state for the use of future general assemblies, and special calls therefor; five hundred copies to be stitched and bound in boards in a book containing a copy of each report, to be distributed as follows: one copy to each member and officer of the general assembly, one copy to each state officer and state institution, one copy to the office of the county auditor of each county, to belong to said office; and one copy to each newspaper in the state; eighty copies to the state historical society, one hundred copies, or so many thereof as may be needed, to the secretary of state for exchange with other states, and for distribution to the public libraries of the state as provided hereafter, and the remainder to be placed in the state library.

Secretary of state to distribute documents where no provision is made. C. 30, § § 1, 3, 10 G. A.

SEC. 131. Whenever any public documents are in the hands of the secretary of state, the distribution of which is not otherwise provided for, he shall transmit one copy of each to every public library in the state which shall be regularly incorporated, and which shall also have filed with the secretary of state an affidavit of its president and secretary, stating that it is in actual operation as a public library within this state, and contains more than two hundred volumes.

Books and accounts to be subject to inspection.

SEC. 132. The books, accounts, vouchers, and funds belonging to, or kept in any state office or institution, or in the charge or under the control of any state officer or person having charge of any state funds or property, shall, at all times, be open or subject to the inspection of the governor or any committee appointed by him, or by the general assembly or either house thereof, and the governor shall see that such inspection of the office of state treasurer is made at least four times in every twelve months.

TITLE III.

OF THE JUDICIAL DEPARTMENT.

CHAPTER 1.

OF THE ORGANIZATION OF THE SUPREME COURT.

SECTION 133. The supreme court shall be held at the seat of government, at the city of Davenport in the county of Scott, the city of Dubuque in the county of Dubuque, and at the city of Council Bluffs in the county of Pottawattamie. Place of holding. R. § § 2623, 2640.

SEC. 134. There shall be two terms a year held at each place; at the seat of government on the first Monday in June and December; at Davenport, on the first Monday in April and October; at Dubuque, on the third Monday in April and October; and at Council Bluffs, on the third Monday in March and September. Time. R. § § 2624, 2640, C. 37, 14 G. A.

SEC. 135. Except otherwise provided, all appeals must be taken to the terms at the seat of government; but from the counties of Clinton, Scott, Johnson, Iowa, Cedar, Muscatine, Louisa, Washington, and Keokuk, appeals shall be taken to Davenport; from the counties of Allamakee, Bremer, Butler, Blackhawk, Buchanan, Clayton, Chickasaw, Cerro Gordo, Delaware, Dubuque, Floyd, Hancock, Winneshiek, Mitchell, Worth, Grundy, Fayette, Jones, Linn, Benton, Howard, Jackson, Wright, and Hamilton, to Dubuque; and from the counties of Fremont, Page, Taylor, Ringgold, Union, Adams, Montgomery, Mills, Pottawattamie, Cass, Shelby, Harrison, Monona, Crawford, Woodbury, Ida, Sac, and Plymouth, to Council Bluffs. With the consent of the appellee expressed in writing on the notice of appeal, causes may be taken from any county to either place where it is provided the court shall be held. Causes: where taken. R. § § 2642, 2643, C. 14, § 1, C. 27, § 3, 12 G. A. C. 42, § 1, 13 G. A. C. 5, § § 37, 70, 14 G. A.

SEC. 136. All causes on the docket shall be heard at each term unless continued for cause, and all causes thus continued shall be heard at the next term of each court unless transferred by agreement of parties to some other place named in section one hundred and thirty-three of this chapter. When heard. R. § 2641.

SEC. 137. The sheriff of the county where the court is held, or his deputy, must attend upon the court. Sheriff. R. § 2625.

SEC. 138. All bills for contingent expenses shall contain the items thereof, and shall be certified to as correct by the chief justice before being audited. Expenses. C. 122, § 9, 13 G. A.

SEC. 139. The presence of three judges is necessary for the transaction of business, but one alone may adjourn from day to day, or to a particular day, or until the next term. Quorum. C. 23, § 4, 10 G. A.

SEC. 140. When the court is equally divided in opinion, the judgment of the court below shall stand affirmed, but the decision is of no further force or authority. Divided court. R. § 2628.

Failure to attend. R. § 2629.

SEC. 141. If all the judges fail to attend on the first day of the term, the clerk must enter the fact on record, and the court shall stand adjourned until the next day, and so on until the fourth day; then, if none of the judges appear, the court shall stand adjourned until the next term.

Stand continued. R. § 2630.

SEC. 142. No process or proceeding shall in any manner be 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.

Opinions filed. R. § § 2636, 2637.

SEC. 143. The opinions of the court, and those of any judge dissenting therefrom, on all questions reviewed on appeal, as well as such motions, collateral questions, and points of practice as such court may think of sufficient importance, shall be reduced to writing and filed with the clerk.

Records show. R § 2638.

SEC. 144. 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.

Reports: what included.

SEC. 145. If the decision, in the judgment of the court, is not of sufficient general importance to be published, it shall be so designated, in which case it shall not be included in the reports, and no case shall be reported except by order of the full bench.

CHAPTER 2.

OF THE CLERK OF THE SUPREME COURT.

Office: duty. R. § § 2647, 2648.

SECTION 146. The office of the clerk of the supreme court shall be kept at the seat of government, and he shall keep a complete record of all proceedings of the court.

Control opinions. R. § 2649.

SEC. 147. He must not allow any written opinion of the court to be removed from his office except by the reporter, but shall permit any one to examine or copy the same, and shall, when required, make a copy and certify to the same.

Announce decision. R. § 2650.

SEC. 148. He shall promptly announce by letter any decision rendered to one of the attorneys of each side, when such attorneys are not in attendance at the place of court.

Make record. R. § 2651.

SEC. 149. He shall record every opinion rendered by the court as soon as filed, and shall perform all the duties pertaining to his office.

CHAPTER 3.

OF THE ATTORNEY-GENERAL.

Appear for the state. R. § 134.

SECTION 150. The attorney-general shall attend in person at the seat of government during the session of the general assembly and supreme court, and appear for the state, prosecute and defend all actions and proceedings, civil and criminal, in which the

state shall be a party or interested, when requested to do so by the governor, executive council, or general assembly, and shall prosecute and defend for the state all causes in the supreme court in which the state is a party or interested.

Written opinions: when given. R. § 125.

SEC. 151. When requested, he shall give his opinion in writing upon all questions of law submitted to him by the general assembly or either house thereof, governor, lieutenant-governor, auditor, secretary of state, treasurer, superintendent of public instruction, register of the state land office, executive council, and district attorneys. He shall, when required, prepare drafts for contracts, forms, and other writings, which may be required for the use of the state, and shall report to the general assembly, when requested, upon any business pertaining to his office.

Pay money. R. § 126.

SEC. 152. All moneys received by him belonging to the people of the state, or received in his official capacity, shall be paid into the state treasury.

Office: keep record. R. § § 127, 130, 131.

SEC. 153. The executive council shall furnish him a suitable office at the seat of government. He shall keep in proper books, a record of all official opinions, and a register of all actions prosecuted and defended by him, and of all proceedings had in relation thereto, which books shall be delivered to his successor.

CHAPTER 4.

OF THE SUPREME COURT REPORTER.

Opinion taken. C. 22, § 3, 10 G. A.

SECTION 154. When the opinions filed at any term of the supreme court are recorded by the clerk, the reporter may take and retain the same for a period not exceeding four months to prepare a report therefrom, but within such time they shall be returned to and remain in the office of such clerk.

Prepare a syllabus. Same, § 4.

SEC. 155. He shall, as soon as practicable after a case is decided, prepare for publication a syllabus of the opinion, a brief abstract of the facts involved, and a statement of the legal propositions made by counsel in the argument; but the argument shall not be reported at length.

Publish reports. Same, § 6.

SEC. 156. As often as there shall be sufficient matter to constitute a volume of six hundred pages, exclusive of the index and table of cases, the reporter shall arrange the same, with a table of cases and an index, and publish the same in a manner and style as neat and substantial as that of the thirteenth volume of Iowa Reports; but the supreme court may increase the size of the volumes when necessary. Two volumes only shall be published in a year.

Copies taken by the state. Same, § 8.

SEC. 157. The secretary of state shall take for the use of the state, five hundred copies of each volume of such reports as soon as published upon presentation of a certificate signed by a majority of the judges of the supreme court, showing that such volume is prepared and published as provided in this chapter; and shall

execute a receipt therefor; upon presentation of which, the auditor of state shall draw a warrant on the state treasury in payment for the same at the rate of five dollars per volume. None of said volumes shall be sold or disposed of before the same have been approved by the judges aforesaid.

Copyright. Same, § 9.

SEC. 158. The copyright of all reports prepared or published after the first day of January, A. D. 1875, shall be the property of the state. But the reporter shall own the copyright of all reports published before that time, and the supreme court may order the publication of a new edition of any volume of which the copyright is owned by the reporter when the public interest requires it, and may require compliance therewith within six months by an order entered of record; and if the reporter neglects or refuses to comply with such order, then such copyright shall be forfeited to the state.

Disposition of reports. Same, § 10. C. 109, § 8, 14 G. A.

SEC. 159. The copies received by the secretaryof state shall be disposed of by him as follows: Two copies of each volume to the library of congress and the library of the supreme court of the United States; one copy to the library of each state and territory in the United States, to each judge of the supreme, district, and circuit courts, to the clerk of the supreme court and attorney-general; fifty copies to the state library, to be and remain therein as a part thereof, and one copy to each county in the state, and twenty copies to the law department of the state university, and twenty copies to the state historical society for exchange in such manner as the proper officers thereof think advisable, and the remaining copies, together with all reports now in the office of governor, secretary, auditor, treasurer of state, and register of the land office, and superintendent of public instruction, shall be used by the trustees of the state library in exchange for such books on law or equity, or reports of other states as they may select. All books received by such exchange shall be deposited in and become a part of the state library.

Price. C. 22, § 13, 10 G. A.

SEC. 160. The reporter shall furnish reports to any person desiring the same, at a rate not exceeding five dollars for each volume. For a violation of this section, and upon conviction thereof, he shall be fined two hundred dollars.

CHAPTER 5.

OF THE DISTRICT AND CIRCUIT COURTS AND JUDGES THEREOF.

Jurisdiction of district court. R. § 2666. C. 153, § 2, 18 G. A.

SEC. 161. The district court shall have and exercise general original jurisdiction, both civil and criminal, where not otherwise provided, and appellate jurisdiction in all criminal matters. Such court shall have a general supervision over all inferior courts and officers in all criminal matters, to prevent and correct abuses where no other remedy is provided.

Same: circuit court. C. 22, 14 G. A.

SEC. 162. The circuit court shall have and exercise general original jurisdiction concurrent with the district court in all civil

actions and special proceedings, and exclusive jurisdiction in all appeals and writs of error from inferior courts, tribunals, or officers, and a general supervision thereof in all civil matters, to prevent and correct abuses where no other remedy is provided.

Terms. R § 2653.

SEC. 163. The judicial districts and circuits, and the terms and places of holding the district and circuit courts therein, shall remain as at present fixed until changed in accordance with law. Where such terms are held in any city or incorporated town not the county seat of a county, such city or town shall provide and furnish the necessary rooms and places for such terms free of charge to the county.

Probate terms.

SEC. 164. The circuit judge having jurisdiction in counties having two county seats, shall hold terms for probate business at each of said county seats.

Judges fix terms. C. 22, § 4, 14 G. A.

SEC. 165. At least one term of each court shall be held in every organized county in each year, and the district and circuit judges of each judicial district shall, on or before the first Monday in December, A. D. 1873, and in each alternate year thereafter, designate and fix by an order under their hands, the times of holding the terms of such courts in each county in their districts for the two years next ensuing the first day of January thereafter, which order shall be forthwith forwarded by the district judge to the secretary of state and the clerk of the district court in each county in such district, and the clerk shall file the same and enter it of record in the journal of each court, and cause such order to be published for four weeks in some weekly newspaper published in such county, if there be any such published. The secretary of state shall, within ten days after receiving said orders, or before the first Monday in January after said orders are made, prepare a tabular statement of the times of holding the several courts as fixed by the several orders in his office, and have printed one thousand copies thereof, which shall be distributed as follows:—One copy to each state officer, state library, library of the law department of the state university, each clerk of the district court, and sheriff, and the residue to the county auditors in proportion to the population of each county, for gratuitous distribution among the attorneys of the county.

Special term. R. § § 2656, 2657, 2658.

SEC. 166. A special term may be ordered in any county at any regular term of the court in that county, and at any other time by the judge, for the trial of those causes in which both parties consent. When ordering a special term, the court, or judge, shall direct whether a grand or trial jury, or both, be summoned.

Failure of judge. R. § 2668.

SEC. 167. If the judge does not appear on the day appointed 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 appears, provided three days are allowed for such term.

Stand adjourned. R. § 2669.

SEC. 168. 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.

Judge may order adjournment. R. § 2670.

SEC. 169. 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.

No proceeding invalid. R. § 2671.

SEC. 170. 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.

Parties: when to appear. R. § 2672.

SEC. 171. 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.

Continued. R. § 2673.

SEC. 172. Upon any final adjournment of the court, all business not otherwise disposed of, will stand continued generally.

When no court house. R. § 2660.

SEC. 173. 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 board of supervisors provide.

Same. R. § 2661.

SEC. 174. If no suitable place be thus provided, the court may direct the sheriff to procure one.

Judges interchanged. R. § 2662, C. 86, § 25, 12 G. A.

SEC. 175. The district judges may interchange and hold each other's courts; and so may the circuit judges.

Records read. R. § 2664.

SEC. 176. The clerk shall, from time to time, read over all the entries made of record in open court; which, when correct, shall be signed by the judge.

Same. R. § 2665.

SEC. 177. 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 meantime; 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.

When amended. R. § 2666.

SEC. 178. 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.

Same. R § 2667.

SEC. 179. Entries made, approved, and signed at a previous term, can be altered only to correct an evident mistake.

Judges make rules.

SEC. 180. The judges of the district and circuit court in any district, may provide by general rule:

1. That the time of filing pleadings or motions shall be other than provided in this code;

2. That issues in all, or a part of the counties in such district, shall be made up in vacation;

3. Prescribing penalties that shall follow the overruling or sustaining a motion or demurrer;

4. Adopting such other rules as they may deem expedient, not inconsistent with this code. Such rules shall be signed by said judges, and such number published as they deem expedient, and

shall be distributed by the district judge as follows: To the secretary of state, to each of the judges of the supreme court, attorney general, clerk of the supreme court, state library, and law department of the state university, one copy each, to be filed and preserved in the said several offices or departments; and the residue to the clerks of the district court in each county composing such district, in such proportion as such judge deems proper. The expense of publishing and distributing such rules shall be paid by the counties composing the district, as the judges may direct. Such rules may be revised and changed as often as the judges deem proper, and shall be published and distributed in the same manner, but shall not take effect until ninety days after their entry of record.

Short-hand reporter. C. 99, § 100, 14 G. A.

SEC. 181. The judge of the district or circuit court may appoint, whenever in the judgment of either of them it will expedite the public business, a short-hand reporter, who shall be well skilled in the art and competent to discharge the duties required, for the purpose of recording the oral testimony of witnesses in criminal cases, and in civil cases when either of the parties request it, and such other matter as the judge may direct.

Oath: removal. Same.

SEC. 182. Such reporter shall take an oath faithfully to perform the duties of his office, which shall be filed in the office of the clerk. He shall attend such sessions of the court as the judge may direct, and may be removed by the judge making the appointment for misconduct, incapacity, or inattention to duty.

Judgment in vacation.

SEC. 183. With consent of parties; actions, special proceedings, and other matters pending in the courts named in this chapter, may be taken under advisement by the judges, decided and entered of record in vacation, or at the next term; if so entered in vacation, they shall have the same force and effect from the time of such entry as if done in term time.

Circuit court a court of record. C. 86, § § 8, 11, 12 G. A.

SEC. 184. The circuit court shall be held by the circuit judge, and be a court of record; shall have and use its own seal, having on the face thereof the words "circuit court" and the name of the county and state.

Judgment on verdict received after the opening of court in another county.

SEC. 185. In all judicial proceedings in any of the courts of this state where a jury trial has been commenced in any case during any term of court, and where such jury may agree upon a verdict, but not until after the time for holding court in some other county in the same district, and where the jury has agreed upon a verdict and reported the same after the opening of court in another county and judgment has been rendered thereon, then and in that case such judgment shall not be deemed invalid by reason of the time of receiving such verdict and the rendition of such judgment.

In such cases judgment may be rendered at next term.

SEC. 186. In cases provided for in the preceding section, where the verdict has been so received and judgment has not been rendered thereon, as provided for in said section, then the time of the coming in of such verdict shall be no legal objection to the rendition of judgment thereon at the next term of the court in the county where such trial was had, but judgment shall then be rendered thereon; *provided*, there be no other good and sufficient reason why such judgment shall not then be rendered;

then the time of the report of the verdict and the provisions of this section shall in all respects have a retrospective effect and operation.

Retrospective.

CHAPTER 6.

GENERAL PROVISIONS.

Judges can not act as attorneys. R. 2674

SECTION 187. No judge of any court of record shall practice as an attorney or counselor at law, or give advice in relation to any action pending, or about to be brought in any of the courts of this state.

Process. R § 2682.

SEC. 188. All process issued by the clerk of the court shall bear date the day it is issued, to be attested in the name of the clerk who issued the same, and be under the seal of the court.

Proceedings public. R. § 2683.

SEC. 189. All judicial proceedings must be public, unless otherwise specially provided by statute, or agreed upon by the parties.

Judge or justice: when disqualified. R. § 2685.

SEC. 190. 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.

Sunday. R. § 2686.

SEC. 191. No court can be opened, nor any judicial business 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;
4. And such other acts as are provided by law.

Where held. R. § 2687.

SEC. 192. Courts must be held at the places provided by law, except for the determination of actions, special proceedings, and other matters not requiring a jury, when they may, by consent of the parties therein, be held at some other place.

CHAPTER 7.

OF THE CLERK OF THE DISTRICT AND CIRCUIT COURTS.

Of circuit court. C. 86, § 10, 12 G. A.

SECTION 193. The clerk of the district court is, by virtue of his office, clerk of the circuit court.

Official duty. R § 343.

SEC. 194. He shall keep his office at the county seat; shall attend the sessions of the district and circuit courts himself, or

by deputy; keep the records, papers, and seals of both courts, and record their proceedings as hereinafter directed under the direction of the judges of each court respectively.

How designated. C. 434, § 2, 12 G. A.

SEC. 195. The clerk of the district court shall, while acting as clerk of the circuit court, be known and designated as "clerk of the circuit court;" and in all certificates and records relating to said court, signed by him, he shall so designate himself. The deputy of the clerk of the district court may perform any of the duties required by the clerk of the district court, to be performed in and for said circuit court; and may sign all certificates and records thereof, in the same manner and with the same force and effect as the clerk of the district court.

Records consist of. R. § 345.

SEC. 196. The records of each court consist of the original papers constituting the causes adjudicated or pending in that court, and the books prescribed in the next section.

Books kept. R. § 346, 3[illegible]. C. 26 § 1, 9 G. A.

SEC. 197. The clerk is required to keep the following books for the business of the district and circuit courts severally:

Record book.

1. 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;

Judgment docket.

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, 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;

Fee book.

3. 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;"

Sale book.

4. 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;

Complete record.

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

Incumbrance book.

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

Appearance docket.

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

Index of liens.

8. A book in which an index of all liens in district or circuit courts shall be kept

Appearance docket. C. 26, § 2, 9 G. A.

SEC. 198. The clerk shall enter in said appearance docket, each suit that shall be brought in the court, numbering them consecutively in the order in which they shall have been commenced, which number shall not be changed during the further progress of the suit. In entering the suits, the clerk shall set out the full name of all the parties, plaintiffs and defendants, as contained in the petition, or as subsequently made parties by any pleading, proceeding, or order, and shall give the date of the filing of the petition.

Same. C. 26, § 3, 9 G. A.

SEC. 199. When the original notice shall be returned to the office of the clerk, he shall enter in said docket so much of the return thereon as to show who of the parties have been served therewith, and the manner and time of service.

Same. C. 26, § 4, 9 G. A.

SEC. 200. The clerk shall, immediately upon the filing thereof, make in the appearance docket a memorandum of the date of the filing of all petitions, demurrers, answers, motions, or paper of any other description in the cause; and no pleading of any description shall be considered as filed in the cause, or be taken from the clerk's office, until the said memorandum is made.

Same. C. 26, § 5, 9 G. A.

SEC. 201. Immediately upon the sustaining or overruling of any demurrer or motion; the striking out or amendment of any pleading; trial of the cause; rendition of the verdict; entry of judgment; issuing of execution, or any other act or thing done in the progress of the cause, the like memorandum thereof shall be made in said docket, giving the date thereof, and the number of the book and page of the record where the entry thereof shall have been made, it being intended that the appearance docket shall be an index from the commencement to the end of a suit.

Records of both courts kept. C. 86, § 10, 12 G. A.

SEC. 202. The district and circuit judges of any county, may, by a joint order under their hands, direct that the records and minutes of both courts be kept in one set of books. But all matters touching decedents' estates, wills, administrations, guardians and heirs, and all business relating thereto transacted in the circuit court, and also the record of marriage licenses, shall be kept separate, in proper books prepared for that purpose, as heretofore.

Report criminal returns. R. § 349.

SEC. 203. 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, his general habits, and also the expenses of the county for criminal prosecutions during the year, including, but distinguishing, the compensation of the district attorney.

Not act as attorney. C. 29, 14 G. A.

SEC. 204. The clerk, or deputy clerk of the district court is prohibited from holding the office of justice of the peace, or practicing, directly or indirectly, as an attorney or solicitor in the district or circuit court.

CHAPTER 8.

OF THE DISTRICT-ATTORNEY.

SECTION 205. The district-attorney shall appear for the state and the several counties composing his district, in all matters in which the state or any such county may be a party or interested, in the district and circuit courts of his district and before any judge on a writ of habeas corpus sued out by a person charged or convicted of a public offense within his district. When any of the above proceedings are taken from his district to the supreme court, he shall furnish to the attorney-general a brief, containing the substance thereof, and the questions therein involved, before the proceeding is set for hearing in the supreme court. He shall also appear for the state, or any county, in any proceedings brought to his district from another on change of place of trial. He may, in his discretion, appear before a magistrate at the preliminary hearing of a criminal case; but nothing herein contained shall prevent the board of supervisors from employing other counsel, in any case properly belonging to his duties, when they deem it necessary. To appear for state or county. R. § 374.

SEC. 206. The district attorney shall, when requested, give his opinion in writing, without fee, upon all questions of law submitted to him by any county officer within his district, which have reference to the official duty of such officer, and, whenever requested by any such officer, he shall prepare proper drafts for contracts, forms, and other writings which may be wanted for the use of any county in his district, and he shall file in his office and preserve a copy of his opinions thus furnished. Give opinion in writing. R. § 375.

SEC. 207. All moneys received by the district-attorney belonging to the people of the state, or any county, shall, immediately upon the receipt thereof, be paid by him to the officer, who by law is entitled to the custody of the same. Pay over money. R. § 376.

CHAPTER 9.

OF ATTORNEYS AND COUNSELORS.

SECTION 208. All persons, who by the laws heretofore in force were permitted to practice as attorneys and counselors, may continue to practice as such; and, hereafter, any person twenty-one years of age, who is an inhabitant of this state, and who satisfies any court of record that he or she possesses the requisite learning, and is of good moral character, may, by such court, be licensed to practice as an attorney and counselor in all the courts of the state, upon taking an oath to support the constitution of the United States and of this state, and to faithfully discharge the duty of an attorney and counselor of the courts of the state according to the best of his or her ability. Who may be: oath. R. 2699, 2700, C. 21, 13 G. A.

Graduates of State University.

SEC. 209. Graduates of the law department of the Iowa State University, shall be admitted by any court of record to practice as attorneys and counselors in all the courts of the state, upon the production of their diploma and taking the oath prescribed in the preceding section.

Of another state. R. § 2702.

SEC. 210. Any practicing attorney of another state, having professional business in the courts of this state, may be admitted to practice in either of such courts upon taking the oath aforesaid.

Duties. R. § 2704.

SEC. 211. It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers;

2. To counsel or maintain no other actions, proceedings, or defences than those which appear to him legal and just, except the defense of a person charged with a public offense;

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 defenceless or the oppressed.

When disbarred. R. § 2705.

SEC. 212. 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.

Power: authority. R. § 2706.

SEC. 213. An attorney and counselor has power:

1. To execute in the name of his client a bond, or other written instrument, necessary and proper for the prosecution of an action or proceeding about to be or already commenced; or for the prosecution or defense of any right growing out of an action, proceeding, or final judgment rendered therein;

2. To bind his client to any 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 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.

May be required to prove authority. R. § 2707.

SEC. 214. 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 the 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.

Lien: extent of. R. § 2708. C. 167, § 2, 13 G. A.

SEC. 215. An attorney has a lien for a general balance of compensation upon:

1. Any papers belonging to his client, which have come into his hands in the course of his professional employment;

2. Money in his hands belonging to his client;

3. Money due his client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to such adverse party, or attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed, and, in general terms, for what services.

4. After judgment in any court of record, such notice may be given and the lien made effective against the judgment debtor, by entering the same in the judgment docket opposite the entry of the judgment.

How released. R. § 2709.

SEC. 216. Any person interested may release such lien, by executing a bond in a sum double the amount claimed, or in such sum as may be fixed by a judge, payable to the attorney, with security to be approved by the clerk of the supreme or district court, conditioned to pay any amount finally found due the attorney for his services, which amount may be ascertained by suit on the bond. Such lien will be released, unless the attorney, within ten days after demand therefor, furnishes any party interested a full and complete bill of particulars of the services and amount claimed for each item, or written contract with the party for whom the services were rendered.

License revoked. R. § 2710.

SEC. 217. Any court of record may revoke or suspend the license of an attorney or counselor at law to practice therein, and a revocation or suspension in one county operates to the same extent in the courts of all other counties.

Causes for. R. § 2711.

SEC. 218. The following are sufficient causes for 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 counselor as hereinbefore prescribed;

4. For doing any other act to which such a consequence is, by law, attached.

Proceedings for. R. § 2712.

SEC. 219. The proceedings to remove or suspend an attorney may be commenced by the direction of the court, or on motion 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.

Same. R. § 2713.

SEC. 220. 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.

Trial. R. § 2714.

SEC. 221. 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.

Judgment. R. § 2715.

SEC. 222. If the accused plead guilty, or fail to answer, the court shall proceed to render such judgment as the case requires.

Appeal. R. § 2716.

SEC. 223. In case of a removal or suspension being ordered by a district or circuit 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 or circuit court is final.

Misdemeanor: when guilty. R. § 2717.

SEC. 224. 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.

Exception. R. § 2718.

SEC. 225. When the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of the preceding section, 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.

Same. R. § 2719.

SEC. 226. 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 10.

OF JURORS.

Who competent. R. § 2720.

SEC. 227. 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.

Who exempt. R. § 2721.

SEC. 228. The following persons are exempt from liability to act as jurors: All persons holding office under the laws of the United States or of this state; all practising 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.

When excused. R. § 2722.

SEC. 229. Any person may also be excused from serving on a jury when 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 the sickness of a member of his family, requires his absence.

When to attend: liability for failure. R. § 2735.

SEC. 230. Unless the judge otherwise orders, jurors shall be summoned to appear at ten o'clock a. m. of the second day of the

term, at which time they shall be called and all excuses heard and determined by the court. If any person summoned fail to appear without sending a sufficient excuse, the court shall issue a rule returnable at that or the succeeding term, requiring him to appear, and show cause why he should not be fined for contempt, and unless he renders a sufficient excuse for such failure, the court may fine him in any amount not exceeding ten dollars, and shall require him to pay the costs, and stand committed until the fine and costs are paid.

Number. § 2732.

SEC. 231. The number of grand jurors shall be fifteen, and in counties containing less than fifteen thousand inhabitants as shown by the last preceding census, the trial jurors shall consist of the same number, unless the judge otherwise orders. But in counties containing a greater number of inhabitants, the number of trial jurors shall be twenty-four.

Failure of trial jurors to attend.

SEC. 232. Should there not be the number of trial jurors in attendance, as provided in the preceding section, by reason of a failure of the persons summoned to attend, or because excused as provided in section two hundred and thirty of this chapter, the requisite number of persons to supply the deficiency shall be drawn in the same manner as provided in sections two hundred and forty and two hundred and forty-one of this chapter. The persons so drawn shall be forthwith summoned to appear, and serve as trial jurors during the term.

Discharge of.

SEC. 233. If, in the judgment of the court, the business of the term does not require the attendance of all, or a portion of the trial jurors, they, or such portion as the court deems proper, may be discharged. Should it afterward appear that a jury is required, the court may direct them to be resummoned, or empanel a jury from the bystanders.

Lists. R. § 2723. C. 167, § 3, 13 G. A.

SEC. 234. Two jury lists, one consisting of seventy-five persons to serve as grand jurors, and one consisting of one hundred and fifty persons, or, in counties containing more than twenty thousand inhabitants, of two hundred and fifty persons, to serve as trial jurors, and composed of persons competent and liable to serve as jurors, shall annually be made in each county from which to select jurors for the year commencing on the first day of January.

Same. R. § 2724.

SEC. 235. Should there be less than the required number of such persons in any county, the list shall comprise all those who answer the above description in the same proportion.

How selected. R. § 2725.

SEC. 236. On or before the first Monday in September in each year, the county auditor shall apportion the number to be selected from each election precinct, 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.

Sheriff to serve notice. R. § 2726.

SEC. 237. The sheriff shall cause a written notice to be delivered to one of the judges of election in each precinct of the county, on or before the day of the general election in each year, informing them of the number of jurors apportioned for the ensuing year to their respective precincts.

Duty of judge of election. R. § § 2727,

SEC. 238. The judges shall thereupon make the requisite selection, and return lists of names as selected to the auditor with the returns of the election, and in case the judges of election

shall fail to make and return said lists as herein required, the county canvassers shall, at the meeting to canvass the votes polled in the county, make such lists for the delinquent precincts, and the auditor shall file said lists in his office and cause a copy thereof to be recorded in the election book.

Term of service. R. 2725.

SEC. 239. Grand jurors shall be selected for the first term in the year at which jurors are required, commencing next after the first day of January in each year, and shall serve for one year. Trial jurors shall be selected for each term wherein they are required; but no person shall be required to attend as a trial juror more than two terms in the same year, and in counties containing a population of more than five thousand inhabitants, it shall be a cause of challenge that the person has served on a jury in a court of record within one year, unless he be a member of the regular panel.

Challenge. C. 1..., § 5, 13 G. A.

Auditor write ballots. R. 2729.

SEC. 240. At least twenty days prior to the first day of any term at which a jury is to be selected, the auditor, or his deputy, must write out the names on the lists aforesaid which have not been previously drawn as jurors during the year, on separate ballots, and the clerk of the district court, or his deputy, and sheriff having compared said ballots with the lists, and corrected the same if necessary, shall place the ballots in a box provided for that purpose.

Clerk to draw: issue precept. R. § § 2731, 2733.

SEC. 241. After thoroughly mixing the same, the clerk, or his deputy, shall draw therefrom the requisite number of jurors to serve as aforesaid, and shall, within three days thereafter, issue a precept to the sheriff, commanding him to summon the said jurors to appear before the court as provided in section two hundred and thirty of this chapter.

Sheriff to serve. R. § 2734.

SEC. 242. 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.

Grand jurors to attend. R. § 2736.

SEC. 243. 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.

When precept is set aside. R. § 2738.

SEC. 244. Where, from any cause, the persons summoned to serve as grand or trial jurors fail to appear, or when from any cause the court shall decide that the grand or trial jurors have been illegally elected or drawn, the court may set aside the precept under which the jurors were summoned, and cause a precept to be issued to the sheriff commanding him to summon a sufficient number of persons from the body of the county, to serve as jurors at the term of court then being holden, which precept may be made returnable forthwith, or at some subsequent day of the term, in the discretion of the court.

How paid. R. § 2739.

SEC. 245. 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 board of supervisors and paid as other demands against the county.

CHAPTER 11.

OF SECURITIES AND INVESTMENTS.

SECTION 246. Whenever security is required to be given by law, or by order on judgment of a court, and no particular mode is prescribed, it shall be by bond. Form of. R. § 4113.

SEC. 247. Such security, when not otherwise directed, may, if for the benefit of individuals, be given to the party intended to be thereby secured. If in relation to the 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. For whose benefit. R. § 4114.

SEC. 248. 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. Remedy when defective. R. § 4119.

SEC. 249. The surety in every bond provided for by this code, must be a resident of this state, and worth double the sum to be secured beyond the amount of his debts, and have property liable to execution in this state equal to the sum to be secured. Where there are two or more sureties in the same bond, they must, in the aggregate, have the qualification prescribed in this section. Surety: resident of state. R. § 4126.

SEC. 250. The officer whose duty it is to take a surety in any bond provided for by this code, shall require the person offered as surety to make affidavit of his qualification, which affidavit may be made before such officer, or other officer authorized to administer oaths. The taking of such an affidavit, shall not exempt the officer from any liability to which he might otherwise be subject for taking insufficient security. Officer may require affidavit. R. § 4125.

SEC. 251. 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 or bonds of this state, or of those of the United States, or upon bond or mortgage of real property of the clear unincumbered value of at least twice the investment. Investments: how made. R. § 4115.

SEC. 252. 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. When discharged. R. § 4116.

SEC. 253. 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 reinvest the same under the direction of the court, unless the court appoint some other person to do such acts. Re-investment. R § 4117.

SEC. 254. Once in each year, and oftener if required by the court, the person so appointed must, on oath, render to the court an account in writing of all moneys so received by him, and of the application thereof. Account: when rendered. R. § 4118.

SEC. 255. 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 Delivery of property or deposit of money. R. § 3416.

subject of litigation, and which is held by him as trustee for another party, the court, or judge thereof, 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; or may order such money to be deposited in a bank with the consent of the parties in interest, to the credit of the court in which the action is pending, and the same shall be paid out by such bank, only upon the check of the clerk annexed to the certified order of the court directing such payment.

How paid out.

Obedience compelled. R. § 3417.

SEC. 256. Whenever a court, or judge, in the exercise of its or his authority, 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 or deliver it in conformity with the directions of the court or judge.

Sheriff: power. R. § 3418.

SEC. 257. The sheriff has the same power in such cases, as when acting under an order for the delivery of personal property.

CHAPTER 12.

OF NOTARIES PUBLIC.

For what time appointed. R. § 195.

SECTION 258. The governor may appoint and commission one or more notaries public in each county, and may at any time revoke such appointment. The commissions of all notaries public heretofore, or hereafter, issued prior to the fourth day of July, A. D., 1876, shall expire on that day, and commissions subsequently issued shall be for no longer period than three years, and all such commissions shall expire on the fourth day of July in the same year. The secretary of state shall, on or before the first day of June, A. D. 1876, and every three years thereafter, notify each notary when his commission will expire.

What done before commission issued. R. § § 200, 207, 208, 209, C. 60, 12 G. A.

SEC. 259. Before any such commission is delivered to the person appointed, he shall:

1. Procure a seal on which shall be engraved the words "notarial seal" and "Iowa," with his surname at length, and at least the initials of his christian name;

2. Execute a bond to the state of Iowa in the sum of five hundred dollars, conditioned for the true and faithful execution of the duties of his office, which bond shall be approved by the clerk of the district court of the proper county;

3. Write on said bond, or a paper attached thereto, his signature, and place thereon a distinct impression of his official seal;

4. File such bond with attached papers, if any, in the office of the secretary of state;

5. Remit to such secretary the fee required by law;

When the secretary of state is satisfied that the foregoing particulars have been fully complied with, he shall deliver the commission to the person appointed.

SEC. 260. When the secretary of state delivers the commission to the person appointed, he shall make a certified copy thereof and forward the same to the clerk of the district court of the proper county, who shall file and preserve the same in his office, and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force. Secretary to forward copy.

SEC. 261. Should the commission of any person appointed notary public be revoked by the governor, the secretary of state shall immediately notify such person, and the clerk of the district court of the proper county, through the mail. Revocation.

SEC. 262. Each notary is invested with the powers and shall perform the duties which pertain to that office by the custom and law of merchants. Powers. R. § 198.

SEC. 263. 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. Keep record of notices sent. R. § 198.

SEC. 264. On the death, resignation, or 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, neglects 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 a deceased notary which came into his hands in said clerk's office, he shall be held guilty of a misdemeanor and punished accordingly. Vacancy: records to be deposited: when. R. § 202.

SEC. 265. If a notary remove his residence from the county for which he was appointed, such removal shall be taken as a resignation. Removal: resignation. R. § 203.

SEC. 266. Each clerk aforesaid shall receive and safely keep all such records and papers of the notary in the cases above named, and shall 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. Duty of clerk. R. § 204.

CHAPTER 13.

OF COMMISSIONERS IN OTHER STATES.

SECTION 267. The governor may appoint and commission in each of the United States and territories, one or more commissioners, to continue in office for the term of three years from the How appointed: power. C. 44, § 1, 13 G. A.

date of commission, unless such appointment shall be sooner revoked by the governor; such commissioners, when qualified as hereinafter provided, shall be empowered to administer oaths, take depositions and affidavits to be used in the courts of this state, and to take acknowledgments or proof of deeds and other instruments to be recorded and used in this state.

Seal. Same. § 4.

SEC. 268. Each commissioner, exercising the authority conferred upon him by this chapter, shall have an official seal, on which shall be engraved the words "COMMISSIONER FOR IOWA," with his surname at length, and at least the initials of his christian name; also the name of the state in which he has been commissioned to act, which seal must be so engraved as to make a clear impression on wax or wafer.

Effect of signature and seal. Same. § 5.

SEC. 269. A signature and impression of such seal of any commissioner, qualified as herein provided, and corresponding with that on file in the office of the secretary of state, shall be entitled to the same credit as evidence in the courts and public offices of this state, as the signature and seal of a clerk of the district court or notary public of this state.

Compensation. Same. § 6.

SEC. 270. Such commissioner is authorized to demand for his services the same fee as may be allowed for similar services by the laws of the state in which he is to exercise his office.

Effect of local acts. Same. § 2.

SEC. 271. Oaths administered by any such commissioner, affidavits and depositions taken by him, and acknowledgments as aforesaid certified by him over his official signature and seal, are made as effectual in law to all intents and purposes, as if done and certified by a clerk of the district court or justice of the peace of this state.

Qualification. Same. § 3.

SEC. 272. Before such commissioner can perform any of the duties of his office, he is required to take and subscribe an oath that he will support the constitution of the United States and the constitution of the state of Iowa, and that he will faithfully perform the duties of such 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, or before a duly authorized commissioner for Iowa, resident in said state, which certificate shall be filed in the office of the secretary of state of this state, and on which shall be the official signature and a clear impression of the official seal of such commissioner.

Duty of secretary of state. Same. § 8.

SEC. 273. The secretary of state, upon the reception of the certificate as provided in section two hundred and sixty-nine of this chapter, shall examine the same, and if this chapter has been strictly complied with, it shall be his duty to forward to said commissioner a certificate properly attested, that he has been duly commissioned as a commissioner for Iowa; and that he is duly qualified as required by the laws of Iowa authorizing the appointment of commissioners in other states; and it shall be the further duty of the secretary of state to forward a duplicate of said certificate to the secretary of the state in which said commissioner may have been appointed.

List of to be published. Same. 11.

SEC. 274. The secretary of state shall cause to be published with the session laws of each general assembly, a full and

complete list of all commissioners for Iowa who are duly qualified, and whose commissions do not expire on or before the fourth day of July of the year in which such publication is made, which list shall give the post office address, date of qualification, and date of expiration of the commission of each commissioner.

Power of commissioners of other states in this state. Same. § 12.

SEC. 275. Commissioners of the like nature appointed in this state, under the authority of any other of the United States or territories, are hereby invested with the authority of a justice of the peace to issue subpœnas, requiring the attendance of witnesses before them to give their testimony by deposition or affidavit, in any matter in which such deposition or affidavit may 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 such law of the other states; and false swearing in such cases is hereby made subject to the penal laws of this state relating to perjury; provided that such commissioner shall cause to be filed in the office of the secretary of state a certificate of the secretary of the state or territory for which he claims to act, that he is properly appointed and qualified as required by the laws of said state, and has in his possession a certificate that this section has been complied with.

Record of appointments to be kept. Same. § 13.

SEC. 276. The secretary of state shall keep in his office a complete record of all appointments made by the governor, pursuant to the provisions of this chapter.

CHAPTER 14

OF THE ADMINISTRATION OF OATHS.

Who authorized. R § 1843, 3201, C.146, 13 G. A.

SECTION 277. 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 the circuit court;
The clerk of the supreme court;
Each clerk of the district court as such, or as clerk of the circuit court;
Each deputy clerk of the district and circuit courts;
Each county auditor;
Each deputy county auditor;
Each sheriff and his deputies, in cases where they are authorized by law to select commissioners or appraisers, or to empanel jurors for the view or appraisement of property, or are directed as an official duty to have property appraised, or take the answers of garnishees;
Each justice of the peace within his county;
Each notary public within his county.

Affirmation. R. 1844.

SEC. 278. Persons conscientiously opposed to swearing may affirm, and shall be subject to the penalties of perjury as in case of swearing.

TITLE IV.

RELATING TO COUNTY, TOWNSHIP, TOWN, AND CITY GOVERNMENT.

CHAPTER 1.

OF COUNTIES.

Body corporate: powers. R. § 221.

SECTION 279. Each county 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 make 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.

Jurisdiction. R. § 223.

SEC. 280. Counties bounded by a stream or other water, have concurrent jurisdiction over the whole of the waters lying between them.

RELOCATION—COUNTY SEAT.

County seat relocation. C. 49, § 1, 9 G. A.

SEC. 281. Whenever the citizens of any county desire a re-location of their county seat, they may petition their board of supervisors respecting the same at any regular session.

Petition for. Same. § § 2, 3.

SEC. 282. Such petition shall designate the place at which the petitioners desire to have the county seat re-located, and shall be signed by none but legal voters of said county, and shall be accompanied by affidavits sufficient to satisfy said board that the signers are all legal voters of said county, and that the signatures on said petition are all genuine.

Remonstrances against. Same. § 9.

SEC. 283. Remonstrances, signed by legal voters of the county only, and verified in like manner as the petition, may also be presented to the board. If the same persons petition and remonstrate they shall be counted only on the remonstrance, and if a greater number of legal voters remonstrate against the re-location than petition for it, no election shall be ordered.

Notice: publication.

SEC. 284. Sixty days notice of the presentation of such petition shall be given by three insertions in a weekly newspaper, if there be one printed in the county; if no paper be therein printed, by posting the same in every township in the county and on the door of the court-house therein.

SEC. 285. Upon the presentation of such a petition, signed by at least one-half of all the legal voters in the county as shown by the last preceding census, if the notice hereinbefore prescribed shall have been given, the board shall order that at the next general election a vote shall be taken between said place and the existing county seat, and shall require a constable of each township in the county to post notices of such order in three public places in such township at least fifty days before said election, and shall also publish a notice of such election in some newspaper, if there be one published in the county, for four consecutive weeks, the last publication to be at least twenty days before said election. When vote may be taken. Same § 4.

SEC. 286. Such election shall be conducted as elections for county officers. The ballot shall state that it was cast for the county seat and name the place voted for. How conducted. Same §§ 6, 7.

SEC. 287. If the point designated in the petition obtain a majority of all the votes cast, the board of supervisors shall make a record thereof, and declare the same to be the county seat of said county, and shall remove the records and documents thereto as early as practicable thereafter. Removal of. Same. § 8.

SEC. 288. The vote for re-location above provided for, shall not take place in any county oftener than once in three years. How often. Same. § 2.

BONDED INDEBTEDNESS.

SEC. 289. In any county having a population exceeding seven thousand inhabitants, the outstanding indebtedness of which, on the first day of January, 1872, exceeded the sum of five thousand dollars, the board of supervisors, by a vote of two-thirds of all the members thereof, are empowered, if they deem it for the public interest, to fund the same and issue bonds of the county therefor, in sums not less than one hundred dollars, nor more than one thousand dollars each, having not more than ten years to run, and bearing a rate of interest not exceeding ten per cent. per annum, payable semi-annually, which bonds shall be substantially in the following form: When bonds may issue. C. 54, § 1, 13 G. A. C. 136, 14 G. A.

No. .....

The county of.....in the state of Iowa, for value received, promises to pay..... or order, at the office of the treasurer of said county in ..... on the first day of..... 18...., or at any time before that date, at the pleasure of the county, the sum of ..... dollars, with interest at the rate of..... per cent. per annum, payable at the office of said treasurer semi-annually, on the first days of ..... and ..... in each year on presentation and surrender of the interest-coupons hereto attached. This bond is issued by the board of supervisors of said county under the provisions of chapter ..... of the code of Iowa, and in conformity with a resolution of said board, dated ..... day of ..... 18.... Form of bond.

In testimony whereof, the said county by its board of supervisors, has caused this bond to be signed by the chairman of the board, and attested by the auditor, with the county seal attached, this..... day of ..... 18....

{ SEAL. }

.....
Chairman of board of supervisors.

Attest:

.....
Auditor.....

And the interest coupon shall be in the following form:

$..... the treasurer of.....county, Iowa, will pay the holder hereof, on the ..... day of .....18...., at his office in.....dollars, for interest on county bond No....., issued under provisions of chapter .....of the code of Iowa.

....
County Auditor.

Disposition of bonds. C. 54, § 2, 13 G. A.

SEC. 290. Whenever bonds, issued under this chapter, shall be duly executed, numbered consecutively and sealed, they shall be delivered to the county treasurer and his receipt taken therefor, and he shall stand charged on his official bond with all bonds delivered to him and the proceeds thereof, and he shall sell the same, or exchange them, on the best available terms for any legal indebtedness of the county, outstanding on the first of January, 1872, but in neither case for a less sum than the face value of the bonds and all interest accrued on them at the date of such sale or exchange. And if any portion of the said bonds are sold for money, the proceeds thereof shall be applied exclusively for the payment of liabilities existing against the county at and before the date above named. When they are exchanged for warrants and other legal evidences of county indebtedness, the treasurer shall at once proceed to cancel such evidences of indebtedness, by endorsing on the face thereof the amount for which they were received, the word "canceled" and the date of cancellation. He shall also keep a record of bonds sold or exchanged by him by number, date of sale, amount, date of maturity, the name and post office address of purchasers, and, if exchanged, what evidences of indebtedness were received therefor, which record shall be open at all times for inspection by the public. Whenever the holder of any bond shall sell or transfer it, the purchaser shall notify the treasurer of such purchase, giving at the same time the number of the bond transferred and his post office address; and every such transfer shall be noted on the record. The treasurer shall also report, under oath, to the board at each regular session, a statement of all bonds sold or exchanged by him since the preceding report, and the date of such sale or exchange; and, when exchanged, a list or description of the county indebtedness exchanged therefor, and the amount of accrued interest received by him on such sale or exchange, which latter sum shall be charged to him as money received on bond fund, and so entered by him on

his books; but such bonds shall not be exchanged for any indebtedness of the county except by the approval of the board of supervisors of said county.

Tax levied to pay bonds. Same, § 3.

SEC. 291. The board of supervisors shall cause to be assessed and levied each year upon the taxable property of the county, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds issued in conformity with the provisions of this chapter accruing before the next annual levy, and such proportion of the principal, that at the end of three years the sum raised from such levies shall equal at least twenty per cent. of the amount of bonds issued; at the end of five years at least forty per cent. of the amount; and at and before the date of maturity of the bonds, shall be equal to the whole amount of the principal and interest; and the money arising from such levies shall be known as the bond-fund, and shall be used for the payment of bonds and interest-coupons, and for no other purpose whatever; and the treasurer shall open and keep in his books a separate and special account thereof, which shall at all times show the exact condition of said bond-fund.

How paid or redeemed. Same, § 4.

SEC. 292. Whenever the amount in the hands of the treasurer belonging to the bond fund, after setting aside the sum required to pay interest maturing before the next levy, is sufficient to redeem one or more bonds, he shall notify the owner of such bond or bonds that he is prepared to pay the same, with all interest accrued thereon, and if not presented for payment or redemption within thirty days after the date of such notice, the interest on such bonds shall cease, and the amount due thereon shall be set aside for its payment whenever presented. All redemptions shall be made in the exact order of their issuance, beginning at the lowest or first number; and the notice herein required shall be directed to the post-office address of the owner, as shown by the record kept in the treasurer's office.

When executive council may levy tax. Same, § 5.

SEC. 293. If the board of supervisors of any county which has issued bonds under the provisions of this chapter, shall fail to make the levy necessary to pay such bonds, or interest-coupons at maturity, and the same shall have been presented to the county treasurer, and the payment thereof refused, the owner may file the bond, together with all unpaid coupons, with the auditor of state, taking his receipt therefor, and the same shall be registered in the auditor's office; and the executive council shall, at their next session as a board of equalization, and at each annual equalization thereafter, add to the state tax to be levied in said county, a sufficient rate to realize the amount of principal or interest past due, and to become due prior to the next levy, and the same shall be levied and collected as a part of the state tax, and paid into the state treasury, and passed to the special credit of such county as bond-tax, and shall be paid by warrant, as the payments mature, to the holder of such registered obligations, as shown by the register in the office of the state auditor, until the same shall be fully satisfied and discharged; any balance then remaining being passed to the general account and credit of said county.

CHAPTER 2.

OF THE BOARD OF SUPERVISORS.

Number: election. C. 148, § 1, 13 G. A.

SECTION 294. The board of supervisors in each county shall consist of three persons, except where the number may heretofore have been, or hereafter be, increased in the manner provided by section two hundred and ninety-nine of this chapter. They shall be qualified electors, and be elected by the qualified voters of their respective counties, and shall hold their office for three years.

When elected. Same, § 2.

SEC. 295. At the general election in each year, there shall be at least one supervisor elected in each county, who shall not be a resident of the same township with either of the members holding over, and who shall continue in office three years.

Meetings of. Same, § 3.

SEC. 296. The members of the board shall meet at the county seat of their respective counties, on the first Mondays of January, April, June, September, and the first Monday after the general election in each year, and such special meetings as are provided for by law.

Quorum. Same, § 5.

SEC. 297. A majority of the board of supervisors shall be a quorum to transact business, but should a division take place on any question when only two members of the board are in attendance, the question shall be continued until there is a full board of supervisors.

Resignation. Same, § 6.

SEC. 298. The absence of any supervisor from the county for six months in succession shall be a resignation of his office.

Number: how increased. Same, § 7.

SEC. 299. The board of supervisors of any county may, and when petitioned to do so by one-fourth of the electors of said county shall, submit to the qualified voters of the county at any regular election, the question, "Shall the number of supervisors be increased to five," or "seven," as the board shall elect in submitting the question. If the majority of the votes cast shall be for the increase of the number, then, at the next ensuing election for a supervisor, the requisite additional supervisors shall be elected, whose terms of office shall be determined by lot in such a manner that one-half of the additional members shall hold their office for three years, and one-half for two years. In any county where the number of supervisors has been increased to "five" or "seven," the board of supervisors, on the petition of one-fourth of the legal voters of the county, shall submit to the qualified voters of the county at any regular election the question, "Shall the number of supervisors be reduced to five," or "three?" If a majority of the votes cast shall be for the decrease, then the board of supervisors shall be reduced to the number indicated by such vote, and thereafter there shall be annually elected the number requisite to keep the board full.

How diminished.

ORGANIZATION—POWERS.

Organization: powers. R. § 398.

SEC. 300. The board of supervisors, at their first meeting in every year, shall organize by choosing one of their number as chairman, who shall preside at all the meetings of the board during the

year. Every chairman of the board of supervisors shall have power to administer an oath to any person concerning any matter submitted to the board or connected with their powers.

SEC. 301. Special meetings of the board of supervisors shall be held only when requested by a majority of the board, which request shall be in writing, addressed to the county auditor, and shall specify the object for which such special meeting is desired. The auditor shall thereupon fix a day for such meeting, not later than ten days from the day of the filing of the petition with him, and shall immediately give notice in writing to each of the supervisors personally, or by leaving a copy thereof at his residence, at least six days before the day set for such meeting. The notice shall state the time and place where the meeting will be held and the object of it, as stated in the petition; and at such special meeting no business other than that so designated in the petition and notice shall be considered or transacted. The auditor shall also give public notice of the meeting by publication in not exceeding two newspapers published in the county, or, if there be none, by causing notice of the same to be posted on the front door of the court house of the county, and in two other public places therein, one week before the time set therefor. Special meetings. R. § 309.

SEC. 302. If any supervisor shall neglect or refuse to perform any of the duties which are, or shall be, required of him by law as a member of the board of supervisors, without just cause therefor, he shall, for each offense, forfeit one hundred dollars. Failure of duty. R. § 311.

SEC. 303. The board of supervisors at any regular meeting shall have the following powers, to-wit: Powers.

1. To appoint one of their number chairman, and also a clerk in the absence of the regular officers; Chairman.

2. To adjourn from time to time, as occasion may require; Adjourn.

3. To make such orders concerning the corporate property of the county as they may deem expedient; County property.

4. To examine and settle all accounts of the receipts and expenditures of the county, and to examine, settle, and allow all just claims against the county unless otherwise provided for by law; Settle accounts.

5. To build and keep in repair the necessary buildings for the use of the county and of the courts; Buildings.

6. To cause the county buildings to be insured in the name of the county, or otherwise, for the benefit of the county as they shall deem expedient, and in case there are no county buildings, to provide suitable rooms for county purposes; To insure.

7. To set off, organize, and change the boundaries of townships in their respective counties, designate and give names thereto, and define the place of holding the first election; Change boundaries.

8. To grant licenses for keeping ferries in their respective counties as provided by law; Ferries.

9. To purchase for the use of the county, any real estate necessary for the erection of buildings for county purposes, to remove or designate a new site for any county buildings required to be at the county seat, when such removal shall not exceed the limits of the village or city at which the county seat is located; Purchase real estate for county.

10. To require any county officer to make a report, under oath, to them on any subject connected with the duties of his office, Control officers.

and to require any such officer to give such bonds, or additional bonds, as shall be reasonable or necessary for the faithful performance of their several duties; and any such officer who shall neglect or refuse to make such report or give such bonds within twenty days after being so required, may be removed from office by the board by a vote of a majority of the members elected;

County agents.

11. To represent their respective counties, and to have the care and management of the property and business of the county in all cases where no other provision shall be made;

School fund.

12. To manage and control the school fund of their respective counties as shall be provided by law;

Highways.

13. To appoint commissioners to act with similar commissioners duly appointed in any other county or counties, and to authorize them to lay out, alter, or discontinue any highway extending through their own and one or more other counties, subject to the ratification of the board;

Fix compensation.

14. To fix the compensation of all services of county and township officers not otherwise provided for by law and to provide for the payment of the same;

Submit to vote.

15. To authorize the taking of a vote of the people for the relocation of the county seat as provided by law;

Highways.

16. To alter, vacate, or discontinue any state or territorial highway within their respective counties;

Same.

17. To lay out, establish, alter, or discontinue any county highway heretofore or now laid out, or hereafter to be laid through or within their respective counties, as may be provided by law;

Bridges.

18. To provide for the erection of all bridges which may be necessary, and which the public convenience may require within their respective counties, and to keep the same in repair;

Bounty.

19. To determine what bounties, in addition to those already provided by law, if any, shall be offered and paid by their county on the scalps of such wild animals taken and killed within their county as they may deem it expedient to exterminate. But no such bounty shall exceed five dollars.

Poor house.

20. To purchase for the use of the county any real estate necessary for the erection of buildings for the support of the poor of such county and for a farm to be used in connection therewith;

Poor.

21. To have and exercise all the powers in relation to the poor given by law to the county authorities;

Rules

22. To make such rules and regulations, not inconsistent with law, as they may deem necessary for the government of their body, the transaction of business, and the preservation of order;

Canvassers.

23. The board of supervisors shall constitute the board of county canvassers;

Submit to vote: proposition to erect buildings or bridges. R. § 318. C. 87, 11 G. A. C. 38, 13 G. A. C. 1, § 1, 14 G. A. C. 53, 130, 14 G. A.

24. It shall not be competent for said board of supervisors to order the erection of a court-house, jail, poor house, or other building or bridge, where the probable cost will exceed five thousand dollars, nor the purchase of real estate for county purposes exceeding two thousand dollars in value, until a proposition therefor shall have been first submitted to the legal voters of the county, and voted for by a majority of all voting for and against such proposition, at a general election, notice of the same being given for thirty days previously in a newspaper, if one is published in the county,

and if none be published therein, then by written notice posted in a public place in each township of the county; *provided*, That the board of supervisors of any county having a population of more than twelve thousand, may appropriate for the construction of any one bridge, which is, or may hereafter become a county charge within the limits of such county; or may appropriate towards the construction of any bridge across any unnavigable river, which is the dividing line between any two counties in this state, and between one county in this state and another state, such sum as may be necessary, not exceeding the sum of forty dollars a lineal foot for superstructure; but in no case shall they appropriate for said purpose, including superstructure and approaches, a sum exceeding fifteen thousand dollars.

PROCEEDINGS PUBLISHED.

Proceedings published. R. § 313.

SEC. 304. They shall cause to be made out and published immediately after each regular or special meeting of the board, in at least one newspaper, if there be one in the county, and if not, by posting on the court-house door, a schedule of the receipts and expenditures of the county, which shall state the names of all claimants, the amount claimed, the amount allowed, for what purpose allowed, and a full statement of the amounts of the treasurer's accounts at the last settlement as on his balance sheet, or account-current in making such settlement.

Majority of whole board required. R. § 313.

SEC. 305. No tax shall be levied, no contract for the erection of any public buildings entered into, no settlement with the county officers made, no real estate purchased or sold, no new site designated for any county buildings, no change made in the boundaries of townships, and no money appropriated to aid in the construction of highways and bridges, without a majority of the whole board of supervisors voting therefor and consenting thereto.

County officers control advertisements.

SEC. 306. The clerk of the district court, sheriff, auditor, treasurer, and recorder shall designate the newspapers in which the notices pertaining to their several offices shall be published, and the board of supervisors shall designate the papers in which all other county notices shall be published; and in counties having a population exceeding eighteen thousand inhabitants, the board shall designate as one of such papers, a paper published in a foreign language, if there be such in its county.

Newspapers selected to publish proceedings. C. 118, 11 G. A.

SEC. 307. The board of supervisors shall, at its January session of each year, select two newspapers published within the county, or one, if but one be published therein, having the largest circulation in the county where published, in which the proceedings of said board shall be published at the expense of the county, and in counties having eighteen thousand inhabitants, a paper printed in a foreign language, if published in said county, shall also be selected, in which such proceedings shall be published; and the auditor shall furnish such papers selected a copy of such proceedings for that purpose; *provided*, That the cost of such publication shall not exceed one-third the rate allowed by law for legal advertisements.

Books kept. R. § 318.

SEC. 308. The board is authorized and required to keep the following books:

Minute book.

1. A book to be known as the "minute book," in which shall be recorded all orders and decisions made by them, except those relating to highways. All 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;

Highway record.

2. A book to be known as the "highway record," in which shall be recorded all proceedings and adjudications relating to the establishment, change, or discontinuance of highways;

Warrant book.

3. A book to be known as the "warrant book, in which shall be entered in the order of their issuance, the number, date, amount, name of drawee of each warrant drawn on the treasury, and the number of warrants as directed in relation to the minute book.

QUESTIONS—SUBMITTED TO THE PEOPLE.

Submit questions to people. R. § 250.

SEC. 309. The board of supervisors may submit to the people of the county at any regular election, or at any special one called for that purpose, the question, whether money may be borrowed to aid in the erection of any public buildings, whether any species of stock, not now prohibited by law, shall be permitted to run at large and 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, they 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 re-paying borrowed money, or constructing, or aiding to construct, any highway or bridge, such special tax shall be paid in money, and in no other manner.

Mode of. R. § 251.

SEC. 310. 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, shall be published at least four weeks in some newspaper printed in the county. If there be no such newspaper, the publication shall be by being posted up in at least one of the most public places in each township in the county, and in addition, in at least five among the most public places in the county, one of them being the door of the court house, for 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 election.

SEC. 311. 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. When to borrow or expend money. R. § 252.

SEC. 312. The rate of 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 highway or bridge, the annual rate shall not be less than one mill on the dollar of valuation, and any of the above taxes becoming delinquent shall draw the same interest with the ordinary taxes. Rate of tax. R. § 253.

SEC. 313. When it is supposed that the levy of one year will not pay the entire amount, the proposition and the vote must be to continue the proposed rate from year to year, until the amount is paid. Levy to continue. R. § 254.

SEC. 314. The board of supervisors, 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 be in full force and effect. When question adopted. R. § 255.

SEC. 315. 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. May be rescinded. R. § 256.

SEC. 316. The board 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, unless a different number be prescribed by law in any special case. When submitted. R. § 257.

SEC. 317. 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. Record: evidence. R. § 258.

SEC. 318. 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. Excess of tax. R. § 259.

SEC. 319. 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. Distinct fund. R. § 260.

CHAPTER 3.

OF THE COUNTY AUDITOR.

Duties of. R. § § 319, 320, C. 160, § 1, 12 G. A.

SECTION 320. The county auditor shall:

1. Record all the proceedings of the board in proper books provided for that purpose;

2. Make full entries of all their resolutions and decisions on all questions concerning the raising of money, and for the allowance of money from the county treasury;

3. Record the vote of each supervisor on any question submitted to the board, if required by any member present;

4. Sign all orders issued by the board for the payment of money, and record in a book provided for the purpose, the reports of the county treasurer of the receipts and disbursements of the county;

5. Preserve and file all accounts acted upon by the board, with their action thereon, and perform such special duties as are or may be required of him by law;

6. Designate upon every account on which any sum shall be allowed by the board, the amount so allowed, and the charges for which the same was allowed;

7. Deliver to any person who may demand it, a certified copy of any record or account in his office on payment of his legal fees therefor.

When to sign warrants. R. § 321.

SEC. 321. The auditor shall not sign or issue any county warrant except upon the recorded vote or resolution of the board of supervisors authorizing the same, except for jury fees, and every such warrant shall be numbered, and the date, amount, and number of the same, and the name of the person to whom issued, shall be entered in a book to be kept by him in his office for the purpose.

School fund. R. § 322.

SEC. 322. Whenever the auditor of any county shall receive from the state auditor, notice of the apportionment of school moneys to be distributed in the county, he shall file the same in his office and transmit a certified copy thereof to the county treasurer, and he shall also lay a certified copy thereof before the board at its next regular meeting.

Court house. C. 2, 8 G. A. Ex. 8

SEC. 323. The county auditor shall have the general custody and control of the court house in each county respectively, subject to the direction of the board of supervisors.

Report to secretary of state. R. § 291.

SEC. 324. The county auditor shall report to the secretary of state the name, office, and term of office of every county officer elected or appointed, within ten days after their election and qualification, and the secretary of state shall record the same in a book to be kept for that purpose in his office.

Who eligible. C. 160, § 7, 12 G. A.

SEC. 325. The clerk of the district court and county recorder shall each be eligible to the office of county auditor, and may discharge the duties of both offices.

Can not be treasurer.

SEC. 326. The offices of county auditor and county treasurer shall not be united in the same person. The auditor and his deputy are prohibited from acting as attorney, either directly or indirectly, in any matter pending before the board of supervisors.

CHAPTER 4.

OF THE COUNTY TREASURER.

SECTION 327. The treasurer shall receive all money payable to the county, and disburse the same on warrants drawn and signed by the county auditor and sealed with the county seal, and not otherwise; and shall keep a true account of all receipts and disbursements, and hold the same at all times ready for the inspection of the board of supervisors. Duties. R. § 350.

SEC. 328. When the warrant drawn by the auditor 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 amount of interest allowed, and such warrant is to be considered as canceled and shall not be re-issued. When no funds. R § 361.

SEC. 329. 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 auditor, 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. Warrants: when divided. R. § 362.

SEC. 330. The treasurer shall 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 auditor—the number, date, drawee's name, when paid, to whom, original amount, and interest paid on each. Warrant book. R. § 363.

SEC. 331. The treasurer shall keep a separate account of the several taxes for state, county, school, and highway 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. Keep separate accounts. R. § 364.

SEC. 332. 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 for at least two years. Warrants canceled. R. § 365.

SEC. 333. The treasurer is required to make weekly returns to the auditor of the number, date, drawee's name, when paid, to whom paid, original amount, and interest, as kept in the book before directed. Returns of. R. § 366.

SEC. 334. A person re-elected to, or holding over the office of treasurer, shall keep separate accounts for each term of his office. Accounts each term. R. § 367.

CHAPTER 5.

OF THE COUNTY RECORDER.

Duties of. R. § 358.

SECTION 335. The recorder shall keep his office at the county seat, and he shall 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.

Treasurer eligible. C. 129, § 8, 10 G. A.

SEC. 336. The same person may be eligible to, and hold the office of county recorder and county treasurer; *provided*, the number of inhabitants in such county does not exceed ten thousand.

CHAPTER 6.

OF THE SHERIFF.

Duties. R. § 383.

SECTION 337. The sheriff shall, by himself or his deputies, execute according to law, and return all writs and other legal process issued by lawful authority and to him directed or committed, and shall perform such other duties as may be required of him by law.

Disobedience. R. § 384.

SEC. 338. 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 further liable to the action of any person injured thereby.

Jail: charge of. R. § 385.

SEC. 339. 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.

Conservators of the peace. R. § 386.

SEC. 340. 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 neccessary, the sheriff may summon the power of the county.

Attend courts. R. § 387.

SEC. 341. The sheriff shall attend upon the district and circuit courts of his county, and while either remains in session he shall be allowed the assistance of such number of bailiffs as either may direct. They shall be appointed by the sheriff, and shall be regarded as deputy sheriffs, for whose acts the sheriff shall be responsible.

Not appear as attorney or counsel. R. § 388.

SEC. 342. 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.

Purchase void. R. § 389.

SEC. 343. 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.

SEC. 344. 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 to return the same, as if the sheriff had continued in office, and he and they will remain liable therefor under the provisions of law as in other cases. Execute process when out of office. R. § 390.

SEC. 345. Where a sheriff goes out of office, he shall deliver to his successor all books and papers pertaining to the office, and property attached and 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. Deliver to successor. R. § 391.

SEC. 346. If the sheriff die or go out of office before the return of any process then in his hands, his successor, or other officer authorized to discharge the duties of the office, may proceed to execute and return the same in the same manner as the out-going sheriff should have done, but nothing in this section shall be construed to exempt the out-going sheriff and his deputies from the duty imposed on them by section three hundred and thirty seven of this chapter, to execute and return all process in their hands at the time the vacancy in the office of sheriff occurs. Successor may serve. R. § 3264.

SEC. 347. On the election or appointment of a new sheriff all new process shall be directed to him. Same. R. § 392.

SEC. 348. If the sheriff, who has made a sale of real estate on execution, die, or go out of office before the period of redemption expires, his successor shall make the necessary deed to carry out such sale. Same.

CHAPTER 7.

OF THE CORONER.

SECTION 349. It is the duty of the coroner to perform all the duties of the sheriff when there is no sheriff, and in cases where exception is taken to the sheriff as provided in the next section. Duties. R. § 393.

SEC. 350. In all proceedings in the courts of record, where it appears from the papers that the sheriff is a party to the action; or where, in any action commenced or about to be commenced, an affidavit is filed with the clerk of the court, stating that the sheriff and his deputy are absent from the county, and are not expected to return in time to perform the service needed; or 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 shall be to execute it in the same manner as if he were sheriff. Serve process. R. § 394.

SEC. 351. When there is no sheriff, deputy sheriff, or coroner qualified to serve legal process, the clerk of the court may, by writing under his hand and the seal of the court certifying the Same. R. § 395.

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.

Inquest. R. § 396.

SEC. 352. 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 electors of the county to appear before the coroner at a time and place named in the warrant.

Warrant. R. § 397.

SEC. 353. 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 forthwith three electors 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, and find by what means he died.

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

A. B., coroner of ——— county.

Service. R. § 398.

SEC. 354. The constable shall execute the warrant, and make return thereof at the time and place named.

Jurors. R. § 399.

SEC. 355. If any juror fails to appear, the coronor 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."

Subpœnas: contempts. R. § 400.

SEC. 356. The coroner may issue subpœnas 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 coronor 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.

Oath. R. § 401.

SEC. 357. 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."

Testimony. R. § 402.

SEC. 358. The testimony shall be reduced to writing under the coroner's order, and subscribed by the witnesses.

Verdict. R. § 403.

SEC. 359. 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. 360. 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. Kept secret. R. § 404.

SEC. 361. 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. Arrest. R. § 405.

SEC. 362. 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 them to arrest the person and take him before a justice of the peace. Warrant. R. § 406.

SEC. 363. The warrant of a coroner in the above case shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice, such justice shall cause an information to be filed against him, and the same proceedings shall be had as in other cases under information, and he shall be dealt with as a person held under an information in the usual form. Same. R. § 407.

SEC. 364. 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 an information. Form of. R. § 408.

SEC. 365. The coroner shall then return to the district court the inquisition, the written evidence, and a list of the witnesses who testified material matter. Inquest: return. R. § 409.

SEC. 366. 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 board of supervisors, shall be allowed by them, if deemed reasonable, and paid as other claims on the county. Disposition of body. R. § 410.

When no coroner. R. § 411.

SEC. 367. 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.

Surgeons. R. § 412

SEC. 368. 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 shall allow in such case a reasonable compensation instead of witness fees.

CHAPTER 8.

OF THE COUNTY SURVEYOR.

Duties. R § 413.

SECTION 369. The county surveyor shall make all surveys of land within his county which he may be called upon to make, and his surveys shall be held as presumptively correct.

Same. R. § 414.

SEC. 370. The field notes and plats made by the county surveyor shall be transcribed into a well bound book under the supervision of the surveyor, when desired by a person interested and at his expense.

Field notes. R. § 415.

SEC. 371. 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 auditor, and his survey shall be made in accordance therewith.

Corners. R. § 416

SEC. 372. 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.

Rules. C. 183. 13 G. A.

SEC. 373. In the re-survey and sub-divisions of lands by county surveyors, their deputies, or other persons, the rules prescribed by acts of congress and the instructions of the secretary of the interior, shall be in all respects followed.

Plat and copy evidence. R. § 417.

SEC. 374. The county surveyor shall, when requested, furnish the person for whom the survey is made with a copy of the field notes and plat of the survey, and such copy certified by him, and also a copy from the record, certified by the county auditor, with the seal, shall be presumptive evidence of the survey and of the facts herein required to be set forth, and which are stated accordingly, between those persons who join in requesting it, and any other person then concerned who has reasonable notice that such a survey is to be made and the time thereof.

Book furnished. R. § 418.

SEC. 375. The board of supervisors is required to furnish a substantial, well bound book, in which the field notes and plats made by the county surveyor may be recorded.

Plat: what to show. R. § 419.

SEC. 376. 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. 377. 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. Chainmen. R. § 430.

SEC. 378. County surveyors, when establishing defaced or lost land corners or lines, may issue subpœnas for witnesses and administer oaths to them, and all fees for service of officers and attendance of witnesses shall be the same as in proceedings before justices of the peace. Administer oaths. C. 102, 14 G. A.

CHAPTER 9.

OF TOWNSHIPS AND TOWNSHIP OFFICERS.

SECTION 379. The board of supervisors of each county shall divide the same into townships, as the convenience of the citizens may require, accurately defining the boundaries thereof, and may from time to time make such alterations in the number and boundaries of the townships as it may deem proper; *provided*, however, that if the congressional township lines are not adopted and followed, the board of supervisors shall not change the lines of any civil township so as to divide any school district or sub-district, unless a majority of the voters of such district or sub-district shall petition therefor. Form townships: change same. C. 122, 14 G. A. R. § 441.

SEC. 380. No township shall be organized in which at the time of organization there shall not be at least ten legal voters; *provided*, that each county shall have one civil township. Must be ten voters. C. 74, § 1, 9 G. A.

SEC. 381. 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 board of supervisors and of the township. Changes recorded. R. § 442.

OF DIVIDING TOWNSHIPS.

SEC. 382. When any township has within its limits an incorporated city or town, the electors of such township residing without the limits of such city or town, may, at the January, April, or June session of the board of supervisors of the county, petition to have such township divided into two townships; the one to embrace the territory without, and the other the territory within such corporate limits; which petition shall be accompanied by the affidavit of three individuals to the effect that all the signatures to such petition are genuine, and that the signers thereof are all legal voters of said township, residing outside said corporate limits. When township contains a city or town. C. 52, § 1, 14 G. A.

Notice
Same, § 2.

SEC. 383. Notice of the time when such petition will be presented, shall be given by two publications in a weekly newspaper published in the township, the last of which publication shall be at least ten days prior to the time fixed for the presentation of such petition; or if no paper is printed in such township, or the papers therein printed refuse to make such publication, the notice herein contemplated shall be given by posting in five public places in the township, two of which shall be without and three within such corporate limits.

Petition: signers.
Same, § § 4, 5.

SEC. 384. If such petition is signed by a majority of the electors of such township residing without the corporate limits of such city or town, the board of supervisors shall divide such township into two townships, as prayed therein, but except for election purposes, including the appointment of all judges and clerks of election rendered necessary by the change, such division shall not take effect until the first Monday of January next ensuing.

First election.
R. § 453.

SEC. 385. When a new township is formed, the board of supervisors shall call the first township election, to be held at such place as it may designate, on the day of the next general election.

Warrant for.
R. § 453.

SEC. 386. The auditor shall issue a 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 to; and no other business shall be done than such as is so named.

How served.
R. § 445.

SEC. 387. 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 election; the original warrant shall be returned to the presiding officer of the election, 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.

Election.
R. § 457.

SEC. 388. The election shall be conducted as other township elections, and the electors shall proceed to elect the officers named in this chapter.

OFFICERS—DUTIES.

Officers of.
R. § § 445, 726.
C. 72, 14 G. A.

SEC. 389. In each township there shall be elected three trustees, one clerk, one assessor, two constables, and two justices of the peace, but where a city or incorporated town is situate in a township, the trustees of the township may order the election of one or two additional justices and constables, and at least one justice and constable shall reside within the limits of such city or town.

When township contains a city or town.

SEC. 390. In any township in which is situate a city or incorporated town, two township assessors shall be elected, one by the voters of said township residing without the corporate limits of such city or town, at the general election, and the other by the voters thereof residing within such limits at the municipal election in such city or town, and each in the discharge of his duties as assessor shall be confined to that portion of his township in which he is elected as hereinbefore provided; and said city or town assessor shall hold his office for one year from the first of January next ensuing.

SEC. 391. The trustees shall designate the place where elections will be held, and whenever a change is made from the usual place of holding elections in the township, notice of such change shall be given by posting up notices thereof in three public places in the township, ten days prior to the day on which the election is to be held. Place of election.

SEC. 392. They shall cause a record to be kept of all their proceedings. Record. R. § 445.

SEC. 393. The township trustees are the overseers of the poor, fence viewers, and the township board of equalization and board of health, and shall have charge of all cemeteries within the limits of their township dedicated to public use when the same is not controlled by other trustees or incorporated bodies. Trustees: duties. R. § 446.

SEC. 394. 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. Refusing to serve. R. § 447.

SEC. 395. The township clerk shall keep accurate records of the proceedings and orders of the trustees, and perform such other acts as may be required of him by law. Clerk: duties. R. § 448.

SEC. 396. 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. Oaths. R. § 449.

SEC. 397. The clerk, immediately after the election of officers in his township, shall send a written notice thereof to the county auditor, stating the names of the persons elected, and the time of the election, and shall enter the time of the election of each officer in the township record. Notify auditor. R. § 450.

SEC. 398. 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. Constables: duty. R. § 451.

SEC. 399. Constables are ministerial officers of justices of the peace. Same. R. § 452.

TOWNSHIP COLLECTOR.

SEC. 400. There shall be elected at the general election in every year, a township collector in and for each organized township in every county, except the township in which the county seat is located, who shall hold office for one year; *provided*, the board of supervisors of the county shall order the election of township collectors as in this chapter hereinafter provided. When elected. C. 187, § 1, 12 G. A.

SEC. 401. He shall qualify as other elective officers, and give a bond to the county in a penal sum equal to double the whole amount of tax to be by him collected, which shall be presented to and approved by the board of supervisors of the county and recorded the same as the bond of county officers. Qualification of. Same, § 2.

SEC. 402. The auditor, in counties where township collectors are elected, shall make out a duplicate tax-list of each township, and deliver the same, with the original, to the county treasurer. Auditor's duty. Same, § 4.

Treasurer's duty: powers of collector. Same, § 5.

SEC. 403. The county treasurer shall deliver to each township collector in the county, as soon as he has qualified, such duplicate tax-list of his township and take his receipt therefor, specifying the total amount of the tax charged in such list, and charge the same over to each township collector in a book to be kept for that purpose; and such duplicate tax list, when so made out and delivered to the township collectors, may be used as an execution, and shall be sufficient authority for them to collect the taxes therein charged in any township in the county by distress and sale or otherwise, as now provided by law for the collection of taxes by the county treasurer; and the county treasurer shall not receive or collect any of the taxes charged in any duplicate tax list so delivered, except the tax of non-residents of the township, until the same has been returned to him as hereinafter provided. The said county treasurer shall procure for and deliver to each township collector with said tax-list, a tax receipt-book, with a blank margin or stub, upon which the said township collector shall enter the number and date of the tax receipt given to the tax-payer, the amount of tax and by whom paid, which said tax receipt-book shall be returned to the county treasurer, with the said duplicate tax-list, as hereinafter provided.

To give notice. Same, § 6.

SEC. 404. Upon the receipt of said tax-lists, each township collector, immediately, shall cause the notice of the reception thereof to be posted up in some conspicuous place in every school-district in the township, and in every ward of any city therein, so located as will be most likely to give notice to the inhabitants thereof, and also publish such notice for four weeks in one or more weekly papers, if any published in the township, designating in such notice a convenient place in such township where he will attend from nine o'clock A. M. to four o'clock P. M., at least once in each week, on a day to be specified in said notice until March first following, for the purpose of receiving payment of taxes, and each collector shall attend accordingly, and he shall proceed to collect and receipt for all taxes therein charged, in the same manner as now provided by law for the collection of taxes by the county treasurer, and all the laws which apply to and govern the collection of taxes by county treasurers, shall apply to and govern the collection of taxes by said township collector, when not inconsistent with the provisions of this chapter.

Demand taxes: distress and sale. Same, § 7.

SEC. 405. Every collector, after the first of March in each year, shall call at least once on each person whose tax remains unpaid, or at the place of his usual residence, if in the township for which such collector has been chosen, and shall demand the payment of the taxes charged to him on his property. In case any person shall attempt to remove from the township, property on which tax is due, without leaving sufficient to pay such tax, at any time after the duplicate comes into his hands, the collector shall attach such property and hold the same until the tax is paid, or make the tax out of such property. In case any person shall refuse or neglect to pay the tax, or shall have removed from said township, the collector shall levy the same by distress and sale of the goods and chattles of the person who ought to pay the same, or of any goods and chattels on which the said tax was assessed, wheresoever the same may be

found within the county. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisements to be posted up in at least three public places in the township where such sale shall be made. The sale shall be made by public auction, and if the property shall be sold for more than the amount of the tax, penalty, and costs, the surplus shall be returned to the person in whose possession such property was when the distress was made.

Make monthly statements. Same, § 8.

SEC. 406. The township collectors shall make monthly statements to the county treasurer of the amount of tax collected by them on each fund, and pay the same over to the county treasurer and take his receipt therefor; and they shall complete the collection of the tax charged in the said duplicate tax lists, by distress and sale or otherwise, on or before the first Monday in May next after the receipt of said duplicate tax list, and pay over the amount so collected to the county treasurer and return to him the said tax lists and receipt-books, and make a full and complete settlement for the taxes so collected with the county treasurer, which settlement shall be subject to the examination and correction by the board of supervisors of the county at its next session.

Compensation. Same, § 9.

SEC. 407. Each township collector shall receive for his services the following compensation; 1. Two per cent. of all sums collected by him on the first two thousand dollars, and one per cent. on all sums in excess thereof collected by him otherwise than by distress and sale, to be paid out of the county treasury; 2. Five per cent. upon all taxes collected by him by distress and sale, which percentage and costs shall be collected of the delinquent tax-payer, and the same fees in addition to the said five per cent. as constables are entiled to receive for the sale of property on execution.

Unpaid taxes. Same, § 10.

SEC. 408. After the return of said duplicate tax-lists and settlement as provided above, the county treasurer shall receive, receipt for, and collect any unpaid taxes in the county, and shall proceed to advertise and sell all the real estate in the county upon which the taxes have not been paid, for the unpaid taxes thereon as provided by law.

When there is failure to collect. Same, § 11.

SEC. 409. If any of the taxes mentioned in the tax-list shall remain unpaid, and the collector shall not be able to collect the same, he shall deliver to the county treasurer an account of the taxes so remaining due; and upon making oath before the county auditor, or in case of his absence before any justice of the peace, that the sums mentioned in such account remain unpaid, and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to or in the possession of the person charged with or liable to pay such sums, whereon he could levy the same, he shall be credited by the county treasurer with the amount thereof, but such oath and credit shall only be presumptive evidence of the correctness thereof.

Liability. Same, § 12.

SEC. 410. Such collector and his sureties shall be liable for the loss by theft or otherwise, of any money collected by him and in his possession.

When election of collector ordered. Same, § 12.

SEC. 411. The board of supervisors of each county in the state having a population exceeding seven thousand inhabitants, as shown by the last preceding census, are hereby authorized and empowered to order an election of a township collector in each organized township in their county, by a resolution to that effect, passed at their regular meeting in June in any year by a two-thirds vote of the board, which shall be spread upon the records of the board, and the first election of township collectors in such county shall be held at the next general election after the passage of such resolution, and every year thereafter until the said resolution is repealed by the board, by a like vote, at their regular meeting in June in any year. They shall be voted for and elected in the manner of the other township officers, and in all counties in the state where such resolution is not in force, as provided in this section, then sections four hundred and one to four hundred and eleven inclusive, of this chapter, shall be inoperative and of no effect.

CHANGING NAME OF TOWNSHIPS.

How changed. C. 80, 9 G. A.

SEC. 412. Any township desirous of changing its name, may petition the board of supervisors of the county in which such township is situated, and if it shall appear to said board that a majority of the actual resident voters of such township are in favor of such change, such board shall cause three notices to be posted up in three of the most public places of such township, for at least thirty days previous to the next session of said board, which notice shall state the fact that a petition has been presented to said board by the citizens of said township praying for a change of the name of the same, and the name prayed for in said petition, and that unless those interested in the change of such name shall appear at the next regular session of said board and show cause why said name shall not be changed, there will be an order made granting such change, which notice shall be attested by the auditor.

Same.

SEC. 413. If, at the time fixed for the hearing of said petition, said board is satisfied that there is a majority in favor of such change of name, said board shall make an order granting such change, which shall be attested by the auditor and recorded in the office of the recorder of the county where such township is situated.

Same.

SEC. 414. The cost of such change and recording shall be paid by the petitioners. But should it appear to said board that a majority of the citizens of such township are opposed to such change, such petition shall be dismissed and the cost of the proceeding taxed against the petitioners.

BOARD OF HEALTH.

Board of health. C. 107, § § 1, 2, 11 G. A.

SEC. 415. The township trustees shall have power to make whatever regulations they deem necessary for the protection of the public health, and respecting nuisances, sources of filth, and causes of sickness within their respective townships; *provided*,

that their jurisdiction as such board shall not extend to any city or incorporated town situated therein.

SEC. 416. Notice shall be given of all regulations made, by publishing the same in a newspaper published in the township, or, where there is no newspaper, by posting in five public places therein. Regulations published. Same, § 3.

SEC. 417. The trustees may order the owner or occupant, at his own expense, to remove any nuisance, source of filth, or cause of sickness found on private property within such time as they deem reasonable, and if such person neglects to do so he shall forfeit a sum of not exceeding twenty-five dollars for every day during which he knowingly permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof. The order shall be in writing, and served by any constable of the town in the usual way of serving notices in civil suits. If the owner or occupant fails to comply with such order, the trustees may cause the nuisance, source of filth, or cause of sickness to be removed, and all expenses incurred thereby shall be paid by such owner or occupant. Power: how executed. Same, §§ 5, 6, 7.

SEC. 418. The trustees shall have power to employ all such persons as shall be necessary to carry into effect the regulations adopted and published according to the powers vested in the trustees and to fix their compensation; to employ physicians in case of poverty, and to take such general precautions and actions as they may deem necessary for the public health. Use means necessary. Same, § 8.

SEC. 419. Any person who shall wilfully violate any of the regulations so made and published by the trustees, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine or imprisonment, such fine not to exceed one hundred dollars, and such imprisonment not to exceed thirty days. Violation: punishment. Same, § 9.

SEC. 420. All expenses, now or hereafter incurred by the trustees of a township in the exercise of the powers heretofore or herein conferred, shall be borne by the township. The trustees shall certify the amount required to pay such expenses to the board of supervisors of the county, and that board shall, at the time it levies the general taxes, and in addition thereto, levy on the property of such township a sufficient tax to pay the amount so certified by the trustees. The tax so levied shall be collected by the county treasurer with the other taxes, and be by him paid over to the township clerk. Expenses: how paid. Same, §§ 10, 11.

CHAPTER 10.

OF CITIES AND INCORPORATED TOWNS.

SECTION 421. When the inhabitants of any part of any county not embraced within the limits of any city or incorporated town shall desire to be organized into a city or incorporated town, they may apply by petition in writing, signed by not less than thirty of How incorporated. C. 61, § 2, 12 L. A.

the qualified electors of the territory to be embraced in the proposed city or incorporated town, to the circuit court of the proper county, which petition shall describe the territory proposed to be embraced in such city or incorporated town, and shall have annexed thereto an accurate map or plat thereof and state the name proposed for such city or incorporated town, and shall be accompanied with satisfactory proofs of the number of inhabitants within the territory embraced in said limits.

Commissioners appointed: election notice. Same, § 3.

SEC. 422. When such petition shall be presented, the court shall forthwith appoint five commissioners who shall at once call an election of all the qualified electors residing within the territory embraced within said limits as described and platted, to be held at some convenient place within said limits, the notice for which shall be given by publication in some newspaper published within said limits, if any there be, for three successive weeks, and by posting notices in five public places within said limits; said posting and the first publication to be not less than three weeks preceding such election. Such notice shall specify the place and time of such election and a description of the limits of said proposed town or city, and that a description and plat thereof are on file in the office of the clerk of the circuit court.

Said commissioners shall act as judges and clerks of the election, and shall qualify as required by law for judges and clerks of county elections, and shall report the result of the ballot to the cuurt aforesaid. The ballot used at said election shall be, "For incorporation," "Against incorporation."

Result of election published: papers where filed. Same, § 4.

SEC. 423. If a majority of the ballots cast at such election be in favor of such incorporation, the clerk shall, immediately on the return of the commissioners being filed in his office, give notice of the result by publication in a newspaper, or, if no newspaper be published in the county, by posting in five public places within the limits of the proposed city or town; and in such notice he shall designate to which of the classes of incorporation hereinafter prescribed, such city or town shall belong. A copy of the notice, with proper proof of its publication, shall be filed with the papers, and a certified copy of all papers and record entries relating to the matter on file in the clerk's office, shall be filed in the recorder's office of the county and in the office of the secretary of state.

When complete. Same, § 5.

SEC. 424. When certified copies are made and filed as required by the preceding section, and officers are elected and qualified for such city or town as hereinafter provided, the incorporation thereof shall be complete; whereof notice shall be taken in all judicial proceedings.

First election of officers: notice to be given. Same, § 6.

SEC. 425. When the incorporation of such city or town is completed, the commissioners shall give notice for two consecutive weeks of the time and place of holding the first election of officers therefor by publication in a newspaper, or, if none be published within the limits of such city or town, by posting in five public places within the limits of the same. At such election the qualified electors of such city or town residing within the limits of such city or town shall choose officers therefor, to hold until the first annual election of officers according to its grade, as hereinafter in this chapter prescribed. The commissioners shall act as

judges and clerks of the election, and otherwise it shall be conducted and the officers elected thereat shall be qualified in the manner prescribed by law for the election and qualification of township officers.

CONTIGUOUS TERRITORY ANNEXED.

SEC. 426. When the inhabitants of a part of any county adjoining any city or town shall desire to be annexed to such city or town, they may apply by petition in writing to the circuit court of the proper county, signed by not less than a majority of the electors residing within the territory proposed to be annexed; which petition shall state at whose instance it is presented, and shall be accompanied by an accurate plat or map of such territory. Mode of procedure. R. § 1038.

SEC. 427. Like proceedings, as nearly as applicable, shall be had on such petition as are prescribed in sections four hundred and twenty-two and four hundred and twenty three of this chapter, *provided*, that notice of the election shall also be served on the mayor or other presiding officer of the town or city to which the annexation is proposed, and such election shall be held in the territory proposed to be annexed. Same. R. § 1039.

SEC. 428. The council or trustees of said city or town may give the consent thereof to such annexation, or they may, in their discretion, provide by ordinance or resolution for submitting to the electors at the next annual election of municipal officers the question whether such annexation shall be made; and if such consent be given, or if a majority of the electors of such city or town voting at such election shall vote in favor of annexation, then on the return of such vote to the proper authority of such city or town a resolution or ordinance shall be adopted or passed declaring that the territory described in the petition has been annexed to and is a part of such city or town; and the clerk or recorder of the said city or town shall make out two copies of the petition, plat, orders of the circuit court, abstract of votes, and resolutions or ordinances in relation to such annexation, with a certificate that the same are correct, attested by the seal of such city or town, and he shall deliver one of said copies to the recorder of the county, who shall, having first made record thereof in the proper books of record, file and preserve the same, and the other of said copies shall be forwarded by the clerk or recorder of said city or town to the secretary of state. Proposition to be submitted to the people. R. § 1041.

SEC. 429. So soon as said resolution or ordinance declaring such annexation has been adopted, and the said copies transmitted, delivered, and recorded, the said territory shall be deemed and taken to be a part and parcel of the said city or town, and the inhabitants residing therein shall have and enjoy all the rights and privileges of the inhabitants within the original limits of such city or town. Annexation: when complete. R. § 1045.

BY CORPORATION.

SEC. 430. When any municipal corporation shall desire to annex any contiguous territory thereto, not embraced within the limits of any city or town, it shall be lawful for the trustees or council of the corporation, by an ordinance passed for that purpose at least one month before the regular annual election, to submit the question of annexation to the qualified electors of such corporation; When corporation desires to annex territory: mode of procedure. R. § 1043.

and if a majority of the electors of the corporation voting on the question shall vote in favor of such annexation, the council or trustees of such corporation shall present to the circuit court a petition praying for such annexation, which petition shall describe the territory proposed to be annexed to such municipal corporation, and have attached thereto an accurate map or plat thereof, and like proceedings shall be had upon said petition as are provided in sections four hundred and twenty-two and four hundred and twenty-three of this chapter, so far as the same may be applicable; and if the result of the election be favorable to the proposed annexation, the same record shall be made as provided in said sections, and thereupon the said contiguous territory proposed to be annexed shall be in law deemed and taken to be included in, and shall be a part of said municipal corporation, and the inhabitants thereof shall in all respects be citizens thereafter of the said municipal corporation.

Annexing contiguous territory which has been laid out in lots or parcels to incorporated city.

SEC. 431. When any incorporated city shall desire to annex to such corporation any abutting and contiguous territory thereto, which is not embraced within the limits of any city, and which territory has been laid out in lots or parcels containing two acres or less, the council of such corporation may present to the circuit court of the county in which such city is situate, a petition setting forth the facts and describing the territory that is desired to be annexed, and that the same has been laid out as above mentioned, together with the names of each owner of any portion of such territory, without describing at length, if there is more than one such owner, the particular portion of such territory owned by each, which petition shall have attached thereto a map or plat of such territory. A notice of the filing of such petition shall be served by publication in one daily or weekly newspaper published in such city, and by posting in five public places in the territory outside of said city for the period of four weeks; and the corporation shall be plaintiff and said owners defendants, and issues joined and the cause tried in the ordinary manner as far as applicable, except that no judgment for costs shall be rendered against any defendant who does not make any defense. If the court find the allegations of the petition to be true, and that justice and equity require that said territory or any part thereof should be annexed to such corporation, a decree shall be entered accordingly, and from the time of entering such decree, the territory therein described shall be included in and become a part of such corporation. The powers conferred under the provisions of this section shall also apply to cities acting under special charters.

When corporations desire to unite with each other. R. § 1041.

SEC. 432. When any city or incorporated town shall desire to be annexed to another and contiguous city or incorporated town, the council or trustees of each of such cities or towns, shall appoint three commissioners to arrange and report to such council or trustees respectively the terms and conditions on which the proposed annexation can be made; and if the council or trustees of each of such cities or towns, approve of the terms and conditions proposed, they shall, by proper ordinance, so declare; and thereupon the council or trustees of each of such cities or towns, by ordinance passed at least one month prior to the general annual

election therein, may submit the question of such annexation, upon the said terms and conditions so proposed, to the electors of their respective cities or towns, and if a majority of the electors of each vote in favor of such annexation, the council or trustees of each shall, by proper ordinance, so declare; and, a certified copy of the whole proceedings for annexation of the city or town to be annexed being filed with the clerk or recorder of the city or town to which the annexation is made, the latter shall file with the secretary of state and in the recorder's office of the county, a certified copy of all proceedings had by both of such cities or towns in the matter of such annexation.

Annexation of corporations: when complete. R. § 1045.

SEC. 433. When certified copies of the proceedings for annexation are filed as contemplated in the preceding section, the annexation shall be deemed complete, and the city or town to which the annexation is made shall have power to pass such ordinances, not inconsistent with law, as will carry into effect the terms of such annexation; and thereafter the city or town annexed shall be governed as part of the city or town to which annexation of it is made; *provided*, that such annexation shall not affect or impair any rights or liabilities then existing for or against either of such cities or towns, and that they may be enforced the same as if no such annexation had taken place.

SPECIAL CHARTERS.

Corporations may abandon and adopt this chapter. C. 25, § 1, Ex. S. 9 G. A. C. 69, 11 G. A.

SEC. 434. Any city or town incorporated by special charter, or in any other manner than that provided by this chapter, may abandon its charter and organize itself under the provisions of this chapter with the same territorial limits, by pursuing the course hereinafter prescribed.

Petition to be presented: election ordered. C. 25, § 2, Ex S. 9 G. A.

SEC. 435. Upon the petition of fifty legal voters in any such city or town to the council or trustees thereof, praying that the question of abandoning its charter be submitted to the legal voters, the council or trustees shall immediately direct a special election to be held, at which such question shall be decided, specifying at the same time, the time and place of holding the same, and appointing the judges and clerks of the election.

Proclamation: notice of election given. Same, § 4.

SEC. 436. The mayor, or in case there is no mayor, the president of the council or board of trustees, shall at once issue a proclamation giving notice of such election, of the question submitted to the electors, and of the time and place of holding the election; which proclamation shall be published for four consecutive weeks in some newspaper published in such city or town; and if there is none published therein, then such proclamation shall be published by posting a copy thereof in five public places within the corporate limits of such city or town, one of which shall be on the door of the mayor's office.

Manner of voting: result declared. Same, § 5.

SEC. 437. At such election, those who desire to vote in favor of the abandonment of the charter shall deposit a ballot with the words "in favor of abandonment;" those desiring to vote against the abandonment shall deposit a ballot with the words "against abandonment." The election shall be conducted in other respects as elections for city officers are conducted under the charter. The abstract of votes shall be returned to the city council or board

of trustees, who shall canvass the same and declare the result, which shall be entered on the journal.

Special charter abandoned. officers to be elected: resubmission. Same, § 6.

SEC. 438. If a majority of the votes cast at such election be in favor of the abandonment of the charter, the council or trustees shall immediately call a special election for the election of officers for such corporation according to its class as defined by this chapter; and from and after the election and qualification of such officers, the former charter of such city or town shall be considered as abandoned, and such city or town shall be considered as organized, and shall have all the rights and be subject to all the liabilities of the class to which it belongs, but the officers so elected shall hold their offices only until the next annual municipal election in such city or town. If a majority of the votes be against abandonment, that question cannot be again submitted until after the expiration of one year from the time of such election.

Vested rights not affected. Same, § 7.

SEC. 439. All rights and property of every description which were vested in any municipal corporation under its former organization, shall be deemed and held to be vested in the same municipal corporation under the organization herein contemplated; and no right or liability, either in favor of or against such corporation existing at the time, and no suit or prosecution of any kind, shall be affected by such change; *provided*, that when a different remedy is given by this chapter which can properly be made applicable to any right existing at the time such change is made, the same shall be deemed cumulative to the remedies before provided, and may be used accordingly.

SEVERANCE OF TERRITORY.

Application: how made. R. § 1048.

SEC. 440. When the inhabitants of a part of any town or city shall desire to have the part of the territory of such city or town in which they reside severed from, or stricken out of the limits of such city or town, they may apply by petition in writing, signed by a majority of the resident property holders of that part of the territory of such city or town, to the circuit court of the county, which petition shall describe the territory proposed to be thus severed or stricken out of the limits of such city or town, and have attached thereto an accurate map or plat thereof, and shall also name the person or persons authorized to act in behalf of the petitioners in the prosecution of said petition.

Notice to be given. R. § 1049.

SEC. 441. Notice of the filing of the same shall be given by publication in a newspaper published in said city or town, or by posting a notice of the same in five public places in said city or town four weeks previous to the succeeding term of said court, which notice shall contain the substance of said petition and state the term of court at which the hearing thereof will be had.

Petition heard: affidavits amended. R. § 1050.

SEC. 442. The hearing of such petition may be had by the court, or either party may demand a jury, and the proper authorities of such city or town, or any person interested in the subject matter of said petition, may appear and contest the granting of the same; and affidavits in support of or against said petition may be prepared and submitted, and may be examined by the court or jury, and the court may, in its discretion, permit the agent or agents named in the petition to amend or change the same, except

that no amendment shall be permitted whereby the territory embraced in said petition shall be increased or diminished without continuing the case to the next term, and requiring new notice to be given as above provided.

Trial by jury: terms of separation adjusted. R. § 1051.

SEC. 443. If the court or jury, after hearing the petition and evidence, shall be satisfied that said petition has been signed by a majority of the property-holders residing within the limits of the part of the city or town described in the petition and plat, and that the limits have been accurately described and a correct map or plat thereof made and filed, and if the court or jury shall be further satisfied that the prayer of the petitioners should be granted, the court shall appoint three disinterested persons commissioners to adjust the terms upon which such part shall be so stricken out as to any liabilities of such city or town that have accrued during the connection of such part with such corporation.

Commissioners to take an oath: hear parties: report may be set aside. R. § 1052.

SEC. 444. The commissioners so appointed shall take and subscribe an oath that they will impartially perform their duties as such, and shall, at a time by them fixed, hear the agent named in the said petition and also the proper authorities of the city or town in regard to the subject matter to them submitted, and report to the next succeeding term of said court their doings and judgment in the premises, and upon the filing of said report the court shall decree in accordance therewith and with the prayer of said petition; *provided*, that for good and sufficient cause, and upon a proper showing, the court may reject or set aside said report, and appoint new commissioners, and continue the cause for further action to be had thereon.

Transcript filed. R. § 1053.

SEC. 445. The clerk shall forthwith file a certified transcript of such decree, together with the petition and map, in the office of the recorder of the county and in the office of the secretary of state.

When complete: costs. R. § 1054.

SEC. 446. When such certified transcripts are filed, the severance shall be deemed complete. The costs shall be paid by the petitioners, but each party shall pay their own witness fees.

DISCONTINUANCE.

How effected. C. 142, § 1, 11 G. A.

SEC. 447. Whenever one-fourth of the legal voters of any city or incorporated town in this state shall petition the circuit court of the county wherein such corporation is situated for the discontinuance of the same, the said court shall cause to be published for at least thirty days, a notice stating that the question of discontinuing such corporation will be submitted to the legal voters of the same at the next annual corporation election.

Ballot. Same, § 2.

SEC. 448. The form of the ballot shall be, "For the incorporation," and "Against the incorporation."

Two-thirds majority required: indebtedness. Same, § 3.

SEC. 449. If a two-thirds majority of all the legal votes cast for and against such proposition shall be cast "against the incorporation," then the same may be discontinued. The vote provided for in this and the two preceeding sections shall not be construed to discontinue any corporation until the said corporation shall have made ample provisions for the payment of all its indebtedness, and for the faithful performance of all its contracts and obligations, and shall have levied the requisite tax therefor.

Canvass: limitation. Same, § 4.

SEC. 450. The vote for this purpose shall be taken, canvassed, and returned in the same manner as other municipal elections, and all expenses of the same paid by the corporation so voting. No more than one such election shall be held in the same year.

Records and seal deposited with county auditor. Same, § 5.

SEC. 451. The books, documents, records, papers, and corporate seal of any city or town so discontinued shall be deposited with the county auditor of the county for safe keeping and reference in future; and all court records of any mayor or other officer shall be deposited with the nearest justice of the township, who shall have authority to execute and complete all unfinished business standing on the same.

Auditor to publish fact. Same, § 6.

SEC. 452. Whenever the incorporation of any city or town shall have been discontinued under the provisions of the four preceding sections, the auditor of the county wherein such corporation was situated shall publish such fact for thirty days in a county paper, if one is published in the county; if not, shall post three notices for the same length of time, and also to certify the fact to the secretary of state.

Warrants to issue: tax collected: surplus. Same, § 7.

SEC. 453. For the payment of its indebtedness, the corporation shall issue warrants in cases where there is no money in the treasury, and the county treasurer shall collect the tax which shall be levied to pay such indebtedness as hereinbefore contemplated and prescribed as he collects other taxes, and pay the said warrants; and any surplus of this fund shall be passed over to the temporary school fund of the district where the same was levied.

POWERS.

Enumerated. R. § 1047.

SEC 454. Cities and towns organized as provided in this chapter shall be bodies politic and corporate under such name and style as they may select at the time of their organization, and may sue or be sued; contract or be contracted with; acquire and hold property, real and personal; have a common seal, which they may change and alter at pleasure, and have such other privileges as are incident to municipal corporations of like character or degree not inconsistent with the laws of the state.

Same. R. § 1056.

SEC. 455. All municipal corporations organized under this chapter shall have the general powers and privileges, and be subject to the rules and restrictions granted and prescribed in the succeeding section.

Prevent nuisances, riots, gaming houses: establish markets. R. § 1057.

SEC. 456. They shall have power to prevent injury or annoyance from anything dangerous, offensive, or unhealthy, and to cause any nuisance to be abated; to regulate the transportation and keeping of gun-powder or other combustibles, and to provide or license magazines for the same; to prevent and punish fast or immoderate riding or driving of horses through the streets; to regulate the speed of trains and locomotives on railways running over the streets or through the limits of the city or incorporated town by ordinance, and enforce the same by a fine not exceeding one hundred dollars; to establish and regulate markets; to provide for the measuring or weighing of hay, coal, or any other article of sale; to prevent any riots, noise, disturbance, or disorderly assemblages; to suppress and restrain disorderly houses, houses of

ill fame, billiard tables, nine or ten pin alleys, or tables and ball alleys, and to authorize the destruction of all instruments or devices used for purposes of gaming, and to protect the property of the corporation and its inhabitants and to preserve peace and order therein.

Regulations against fires. R. § 1058.

SEC. 457. They shall have power to make regulations against danger from accidents by fire, to establish fire districts, and, on petition of the owners of two-thirds of the grounds included in any square or block, to prohibit the erection thereon of any building or any addition to any building, unless the outer walls thereof be made of brick and mortar or of iron and stone and mortar, and to provide for the removal of any building or additions erected contrary to such prohibition.

Burial of the dead. R. § 1060.

SEC. 458. They shall have power to regulate the burial of the dead, to provide without the limits of the corporation places for the interment of the dead, to prevent any sub-interments within such limits and to cause any body interred contrary to such prohibition to be taken up and buried without the limits of the corporation.

Animals running at large. R. § 1061.

SEC. 459. They shall have power to restrain and regulate the running at large of cattle, horses, swine, sheep, and other animals within the limits of the corporation, and to autho ize the distraining, impounding, and sale of the same for the penalty incurred and costs of the proceeding, to prevent the running at large of dogs and injuries therefrom, and to authorize the destruction of the same when at large contrary to any prohibition to that effect.

Theatrical exhibitions. R. § 1062.

SEC. 460. They shall have power to regulate or prohibit all theatrical exhibitions of whatever name or nature, for which money or any other reward is in any manner demanded or received; but lectures on scientific, historical, or literary subjects shall not come within the provisions of this section.

Pub'ic library established: no money to be appropriated except on vote of people. C. 17, 14 G. A.

SEC. 461. The establishment and maintenance of a free public library is hereby declared to be a proper and legitimate object of municipal expenditure; and the council or trustees of any city or incorporated town may appropriate money for the formation and maintenance of such a library, open to the free use of all its inhabitants under proper regulations, and for the purchase of land and erection of buildings, or for the hiring of buildings or rooms suitable for that purpose, and for the compensation of the necessary employes; *provided*, that the amount appropriated in any one year for the maintenance of such a library shall not exceed one mill upon the dollar upon the assessed valuation of such city or town. Any such city or incorporated town may receive, hold, or dispose of any and all gifts, donations, devises, and bequests that may be made to such city or incorporated town for the purpose of establishing, increasing, or improving any such public library; and the city or town council thereof may apply the use, profits, proceeds, interests, and rents accruing therefrom, in such manner as will best promote the prosperity and utility of such library. Every city or incorporated town, in which such a public library shall be maintained, shall be entitled to receive a copy of the laws, journals, and all other works published by authority of the state after the establishment of such library, for the use of

such library, and the secretary of state is hereby authorized and required to furnish the same from year to year to such city or incorporated town. But no appropriation of money can be made under this section, unless the proposition is submitted to a vote of the people; and at the municipal election of such city or town, the question, "Shall the city (or town council, as the case may be,) accept the benefit of the provisions of this section."

Auctioneers and transient merchants. C. 97, 9 G. A.

SEC. 462. They shall have power to regulate and license sales by auctioneers and transient merchants within their corporate limits, provided, that the exercise of the power shall not interfere with sales made by sheriffs, constables, coroners, marshals, executors, guardians, assignees of insolvent debtors or bankrupts, or any other person required by law to sell real or personal property.

Sales of animals at auction: license or tax carts, taverns, &c.: intoxicating liquors. R. § 1063.

SEC. 463. They shall have power to regulate or prohibit the sale of horses or other domestic animals at public auction in the streets, alleys, or highways; to regulate, license, and tax all carts, wagons, drays, coaches, omnibuses, and every description of carriage which may be kept for hire; to regulate and tax taverns and houses for the public entertainment, and to regulate or prohibit the sale of intoxicating liquors not prohibited by the laws of the state.

Streets, alleys, public grounds, and railways. R. § 1064.

SEC. 464. They shall have power to lay off, widen, straighten, narrow, vacate, extend, establish and light streets, alleys, public grounds, wharves, landing, and market places; and to provide for the condemnation of such real estate as may be necessary for such purposes. They shall also have the power to authorize or forbid the location and laying down of tracks for railways and street railways on all streets, alleys, and public places; but no railway track can thus be located and laid down until after the injury to property abutting upon the street, alley, or public places upon which such railway track is proposed to be located and laid down has been ascertained and compensated in the manner provided for compensation of injuries arising from regrade of streets in section four hundred and seventy of this chapter.

Grading of streets: construction of sewers. C. 45, § 1, 14 G. A.

SEC. 465. They shall have power to provide for the grading and repairs of any street, avenue, or alley, and the construction of sewers, and shall defray the expenses of the same out of the general funds of such city or town, but no street shall be graded except the same be ordered to be done by the affirmative vote of two-thirds of the city council or trustees.

Sidewalks: highways: special tax: assent of property owners. Same, § 2.

SEC. 466. They shall have power to construct side-walks, to curb, pave, gravel, macadamize, and gutter any highway or alley therein, and to levy a special tax on the lots and parcels of land fronting on such highway or alley to pay the expense of such improvement. But unless a majority of the resident owners of the property subject to assessment for such improvement petition the council or trustees to make the same, such improvements shall not be made until three-fourths of all the members of such council or trustees shall, by vote, assent to the making of the same.

Expense assessed on property. Same, § 3.

SEC. 467. They shall have power to repair permanent side-walks, and to assess the expense thereof on the property in front of which such repairs are made.

Temporary side walks: expense limited. Same, § 5.

SEC. 468. They shall have power to provide for the laying of temporary plank side-walks upon the natural surface of the ground,

without regard to grade, on streets not permanently improved, at a cost not exceeding forty cents a lineal foot, and to provide for the assessment of the cost thereof on the property in front of which the same shall be laid.

When grade of streets is changed after buildings are erected: damages to be assessed and paid. C. 40, 14 G. A.

SEC. 469. When any city or town shall have established the grade of any street or alley, and any person shall have built or made any improvements on such street or alley according to the established grade thereof, and such city or town shall alter said established grade in such a manner as to injure or diminish the value of said property, said city or town shall pay to the owner or owners of said property so injured the amount of such damage or injury, which shall be assessed by three persons—one of whom shall be appointed by the mayor of such city or town, one by the owner of the property, and one by the two so appointed, or in case of their disagreement, by mayor and owner, or in case of their disagreement, by the city council or town trustees. If the owner of such property shall fail to appoint one such appraiser in ten days from the time of receiving notice so to do, then the city council or town trustees shall appoint all such appraisers, and no such alteration of grade shall be made until said damages so assessed shall have been paid or tendered to the owner of the property so injured or damaged. The appraisers shall be sworn to faithfully execute their duties according to the best of their ability. Before entering upon their duties, they shall give notice by publication for three weeks in one or more newspapers printed in such city, of the time and place of their meeting for the purpose of viewing the premises and making their assessment. They shall view the premises, and, in their discretion, receive any legal evidence and may adjourn from day to day. When the appraisement shall be completed, the appraisers shall sign and return the same to the city council or town trustees within thirty days of their appointment. The city council or town trustees shall have power, in their discretion, to confirm or annul the appraisement, and if annulled, all the proceedings shall be void, but if confirmed, an order of the confirmation shall be entered. Any person interested may appeal from the order of confirmation to the circuit court of the county in which such city or town is situated, by notice in writing to the mayor at any time before the expiration of twenty days after the entering the order of confirmation. Upon the trial of the appeal, all questions involved in the proceedings, including the amount of damages, shall be open to investigation, and the burden of proof shall, in all cases, be upon the city or town to show that the proceedings are in comformity with this section. The cost of any proceedings incurred prior to the order of such city council or trustees confirming or annulling the appraisement, shall in all cases be paid by such city or town.

Appeal.

Land purchased or condemned for public purposes. C. 127, 10 G. A. C. 80, 18 G. A.

SEC. 470. They shall have power to purchase or condemn, and pay for out of the general fund, and enter upon and take any lands within or without the territorial limits of such city or town for the use of public squares, streets, parks, commons, cemeteries, hospital grounds, or any other proper and legitimate municipal use, and to enclose, ornament and improve the same. They shall have entire control of the same, and shall have power, in case such

lands are deemed unsuitable or insufficient for the purpose for which they were originally granted, to dispose of and convey the same; and conveyances executed in accordance with this chapter shall be held to extinguish all rights and claims of any such town or city to such lands existing prior to such conveyance. But when such lands are so disposed of and conveyed, enough thereof shall be reserved for streets to accommodate adjoinining property-owners.

Water works. C. 78, § 1, 14 G. A.

SEC. 471. They shall have power to erect water works, or to authorize the erection of the same; but no such works shall be erected or authorized until a majority of the voters of the city or town at a general or special election, or four-fifths of the members of the council or board of trustees thereof, by vote, approve the same.

Same. C. 78, § § 2, 3, 4, 14 G. A.

SEC. 472. They shall have power to construct or authorize the construction of such works without their limits, and for the purpose of maintaining and protecting the same from injury, and the water from pollution, their jurisdiction shall extend over the territory occupied by such works and all reservoirs, streams, trenches, pipes, and drains, used in, and necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken for five miles above the point from which it is taken; and to enact all ordinances and regulations necessary to carry the power herein conferred into effect.

When privilege granted to individuals. Same § 5.

SEC. 473. When the right to build and operate such works is granted to private individuals or incorporated companies by said cities and towns, they may make such grant to inure for a term of not more than twenty-five years, and authorize such individual or company to charge and collect from each person supplied by them with water, such water rent as may be agreed upon between said person or corporation so building said works, and said city or town; and such cities or towns are authorized and empowered to enter into a contract with the individual or company constructing said works, to supply said city or town with water for fire purposes, and for such other purposes as may be necessary for the health and safety thereof, and to pay therefor such sum or sums as may be agreed upon between said contracting parties.

May condemn private property. Same, § 6.

SEC. 474. Said cities or towns are hereby authorized to condemn and appropriate so much private property as shall be necessary for the construction and operation of said water works; and when they shall authorize the construction and operation thereof by individuals or corporations, they may confer, by ordinance, upon such person or corporation the said power to take and appropriate private property for said purpose.

Assess water rents as a special tax: collection of: amount. Same, § 8.

SEC. 475. All cities and incorporated towns constructing such works are authorized to assess from time to time, in such manner as they shall deem equitable, upon each tenement or other place supplied with water, such water rents as may be agreed upon; and at the regular time of levying taxes in each year, said city or town is hereby empowered to levy and cause to be collected, in addition to the taxes now authorized to be levied, a special tax on taxable property in said city or town, which tax, with the water rents hereby authorized, shall be sufficient to pay the expenses of

running and operating such works, and if the right to build, maintain, and operate such works is granted to private individuals or incorporated companies by such cities or towns, and said cities or towns shall contract with said individuals or companies for a supply of water for any purpose, such city or town shall levy each year, and cause to be collected, a special tax as provided for above sufficient to pay off such water rents so agreed to be paid to said individual or company constructing said works; *provided*, however, that said tax shall not exceed the sum of five mills on the dollar for any one year, nor shall the same be levied upon the taxable property of said city or town which lies wholly without the limits of the benefit or protection of such works, which limit shall be fixed by the city council or board of trustees each year before making said levy.

Proceedings when private property is condemned. R. § 1065. C. 80, 18 G. A.

SEC. 476. When it shall be deemed necessary by any such corporation to enter upon or take private property for any of the above uses, an application in writing shall be made to the circuit court, which application shall describe, as correctly as may be, the property to be taken, the object proposed, and the owners of the property, and of each lot or parcel thereof known, and notice of the filing thereof shall be given as is required to commence a civil action in said court. After such notice shall have been given, the court shall proceed to determine the compensation to be paid for the taking of the property, and for that purpose shall empanel a jury, and the mode of procedure therein shall be the same, so far as applicable, as in an action by ordinary proceedings. The assessment shall be made so that the amount payable to each owner may be ascertained either by allotting it to each owner by name or on each lot or parcel of land, and the inquiry and assessment shall in other respects be made by the jurors under such instructions as shall be given by the court. The jurors shall be sworn to make the whole inquiry and assessment, but may be allowed to return a verdict as to part and be discharged as to the rest in the discretion of the court, and in case they shall be discharged from rendering a verdict in whole or in part, another jury may be empaneled at the earliest convenient time, which shall make the whole inquiry and assessment, or the part not made, as the case may be.

Payment or deposit of damages; possession when taken; costs. R. § 1066.

SEC. 477. When the amount of compensation due to any of the owners of the property to be taken shall be ascertained, the court shall make such order as to its payment or deposit as may be deemed just and proper, and may require adverse claimants to any part of the money or property to interplead, so as to fully settle their rights and interests, and may direct the time and manner in which possession of the property shall be taken or delivered, and may, if necessary, enforce an order giving possession. But none of the property shall be actually taken or occupied until the compensation thus ascertained shall have been paid, or secured to be paid. The costs occasioned by the inquiry and assessment shall be paid by the corporation, and as to the other costs which may arise, they shall be charged or taxed as the court, in its discretion, may direct; no delay in making an assessment of

compensation, or in taking possession, shall be occasioned by any doubt which may arise as to the ownership of the property, or any part thereof, or as to the interest of the respective owners; but in such cases the court shall require the deposit of the money allowed as compensation for the whole of the property, or the part in dispute; and in all cases as soon as the corporation shall have paid the compensation assessed, or secured its payment by a deposit of money under the order of the court, possession of the property may be taken and the public work or improvement progress.

Assessment on lots: how enforced. R. § 1068.

SEC. 478. Each municipal corporation may, by a general ordinance, prescribe the mode in which the charge on the respective owners of lots or lands, and on the lots or lands, shall be assessed and determined for the purposes authorized by this chapter; such charge, when assessed, shall be payable by the owner or owners at the time of the assessment personally, and shall also be a lien upon the respective lots or parcels of land from the time of the assessment. Such charge may be collected and such lien enforced by a proceeding in law or in equity, either in the name of such corporation, or of any person to whom it shall have directed payment to be made. In any such proceedings, where pleadings are required, it shall be sufficient to declare generally for work and labor done, and materials furnished on the particular street, alley or highway. Proceedings may be instituted against all the owners or any of them, to enforce the lien against all the lots or land, or each lot or parcel, or any number of them embraced in any one assessment, but the judgment or decree shall be rendered separately for the amount properly chargeable to each. Any proceedings may be severed, in the discretion of the court, for the purpose of trial, review, or appeal.

Recovery had or charge enforced with penalty. R. § 1069.

SEC. 479. In any such proceeding, where the court trying the same shall be satisfied that the work has been done, or materials furnished, which, according to the true intent of the act, would be properly chargeable upon the lot or land through or by which the street, alley or highway improved, repaired, or lighted, may pass, a recovery shall be permitted, or a charge enforced, to the extent of the proper proportion of the value of the work or materials which would be chargeable on such lot or land, notwithstanding any informality, irregularity, or defect in any such municipal corporation or any of its officers. But in such case the court may adjudge as to costs as may be deemed proper, and in cases where an assessment shall have been regularly made, and payment shall have been neglected or refused at the time when the same was required, any municipal corporation may be entitled to demand and recover, in addition to the amount assessed and interest thereon at ten per cent. from the time of the assessment, five per cent. to defray the expenses of collection, which shall be included in any judgment or decree which may be rendered.

Preceding fifteen sections to apply to cities acting under special charters.

The provisions and powers conferred in this chapter from section four hundred and sixty-five to section four hundred and seventy-nine, inclusive, shall apply to cities acting under special charters.

SEC. 480. Municipal corporations shall have power to cause any lot of land within their limits on which water at any time becomes stagnant, to be filled up or drained in such manner as may be directed by a resolution of the council or trustees; and such owner or his agent, shall, after service of a copy of such resolution, or after a publication of the same in some newspaper of general circulation in such corporation for two consecutive weeks, comply with the directions of such resolution within the time therein specified; and in case of a failure or refusal to do so, it may be done at the expense of said corporation; and the amount of money so expended shall be a debt due to said corporation from the owner of said lot, and shall, moreover, from the time of the adoption of such resolution, be a lien on such lot or lots.

Stagnant water: drained: lots filled: lien on property. R. § 1070.

SEC. 481. Any municipal corporation may, in addition to the means provided by the three preceding sections, if, by ordinance, it so elects, cause any or all delinquent charges, assessments, and taxes made or levied under and by virtue of, and for the purpose specified in said section or referred to therein, to be be certified to the county auditor of the county, and be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be by this chapter.

Delinquent charges and assessments certified to auditor. C. 14, 13 G. A.

ORDINANCES, FINES, AND SUITS.

SEC. 482. Municipal corporations shall have power to make and publish, from time to time, ordinances, not inconsistent with the laws of the state, for carrying into effect or discharging the powers and duties conferred by this chapter, and such as shall seem necessary and proper to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort, and convenience of such corporation and the inhabitants thereof, and to enforce obedience to such ordinances by fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days.

Make and publish ordinances: enforce penalties and fines. R. § § 1071, 1072, 1073.

SEC. 483. Fines may, in all cases, and in addition to any other mode provided, be recovered by suit or action before a justice of the peace or other court of competent jurisdiction, in the name of the proper municipal corporation, and for its use. And in any such suit or action where pleading is necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance, referring to its title and the date of its adoption or passage, and showing as near as may be the facts of the alleged violation.

Fines recovered by action: pleading therein. R. § 1074.

SEC. 484. Whenever a fine and costs imposed for the violation of any ordinance are not paid, the person convicted may, by the officer having jurisdiction of the case, be committed until the fine and costs are paid, not to exceed thirty days.

Offender committed to jail. C. 81, § 2, 13 G. A.

SEC. 485. Any city or town shall have the right to use the jail of the county for the confinement of such persons as may be liable to imprisonment under the ordinances of such city or town, but it shall be liable to the county for the cost of keeping such prisoners.

May use county jail. Same, § 1.

SEC. 486. All suits for the recovery of any fine, and prosecutions for the commission of any offense made punishable as herein pro-

Suits: when barred. R. § 1075.

vided, shall be barred in one year after the commission of the offense for which the fine is sought to be recovered, or the prosecution is commenced.

Labor on highways: penalty for failure: how enforced. C. 31, 14 G. A.

SEC. 487. All municipal corporations are hereby empowered to provide that all able bodied male residents of the corporation between the ages of twenty-one and fifty years, shall, between the first day of April and the first day of September in each year, either by themselves or satisfactory substitutes, perform two days labor upon the streets, alleys, or highways within such corporation, at such times and places as the proper officer may direct, and upon three days notice in writing given. They may further provide that, for each day's failure to attend and perform the labor as required at the time and place specified, the delinquent shall forfeit and pay to the corporation any sum not exceeding two dollars for each day's delinquency, and that all such sums remaining unpaid on the first day of September in each year may be treated and collected as taxes on property, and the same shall be a lien on all the property of the delinquent that may be listed for taxation and assessed and owned by him on the first day of November of the same year.

May aid in construction of highways outside corporate limits: how given. C. 13, 98, 14 G. A.

SEC. 488. Any city or incorporated town may aid in the construction and repair of any highway leading thereto, by appropriating therefor a portion of the highway tax belonging to said city or incorporated town, not exceeding fifty per cent. thereof, annually, as hereinafter provided. When a petition shall be presented to the council or trustees, signed by one-third of the resident taxpayers of said city or town, asking that the question of aiding in the construction or repair of any highway leading thereto be submitted to the voters thereof, the council or trustees, immediately, shall give notice of a special election by posting notice in five public places in said town at least ten days before said election, which notice shall specify the time and place of holding said election, the particular highway proposed to be aided, the proportion of the highway tax then levied and not expended, or next thereafter to be levied, to be appropriated; at which election the question of "appropriation" or "no appropriation" shall be submitted, and if a majority of votes polled be for appropriation, then the council or trustees may aid in the construction and repair of said highway to the extent of said appropriation, in the same manner as they otherwise would if said highway was within the corporate limits of said city or town; but no part of such highway tax shall be expended more than two miles from the limits of such city or town.

Ordinances read: conta'n but one subject: how passed. R. § 1122.

SEC. 489. All ordinances and resolutions, or orders for the appropriation or payment of money, shall require for their passage or adoption the concurrence of a majority of all the trustees of any municipal corporation; ordinances of a general or permanent nature shall be fully and distinctly read on three different days, unless three-fourths of the council shall dispense with the rule; no ordinance shall contain more than one subject, which shall be clearly expressed in its title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contain the

entire ordinance or section reviewed or amended, and the ordinance or section so amended shall be repealed.

Councilmen and trustees not eligible to office: or interested in contract. R. § 1122.

SEC. 490. No trustee or member of any council shall, during the time for which he has been elected or for one year thereafter, be appointed to any municipal office which shall be created, or the emoluments of which shall be increased during the term for which he shall have been elected, except in the cases provided in this chapter; nor shall any such trustee be interested, directly or indirectly, in the profits of any contract or job for work, or services to be performed for the corporation.

Salary not increased or diminished during term of office. R. § 1122.

SEC. 491. The emoluments of no officer whose election or appointment is required by this chapter, shall be increased or diminished during the term for which he shall have been elected or appointed; nor shall any change of compensation affect any officer whose office shall be created under the authority of this chapter during his existing term, unless the office be abolished; and no person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed when during the same time the emoluments had been increased.

Ordinances recorded and published. R. § 1133. C. 34, § 1, 11 G. A.

SEC. 492. All ordinances shall, as soon as may be after their passage, be recorded in a book kept for that purpose and be authenticated by the signature of the presiding officer of the council and the clerk, and all by-laws of a general or permanent nature, and those imposing any fine, penalty, or forfeiture, shall be published in some newspaper of general circulation in the municipal corporation, and it shall be deemed a sufficient defence to any suit as prosecution for such fine, penalty, or forfeiture, to show that no such publication was made: *provided*, however, that if no such newspaper is published within the limits of the corporation, then and in that case, such by-laws may be published by posting up three copies thereof in three public places within the limits of the corporation, two of which places shall be the post office and the mayor's office of such town or city; and such by-laws and ordinances shall take effect and be in force at the expiration of five days after they have been published.

Yeas and nays called on passage of ordinances: officers: how appointed. R. § 1134.

SEC. 493. On the passage or adoption of every by-law or ordinance, and every resolution or order to enter into a contract by any council of any municipal corporation, the yeas and nays shall be called and recorded; and to pass or adopt any by-law, ordinance, or any such resolution or order, a concurrence of a majority of the whole number of members elected to the council shall be required; all appointments of officers by any council shall be made viva voce, and the concurrence of a like majority shall be required and the names of those, and for whom they voted, on the vote resulting in an appointment, shall be recorded. No money shall be appropriated by the council except by ordinance.

Two-thirds vote required to make improvements. R. § 1135.

SEC. 494. No street or highway shall be opened, straightened, or widened, nor shall any other improvement be made which will require proceedings to condemn private property without the concurrence, in the ordinance or resolution directing the same, of two-thirds of the whole number of the members elected to the council, and the concurrence of a like majority shall be required

to direct any improvement or repair of a street or highway, the cost of which is to be assessed upon the owners of the property, unless two-thirds of the owners to be charged therefor shall petition in writing for the same.

Tax certified to auditor and collected as other taxes by county treasurer. R. § 1123. C. 25, § 3, 10 G. A.

SEC. 495. The council or trustees, as the case may be, of each municipal corporation is required to cause to be certified to the county auditor, on or before the first Monday of September of each year, the percentage or number of mills on the dollar of tax levied for all city purposes by them on the taxable property within said corporation for the year then ensuing, as shown by the assessment roll of said city for said year, and the said auditor is required to place the same on the tax books of the county in the same manner as county taxes are placed thereon, which taxes for municipal purposes shall be collected by the county treasurer; and in all things relating to the collection of the same, and the sale of real or personal property, he is authorized and required to proceed according to the provisions of the statutes regulating the sale of property for delinquent state and county taxes, and in all sales for such, or any delinquent taxes for municipal purposes, if there be other delinquent taxes due from the same person, or lien on the same property, the sale shall be for all the delinquent taxes; and such sales, and all sales made under or by virtue of this section or the provisions of law herein referred to, shall be of the same validity, and, in all respects, be deemed and treated as though such sales had been made for the delinquent state and county taxes exclusively. And in any city or town incorporated under or by special charter, which now is, or hereafter may be regulated by or subject to the general incorporation laws, all delinquent taxes, except such as were levied to pay indebtedness created to take stock or aid in the building of railways, remaining unpaid upon the tax books of such city or town, shall be certified at the time, collected and paid over as above directed. And the county treasurer shall include said delinquent taxes so certified with the delinquent state and county taxes on his books, and collect the same by sale of real or personal property in the same manner as is by statute required for delinquent state and county taxes; and all sales of property for such delinquent municipal taxes shall be as valid, and, in all respects, be deemed and treated as though such sales had been made for delinquent state and county taxes.

Taxes limited. R. § 1124.

SEC. 496. The amount which may be so certified, assessed, and collected, shall not exceed ten mills on the dollar, to defray its general and incidental expenses.

Sinking fund may be created by taxation. R. § 1125. C. 59, 13 G. A.

SEC. 497. For the purpose of creating a sinking fund for the gradual extinguishment of the bonds and funded debt of any municipal corporation, the council thereof may, in their discretion, annually, levy and collect, in addition to the other taxes of said corporation, a tax of not more than two mills on the dollar upon the assessed value of said property appraised and returned as aforesaid, which shall be paid into said treasury and be applied by order of the city council towards the extinguishment of the said bonds and funded debt, and to no other purpose whatever.

County treasurer to pay over to city treasurer. R. § 1126.

SEC. 498. The treasurer of the county shall pay over to the treasurer of any municipal corporation, all moneys received by him arising from taxes levied belonging to such municipal corpora-

tion, on or before the first day of March in each year; and such moneys as said county treasurer may receive after that time, for delinquent taxes belonging to such corporation, he shall pay over to the treasurer thereof when demanded.

May tax dogs and domestic animals. R. § 1128.

SEC. 499. The council of any municipal corporation shall have power, whenever in their opinion the interests of the corporation require it, to lay and collect a tax on dogs and other domestic animals not included in the list of taxable property, for the state and county purposes; and said tax shall be collected by the collector of such corporation and paid into the treasury thereof.

Loans negotiated and limited. R. § 1129.

SEC. 500. Loans may be negotiated by any municipal corporation in anticipation of the revenues thereof, but the aggregate amounts of such loans shall not exceed the sum of three per cent. upon the taxable property of any city or town.

ELECTION AND QUALIFICATION OF OFFICERS.

Annual election: places for holding: qualification of voters. R § 1130 C. 25, § 4, 10 G. A.

SEC. 501. The first Monday of March shall be the regular annual period for the election of municipal officers, and all officers whose election is provided for in this chapter, or may be provided for by ordinance, shall be elected on that day. The trustees or council of every municipal corporation shall direct the place or places for holding elections for municipal officers, and whenever the corporation is divided into wards or precincts, there shall be one such place in each ward and precinct, and any person who, at the time of any election of municipal officers, would be a qualified elector under the laws of the state for county officers, and shall have actually resided in the ward or precinct in which he offers to vote for the ten days last preceding the election, shall be deemed a qualified voter; and all elections shall in all respects be held and conducted in the manner prescribed by law in case of county elections.

Elections: holding of: result declared: certificate. R. § 1131.

SEC. 502. At all elections in cities and incorporated towns which are not divided into election districts or wards, the mayor and trustees, any three of whom shall be a quorum, shall serve as judges, and the recorder shall serve as clerk, and after canvassing the votes which may be given at such election they shall declare the result, and the recorder shall make out and deliver to each person elected to any office in such city or town a certificate of such election.

Returns of: to whom made: canvass. R. § 1131.

SEC. 503. The returns of all municipal elections in cities and incorporated towns which are divided into election districts or wards, shall be made to the clerk or recorder of the corporation, and shall be opened by him on the third day after election. He shall call to his assistance the mayor of the corporation, or if there be no mayor, or the mayor shall have been a candidate at such election, then any justice of the peace of the county, and shall, in his presence, make out an abstract and ascertain the candidates elected in all respects as required by law for the canvass of the returns of county elections, and shall, in like manner, make out a certificate as to each candidate so elected and cause the same to be delivered to him or to be left at his place of abode.

Oath of office: bond: vacancy. R. § 1132.

SEC. 504. All officers elected or appointed in any municipal corporation, shall take an oath or affirmation to support the constitution of the United States and the constitution of the state of Iowa, and the trustees or council of any municipal corporation may require from such officers, as they may think proper, a bond, with proper penalty and surety, for the faithful discharge of the duties of their office; and such trustees or council shall have the power to declare the office of any person appointed or elected to any office who shall fail to take the oath of office, or give bond when required, for ten days after he shall have been notified of appointment or election, vacant, and proceed to appoint as in other cases of vacancy.

Compensation of council or trustees. R. § 1095.

SEC. 505. The compensation of the council or trustees shall not exceed one dollar to each member for every regular or special meeting of the board, and shall not exceed fifty dollars to each in any one year.

Jurisdiction of mayor. R. § § 1085, 1102, 1105.

SEC. 506. The mayor of each city or incorporated town shall be a magistrate and conservator of the peace, and, within the same, have the jurisdiction of a justice of the peace in all matters, civil and criminal, arising under the laws of the state or the ordinances of such city or town; and the rules of law regulating proceedings before a justice of the peace shall be applicable to proceedings before such mayor; but the criminal jurisdiction hereby conferred shall be co-extensive with the county in which such city or town is situated.

OF THE CLASSES OF MUNICIPAL CORPORATIONS.

How classified. R. § 1077.

SEC. 507. In respect to the exercise of certain corporate powers and duties of certain officers, municipal corporations are divided into cities of the first and cities of the second class, and incorporated towns.

Defined by population. R. § 1078.

SEC. 508. Every municipal corporation having a population of fifteen thousand and upwards, shall be a city of the first class; every municipal corporation having a population exceeding two thousand, but not exceeding fifteen thousand, shall be a city of the second class; and every municipal corporation having a population not exceeding two thousand shall be deemed an incorporated town.

After each census governor to cause statement of population of cities published. R. § 1079.

SEC. 509. The governor, auditor, and secretary of state, or any two of them, within six months after the returns of any census have been filed in the office of the secretary of state, shall ascertain what cities of the second class are entitled to become cities of the first class, and what incorporated towns are entitled to become cities of their proper class. And the governor shall cause a statement thereof to be prepared by the secretary of state, which statement he shall cause to be published in some newspaper published in the city of Des Moines, and also in some newspaper printed in each of the cities and incorporated towns the grade of which shall have been so advanced, and a copy of said statement shall also be transmitted by the secretary of state to the next general assembly, and any such city or incorporated town shall, at the next regular annual period for the election of municipal officers,

proceed to organize according to its new grade, by the election of officers properly belonging thereto, and on their election and qualification the term of service of any former officer expire.

When class is changed, the proper ordinances to be passed. R. § 1080.

SEC. 510. So soon as the statement shall be published, as above provided, showing that any city or incorporated town will be entitled, at the next regular annual period for the election of municipal officers, to be organized into a city of the first or second class, as the case may be, the proper authority of such city or incorporated town shall make and publish such ordinances as may be necessary to perfect such organization in respect to the election, duties, and compensation of officers or otherwise.

OF INCORPORATED TOWNS.

Officers of. R. § 1081.

SEC. 511. The corporate authority of incorporated towns, organized for general purposes, shall be vested in one mayor, one recorder, and five trustees, who shall be qualified electors residing within the limits of the corporation, and shall hold their offices for one year; and such mayor, recorder, and trustees, shall constitute the council of the incorporated town, any five of whom shall be a quorum for the transaction of business.

Recorder: duties. R. § 1082.

SEC. 512. The mayor, or in case of his absence the recorder, shall preside at all meetings of the council; the recorder shall also be clerk of the corporation, and shall attend all meetings of the council, and make a fair and accurate record of all their proceedings, rules, and ordinances made and passed by the council, and the same shall at all times be open for the inspection of the electors of the corporation.

Vacancies. R. § 1083.

SEC. 513. The council shall have power to order special elections to fill vacancies, which may happen in the board, from the qualified electors of the corporation, who shall hold their office until the next annual election and until their successors are elected and qualified, and in the absence of the mayor and recorder from any meeting of the council, the council shall have power to appoint any two of their number to perform the duties of mayor and recorder for the time being.

Treasurer and other officers to be elected: compensation. R. § 1084.

SEC. 514. The council of any incorporated town shall have power to provide by ordinance for the election of a treasurer, and such subordinate officers as they may deem necessary for the good government of the corporation, to prescribe their duties and compensation, or the fees they shall be entitled to receive for their services, and to require of them an oath of office, and a bond, with surety, for the faithful discharge of their duties. The election of any such officer shall be at the regular annual election, and no appointment of any officer shall endure beyond one week after the qualification of the members of the succeeding council.

Marshal: powers and duties. R. § 1086.

SEC. 515. A marshal shall be appointed by the trustees, and shall be the principal ministerial officer of the corporation, and shall have the same power that constables have by law, co-extensive with the county, for offenses committed within the limits of the corporation. He shall execute the process of the mayor, and receive the same fees for his services that constables are allowed in similar cases.

Officers may be removed. R. § 1087.

SEC. 516. By the concurrent vote of five members of the council, the mayor, recorder, or any member of the council, or any officer of the corporation, may be removed from office; but no such removal shall be made without a charge in writing being made and an opportunity of hearing being given, unless the officer against whom the charge is made shall have removed out of the limits of the corporation, and when any officer shall cease to reside within the limits of the corporation, it shall be deemed a good ground for a removal from office.

OF CITIES.

Corporate authority: in whom vested. R. § 1.9.).

SEC. 517. The corporate authority of cities organized under this chapter, shall be vested in a mayor and a board to be denominated the city council, together with such officers as are in this chapter mentioned, or may be created under its authority.

Election of mayor: term: qualification: duties. R. § 1091. C. 25, § § 1, 2, 10 G. A.

SEC. 518. The mayor shall be elected biennially in cities of the first class, and annually in cities of the second class, by the qualified voters of the city. He shall be a qualified elector and reside within the limits of the city, and shall hold his office for the term for which he shall have been elected and qualified. He shall keep an office at some convenient place in the city, to be provided by the city council, and shall keep the corporate seal of the city in his charge; he shall sign all commissions, licenses, and permits granted by the authority of the city council, and such other acts as by the law or ordinances may require his certificate.

Vacancy in office of mayor: powers enumerated. R. § 1091.

SEC. 519. In case of the mayor's death, disability, resignation, or other vacation of his office, the city council shall order a special election, as soon as practicable, to fill the vacancy for the remainder of the time of office, and may appoint some qualified elector to act as mayor until such special election. The mayor of the city shall be its chief executive officer and conservator of the peace, and it shall be his special duty to cause the ordinances and the regulations of the city to be faithfully and constantly obeyed; he shall supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against any of them, and cause all the violations of their duty, or their neglect, to be promptly corrected or reported to the proper tribunal for punishment and correction; he shall have and exercise within the city limits the powers conferred upon the sheriffs of counties to suppress disorders and keep the peace; he shall also perform such other duties compatible with the nature of his office, as the council may from time to time require; he shall receive such salary, payable quarterly out of the city treasury, as may be provided by ordinance; but the amount of such salary shall neither be increased nor diminished during an incumbent's term of office.

Wards defined: changes made. R. § 1092.

SEC. 520. The numbers, divisions, and boundaries of the several wards of all cities heretofore incorporated, shall remain as fixed at the time when this code goes into operation, until changed by the city council; said council may at any time create new wards, or alter those now established, or the boundaries thereof, as may be deemed expedient; but, in cities of the second class, the number of wards now existing shall not be decreased, nor shall they be increased beyond seven.

SEC. 521. The qualified electors of each ward, shall, on the first Monday of March of each year, elect by a plurality of votes one member of the city council, who shall at the time be a resident of the ward and a qualified elector therein. His term of service shall be two years, so that there may always be in the council two members from the same ward whose terms of service shall expire in different years; but at the first election held on the organization of a new city government under this chapter, two members of the city council shall be elected in each ward, and the city council shall determine by lot their terms of service, so that one trustee from each ward may serve for two years, and one for one year.

Election of councilmen: qualification: term of service. R. § 1093.

SEC. 522. The members elected for each city shall, on the second Monday after their election, assemble together and organize the city council. A majority of the whole number of members shall be necessary to constitute a quorum for the transaction of business, they shall be judges of the election returns and qualification of their own members; they shall determine the rule of their own proceedings and keep a journal thereof, which shall be open to the inspection and examination of any citizen; they may compel the attendance of absent members in such manner and under such penalties as they shall think fit to prescribe, and shall elect from their own body a temporary president; they shall also appoint from the qualified electors of the city, a city clerk who shall have the custody of all the laws and ordinances of the city, and shall keep a regular and correct journal of the proceedings of the council, and shall perform such other duties as may be required by the ordinance of the city. The clerk in office at the expiration of the term of service of any council, shall continue in office until his successor shall be appointed and qualified.

Organization of council: duties: shall choose clerk. R. § 1093.

SEC. 523. Each city council shall cause to be provided for the clerk's office a seal, in the center of which shall be the name of the city, and around the margin the words "city clerk," which shall be affixed to all transcripts, orders, or certificates which may be necessary or proper to authenticate under the provisions of this chapter or any ordinances of the city. For all attested certificates and transcripts, other than those ordered by the city council, the same fees shall be paid to the clerk as are allowed to county officers for the same services.

Provide seal for clerk: fees of. R. § 1094.

SEC. 524. The city council shall possess all the legislative powers granted in this chapter and other corporate powers of the city not herein, or by some ordinance of the city council, conferred on some officer of the city; they shall have the management and control of the finances, and all the property, real and personal, belonging to the corporation; they shall determine the times and places of holding their meetings, which shall at all times be open to the public; and the mayor, or any three members, may call special meetings by notice to each of the members of the council personally served, or left at his usual place of abode; they shall appoint or provide by ordinance, that the qualified electors of the city, or of the wards or districts, as the case may require, shall elect all such city officers as may be necessary for the good government of the city, and for the due exercise of its

Powers of council enumerated: compensation of officers. R. § 1095.

corporate powers, and which shall have been provided for by ordinance, as to whose election or appointment provision has not herein been made; and all city officers whose term of service is not prescribed, and whose powers and duties are not defined by this chapter, shall perform such duties, exercise such powers, and continue in office such term of time, not exceeding one year, as shall be prescribed by ordinance; but all officers to be elected, shall be elected at the regular annual election for municipal corporations. The officers of cities shall receive such compensation and fees for their services as the council shall by ordinance prescribe.

May establish board of health and organize fire companies. R. § 1096.

SEC. 525. The city council shall have power to establish a board of health, with all the powers and duties specified in sections four hundred and fifteen, four hundred and sixteen, four hundred and seventeen and four hundred and eighteen, of the ninth chapter of this title; to establish a city watch, or police, to organize the same under the general supervision of the mayor, or marshal, to prescribe their duties and powers, and to establish and organize fire companies and provide them with proper engines and such other instruments as may be necessary.

Regulate markets. R. § 1096. C. 197, § 1, 11 G. A.

SEC. 526. No charge or assessment of any kind shall be made or levied on any wagon or other vehicle, or the horses thereto attached, or on the owner thereof, bringing produce or provisions to any of the markets in the city for standing in or occupying a place in any of the market spaces of the city, or in the streets contiguous thereto, on market days and evenings previous thereto; but the city council shall have full power to prevent forestalling, to prohibit or regulate huckstering in the markets, to prescribe the kind and description of articles which may be sold, and the stands or places to be occupied by the vendors, and may authorize the immediate seizure and arrest, or removal from the markets, of any person violating its regulations as established by ordinance, together with any article of produce in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions.

Control high ways, bridges, streets, and public squares: limitation on amount to be appropriated to any bridge. R. § 1095. C. 179, 13 G. A. C. 1, § 2, 14 G. A. C. 190, § 2, 14 G. A.

SEC. 527. The city council shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares, and commons within the city, and shall cause the same to be kept open and in repair, and free from nuisances; all public bridges exceeding forty feet in length, over any stream crossing a state or county highway, shall be constructed and kept in repair by the county; *provided*, that the city council may appropriate a sum not exceeding ten dollars per lineal foot to aid in the construction of any county bridge within the limits of such city, or may appropriate a like sum to aid in the construction of any bridge contiguous to said city on a highway leading to the same, or any bridge across any unnavigable river which divides the county in which said city is located from another state; and that no street or alley which shall hereafter be dedicated to public use by the proprietor of ground in any city, shall be deemed a public street or ally, or to be under the use or control of the city council, unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

SEC. 528. The city council shall have power to establish and construct and regulate landing places, wharves, docks, piers, and basins, and to fix the rates of landing, wharfage, and dockage, and to use for the purpose aforesaid any public building or any property belonging to or under the control of the city, and the city council shall have the use and control, for the above purpose, of the shore or bank of any lake or river not the property of individuals, to the extent, and in any manner, that the state can grant such use or control. The city council shall have the power to appoint or to provide that the qualified electors shall elect harbor masters, wharf masters, port wardens, and other officers usual and proper for the regulation of the navigation, trade, or commerce of such city, to define their duties and powers, and to fix their fees or compensation. Copies of examination and surveys, and of the proceedings of any port warden in the usual discharge of the duties of such officers, certified under his hand and seal, shall be presumptive evidence of the facts therein duly stated.

Wharfs, docks, piers: wharfage: dockage: rates fixed: harbor masters: certified copies of survey. R. § 1098.

SEC. 529. The city council of any city shall have the exclusive power to establish and to regulate, and to license ferries from such city, or any landing therein, to the opposite shore, or from one part of said city to another, and in granting such license to impose such reasonable terms and restrictions in relation to the keeping of such ferries, and the time, manner, and rates of the carriage and transportation of persons and property as the city council may prescribe, and the city council shall have power to provide for the revocation of any such license, and for the punishment by proper fines and penalties of the violation of any ordinance prohibiting unlicensed ferries, or regulating those established and licensed.

License and regulate ferries. R. § 1099.

SEC. 530. Any member of the city council may be expelled or removed from office by a vote of two-thirds of all the members elected to the city council, but not a second time for the same cause; any officer appointed by the city council may be removed from office by a vote of two-thirds of all the members elected to the city council, and provision may be made by ordinance as to the mode in which charges shall be preferred and a hearing be had; in all cases of vacancies in the city council they shall be filled by special election, and in case any office of an elective officer, except members of the city council, shall become vacant before the regular expiration of the term thereof, the vacancy shall be filled by the city council until a successor is elected and qualified, and such successor shall be elected for the unexpired term at the first annual election that occurs after the vacancy shall have happened.

Removal from office and vacancies. R. § 1101.

OF CITIES OF THE SECOND CLASS.

SEC. 531. The mayor of cities of the second class shall be the presiding officer of the city council, and shall constitute a member of such council, and shall have a casting vote where there is a tie.

Mayor to preside: casting vote. C. 188, 12 G. A.

SEC. 532. The qualified electors of each city of the second class shall elect a city treasurer, who shall hold his office for one year, and a city solicitor, who shall hold his office for two years;

Election of officers and terms. R. § 1108. C. 34, 7 G. A.

each of said officers shall have such powers and perform such duties as are prescribed in this chapter, or by any ordinance of the city council not inconsistent herewith. In all such cities, the marshal, deputy marshal, and police, shall be elected by the city council, and shall hold their offices during its pleasure.

Powers and duties of marshal. R. § 1104.

SEC. 533. The marshal of the cities of the second class shall execute and return all writs and processes to him directed by the mayor, and, in criminal cases, or cases in violation of city ordinances, he may serve the same in any part of the county; he shall suppress all riots, disturbances, and breaches of the peace, apprehend all disorderly persons in the city, and shall pursue and arrest any person fleeing from justice in any part of the state; he shall apprehend any person in the act of committing any offense against the laws of the state or ordinances of the city, and forthwith bring such person before the mayor, or other competent authority for examination and trial; he shall have, in the discharge of his proper duties, like power, be subject to like responsibilities, and shall receive the same fees as sheriffs and constables, in similar cases.

OF CITIES OF THE FIRST CLASS.

Message of mayor: appointment of police. R. § 1105.

SEC. 534. The mayor of the cities of the first class, shall, at the first regular meeting of the city council in the month of April of every year, and at such other times as he may deem expedient, report to the city council concerning the municipal affairs of the city, and recommend such measures as to him may seem advisable; he shall appoint one chief of police and as many subordinate officers and watchmen as the city council may deem necessary, who shall hold their appointments during the pleasure of the mayor; he shall have power, in cases of emergency, to appoint as many special watchmen as he may think proper, but such appointments shall be reported to and subject to the action of the city council at its next meeting.

Election of officers and terms. R. § 1106.

SEC. 535. The qualified electors shall elect a marshal, a civil engineer, a treasurer, an auditor, a solicitor, police judge, and a superintendent of the market, who shall hold their offices for two years, and until their successors are elected and qualified; each of said officers shall have such powers and perform such duties as are prescribed in this chapter; or in any ordinance of the city, not inconsistent herewith.

Powers and duties of marshal. R. § 1107.

SEC. 536. The city marshal shall execute and return all process to him directed by the mayor or judge of the police court, and shall attend on the sittings of said court; he shall have power to execute any such process, by himself or deputy, in any part of the county; he shall suppress all riots, disturbances, and breaches of the peace, apprehend all persons committing any offense against the laws of this state or the ordinances of the city, and forthwith bring such persons before the proper authority for examination or trial; he shall have power to pursue and arrest any person fleeing from justice in any part of the state, and to receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from other places or states, and to appoint one

or more deputies for whose official acts he shall be responsible; he shall have, in the discharge of his proper duties, like powers, be subject to like responsibilities, and shall receive the same fees as sheriffs and constables in similar cases.

Appointment of police: powers, duties, and jurisdiction thereof. R. § 1108.

SEC. 537. The city council shall, by a general ordinance, direct the number of officers of the police and watchmen to be appointed. They shall also provide, in addition to the regular watch, for the appointment of a reserved watch, to consist of a suitable number of persons in each ward, to be called into duty as the council may prescribe, and by the mayor or officers of police under his direction, in special cases of emergency. The duty of the chief and other officers of the police, and of the watchmen, shall be, under the direction of the mayor and in conformity with the ordinances of the city, to suppress all riots, disturbances, and breaches of the peace; to pursue and arrest any person fleeing from justice in any part of the state; to apprehend any and all persons in the act of committing any offense against the laws of the state or the ordinances of the city, and, forthwith, to bring such person or persons before the police court or other competent authority for examination; and at all times to diligently and faithfully enforce all such laws, ordinances, and regulations for the preservation of good order and public welfare as the city council may ordain, and for such purposes they shall have all the power of constables. The mayor, marshal, chief of police, and watchmen of the city may, upon view, arrest any person who may be guilty of a breach of the ordinances of the city, or of any crime against the laws of the state, and may, upon reasonable information, supported by affidavits, procure process for the arrest of any person who may be charged with a breach of any of the ordinances of the city. The city council shall have the power to prescribe by ordinance the width of the tires of all wagons, drays, and other vehicles habitually used in the transportation of persons and articles from one part of the city to another, or in the transportation of coal, wood, stone, or lumber into the city; to establish stands for hackney-coaches, cabs, and omnibuses, and enforce the observance and use thereof; and to fix the rates and prices for the transportation of persons and property in such coaches, cabs, and omnibuses from one part of the city to another.

Power of council as to drays, wagons, and coaches.

INFIRMARY—HOUSE OF REFUGE—WORKHOUSE.

Infirmary for the poor. R. § 1111.

SEC. 538. The city council shall have power to establish and maintain an infirmary for the accommodation of the poor of the city, either within or without the limits of the city, and to provide for the distribution of out-door relief to the poor.

House of refuge and correction: workhouse: who may be confined therein. R. § 1112.

SEC. 539. The city council shall have power to establish and maintain, either within its limits or within the county in which it is situated, a house of refuge or a house of correction, and a workhouse, or either of them, and place the same under the management and control of such directors, superintendents, and other officers as the council may, by ordinance, provide. All children under the age of sixteen years, who shall be convicted of any offense made punishable by imprisonment under any ordi-

nance of the city, or who shall be liable to be committed to prison under any such ordinance, may be confined in such house of refuge, and may be there kept, or apprenticed out, under such rules as the directors of the house of refuge may prescribe until they arrive at the age of eighteen years. Any person over the age of sixteen years convicted of the violation of any ordinance, and liable to be punished therefor by imprisonment, may, in lieu thereof, be committed to the house of correction, or to the workhouse, as may be provided by ordinance.

Directors of: may apprentice inmates. R. § 1113.

SEC. 540. The board of directors of any house of refuge established by any city, are authorized to appoint a committee of one or more of their own number with power to execute and deliver, on behalf of said board, indentures of apprenticeship for any inmate of said institution whom they may deem a proper person for an apprenticeship to a trade or occupation, to such person as said committee or the board may select; and said indentures shall have the like force and effect as other indentures of apprenticeship under the laws of this state, and said indentures shall be filed and kept in said institution by the superintendent thereof, and it shall not be necessary to file the same in any other place or office.

Liable to be re-committed. R. § 1115.

SEC. 541. When any inmate of said institution shall have been apprenticed and prove untrustworthy and unreformed, he or she shall be re-committed to the said institution to be held in the same manner as before said apprenticeship.

City prison: watch house: police court and clerk. R. § 1116.

SEC. 542. The city council shall have power to erect, establish, and maintain a city prison, which shall be in the keeping of the city marshal under such rules and regulations as the city council shall provide. They shall provide one or more watch or station houses; they shall also provide suitable rooms for holding police court; they shall provide, by ordinance, for the election by the qualified electors of the city, or for the appointment by the police judge, of a clerk of such police court, and for the selection, summoning, and empanelling its juries, and for all such matters touching said court as may tend to its efficiency, and the dispatch of business. No clerk of said court shall be in any way concerned as counsel or agent in the prosecution or defense of any person before such court.

Power and jurisdiction of police judge. R. § 1117.

SEC. 543. The police judge shall have, in all criminal cases, the powers and jurisdiction vested in justices of the peace; he shall also have power to take the acknowledgment of deeds and other writings, and shall have jurisdiction of all violations of the ordinances of the city. Every such police court shall be deemed a court of record, shall have a seal, to be provided by the city council, with the name of the state in the center, and the style of the court around the margin.

Fees of police judge. R. § 1118.

SEC. 544. The police judge holding the police court shall be entitled to receive, in all criminal cases prosecuted in behalf of the state, the same fees, to be collected in the same manner, as a justice of the peace in like cases; and in cases prosecuted in behalf of the city, such fees, not exceeding those for services of the like nature in state prosecutions, as the council may, by ordi-

nance, prescribe; and shall also receive such salary or compensation as the city council may, in like manner, prescribe.

Court always open. R. § 1119.

SEC. 545. The police court shall always be open for the dispatch of business; and the jurors in said court shall have the qualifications of jurors in the district court.

Appeal. R. § 1120.

SEC. 546. An appeal may be taken from the police court, in like manner as from a justice of the peace, on the trial whereof the appellate court shall take judicial notice of the ordinances of the city.

Mayor to act as police judge. R. § 1121.

SEC. 547. Until a police judge shall be elected and qualified, the mayor of any such city shall have all the powers and jurisdiction of such judge, and shall hold the police court in such manner as required of the police judge, and shall be entitled to demand and receive the same fees and compensation as may be provided for the police judge or police court.

Amending special charters: mode of procedure. R. § 1141.

SEC. 548. On the presentation of a petition signed by one-fourth of the electors, as shown by the vote at the next preceding charter election, of any city or town acting under a special charter or act of incorporation, to the governing body thereof, asking that the question of the amendment of such special charter or act of incorporation be submitted to the electors of such city or town, such governing body shall, immediately, propose sections amendatory of said charter or act of incorporation, and submit the same, as requested, at the first ensuing charter election. At least ten days before such election, the mayor of such city or town shall issue his proclamation setting forth the nature and character of such amendment, and shall cause such proclamation to be published in a newspaper published therein; or, if there be none, he shall cause the same to be posted in five public places in such city or town. On the day specified, the amendment shall be submitted to the electors thereof for adoption or rejection, and the form of the ballots shall be "for the amendment," or, "against the amendment."

Same. R. § 1142.

SEC. 549. If a majority of the votes cast is in favor of said amendment, the mayor, or chief officer, shall issue his prolamation accordingly; and the said amendment shall thereafter constitute a part of said charter.

Same. R. § 1143.

SEC. 550. The legislative body of said city or town, may submit any amendment to the vote of the people as aforesaid at any special election; *provided*, one-half the electors as aforesaid petition for that purpose, and the proceedings shall be the same as at the general election.

Prior laws repealed: corporations acting under special charter not affected thereby.

SEC. 551. All acts and parts of acts passed subsequent to the fourth day of July, A. D., 1858, and prior to the taking effect of this code, relating to cities of the first and second class and incorporated towns, or to any or either of said classes of municipal corporations, and applicable, both to such corporations as are acting under special charter, and to such as are incorporated under the general act of which this chapter is an amendment, are repealed by the code only so far as they affect the latter, and not as they affect corporations acting under special charters. All rights, powers, privileges, duties, directions, and provisions what-

ever, contained in and enacted by such acts and parts of acts, shall remain in full force and effect so far as municipal corporations acting under special charters are concerned, and the provisions of this chapter shall not apply to any city or town incorporated prior to the eighteenth day of July, A. D. 1858, unless the same be adopted as hereinbefore provided.

CHAPTER 11.

OF GENERAL REGULATIONS AFFECTING COUNTIES, TOWNS, AND CITIES.

Sectarian schools: no public money to be given to. C. 47, 14 G. A.

SECTION 552. Public money shall not be appropriated, given, or loaned by the corporate authorities, supervisors, or trustees of any county, township, city, or town, or municipal organization of this state, to, or in favor of, any institution, school, association, or object, which is under ecclesiastical or sectarian management or control.

Cannot take stock in banks or railways. R. § 1346.

SEC. 553. No county, city, or incorporated town in this state, shall, in their corporate capacity, or by their officers, directly or indirectly, subscribe for stock, or become interested as a partner, shareholder, or otherwise, in any banking institution, whether the same be a bank of issue, deposit, or exchange, nor in any plank road, turnpike, or railway, or in any other work of internal improvement; nor shall they be allowed to issue any bonds, bills of credit, scrip, or other evidences of indebtedness for any such purposes—all such evidences of indebtedness for said purposes being hereby declared absolutely void: *provided, nevertheless*, that this section shall not be so construed as to prevent, or in any wise to embarrass, the counties, cities, or towns, or any of them, in the erection of their necessary public buildings, bridges, laying off highways, streets, alleys, and public grounds, or other local works in which said counties, cities, or towns may respectively be interested.

Bonds void. R. § 1346.

SEC. 554. All bonds, or other evidences of debt, hereafter issued by any corporation to any railway company as capital stock, shall be null and void, and no assignment of the same shall give them any validity.

Recovery on coupons no bar in another action. C. 34, Ex. S. 9 G. A.

SEC. 555. In all actions now pending or hereafter brought in any court in this state, on any bond or coupon issued, or purporting to be issued, by any county, city, or incorporated town for railway purposes, a former recovery against such corporation on any one or more, or any part of such bonds or coupons, shall not bar or estop any defense such corporation has made, or can make, to such bonds or coupons in the action in which such former recovery was had; but the corporation sought to be charged in any such action now pending or hereafter brought, may allege and prove any matter of defense in such action to the same extent,

and with the same effect, as though no former action had been brought or former recovery had.

Officers cannot purchase warrants at discount. R. § 2186.

SEC. 556. No officer of any county or other municipal corporation, or any deputy or employe of such officer, shall, either directly or indirectly, be permitted to take, purchase, or receive in payment, exchange, or in any way whatever, any warrant, scrip, or other evidence of the indebtedness of such corporation, or any demand against the same, for a less amount than that expressed on the face of the warrant, scrip, or other evidence of indebtedness or demand.

Duty of treasurer. R. § 2187.

SEC. 557. The treasurer of every county, or other municipal corporation, when he shall receive any warrant, scrip, or other evidence of indebtedness of such corporation, shall endorse thereon the date of its receipt, from whom received, and what amount.

Penalty. R. § 2188.

SEC. 558. Any officer of any county or other municipal corporation, or any deputy or employe of such officer, who violates any of the provisions of this chapter, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars, and not more than five hundred dollars for each offense.

CHAPTER 12.

OF PLATS.

Lands subdivided into lots or parcels: accurate plats to be made.

Reference to known monuments to be made.

Numbered by progressive numbers.

Length and breadth of streets and alleys stated.

SECTION 559. Every original owner or proprietor of any tract or parcel of land, who has heretofore subdivided, or shall hereafter subdivide the same into three or more parts for the purpose of laying out any town or city, or any addition thereto or any part thereof, or suburban lots, shall cause a plat of such subdivision, with references to known or permanent monuments, to be made, which shall accurately describe all the subdivisions of such tract or parcel of land, numbering the same by progressive numbers, and giving the dimensions and length and breadth thereof, and the breadth and courses of all the streets and alleys established therein. Descriptions of lots or parcels of land in such subdvisions, according to the number and designation thereof on said plat contained, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes. The duty to file for record a plat as provided herein, shall attach as a covenant of warranty in all conveyances of any part or parcel of such subdivision by the original owner or proprietors against any and all assessments, costs, and damages paid, lost, or incurred by any grantee, or person claiming under him, in consequence of the omission on the part of said owner or proprietors to file such plat.

Duty to file plat attaches as a covenant of warranty in all conveyances.

Plat to contain statement that it is made with the free consent of owners

SEC. 560. Every such plat shall contain a statement, to the effect that the above or foregoing subdivision of (here insert a correct description of the land or parcel subdivided), as appears on this plat, is with the free consent and in accordance with the

desire of the undersigned owners and proprietors, which shall be signed by the owners and proprietors, and shall be duly acknowledged before some officer authorized to take the acknowledgment of deeds; and when thus executed and acknowledged, said plat shall be filed for record and recorded in the office of the recorder of the proper county.

Must be acknowledged and recorded.

Acknowledgment and recording equivalent to deed. R. § 1021.

SEC. 561. The acknowledgment and recording of such plat, is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for streets or other public use; or as is thereon dedicated to charitable, religious, or educational purposes.

Streets may be altered after the manner for highways. R. § 1029.

SEC. 562. Streets and alleys so platted and laid out, or which have been platted or laid out under any prior law of this state regulating private plats, may be altered or vacated in the manner provided by law for the alteration or discontinuance of highways.

Plat may be vacated. C. 78. § 1, 9 G. A.

SEC. 563. Any such plat may be vacated by the proprietors thereof, at any time before the sale of any lots therein, by a written instrument declaring the same to be vacated, duly executed, acknowledged, or proved and recorded in the same office with the plat to be vacated; and the execution and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, commons, and public grounds laid out or described in such plat. And in cases where any lots have been sold, the plat may be vacated, as herein provided, by all the owners of lots in such plat joining in the execution of the writing aforesaid.

Not vacated when it affects the rights of others. Same, § 2.

SEC. 564. Any part of a plat may be vacated under the provisions and subject to the conditions of this chapter, provided such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat, and provided further, that nothing contained in this section shall authorize the closing or obstructing of any public highways laid out according to law.

Streets enclosed. Same, § 3.

SEC. 565. When any part of a plat shall be vacated as aforesaid, the proprietors of the lots so vacated may enclose the streets, alleys, and public grounds adjoining said lots in equal proportions.

Recorders duty when vacated. Same, § 4.

SEC. 566. The county recorder, in whose office the plats aforesaid are recorded, shall write in plain, legible letters across that part of said plat so vacated, the word "vacated," and also make a reference on the same to the volume and page in which the said instrument of vacation is recorded.

Plats vacated may be re-platted and conveyed accordingly. Same, § 5.

SEC. 567. The owner of any lots in a plat so vacated, may cause the same and a proportionate part of adjacent streets and public grounds, to be platted and numbered by the county surveyor; and when such plat is acknowledged by such owner, and is recorded in the record office of the county, such lots may be conveyed and assessed by the numbers given them on such plat.

Plat to be made and recorded: by whom.

SEC. 568. Whenever the original owner or proprietor of any subdivision of land, as contemplated in section five hundred and fifty-nine of this chapter, have sold or conveyed any part thereof, or invested the public with any rights therein, and have failed and neglected to execute and file for record a plat as provided in section five hundred and fifty-nine of this chapter, the county auditor shall notify some, or all, of such owners and proprietors by mail

or otherwise, and demand the execution of said plat as provided; and if such owners or proprietors, whether so notified or not, fail and neglect to execute and file for record said plat for thirty days after the issuance of such notice, the auditor shall cause to be made the plat of such subdivision and any surveying necessary therefor. Said plat shall be signed and acknowledged by the auditor, who shall certify that he executed by reason of the failure of the owners or proprietors named to do so, and filed for record; and, when so filed for record, shall have the same effect for all purposes as if executed, acknowledged, and recorded by the owners or proprietors themselves. A correct statement of the costs and expenses of such plat, surveying, and recording, verified by oath, shall be by the auditor laid before the first session of the board of supervisors, who shall allow the same, and order the same to be paid out of the county treasury, and who shall, at the same time, assess the said amount, pro rata, upon all the several subdivisions of said tract, lot, or parcel so subdivided; and said assessment shall be collected with and in like manner as the general taxes, and shall go to the general county fund; or said board may direct suit to be brought in the name of the county before any court having jurisdiction, to recover of the said original owners or proprietors, or either of them, the said cost and expense of procuring and recording said plat.

Auditor to notify owner on his failure to plat.

Auditor to cause plat to be made.

Filed for record.

Effect of.

Costs and expenses.

Assessed pro rata and collected as other taxes.

Suit may be brought.

SEC. 569. Whenever any congressional subdivision of land of forty acres or less, or any lot or subdivision is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof can not, in the judgment of the county auditor, be made sufficiently certain and accurate, for the purposes of assessment and taxation without noting the metes and bounds of the same, the auditor shall require and cause to be made and recorded, a plat of such tract or lot of land with its several subdivisions in accordance with the provisions of this chapter; and he shall proceed in such cases according to the provisions of section five hundred and sixty-eight, and all the provisions of said section in relation to plats of towns, cities and so forth, shall govern as to the tracts and parcels of land in this section referred to.

When subdivisions of land are not described by metes and bounds, auditor may cause plat to be made.

How to proceed.

SEC. 570. Every conveyance of land in this state, shall be deemed to be a warranty that the description therein contained is sufficiently definite and accurate to enable the auditor to enter the same on the plat book required by law to be kept; and when there is presented to be entered on the transfer book, any conveyance in which the description is not, in the opinion of the auditor, sufficiently definite and accurate, he shall note said fact on said deed with that of the entry for transfer, and shall notify the person presenting the same that the land therein not sufficiently described must be platted within thirty days thereafter. Any person aggrieved by the opinion of the auditor, may, within said thirty days, appeal therefrom to the board of supervisors, by claiming said appeal in writing, and thereupon no further proceeding shall be taken by the auditor, and at their next session the board of supervisors shall determine said question and direct whether or not said plat shall be executed and filed and within what time;

Conveyance deemed warranty.

When not properly described: auditor's duty.

Appeal from auditor: how taken.

Duty of supervisors.

Auditor to have plat made and recorded.

and if the grantor in such conveyance shall neglect for thirty days thereafter to file for record a plat of said land and of the appropriate congressional subdivision in which the same is found, duly executed and acknowledged as required by the auditor, or in case of appeal as directed by the board of supervisors, then the auditor shall proceed as is provided in section five hundred and sixty eight of this chapter, and cause such plat to be made and recorded, and thereupon the same proceedings shall be had and rights shall accrue, and remedies had, as are in said section provided. Such plat shall describe said tract of land and any other subdivisions of the smallest congressional subdivision of which the same is part, numbering them by progressive numbers, setting forth the courses and distances, and number of acres, and such other memoranda as are usual and proper; and descriptions of such lots or subdivisions according to the number and designation thereof on said plat shall be deemed good and sufficient for all purposes of conveyancing and taxation.

Plat: what to contain.

Plats heretofore made legalized.

SEC. 571. None of the provisions of this chapter shall be construed to require replatting in any case where plats have been made and recorded in pursuance of any law heretofore in force; and all plats heretofore filed for record, and not subsequently vacated, are hereby declared valid, notwithstanding irregularities and omissions in the manner or form of acknowledgment or judge's certificate; but the provisions of this section shall not affect any action or proceedng now pending.

Suits pending not affected.

Penalty where plats have not been made. R § 1027.

SEC. 572. Any person who shall dispose of or offer for sale, or lease any lots in any town, or addition to any town or city, until the plat thereof has been duly acknowledged and recorded as provided in this chapter, shall forfeit and pay fifty dollars for each lot and part of lot sold or disposed of, leased, or offered for sale.

TITLE V.

OF ELECTIONS AND OFFICES.

CHAPTER 1.

OF THE ELECTION OF OFFICERS, AND THEIR TERMS.

SECTION 573. The general election for state, county, district, and township officers shall be held throughout the state on the second Tuesday of October in each year, except the years of the presidential election, when it shall be held on the Tuesday next after the first Monday of November. General election. R. § 459.

SEC. 574. Special elections authorized by any law, or held to supply vacancies in any office to be filled by the vote of the qualified voters of the entire state, or of any district, county, or township, may be held at the time designated by such law, or by the officer authorized to order such election. Special election. R. § 460.

SEC. 575. All vacancies in office created by the expiration of a full term, shall be supplied at the general election next preceding the time of expiration. Vacancies: how supplied. R. § 461.

SEC. 576. The term of office of all officers chosen at a general election for a full term, shall commence on the first Monday of January next thereafter, except when otherwise provided by the constitution. The term of an officer chosen to fill a vacancy shall commence as soon as he has qualified therefor. Term of office. R. § 462

SEC. 577. At least thirty days before any general election, the governor shall issue his proclamation designating all the offices to be filled by the vote of all the electors of the state, or by those of any congressional, legislative, or judicial district, and transmit a copy thereof to the sheriff of each county. Proclamation by governor. R. § 462.

SEC. 578. The sheriff shall give at least ten days notice thereof, by causing a copy of such proclamation to be published in some newspaper printed in the county; or, if there be no such paper, by posting such a copy in at least five of the most public places in the county. Sheriff to give notice. R. § 463.

SEC. 579. A similar proclamation shall be issued before any special election ordered by the governor, designating the time at which such special election shall be held, and the sheriff of each county in which such election is to be held, shall give notice thereof as above provided. Same when special election. R. § 464.

SEC. 580. The governor, lieutenant-governor, and superintendent of public instruction, shall be chosen at the general election in each odd-numbered year. Election of governor. R. § 465. C. 52, § 2, 10 G. A.

Other state officers. R. § 460.

SEC. 581. The secretary of state, auditor of state, treasurer of state, register of state land office, and attorney-general, shall be chosen at the general election in each even-numbered year, and their term of office shall be two years.

Judges supreme court. R. § 467. C. 23, § 3, 10 G. A.

SEC. 582. One judge of the supreme court shall be chosen at the general election in each odd-numbered year, and a judge of said court shall also be chosen at the general election in the year 1876, and each sixth year thereafter.

Clerk and reporter of supreme court. C. 88, 89, 11 G. A.

SEC. 583. The clerk and reporter of the supreme court shall be chosen at the general election in the year 1874, and each fourth year thereafter, and their terms of office shall be four years.

District judge and attorney. R. § 468.

SEC. 584. A district judge and a district attorney shall be chosen in each judicial district, except the twelfth and thirteenth, at the general election in the year 1874, and each fourth year thereafter.

Same. C. 98, § 18, 10 G. A. C. 61, § 5, 14 G. A.

SEC. 585. District judges and district attorneys in the twelfth and thirteenth districts, shall be chosen at the general election in the year 1876, and each fourth year thereafter.

Circuit judges. C. 22, § 1, 14 G. A.

SEC. 586. A circuit judge shall be chosen in each judicial district at the general election in the year 1876, and every fourth year thereafter, and his term of office shall be four years, and shall commence on the first day of January next after his election.

Representatives. R. § 470.

SEC. 587. Members of the house of representatives shall be chosen by the qualified voters of the respective representative districts in each odd-numbered year.

Senators. R. § 471.

SEC. 588. Senators in the general assembly, to succeed those whose term of office is about to expire, shall be chosen by the qualified voters of the respective senatorial districts in each odd-numbered year, for the term of four years.

County officers. R. § § 224, 472, 473. C. 172, § 62, 9 G. A. C. 139, § § 3, 4, 10 G. A. C. 160, § 1, 12 G. A.

SEC. 589. Each county shall elect at the general election in each even-numbered year, a clerk of the district and circuit courts, and a recorder of deeds; and in each odd-numbered year, an auditor, a treasurer, a sheriff, a coroner, a county superintendent, and a surveyor; and each of said officers shall hold his office for the term of two years.

Justices and constables. R. § 474.

SEC. 590. Two justices of the peace and two constables shall be chosen by the qualified voters of each township at the general election of each even-numbered year, and shall hold their offices for the term of two years.

Township officers. R. § 474.

SEC. 591. Three township trustees, a township clerk, one assessor, and one highway supervisor for each highway district in each civil township in this state, shall be chosen by the qualified voters of each township at the general election annually, and shall hold their offices for the term of one year.

Additional justices and constables. R. § 477.

SEC. 592. One or two additional justices of the peace, and one or two additional constables may be elected in each township 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 election.

Justices and constables county officers. R. § 474.

SEC. 593. Justices of the peace and constables shall be considered as county officers under the provisions of this title, but they shall be voted for by the voters of their respective townships.

CHAPTER 2.

OF THE REGISTRATION OF VOTERS.

SECTION 594. At every annual assessment the township assessor shall record in a separate book, the full name and residence of every resident of the township who is, or will become, a qualified elector previous to the next general election; and shall deliver said list, properly certified, to the township clerk, on or before the first day of July in each year.

Assessor to make lists of voters. C. 171, § 1, 12 G. A.

SEC. 595. The township trustees and clerk shall constitute the board of registry, and shall meet, annually, on the first Monday in September, at nine o'clock A. M., and make a list of all qualified electors in their township, which shall be known as the register of elections.

Trustees and clerk board of registry. Same, § 2.

SEC. 596. The register of elections shall contain the names at full length, alphabetically arranged, with the residence set opposite. It shall be made from the assessor's list and the poll books of the previous election, and shall be kept by the township clerk, and shall at all times be open to inspection at his office without charge. He shall, also, within two days after the adjournment of the board, post up a certified copy thereof in a conspicuous place in his office, or in such other place as the board may direct.

Register of elections: what to contain. Same, §§ 3, 6.

SEC. 597. The board of registry shall hold a meeeting at the place where the last general election was held, or if from any cause it cannot be held at such place, then at some place to be designated by notice published in at least one paper printed in the township, or posted in at least three public places therein, on the Tuesday preceding the general election of each year, at which they shall revise, correct, and complete the register of elections, and shall hear any evidence that may be brought before them in reference to such correction. Their session shall be from nine o'clock A. M., till five P. M., and from day to day thereafter until they shall deem the register properly completed. The names of all persons not qualified as electors shall be stricken from the register, and any person appearing to register his name may be challenged by any elector or member of the board, and, in case of such challenge, shall be examined on oath touching his qualifications as an elector, which examination may, in the discretion of the board, be reduced to writing; and if it shall appear upon such examination that the person is entitled to be registered, in the opinion of the board, or if, after such examination, the said person will take an oath that he is, or will be at the election for which the registry is made, a legal voter, stating the ward, district, or township in which he resides, and complying in other respects with the oath now administered to an elector in case of his being challenged, then the board shall cause the name of said person to be registered. But no name shall be added to the register within five days next before the election.

Board: where to meet: make corrections in the register. Same, § § 4, 5. C. 174, § 1, 13 G. A.

SEC. 598. The board of registry may appoint a clerk in the absence of the township clerk, and may administer oaths in all cases coming before them for action.

Board appoint clerk. C. 171, § 7, 12 G. A.

Clerk of cities and incorporated towns to prepare register. C. 171, § 5, 12 G. A.

SEC. 599. In corporation elections, the clerk of the city or town shall prepare from the poll-books of the last preceding annual election of said corporation, an alphabetical register of the electors as provided in section five hundred and ninety-six of this chapter, showing the residence of each person by number of dwelling if there be a number, and the name of the street or other location of the dwelling-place of each person. And he shall post up one copy thereof in each ward at the place where the last preceding election was held one month preceding each election, and furnish the original to the board of registry at their next meeting. The board of registry for said cities and towns shall consist of the mayor, assessor, clerk, and marshal, who shall meet for the purpose of correcting the registry one week before each election, at the usual place of meeting of the city council or trustees, and, after having corrected the registry of voters in each ward as contemplated in the general provisions of this chapter, said board shall cause a certified copy of said registry for each ward to be delivered to the election board of such ward at or before the time of opening the polls. After the canvassing of the votes, the registries shall be attached to the poll-books and filed in the office of the clerk of the city or town for the use of the succeeding board of registry. The general provisions of this chapter shall extend to incorporated towns and cities as far as the same may be applicable. But no residence in such cities or towns shall be deemed sufficiently stated, unless the street or other location, and number, if any, are specified in the list.

Board of registry.

Special elections. Same, § 14.

SEC. 600. In cases of special elections, the township clerk shall furnish a certified copy of the corrected registry for the last preceding general election, and the same shall be corrected and completed at a meeting of the board of registry of each township, held on the Tuesday preceding the special election at the usual place, in the manner hereinbefore provided.

Board in new townships. C. 174, § 4, 13 G. A. C. 58, § 6, 14 G. A.

SEC. 601. When a new township has been formed, by division or otherwise, the persons appointed to act as judges and clerks of the first election in such new township shall also constitute the board of registry therein; and the clerks of the township or townships from which the territory of the new township has been taken, shall furnish to such board a list of the registered legal voters residing in such territory.

When not applicable.

SEC. 602. This chapter shall not apply to townships, incorporated towns, or cities, having a population of less than six thousand inhabitants as shown by the last preceding census.

CHAPTER 3.

OF THE GENERAL ELECTION.

Election precincts. R. § 480. C. 23, § 1, 9 G. A. C. 88, 14 G. A.

SECTION 603. At the general elections, each township shall be an election precinct, and a poll shall be opened at the place of election therein. But the board of supervisors may, in their

judgment, divide any township in their county into two or more precincts.

Numbered and recorded. C. 23, § 2, 9 G. A.

SEC. 604. In that case they shall number or name the several precincts and cause the boundaries of each to be recorded in their minute-book, and notice thereof to be published in some newspaper of general circulation in the county for three consecutive weeks at least once a week, the last publication to be made at least thirty days before the next election.

Place of voting. C. 23, § 7, 9 G. A.

SEC. 605. No person shall vote in any other precinct than that in which he resides at the time.

Judges and clerk. R. § 481. C. 23, § 5, 9 G. A.

SEC. 606. There shall be three judges of election in each precinct, who shall be appointed by the board of supervisors at their meeting in September; and 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 if the township clerk does not attend, then the two clerks shall be chosen by the judges of election; *provided*, that the township trustees and township clerks shall be judges and clerks of election in those precincts where they respectively reside.

Failure of judges to attend. R. § 482.

SEC. 607. If any judge does not attend in time, or refuses to be sworn, his place shall be filled by an elector appointed by those who do attend; and if no judge is present at the time for opening the polls, the electors present shall choose three qualified persons to act as judges of election.

Of clerks. R. § 483.

SEC. 608. If the clerks, or either of them, are not present at the opening of the polls, or, being present, refuse to be sworn, the judges of election shall fill their places from the electors present.

Oath. R. § 484.

SEC. 609. 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.

Who may administer. R. § 485. C. 23, § 5, 9 G. A.

SEC. 610. Any one of the judges or clerks present may administer the oath to the others, and it shall be entered in the poll books, subscribed by the person taking it, and certified by the officer administering it.

Polls opened and closed: proclamation. R. § 486.

SEC. 611. 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 at or before the opening of the polls, and half an hour before closing them.

Order: preservation of. R. § 487.

SEC. 612. Any constable of the township who may be designated by the judges of election is directed to attend at the place of 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 or more specially, by writing, who shall have all the powers of a regular constable.

Same.
R. § 489.

SEC. 613. 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.

Boxes.
R. § 489.

SEC. 614. The board of supervisors shall provide for each precinct in the county, for the purpose of elections, one box with lock and key.

Poll books.
R. § 490.
C. 171, § § 1, 9, 12 G. A.

SEC. 615. The county auditor shall prepare and furnish to each precinct 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; and also all books, blanks, and materials necessary to carry out the provisions of the chapter on registration of voters.

Ballots.
R. § 491.

SEC. 616. The ballots shall designate the office for which the persons therein named are voted for.

Voting.
R. § 492.

SEC. 617. In voting, the electors shall deliver their ballots to one of the judges, and he shall deposit them in the ballot-box.

Check register: vote rejected: affidavit filed.
C. 171, § 8, 12 G. A.
C. 174, § 2, 13 G. A.

SEC. 618. The judges, in election-precincts where the registry law is in force, shall designate one of their number to check on the register the name of every person voting; and no vote shall be received from any person whose name does not appear there, unless he shall furnish the judges his affidavit, showing that he is a qualified elector, and a sufficient reason for not appearing before the board on the day for correcting the register, and also shall prove by the affidavit of one freeholder or householder, whose name is on the register, that such affiant knows him to be a resident of that election-precinct, giving his residence by street and number if in a city or incorporated town, as the same is in such case required to appear on the register. Said affidavits shall be kept by the judges and by them filed in the office of the township clerk, and all such affidavits may be administered by either of the judges or clerks of the election.

Challenge.
R. § 493.
C. 174, § 3, 13 G. A.

SEC. 619. Any person offering to vote, whether his name be on the register or not, may be challenged as unqualified by any judge or elector; 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.

Oath.
R. § 494.

SEC. 620. 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 this precinct, that you are twenty-one years of age as you verily believe, that you have been a resident of this county sixty days, and of this state six months next preceeding this election, and that you have not voted at this election." And if he takes such oath his vote shall be received.

SEC. 621. 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. Name entered on poll book. R. § 595.

CANVASS BY JUDGES OF ELECTION.

SEC. 622. When the poll is closed, the judges shall proceed to canvass and ascertain the result of the election. Canvass. R. § 496.

SEC. 623. The canvass shall be public, and shall commence by a comparison of the poll lists from the beginning, and a correction of any errors which may be found therein until they agree. If two or more ballots are found so folded together as 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. Same. R. § 497.

SEC. 624. 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. Ballot rejected. R. § 499.

SEC. 625. If a ballot be found containing the names of more persons for an office than can be elected to that office, and such ballot form an excess above the number voting, 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. Same. R. § 500.

SEC. 626. As a check in counting, each clerk shall keep a tally list. Tally list. R. § 501.

SEC. 627. 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 precinct 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 in the precinct where such excess occurs and a new election ordered therein, providing that no person or persons residing in another precinct at the time of the general election shall be allowed to vote at such special election; but if the error occur 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 state canvassers, and if it be found that the error would affect the result as above, a new vote shall be ordered in the precinct 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. Effect of excess of ballot. R. § 498. C. 121, 14 G. A.

SEC. 628. 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 Return made on each poll book. R. § 502.

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, or in .....precinct of.....township, in.....county, state of Iowa, on the.....day of ....., 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.....,
N..... O.....,
P..... Q....., } Judges of the election.

ATTEST, R.....S.....,
T.....U....., } Clerks of election.

Disposition of poll books. R. § 333, 503. C. 23, § 6, 9 G. A. C. 74, 14 G. A.

SEC. 629. One of the poll books containing such return, with the register of election attached thereto, shall be delivered to the township clerk, and be by him filed in his office. The other poll book, with its return, shall be enclosed, sealed, superscribed, and delivered by one of the judges of election within two days to the county auditor, who shall file the same in his office.

Disposition of ballots and tally lists. R. § 504.

SEC. 630. When the result of the election is ascertained, the judges shall cause all the ballots, including those rejected, with the tally list, 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.

Result of canvass as to township officers to be certified.

SEC. 631. In townships constituting a single precinct, the judges of the election shall certify the result as to township officers immediately after the canvass above directed; but where there are two or more precincts in a township, the trustees and clerk thereof shall meet on the day after the election, and canvass the votes given for township officers as shown by the returns from the precincts.

Tie vote for township office. R. § 547.

SEC. 632. 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, the clerk shall draw for him.

Clerk to notify township officers elect. C. 89, 9 G. A.

SEC. 633. The ballots for township officers having been canvassed, the clerk shall, within five days thereafter, post up in three public places in the township written notices containing the names of persons elected to township offices at such election, and requiring each of them to appear before the proper officer and qualify according to law.

COUNTY CANVASS.

Returns not made. R. § 505.

SEC. 634. If the returns from all the precincts are not made to the county auditor by the third day after the election, on the fourth day he shall send messengers to obtain them from those

precincts whose returns are wanting, the expense of which shall be paid out of the county treasury.

Supervisors to canvass: time: make abstracts. R. § § 335, 506.

SEC. 635. At their meeting on the Monday after the general election, at twelve o'clock noon, the board of supervisors shall open and canvass the 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.

Form of abstracts. R. § 507. C. 22, § 1, 14 G. A.

SEC. 636. The abstract of the votes for each of the following classes shall be made on a different sheet:

1. Governor and lieutenant-governor;
2. All state officers not otherwise provided for;
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 comprising more than one county;
6. Judges of the district court, district attorneys, and judges of the circuit court;
7. County officers.

Two abstracts made. R. § 507.

SEC. 637. Two abstracts of all the votes cast for any state or judicial district officer shall be made, and one forwarded to the secretary of state, and the other filed by the county auditor.

Who elected. R. § 508.

SEC. 638. The person having the greatest number of votes for any office is to be declared elected.

Declare who elected. R. § 509.

SEC. 639. Each abstract of the votes for such officers as the county alone elects, shall contain a declaration of whom the canvassers determine to be elected, except when two or more persons receive an equal and the greatest number of votes.

Returns filed: abstracts recorded. R. § § 335, 510.

SEC. 640. When the canvass is concluded, the board shall deliver the original returns to the auditor to be filed in his office, and shall cause each of the abstracts mentioned in the preceding section to be recorded in a book to be kept for recording the result of county elections, and to be called the "election book."

Certificate. R. § 511. C. 36, 9 G. A

SEC. 641. When any person thus elected has appeared and given bond, and taken the oath of office as directed in this title, there shall be delivered him a certificate of election, under the official seal of the county, in substance as follows:

STATE OF IOWA, }
..... COUNTY. }

At an election holden in said county on .... day of ...., A. D., ..., A. B. was elected to the office of .... of the said county, for the term of two years from the first Monday of January, A. D. ...., (or if he was elected to fill a vacancy, say for the residue of the term ending on the .... day of ...., A. D. ....,) 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.

[L. S.] A. B.
President of the board of canvassers.

WITNESS: E. F., county auditor.

Which certificate shall be presumptive evidence of his election and qualification.

Of senators and representatives. R. § 512.

SEC. 642. The certificates of senators and representatives in the general assembly may vary from the foregoing according to the nature of the case, and the requirements of law, and shall be made out in duplicate, one copy to be forwarded to the secretary of state, and the other to be delivered to the member on request.

Tie vote. R. § 515.

SEC. 643. 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 auditor shall issue a notice to such persons of such tie vote and require them to appear at his office on a day named in the notice, within twenty days from the election day, and determine by lot which of them is to be declared elected.

Lot. R. § 516.

SEC. 644. The county auditor shall notify the board of canvassers, or, in case of their absence or inability, the recorder and sheriff, of such lot and on the day fixed, the parties interested, or such of them as may appear, 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 auditor, and the certificate shall be recorded in the election book, and the auditor shall deliver to the person elected his certificate of election on the terms prescribed in this chapter.

Abstracts for governor and state officers. R. § § 517, 518.

SEC. 645. Within ten days after the election day, the county auditor shall envelope and seal up by itself, one of the abstracts of votes for governor and lieutenant-governor, and endorse upon it in substance "abstract of votes for governor and lieutenant-governor, from ——county," and address it to the speaker of the house of representatives. The abstract 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 transmitted to the secretary by mail.

For senator or representative elected by more than one county. C. 29, § § 1, 2, 10 G. A.

SEC. 646. When a senator or representative in the general assembly is elected by a district composed of more than one county, the board of county canvassers shall, at the time of canvassing the vote of the county, make and certify an abstract of the votes cast in their county for such office, similar to the abstract required by section six hundred and thirty-six of this chapter and the auditor shall seal up, direct, and transmit such abstract to the secretary of state as provided in section six hundred and forty-five of this chapter. He shall also transmit a similar abstract to the county auditor of each other county in the district, who shall file the same in his office.

Duty of state canvassers. Same, § 3.

SEC. 647. The board of state canvassers shall open the abstracts transmitted to the secretary of state, as provided by the last section, and canvass the votes therein returned at the time of canvassing the state vote, or at such other time as they may fix, and in all cases at least twenty days prior to the time fixed by law for the meeting of the next general assembly; and in case of a special election, within five days after the receipt of such abstracts, and shall immediately make out, certify, and transmit by mail to the

county auditor of each county in such district, to be by him filed in his office, an abstract of such canvass similar to the abstract required by section six hundred and forty-five of this chapter.

SEC. 648. They shall, also, make and sign a certificate showing who is elected to the office of senator or representative in such district, designating it by its number and similar to the certificate required by section six hundred and fifty-five of this chapter, and the secretary of state shall deliver it to the person appearing by it to be elected to such office on his demanding it. Make certificate. Same, § 4.

STATE CANVASS.

SEC. 649. 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 auditor 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. Returns: messenger sent. R. § 519.

SEC. 650. 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. Abstracts opened. R. § 520.

SEC. 651. The executive council constitute a board of canvassers for the state, but no member thereof shall take part in canvassing the votes for any office for which he himself is a candidate. Who constitutes. R. § 521.

SEC. 652. On the Thursday following the fourth Monday after the day of 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, not exceeding twenty days, for the purpose of obtaining the returns from all the counties, and when these are received shall proceed with the canvass. Time of. R. § 522.

SEC. 653. 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 the office; which abstract shall be signed by the canvassers in their official capacity, and as state canvassers, and have the seal of the state affixed. Make abstracts. R. § 523.

SEC. 654. 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. Record of canvass. R. § 544.

SEC. 655. A certificate shall be prepared for each person elected, in substance as follows: Certificate. R. § 525.

STATE OF IOWA.

At an election holden on the ..... day of ...., A. B. was elected to the office of ..... of said state, for the term of .... years from the first Monday, (or day, as the case may be) of January, A. D. ....: (or, if to fill a vacancy, say, for the residue of the term ending on the .... day of .... A. D. ....)

Given at Des Moines, 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 canvassers, but in the absence of the governor the secretary's certificate shall be signed by the auditor.

Same. R. § 536.

SEC. 656. Such certificate shall be delivered to the person elected when he has qualified as provided in chapter five of this title.

Notice. R. § 537.

SEC. 657. The governor shall cause the persons elected to be notified thereof immediately, either by mail or by a sheriff or constable, who shall return his doings to the secretary's office.

Representative in congress. R. § 538.

SEC. 658. 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.

CHAPTER 4.

OF ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

Election of. R. § 535.

SECTION 659. On the Tuesday next after the first Monday in the month of November in the year eighteen hundred and seventy-six, 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 precinct for the election of electors of president and vice-president of the United States.

Ballots. R. § 536.

SEC. 660. 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.

Conducted. R. § 537.

SEC. 661. This election shall be conducted, and the returns made, as directed in relation to the election of state officers and representatives in congress, except as herein otherwise expressed.

Duty of county canvassers and auditor. R. § § 538, 539.

SEC. 662. The board of county canvassers shall examine the returns, make, sign, envelope, and seal up the abstracts, and endorse and direct them as provided in other cases, and the county auditor shall transmit them to the secretary of state by mail. In case of his failure so to do, or if they are not received by the secretary of state within fifteen days after the election, he may send a special messenger for them as in other cases.

Time of state canvass. R. § 540.

SEC. 663. On the twentieth day after the day of election, or before that time, if the returns are received from all the counties, the board of state canvassers 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.

Same. R. § 541.

SEC. 664. 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 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 other canvassers.

Certificate. R. § 543.

SEC. 665. The governor 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.

Time of meeting: vacancies. R. § 543.

SEC. 666. The electors so attending shall meet at noon of the said Tuesday, and the governor shall provide them a list of all the electors, and in case of the absence of any elector, 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.

Notice. R. § 544.

SEC. 667. Such choice being certified to the governor, he shall cause the person chosen to be notified immediately.

Election. R. § 545.

SEC. 668. 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.

Compensation. R. § 546.

SEC. 669. The electors shall receive a compensation of five dollars for every days' attendance, and the same mileage as members of the general assembly.

CHAPTER 5.

OF QUALIFICATION FOR OFFICE.

Must qualify. R. § 549.

SECTION 670. No civil officer shall enter on the duties of his office until he has qualified himself as required in this chapter.

Governor and lieutenant-governor. R. § 550.

SEC. 671. The governor and lieutenant-governor, by taking an oath in the presence of the general assembly in convention assembled, administered by a judge of the supreme court, 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 governor, or lieutenant-governor, of this state.

Members of general assembly. R. § 551.

SEC. 672. Members of the general assembly, by taking the oath prescribed for them in the third article of the constitution.

Judges. R. § 552.

SEC. 673. The judges of the supreme, district, and circuit 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, unless elected by the people, shall be commissioned by the governor.

Who to give bond: form of. R. § § 553, 554.

SEC. 674. County supervisors and township trustees, with the officers already named in this chapter, are not required to give bond. All other civil officers elected by the people, with those specified hereafter in this chapter, are required to give bond with a condition in substance as follows:

That as ..... (naming the office) in .... township, 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 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 duties now or hereafter required of his office by law.

Oath. R. § 561.

SEC. 675. 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.

Same.

SEC. 676. The oath of office provided by article eleven of the constitution for all civil officers not otherwise expressly provided for, may be substantially in the following form: I, ..., do solemnly swear that I will support the constitution of the United States and the constitution of the state of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of ..... (naming it) in ..... (naming the township. county, district, or state, as the case may be,) as now or hereafter required by law.

Bonds. R. § 555.

SEC. 677. The bonds of state and district officers shall be given to the state, those of county and township officers to the county.

Same. R. § § 128, 135, 165, 377, 556, 557. C. 22, § 2, 10 G. A. C. 52, § 3, 10 G. A. C. 129, § 4, 10 G. A. C. 160, § 5, 12 G. A.

SEC. 678. The bond of the secretary of state shall be in the penal sum of not less than five thousand dollars.

Of the auditor of state, in the sum of not less than ten thousand dollars.

Of the treasurer of state, in the sum of not less than three hundred thousand dollars.

Of the state printer, in the sum of not less than five thousand dollars.

Of the state binder, in the sum of not less than two thousand dollars.

Of the attorney-general, in the sum of not less than ten thousand dollars.

Of the register of the state land office, in the sum of not less than five thousand dollars.

Of the reporter of the supreme court, in the sum of not less than ten thousand dollars.

Of the clerk of the supreme court, in the sum of not less than ten thousand dollars.

Of each district attorney, in the sum of not less than ten thousand dollars.

Of the superintendent of public instruction, in the sum of not less than two thousand dollars.

The bonds of county treasurers, clerks of the district and circuit courts, county recorders, coroners, county surveyors, township assessors, auditors, county superintendents, sheriffs, and of justices of the peace and constables, shall each be in a penal sum to be fixed by the board of supervisors; but those of the treasurer, clerks of the district and circuit courts, auditors, and sheriffs, shall not be in a less sum than five thousand dollars each, and those of justices and constables, not less than five hundred dollars each.

Number of sureties. R. § § 135, 166, 558, 559.

SEC. 679. Every official bond shall be given with at least two sureties, and all sureties shall be freeholders within the state; the bonds of the state printer and binder shall be given with at least three sureties, and those of the treasurer of state and each county treasurer with at least four sureties.

Approval of bonds. R. § § 377, 560

SEC. 680. The bonds of state officers must be approved by the governor before being filed; those of district-attorneys, by the district judges of their respective districts; those of county officers and township clerk, by the board of supervisors, and of township officers, by the township clerk. The approval shall in all cases be endorsed upon the bond and signed by the officer approving, or the president of the board. But in case the board of supervisors should decide that a bond which is to be approved by them is insufficient, or such bond is not approved the first day of the session, then a reasonable time, not to exceed five days, is to be allowed the officer elect to supply a sufficient bond, or to approve the same.

Same. C. 16, 14 G. A.

SEC. 681. If the board of supervisors refuse or neglect to approve the bond of any county officer elect, he may present the same for approval to the judge of the circuit court, who shall fix a day for the hearing. Notice of such hearing shall be served upon the board of supervisors as provided by law for the service of original notice; and due proof of such service being made to the judge at the time fixed, he shall, unless good cause for postponement be shown, proceed to hear and determine the sufficiency of the bond, and, if satisfied that the same is sufficient, he shall approve the same, and such approval shall have the same force and effect as an approval by the board of supervisors at the time the same was presented to them for approval, would have had.

State officer's filed and recorded. R. § 563. C. 160, § § 4, 5, 12 G. A.

SEC. 682. The bonds and oaths of state officers shall be filed in the office of the secretary of state, except those of the secretary, which shall be filed and recorded in the office of the auditor; those of county and township officers in the county auditor's office, except those of the county auditor, which shall be kept in the county treasurer's office, and those of justices of the peace, which shall be filed by the auditor in the office of the clerk of the district court, after the same have been approved and recorded.

Same, of county officers. C. 25, § § 1, 2, 4, 9 G. A.

SEC. 683. The auditor of each county shall keep in his office a book to be known as the record book of officers' bonds, and to record in said book, the official bonds of all county officers, including justices of the peace and constables, filed in his county; and also to keep an index to said book, in which, under the title of each office, shall be entered the names of each principal and his sureties, and the date of the filing of the bond.

Penalty. C. 25, § 5, 9 G. A.

SEC. 684. Any county officer who shall enter upon the discharge of the duties of his office, without first having caused his official bond to be recorded, shall forfeit to the county of which he is an officer, the sum of five dollars for each official act by him performed prior to the recording of said bond, and the chairman of the board of supervisors of each county is hereby required to bring suit for, or collect such penalty in the name of his county; and it shall be considered a misdemeanor for any officer who is required to give bond to act in such official capacity without giving such bond as is provided by law, and he shall be liable to a fine for an amount not exceeding the amount of the bond required of him.

When governor and lieutenant governor shall qualify. R. § 564.

SEC. 685. The governor and lieutenant-governor shall qualify within ten days after the result of the election shall be declared by the general assembly; judges of the supreme, district, and circuit courts, by the first day of January following their election; and all other officers by the first Monday of January following their election.

Refusal to serve. R. § 564.

SEC. 686. A failure to qualify within the time prescribed shall be deemed a refusal to serve.

Election contested. R. § 565.

SEC. 687. When any election is contested, the person elected shall have twenty days in which to qualify after the day of the decision.

Effect of bonds. R. § 566.

SEC. 688. The bonds of officers shall be construed to cover duties required by law subsequent to giving them.

None void. R. § 567.

SEC. 689. 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.

Bond not approved until all public property has been accounted for. R. § 568.

SEC. 690. When the incumbent of an office is re-elected, he shall qualify as above directed; but when the re-elected officer has had public funds or property in his control, under color of his office, his bond shall not be approved until he has produced and fully accounted for such funds and property to the proper person to whom he should account therefor; and the officer or board approving the bond shall endorse upon the bond before its approval the fact that the said officer has fully accounted for and produced all funds and property before that time under his control as such officer; 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.

Temporary officer.

SEC. 691. Any person temporarily appointed to fill an office during the incapacity or suspension of the regular incumbent, shall qualify in the manner required by this chapter for the office so to be filled.

CHAPTER 6.

OF CONTESTING ELECTIONS.

SECTION 692. The election of any person to a county office may be contested by any elector of the county: By whom, and for what causes. R. § § 569, 571.

1. When mal-conduct, fraud, or corruption on the part of the judges of election in any precinct, or of any board of canvassers, or any member of either board, sufficient to change the result;

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

3. 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. When the incumbent has given or offered to 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. When illegal votes have been received or legal votes rejected at the polls sufficient to change the result;

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

7. For any other cause which shows that another was the person legally elected.

SEC. 693. The term "incumbent" in this chapter, means the person whom the canvassers declare elected.

SEC. 694. When the misconduct complained of is on the part of the judges of election in a precinct, it shall not be held sufficient to set aside the election, unless the rejection of the vote of that precinct would change the result as to that office. Same. R. § 572.

SEC. 695. The court for the trial of contested county elections, shall be thus constituted: The chairman of the board of supervisors shall be the presiding officer, and the contestant and incumbent may each name a person who shall be associated with him. Court: how constituted. R. § 572.

SEC. 696. The county auditor shall be clerk of this court, and keep all papers and record the proceedings in the election book, in manner similar to the record of the proceedings of the district court. But when the county auditor is a party, the court shall appoint a suitable person as clerk, whose appointment shall be recorded. Clerk. R. § 574.

SEC. 697. The contestant shall file in the office of the county auditor, within twenty days after the day when the votes were 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. The contestant must also Contestant to file statement. R. § 575.

file with the county auditor a bond, with security to be approved by said auditor, conditioned to pay all costs in case the election be confirmed, or the statement be dismissed, or the prosecution fail. When the auditor is a party, the clerk of the district court shall receive such statement and approve such bond.

Same. R. § 576.

SEC. 698. 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 precinct where they voted or offered to vote, shall be set forth in the statement.

Day of trial: notice. R. § § 577, 579, 580.

SEC. 699. The chairman of the board of supervisors shall thereupon fix a day for the trial, not more than thirty, nor less than twenty days thereafter; and shall cause a notice of such trial to be served on the incumbent, with a copy of the contestant's statement, at least ten days before the day set for trial.

Selection of judges. R. § § 577, 580.

SEC. 700. The contestant and incumbent shall each file in the auditor's office, on or before the day of trial, a written nomination of one associate judge of the contested election, who shall be sworn in manner and form as trial jurors are in trials of civil action. If either the contestants or the incumbent fail to nominate, the presiding judge shall appoint for him. When either of the nominated judges fails to appear on the day of trial, his place may be filled by another appointment under the same rule.

Trial postponed. R. § 583.

SEC. 701. 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.

Manner of: powers of court. R. § § 584, 588, 591.

SEC. 702. The proceedings shall be assimilated to those in an action, so far as practicable, but shall be under the control and direction of the court, which shall have all the powers of the district court necessary to the right hearing and determination of the matter, to compel the attendance of witnesses, swear them and direct their examination; to punish for contempt in its presence or by disobedience to its lawful mandate, to adjourn from day to day, to make any order concerning immediate costs, and to enforce its orders by attachment. It shall be governed by the rules of law and evidence applicable to the case.

Testimony. R. § 581.

SEC. 703. The testimony may be oral or by depositions, taken as in an action at law in the district court.

Subpœnas. R. § § 582, 586.

SEC. 704. Subpœnas for witnesses may be issued at any time after the notice of trial is served, either by the clerk of the district court, or by the county auditor. 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.

Statement not dismissed for want of form: amendment R. § § 585, 591.

SEC. 705. 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 grounds 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

mendment is asked, the adjournment shall be at the cost of contestant. If no amendment is asked for or made, or in case of entire failure to prosecute, the proceedings may be dismissed.

Process: fees. R. § 586.

SEC. 706. The style, form, and 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 admits.

Trial: where to take place. R. § 587.

SEC. 707. The trial of contested county elections shall take place at the county seat, unless some other place within the county is substituted by the consent of the court and parties.

Sheriff to attend. R. § 589.

SEC. 708. The court, or the presiding judge, may direct the attendance of the sheriff or a constable when deemed necessary.

Witness compelled to answer. R. § 590.

SEC. 709. The court may require any person called as a 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 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.

Compensation. R. § 593.

SEC. 710. The judges shall be entitled to receive four dollars a day for the time occupied by the trial.

Who liable for costs. R. § 594.

SEC. 711. 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.

How collected. R. § 595.

SEC. 712. A transcript of the judgment, filed and recorded in the office of the clerk of the circuit court as provided in relation to transcripts from justices' courts, shall have the same effect as there provided, and execution may issue thereon.

Certificate of election withheld. R. § 597.

SEC. 713. 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.

Judgment. R. § 598.

SEC. 714. 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 on 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.

Judgment enforced. C. 34, § 1, 10 G. A.

SEC. 715. When either the contestant or incumbent shall be in possession of the office, by holding over or otherwise, the presiding judge shall, if the judgment be against the party so in possession of the office and in favor of his antagonist, issue an order to carry into effect the judgment of the court, which order shall be under the seal of the county, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books and papers belonging to the same, and the sheriff shall execute such order as other writs.

Appeal. Same, § 2.

SEC. 716. The party against whom judgment is rendered may appeal within twenty days to the circuit court, but if he be in

possession of the office, such appeal shall not supersede the execution of the judgment of the court as provided in the preceding section, unless he give a bond with security, to be approved by the circuit judge, in a sum to be fixed by the judge, and which shall be at least double the probable compensation of such officer for six months, which bond shall be conditioned that he will prosecute his appeal without delay, and that if the judgment appealed from be affirmed, he will pay over to the successful party all compensation received by him while in possession of said office after the judgment appealed from was rendered.

Judgment on appeal. Same, § 3.

SEC. 717. If, upon appeal, the judgment be affirmed, the circuit court may render judgment upon the bond for the amount of damages against the appellant and his sureties on the bond.

OF CERTAIN STATE OFFICERS.

By whom. R. § 598

SEC. 718. The election of any person to any state office, except that of governor or lieutenant-governor, or to the office of district judge, circuit judge, or district attorney, may be contested by an eligible person who received votes for the same office, for any of the causes before mentioned.

Court: how constituted. R. § 599.

SEC. 719. The court for the trial of contested state elections shall consist of three judges, not interested, of the supreme, district, or circuit court, or any of them, as may be convenient.

Clerk. R. § 600.

SEC. 720. 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, or in case of his absence or inability, the auditor of state shall be clerk.

Statement filed. R. § 601.

SEC. 721. The statement must be filed with such clerk within thirty days from the day when the votes are canvassed.

Time of trial: notice. R. § § 601, 602.

SEC. 722. 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 cause a copy of the statement and a notice of the time fixed for trial to be served upon the incumbent, and a notice of the time to be served upon the contestant at least twenty days before the day of trial, and returns thereof to be made to him. When convenient, the service 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 January following the election.

Subpœnas: depositions. R. § 603.

SEC. 723. The secretary of state, the several clerks of the supreme and district courts, under their respective seals of office, and either of the judges of the supreme, district, or circuit courts, under their hands, may issue subpœnas for witnesses to attend this court; and disobedience to such process may be treated as a contempt. Depositions may also be taken as in the case of contested county elections.

Process. R. § 604.

SEC. 724. Process and papers may be issued to and served by the sheriff of any county.

Place of trial. R. § 605.

SEC. 725. The trial shall take place at the seat of government, unless some other place be substituted by consent of the court and both parties.

SEC. 726. The judges shall be entitled to receive for their travel and attendance, the sum of six dollars each per day, with such mileage as is allowed to members of the general assembly, to be paid from the state treasury. Compensation. R. § 606.

SEC. 727. A transcript of the judgment rendered by such court, filed in the office of the clerk of the supreme court, shall have the force and effect of a judgment of the supreme court, and execution may issue therefrom in the first instance, and against the party's property generally. Judgment filed: execution. R. § 607.

SEC. 728. 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. Power of presiding judge. R. § 608.

SEC. 729. The provisions of this chapter in relation to contested county elections, are applied to contested state elections when applicable, except as herein otherwise directed. Provisions applicable. R. § 609.

OF MEMBERS OF THE GENERAL ASSEMBLY.

SEC. 730. The election of any person to a seat in either branch of the general assembly may be contested by any qualified voter of the district to be represented. By whom. R. § 610.

SEC. 731. The contestant shall, within thirty days after the canvass, 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 first day of the next session. Statement served. R. § 611.

SEC. 732. Any judge or clerk of a court of record may issue subpœnas in the above cases as in those before provided, and compel the attendance of witnesses thereunder. Subpœnas. R. § 612.

SEC. 733. Depositions may be taken in such cases in the same manner and under the same rules as in an action at law in the district court; but no cause for taking the same need be shown. Depositions. R. § 613.

SEC. 734. 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 to the secretary of state with an endorsement thereon showing the nature of the papers, the names of the contesting parties, and the branch of the general assembly before which the contest is to be tried. Same. R. § 614.

SEC. 735. 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. Statement and deposition given presiding officer. R. § 615

SEC. 736. 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 witness it may desire to hear on such trial. Power of general assembly. R. § 616.

OF GOVERNOR.

By whom. R. § 617.

SEC. 737. The election of any person declared duly elected to the office of governor or lieutenant-governor, may be contested by an eligible person who received votes for the office contested.

Notice of contest. R. § 618.

SEC. 738. 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.

Notice to incumbent. R. § 619.

SEC. 739. As soon as the presiding officers have received the notice and specifications, they shall make out a notice directed to the incumbent, including a copy of the specifications, which shall be served by the sergeant-at-arms.

To each house. R. § 620.

SEC. 740. The presiding officers shall also immediately make known to their respective houses that such notice and specifications have been received.

Court: how chosen. R. § 622.

SEC. 741. Each house shall forthwith proceed, separately, to choose seven members of its own body in the following manner:

1. The names of 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 clerk;

2. The secretary of the senate in the presence of the senate, and the clerk 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 entered on the journals of each house.

SEC. 742. The members thus drawn shall constitute a committee 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 times 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.

Testimony. R. § 623.

SEC. 743. The testimony shall be confined to the matters contained in the specifications.

Judgment. R. § 624.

SEC. 744. The judgment of the committee pronounced in the final decision on the election shall be conclusive.

Other provisions R. § 624.

SEC. 745. The provisions of this chapter in relation to other contested elections are applied to a contested election for governor, when applicable, except as herein otherwise directed.

CHAPTER 7.

OF REMOVAL AND SUSPENSION FROM OFFICE.

SECTION 746. All county and township officers may be charged, tried, and removed from office for the causes following: Causes. R. § 628.

1. For habitual or wilful neglect of duty;
2. For gross impartiality;
3. For oppression;
4. For extortion;
5. For corruption;
6. For wilful mal-administration in office;
7. Upon conviction of a felony;
8. For a failure to produce and fully account for all public funds and property in his hands at any inspection or settlement.

SEC. 747. Any person may make such a charge, and the district court shall have exclusive original jurisdiction thereof by the service of original notice. By whom made. R. § 629.

SEC. 748. The proceedings shall be as nearly like those in other actions at law as the nature of the case admits, excepting where otherwise provided in this chapter. Proceedings. R. § 630.

SEC. 749. The petition shall be by an accuser against the accused, and shall contain the charges with the necessary specifications under them and be verified by any elector. Petition. R. § 631.

SEC. 750. It will be sufficient that the notice require the accused to appear and answer the petition of A. B. (naming the accuser), for "official misdemeanors;" but a copy of the petition must be served with the notice. Notice. R. § 632.

SEC. 751. If the person who holds the office of clerk of the district and circuit court is the accused in either of those capacities, his removal or suspension shall operate in both courts and the petition may be filed with the county auditor, and both he and the clerk may issue subpœnas for witnesses, and the county auditor shall deliver the papers to the judge of the district court, on its sitting. When clerk is the accused. R. § 63.

SEC. 752. 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 take place, the board of supervisors shall temporarily fill the office by appointment. Suspensio R. § 635.

SEC. 753. When the accused is an officer of the court and is suspended, the court may supply his place by appointment for the term. Appointments. R. § 638.

SEC. 754. The question of fact shall be tried as in other actions, and if the accused is found guilty, judgment shall be entered removing the officer from his office, and declaring the latter vacant; and a copy thereof shall be certified to the county auditor, who shall cause it to be entered in the election book. Trial: judgment. R. § 636.

SEC. 755. The accuser and the accused are liable to costs as in other actions. Costs. R. § 637.

Judges may suspend clerk or sheriff. R. § 639.

SEC. 756. The judges of the district and circuit courts in their respective districts shall have authority, on their own motion, to suspend from office any clerk of those courts, or sheriff of a county, for any of the causes mentioned in this chapter coming to their own knowledge, or manifestly appearing from the papers or testimony in any proceeding in court.

Direct petition to be filed. R. § 640.

SEC. 757. Upon such suspension the court may direct the district attorney to file a petition in the name of the county; but it need not be verified.

Suspension certified. R. § 641.

SEC. 758. Such order of suspension shall be certified to the county auditor and be by him entered in the election book.

SUSPENSION OF STATE OFFICERS.

Accounts examined. R. § § 46, 47, 55, 56.

SEC. 759. Whenever, in the judgment of the governor, the public service requires it, he shall appoint a commission of three competent accountants who shall examine the books, papers, vouchers, moneys, securities, and other documents in the possession or under the control of any state officer, shall make out a full, complete and specific statement of the transactions of said officer, with, for, or on behalf of the state, showing the true balances in each case and report the same to the governor with such suggestions as they may deem proper.

Defalcation: suspension. R. § 48.

SEC. 760. Whenever any commission appointed as aforesaid, or under the provisions of section one hundred and thirty-two, of chapter nine, of title two of this code, shall report that any officer has been guilty of any defalcation or misappropriation of the public money, or that his accounts, papers, and books are improperly or unsafely kept, and that the state is liable to suffer loss thereby, the governor shall forthwith suspend such officer from the exercise of his office, and require him to deliver all the money, books, papers, and other property of the state to the governor to be disposed of as hereinafter provided.

Consequences. R. § 49.

SEC. 761. After such suspension, it shall be unlawful for such officer to exercise or attempt to exercise any of the functions of his office until such suspension shall be revoked, and any attempt to exercise said office after such suspension, shall be deemed a misdemeanor, and shall subject the offender for each offense to the penalty of not more than one year's imprisonment in the county jail, and not more than one thousand dollars fine, to be recovered and enforced as provided by law.

Temporary appointment. R. § 51.

SEC. 762. In every such case of suspension, the governor shall appoint some suitable person to fill, temporarily, the office, and such person having qualified as required by law, shall perform all the duties and enjoy all the rights to the said office belonging, until the removal of the suspension of his predecessor or the election of a successor.

Duty of governor. R. § 52.

SEC. 763. Whenever the governor shall suspend any such public officer, he shall direct the proper legal steps to be taken to indemnify the state from loss.

Compensation. R. § 53.

SEC. 764. The commissioners provided for in this chapter shall each receive the sum of three dollars per day, for the time actually employed in the performance of their duties.

SEC. 765. Said commissioners shall have power, when in session, to issue subpœnas to call any person before them to testify in reference to any fact connected with their investigation; also to require such person to produce any papers or books which the district court might require to be produced. Power of commissioners. R. § 54.

CHAPTER 8.

OF DEPUTIES.

SECTION 766. The secretary, auditor, and treasurer of state, the superintendent of public instruction, the register of the state land office, each clerk of the district and circuit courts, county auditor, treasurer, sheriff, surveyor, and recorder, may appoint a deputy for whose acts he shall be responsible, and from whom he shall require bonds; 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 auditor respectively. What officers may appoint. R. § § 421, 642, 645. C. 115, 12 G. A. C. 134, § 2, 12 G. A. C. 38, 14, G. A.

SEC. 767. In the absence or disability of the principal, 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. Powers of deputy. R. § 643.

SEC. 768. 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, auditor, recorder, treasurer, or sheriff of a county, appoint either of the others. Who may be appointed. R. § 644.

SEC. 769. The sheriff may appoint such number of deputies as he sees fit. Sheriff. R. § 646.

SEC. 770. Each deputy shall take the same oath as his principal, which shall be endorsed upon and filed with the certificate of his appointment. Oath. R. § 647.

SEC. 771. When a county officer receiving a salary is compelled by the pressure of the business of his office to employ a deputy, the board of supervisors may make a reasonable allowance to such deputy. Compensation. R. § 648.

CHAPTER 9.

OF ADDITIONAL SECURITY AND THE DISCHARGE OF SURETIES.

SEC. 772. Whenever the governor shall deem it advisable that the bonds of any state officer should be increased and the security enlarged, or a new bond given, he shall notify said officer of the Bonds of State officers increased. R. § 660.

fact, the amount of new or additional security to be given, and the time when the same shall be executed, which said new security shall be approved and filed as provided by law.

Additional security required. R. § § 649, 65.

SEC. 773. Any officer or board who has the approval of another officer's bond, when of opinion that the public security requires it, upon giving ten days' notice to show cause to the contrary, may require him to give such additional security by a new bond, as may be deemed requisite, within a reasonable time to be prescribed.

Security in force: vacancy. R. § § 651, 661.

SEC. 774. If a requisition made under either of the foregoing sections be complied with, both the old and the 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.

Sureties relieved. R. § 652.

SEC. 775. When any surety on the bond of a civil officer conceives himself in danger by remaining surety, and desires to be relieved of his obligation, he may petition the approving officer or board above referred to for relief, stating the ground of his apprehension.

Notice of petition. R. § 653.

SEC. 776. The surety shall give the principal at least twenty-four hours notice of the presenting and filing of the petition, with a copy thereof. At the expiration of this notice, the approving officer may hear the matter or may postpone the hearing as the case permits or requires.

Hearing: order: effect. R. § 655.

SEC. 777. If, upon the hearing, there appears substantial ground for apprehension, the approving officer or board 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 upon 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.

Failure to comply. R. § 656.

SEC. 778. If the new bond is not given as required, the office shall be declared vacant, and the order to that effect entered in the proper election book.

Justice of the peace. R. § 657

SEC. 779. If the proceedings relate to a justice of the peace and he is removed from office, the county auditor shall notify the proper township trustees, or clerk of the removal.

Subpœnas. R. § 658.

SEC. 780. The approving officer may issue subpœnas in his official name for witnesses, compel their attendance, and swear them.

CHAPTER 10.

OF VACANCIES AND SPECIAL ELECTIONS.

Civil office: when vacant. R. § 662. C. 54, 9 G. A.

SEC. 781. 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, as follows:

1. The resignation of the incumbent;
2. His death;
3. His removal from office;
4. The decision of a competent tribunal declaring his office vacant;
5. 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;
6. A failure to elect at the proper election, there being no incumbent to continue in office until his successor is elected and qualified, nor other provision relating thereto;
7. A forfeiture of office as provided by any law of the state;
8. Conviction of an infamous crime, or of any public offense involving the violation of his oath of office;
9. The acceptance of a commission to any military office, either in the militia of this state or in the service of the United States, which requires the incumbent in the civil office to exercise his military duties out of the state for a period not less than sixty days.

Resignations: how made. R. § 663. C. 69, 10 G. A. C. 148, § 6, 13 G. A.

SEC. 782. Resignation of civil officers may be made 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 by all officers elected by the qualified voters of the state, and by judges of courts of record, and district attorneys, to the governor;
3. By senators and representatives in the general assembly, to the presiding officer of their respective bodies, if in session, who shall immediately transmit information of the same to the governor; if such bodies are not in session, to the governor;
4. By all county officers to the board of supervisors, and by members of the board of supervisors, to the county auditor;
5. By all township officers, to the township clerk; and by the township clerk to the township trustees, or any one of them;
6. By all officers holding by appointment, to the officer or body by whom they were appointed.

Vacancies: how filled. C. 88, 11 G. A. C. 47, 13 G. A. C. 148 § 6, 13 G. A.

SEC. 783. Vacancies shall be filled as follows:
In the offices of clerk and reporter of the supreme court, by the supreme court;
In all other state offices, and in the membership of any board or commission created by the state, where no other method is specially provided, by the governor;
In county offices by the board of supervisors; and in the membership of such board by the county clerk, auditor, and recorder;
In township offices by the trustees, but where the offices of the three trustees are all vacant the clerk shall appoint, and if there be no clerk, the county auditor shall appoint.

Term continues until successor qualifies.

SEC. 784. Every officer elected or appointed for a fixed term, shall hold office until his successor is elected and qualified, unless the statute under which he is elected or appointed expressly declares the contrary; *provided*, that this section shall not be construed in any way to prevent the removal or suspension of such officer during or after his term, in cases provided by law.

Appointments. R. § 667.

SEC. 785. Appointments under the provisions of this chapter shall be in writing, and 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.

Qualification. R. § 668.

SEC. 786. Persons appointed to office as herein provided, shall qualify in the same manner as those elected, within a time to be prescribed in their appointments, and the provisions of the chapter relating to qualification for office are extended to them.

Removed. R. § 669.

SEC. 787. 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.

Who may take possession of office. R. § 671.

SEC. 788. When a vacancy occurs in a public office, possession shall be taken of the office room, and of the books, papers, and all things pertaining to the office, to be held until the election or appointment and qualification of a successor, as follows:

Of the office of the county auditor, by the clerk of the district court;

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

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, register of the land office, or 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.

Election to fill vacancies. R. § 672.

SEC. 789. Vacancies occurring in the township offices, ten days; in county offices, fifteen days; and in all other public elective offices, thirty days prior to a general election, shall be filled thereat. When a vacancy occurs in the office of representative in congress, or senator or representative in the general assembly, and the body in which such vacancy exists will convene prior to such election, the governor shall order a special election to fill such vacancy at the earliest practicable time, and ten days notice of such election shall be given.

Members of general assembly: vacancy. C. 188, 11 G. A.

SEC. 790. Whenever a vacancy shall occur in the office of a senator or representative in the general assembly, the auditor of the county in which such vacancy occurs shall notify the governor of such fact and the cause of the vacancy; and if more than one county is represented in the district in which such vacancy may occur, then such notice shall be given by the auditor of the county in which the late member resided.

SPECIAL ELECTIONS.

Provisions for. R. § 673.

SEC. 791. The provisions relating to general elections, shall govern special elections except where otherwise provided by law.

SEC. 792. In all cases where special elections are held to fill vacancies in the offices of senator or representative in the general assembly, or representative in congress, the board of county canvassers shall meet at twelve o'clock M., on the second day after said election, to canvass the votes cast at such election, and the auditor, within four days after such election, shall transmit to the secretary of state an abstract of the votes cast at said election, if there be more than one county in the district.

Canvass: when and by whom made. C. 88, § § 1, 3, 9 G. A.

SEC. 793. Within fifteen days after said election, in the case last mentioned, the board of state canvassers shall meet and canvass the votes cast to fill such vacancy, and if the returns have not been received from all the counties composing said district, they may adjourn to such day as they deem necessary, not exceeding ten, for the purpose of receiving said returns.

State canvass. C. 88, § 4, 9 G. A.

SEC. 794. Whenever a vacancy occurs in the office of a justice of the peace or constable more than thirty days prior to any general election, the county auditor shall immediately notify the clerk of the township in which the vacancy exists, and the township clerk, within five days after receiving such notice, shall notify each of the trustees of his township in writing, fixing the time and place that they shall meet for the purpose of filling such vacancy by appointment. Such notice may be served by any constable of the township, and shall be served at least five days prior to such meeting.

In office of justice. C. 137, § § 1, 2, 11 G. A.

SEC. 795. The trustees shall meet in accordance with such notice and fill such vacancy, and in five days after such appointment has been made, the township clerk shall record it in the township record book, and shall cause a notice to be served upon the person so appointed, informing him of his appointment, by any constable in the township in the manner prescribed by law for the service of notices, and any person so appointed and notified, shall qualify within ten days after such notice has been served upon him. The auditor may approve of the bond of a justice of the peace and constable so appointed, by the recommendation of the sufficiency of the sureties upon such bond, signed by any member of the board of supervisors.

Trustees to appoint: qualification Same, § § 3, 4, 5.

TITLE VI.

OF REVENUE.

CHAPTER 1.

OF THE ASSESSMENT OF TAXES.

Levy: amount of.
R. § 710.
C. 24, § 2, Ex. S. 8 G. A.
C. 87, § 1, 11 G. A.

SECTION 796. The board of supervisors of each county shall, annually, at their September session, levy the following taxes upon the assessed value of the taxable property in the county:

1. For state revenue, one and a-half mills on a dollar, or such rate as may be directed by the executive council, not exceeding two mills on a dollar;

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

3. For support of schools, not less than one, nor more than three mills on a dollar;

4. For making and repairing bridges, not more than three mills on a dollar.

EXEMPTIONS.

Property exempt.

SEC. 797. The following classes of property are not to be taxed, and they may be omitted from the assessments herein required:

1. The property of the United States and of this state, including university, agricultural college and school lands, and all property leased to the state; the property of a county, township, city, incorporated town, or school district, when devoted entirely to the public use and not held for pecuniary profit; public grounds, including all places for the burial of the dead; fire engines, and all implements for extinguishing fires, with the grounds used exclusively for their buildings and for the meetings of the fire companies; all public libraries, grounds, and buildings of literary, scientific, benevolent, agricultural, and religious institutions, and societies devoted solely to the appropriate objects of these institutions, not exceeding six hundred and forty acres in extent, and not leased or otherwise used with a view to pecuniary profit; and all property leased to agricultural, charitable institutions, and benevolent societies, and so devoted during the term of such lease; *provided*, that all deeds by which such property is held shall be duly filed for record before the property therein described shall be omitted from the assessment;

School.

Fire engines.

Public libraries and property of religious societies, &c.

2. The books, papers, and apparatus belonging to the above institutions, used solely for the purposes above contemplated, and the like property of students in any such institution used for their education; Books, papers, and apparatus.

3. 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; Money, credits.

4. Animals not hereafter specified, the wool shorn from sheep belonging to the person giving the list, his farm produce harvested within one year previous to the listing, private libraries not exceeding three hundred dollars in value, family pictures, kitchen furniture, beds and bedding requisite for each family, all wearing apparel in actual use, and all food provided for the 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; Enumeration of articles.

5. The polls or estates, or both, of persons who by reason of age or infirmity may, in the opinion of the assessor, be unable to contribute to the public revenue; such opinion, and the fact on which it is based, being in all cases reported to the board of equalization by the assessor, or any other person, and subject to reversal by them; Polls or estates of infirm persons.

6. The farming utensils of any person who makes his livelihood by farming, and the tools of any mechanic, not in either case to exceed three hundred dollars in value; Farming utensils.

7. Government lands entered or located, or lands purchased from this state, shall not be taxed for the year in which the entry, location, or purchase is made. Lands entered during the year. R. § 711. C. 31 § 1, 9 G. A. C. 79, § 1 10. A

SEC. 798. For every acre of forest trees planted and cultivated for timber within the state, the trees thereon not being more than twelve feet apart and kept in a healthy condition, the sum of one hundred dollars shall be exempted from taxation upon the owner's assessment, for ten years after each acre is so planted. For every acre of fruit trees planted and suitably cultivated within the state, the trees thereon not being more than thirty-three feet apart and kept in a healthy condition, the sum of fifty dollars shall be exempted from taxation upon the owner's assessment, for five years after each acre is planted. Such exemption shall be made by the assessor at the time of the annual assessment, upon satisfactory proof that the party claiming the same has complied with this section; and the assessor shall return to the board of equalization the name of each person claiming exemption, the quantity of lands planted to timber or fruit trees, and the amount deducted from the valuation of his property. Forest trees. Fruit trees. C. 92, § § 1, 2, 3, 12 G. A.

SEC. 799. The board of supervisors may exempt from taxation for any one year, except for state purposes, an amount not exceeding five hundred dollars for each acre of forest trees less than three years old, planted and suitably cultivated for timber, or for each one-fourth mile of hedge, or for each one-fourth mile of shade trees along the public highway, or for each acre of fruit trees not more than three years old, and also a proportionate exemption for each one-fourth mile of hedge, or one-fourth mile of shade trees along the public highway. Such board, before granting any of the Amount in value of forest, fruit trees, hedge or shade trees, that may be exempted. C. 92 § § 5, 6, 7, 12 G. A. C. 3, 14 G. A.

exemptions contemplated in this section, shall establish rules as to the method of planting and cultivating such hedges and trees, and the number of the same to the mile or acre, and persons claiming such exemption shall bring satisfactory proof that such rules have been complied with. But no person shall have any personal property more than one-half his real estate exempted under this and the foregoing section, nor shall there be any exemption on account of nursery trees grown for sale. Any person claiming such exemption may appear before the board of supervisors at any regular meeting, and, upon showing to the satisfaction of said board that he has complied with the requirements, shall receive from the county auditor a certificate, stating the amount of the exemption, which shall be received by the county treasurer in satisfaction of the taxes exempted.

When destroyed by fire or tornado. R. § 818. C. 12 Ex S. 8 G. A.

SEC. 800. Where buildings are destroyed by fire, tornado, or other unavoidable casualty after being assessed for the year, the board of supervisors may rebate from the taxes of that year so much as may have been assessed on the part destroyed if said property shall not have been sold for taxes, or if said taxes have not been in default for thirty days at the time of destruction. But the loss for which such rebate is allowed, shall be such only as is not covered by insurance.

TAXABLE PROPERTY, AND LISTING THEREOF.

Enumerated. R. § 712. C. 187, 13 G. A.

SEC. 801. All other property, real or personal, is subject to taxation in the manner directed. Ferry franchises and toll-bridges, for the purposes of this title, are considered as real property. Horses, cattle, mules, asses, sheep, swine, and money, whether in possession or on deposit, and including bank bills, money, property, or labor due from solvent debtors on contract or on judgment, mortgages and other like securities, and accounts bearing interest, property situated in this state belonging to any bank, or company, incorporated or otherwise, whether incorporated by this or any other state, public stocks or loans, household furniture, including gold and silver plate, musical instruments, watches, and jewelry, private libraries, for their value exceeding three hundred dollars, carriages, threshing machines, and every description of vehicle, farming utensils, machines and machinery, and professional libraries for their aggregate value over three hundred dollars, boats and vessels of every description, wherever registered or licensed, and whether navigating the waters of this state or not, if owned either wholly or in part by inhabitants of this state, to the amount owned in this state. Any and all lands in this state which are owned or held by any other county or counties claiming title under locations with swamp land indemnity script, or otherwise, shall be taxed the same as other real estate within the limits of the county.

Definition of term "credit." R. § 713.

SEC. 802. 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 or property of any kind secured by deed, mortgage, or otherwise; but pensions of the United States, or any of them,

and salaries or payments expected for services to be rendered, are not included in the above term.

How listed. R. § 714.

SEC. 803. Every inhabitant of this state, of full age and sound mind, shall assist the assessor in listing all property subject to taxation in this state of which he is the owner, or has the control or management, in the manner hereinafter directed; the property of a ward is to be listed by his guardian, of a minor, by his father if living, if not, by his mother if living, and if not, by the persons having the property in charge; of a married woman, by herself or husband; 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 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.

Who deemed owners. R. § 715.

SEC. 804. Commission merchants and all persons trading and dealing on commission, and assignees authorized to sell, when the owner of the goods does not reside in the county, are, for the purpose of taxation, to be deemed the owners of the property in their possession.

When listed: in whose name. R. § 716.

SEC. 805. Any person required to list property belonging to 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 shall list it separately from his own, giving the assessor the name of 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 his heirs without enumerating them.

Where taxed: partnership property. R. § 717.

SEC. 806. When a person is doing business in more than one county, the property and credits existing in any one of the counties shall be listed and taxed in that county, and the credits not existing or pertaining especially to the business in any county, shall be listed and taxed in that where the principal place of business may be. Any individual of a partnership is liable for the taxes due from the firm.

Insurance companies: how taxed. C. 106 § 6, 14 G. A.

SEC. 807. Every insurance company doing business in this state, except joint stock and mutual companies organized under the laws of this state, shall, at the time of making the annual statements as required by law, pay into the state treasury as taxes, two and one-half per cent. of the gross amount of premiums received in this state during the preceding year, taking duplicate receipts therefor, one of which shall be filed with the auditor; and upon the filing of said receipts, and not till then, the said auditor shall issue the annual certificate as provided by law; and the said sum of two and one-half per cent. shall be in full for all taxes, state and local.

Real property of railways. C. 26 § 8, 10, 14 G. A.

SEC. 808. Lands, lots, and other real estate belonging to any railway company, not exclusively used in the operation of the several roads, and all railway bridges across the Mississippi and Missouri river, shall be subject to assessment and taxation on the same basis as the property of individuals in the several counties where situated.

Road beds and highways. C. 89, 14 G. A.

SEC. 809. No real estate used by railway corporations for road-beds shall be included in the assessment to individuals of

the adjacent property, but all such real estate shall be deemed to be the property of such campanies for the purpose of taxation; nor shall real estate, occupied for and used as a public highway, be assessed and taxed as part of adjacent lands whence the same was taken for such public purpose.

Railway property: how assessed and taxed. C. 26 § § 6, 7, 14 G. A.

SEC. 810. All railway property not specified in section eight hundred and eight of this chapter, shall be taxed upon the assessment made by the executive council as provided in chapter five of title ten, at the same rates, by the same officers, and for the same purposes as individual property under the provisions of this chapter; and all provisions of this title relating to the levy and collection of taxes shall apply to the taxes so levied upon railway property.

Telegraph and express companies. C. 100, 13 G. A.

SEC. 811. All property, real and personal, including their franchises, owned by telegraph and express companies, shall be listed and assessed for taxation and shall be subject to the same levies as the property of individuals.

When, and in whose name assessed. R. § § 719, 720.

SEC. 812. All taxable property shall be taxed each year, and personal property shall be listed and assessed each year, in the name of the owner thereof on the first day of January; real property shall be listed and valued in the year eighteen hundred and seventy-three and each second year thereafter, and shall be assessed at its true cash value, having regard to its quality, location, and natural advantages, the general improvement of the vicinity, and all other elements of its value; and in each year in which real estate is not regularly assessed, the assessor shall list and value any real property not included in the previous assessment.

Money, credits, bank notes, and stock: how estimated. R. § 721. G. A.

SEC. 813. Depreciated bank notes, and the stock of corporations and companies, shall be assessed at their cash value; credits shall be listed at such sum as the person listing them believes will be received or can be collected thereon, and annuities, at the value which the person listing believes them to be worth in money.

Debts owing, to be deducted from credits. R. § 722. C. 181, § 1, 13

SEC. 814. In making up the amount of money or credits which any person is required to list, or have listed and assessed, he will be entitled to deduct from the gross amount, all debts in good faith 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 equitably or legally 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 name the list is made will be bound to contribute; but no person will be entitled to any deduction on account of any obligations of any kind given to any insurance company for the premiums of insurance, nor on account of any unpaid subscription to any institution, society, corporation, or company; and no person shall be entitled to any deduction on account of any indebtedness contracted for the purchase of United States bonds, or other non-taxable property.

SEC. 815. Any person owning, or having in his possession, or under his control, within this state, with authority to sell the same, any personal property purchased with a view of its being sold at a profit, or which has been consigned to him from any place out of this state to be sold within the same, shall be held to be a merchant for the purposes of this title; 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 under his control during the next year previous to the time of assessing, and if he has not been engaged in the business so long, then he shall take the average during such time as he shall have been so engaged, and if he be commencing, he shall take the value of the property at the time of assessment. Who held to be a merchant. R. § 723.

SEC. 816. 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, packing of meats, refining, 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 title, 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 those materials only which enter into the combination or manufacture. Who a manufacturer. R. § 724.

SEC. 817. Any person acting as the agent of another, and having in his possession, or under his control or management, any money, notes, and credits, or personal property belonging to such other person, with a view to investing or loaning, or in any other manner using the same for pecuniary profit, shall be required to list the same at the real value, and such agent shall be personally liable for the tax on the same; and if he refuse to render the list, or to swear to the same, the amount of such money, property, notes, or credits, may be listed and valued according to the best knowledge and judgment of the assessor, subject to the provisions of section eight hundred and twenty-four of this chapter. Agent personally liable. R. § 725.

BANKING ASSOCIATIONS.

SEC. 818. All shares of the banking associations organized within this state, pursuant to the provisions of the acts of congress to procure a national currency secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof, held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate in the assessment of taxes in the township, incorporated town, or city, where such banking association is located and not elsewhere, whether the holder thereof resides there or not, but not at a greater rate than is assessed on other moneyed capital in the hands of individuals. How assessed and taxed. C. 153 §, 12 G. A.

SEC. 819. The principal accounting officer of each of said associations, between the first and fifteenth days of January of each year, shall list the shares of the association, giving the assessor the name of each person owning shares, and the amount owned by List: by whom made: associations responsible for tax. Same, § 2.

each; and for the purpose of securing the collection of taxes assessed upon said shares, each banking association shall be liable to pay the same as the agent of each of its shareholders, under the provisions of section eight hundred and seventeen; and the association shall retain so much of any dividend belonging to any shareholder as shall be necessary to pay any taxes levied upon his shares.

Acts of congress amended. Same, § 3.

SEC. 820. If, at any time, congress shall amend the acts aforesaid, then each assessor shall assess the shares in any such national bank in such manner as to conform to such amended act of congress; *provided*, that such shares shall not be assessed at a greater rate than is imposed by law on other moneyed capital in the hands of individuals in this state.

CLASSIFICATION OF PROPERTY.

When, by whom, and how classified. R. § § 732, 733. C. 173 § § 4, 5, 9 G. A.

SEC. 821. The board of supervisors of each county, shall, at their meeting in January in each year, classify the several descriptions of property to be assessed, for the purpose of equalizing such assessment; and the county auditor shall deliver to each assessor in the county, on or before the fifteenth day of January in each year, a certificate of such classification, together with a suitable plat of his township on which to check each parcel of land assessed, and suitable books in duplicate, properly ruled and headed, in which to enter the following items:

1. The name of the individual, corporation, company, society, partnership, or firm, to whom any property shall be taxable;

2. His or their lands, by township, range, section, or part of section, and when such part is not a congressional division or subdivision, some other description sufficient to identify it; and 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;

3. Personal property as follows: number of cattle, number of horses, number of mules, number of sheep, number of swine over six months old, number of carriages and vehicles of every description, with a separate column for the value of each; value of merchandise, amount of capital employed in manufacture, amount of money and credits, amount of taxable furniture, amount of stock or shares in any corporation or company, not required by law to be otherwise listed and taxed, amount of taxable farming utensils or mechanics' tools, amount of all other personal property not enumerated, and the number of polls; and a column for remarks. But no entry shall be made on said books of any animal under the age of one year, except as above provided.

DUTY OF ASSESSOR.

When to begin; how to list property. R. § 733. Same, § 15.

SEC. 822. Each assessor shall enter upon the discharge of the duties of his office on the third Monday in January in each year, and shall, with the assistance of each person assessed, or who may be required by law to list property belonging to another, enter in the books furnished him for that purpose, the several

items specified in the preceding section; entering the names of the persons assessed in alphabetical order, so far as practicable, by alloting to each letter its requisite number of pages in each of the said books. He shall note opposite each piece or parcel of property by him assessed, in a column of his book prepared for that purpose, the number of the highway, independent school districts, district township, or sub-district in which said property is situated.

Assess values: penalty for refusal to take oath. R. § 734.

SEC. 823. The assessor shall list every person in his township, and assess all the property, personal and real, therein, except such as is heretofore specifically exempted; and any person who shall refuse to assist in making out a list of his property, or of any property which he is by law required to assist in listing, or who shall refuse to make the oath required by the next section, shall forfeit the sum of one hundred dollars, to be recovered in the name of the county for the use of common schools therein; and the assessor shall assess such person according to the best information he can get.

Same. R. § 735.

SEC. 824. The assessor shall administer an oath, or affirmation, to each person assessed, to the effect that he has given in a full, true, and correct inventory of all the taxable property owned by him, and all property which he is required by law to list, to the best of his knowledge and belief; and in case any one refuses to make such oath, or affirmation, the assessor shall note the fact in the column of remarks opposite such person's name, and should it afterwards appear that such person so refusing has not given a full list of his property, or that which he was by law required to list, any property so omitted shall be entered on the book at double its ordinary assessable value, and taxed accordingly.

Deliver books to township clerk and county auditor. R. § 736.

SEC. 825. Each assessor shall, on or before the first Monday in April of each year, deliver to the clerk of his township, one of the assessment books, to be used by the trustees for the equalization of assessments, and for the levy of taxes for township and highway purposes. Said book shall have the several columns of numbers and values correctly footed up, and amount of personal property assessed to each person carried forward into a column under the head of "total personal property"; the other book he shall return to the office of the county auditor, on or before the third Monday in May of each year, which book shall be a correct copy of the first, after the same has been corrected by the township board of equalization.

Owner unknown. R. § 737.

SEC. 826. When the name of the owner of any real estate is unknown, it shall be lawful to assess such real estate without connecting therewith any name, but inscribing at the head of the page the words, "owners unknown;" and such property, whether lands or town lots, shall be listed, as near as practicable, in the order of the numbers thereof; and no one description shall comprise more than one town lot, or more than the sixteenth part of a section or other smallest subdivision of the land according to the government surveys, except in cases where the boundaries are so irregular that it cannot be described in the usual manner in accordance with such surveys.

Penalty for failure of duty. R. § 738.

SEC. 827. If any assessor shall fail or neglect to perform any of the duties required of him by this chapter, at the time and in

the manner specified, he shall be liable to a fine of not less than twenty nor more than five hundred dollars, to be recovered in an action brought in the district court, in the name of the county, and the judgment shall be against him and his bondsmen.

Auditor of state to publish revenue laws.

SEC. 828. The auditor of state is hereby authorized and required to cause to be published, in pamphlet form, the revenue laws of this state, for the benefit of township assessors; and shall cause the same to be distributed to the county auditors, who shall distribute the same to the township assessors of their respective counties.

TOWNSHIP BOARD OF EQUALIZATION.

Who composes. C. 89 § 1, 13 G. A.

SEC. 829. The township trustees shall constitute a board of equalization for their respective townships, and have power to equalize the assessments of all tax-payers within the same, except in such cities and incorporated towns as elect a township assessor, in which case the city council shall be the board of equalization, and shall perform such duties in substantially the same manner, as is required of a township board of equalization, by increasing or diminishing the valuation of any piece of property, or the entire assessment of any tax-payer, as they may deem just and necessary for an equitable distribution of the burden of taxation upon all the property of the township; *provided*, that such boards shall keep a record of their proceedings.

Time of meeting: duties. Same, § 2.

SEC. 830. Said board shall meet for that purpose at the office of the township or city clerk, on the first Monday in April of each year, and continue from day to day until completed; and at such meeting they may also add to the assessment as returned by the assessor, any taxable property in the township, city, or incorporated town, not included therein, placing the same to the name of the owner, if known, and assessing the value thereof.

May correct assessment: appeals. R. § 740. Same, § 3.

SEC. 831. Any person who may feel aggrieved at anything in the assessment of his property, may appear before said board of equalization in person, or by agent, at the time and place mentioned in the preceding section, and have the same corrected in such manner as to said board may seem just and equitable, and the assessors shall meet with said board and correct the assessment books as they may direct. Appeals may be taken from all boards of equalization to the circuit court of the county where the assessment is made.

COUNTY BOARD OF EQUALIZATION.

Who compose: time. R. § 739. C. 24, § 3, Ex. S. 8 G. A.

SEC. 832. The board of supervisors shall constitute a county board of equalization, and shall equalize the assessments of the several townships, cities, and incorporated towns of their county, at their regular meeting in June of each year, substantially as the state board equalize assessments among the several counties of the state.

County auditor to send abstract to auditor of state. R. § 741. C. 173, § 6. 9 G. A.

SEC. 833. Each county auditor shall, on or before the third Monday in June in each year, make out and transmit to the auditor of state, an abstract of the real and personal property in his county, in which he shall set forth:

1. The number of acres of land in his county, and the aggregate value of the same, exclusive of town lots, returned by the assessors as corrected by the county board of equalization;

2. The aggregate value of real property in each town in the county, returned by the assessor as corrected by the county board of equalization;

3. The aggregate value of personal property in his county;

4. An abstract of the aggregate value and number of cattle, the aggregate value and number of horses, the aggregate value and number of mules, the aggregate value and number of sheep, the aggregate value and number of swine over six months old, as the same are returned by the assessors of his county.

STATE BOARD OF EQUALIZATION.

Who compose: where and when to assess duties. R. § 742.

SEC. 834. The executive council shall constitute the state board of equalization, and shall meet at the seat of government on the second Monday of July in each year in which real property is assessed. The auditor of state shall be clerk of the board by virtue of his office, and shall lay before it the abstracts transmitted to him by the county auditors, as required by the preceding section, and then the board shall proceed to equalize the valuation of real property among the several counties and towns in the following manner:

1. They shall add to the aggregate valuation of real property of each county, which they shall believe to be valued below its proper valuation, such percentage in each case as will raise the same to its proper valuation;

2. They shall deduct from the aggregate valuation of real property of each county, which they shall believe to be valued above its proper valuation, such percentage in each case as will reduce the same to its proper valuation.

Determine rate of state tax. R. § 743. C. 24, § 1, Ex. S. 8 G. A.

SEC. 835. The state board shall also determine each year, at the same time, the rate of state tax to be levied and collected, not exceeding two mills on the dollar.

When to complete duties. R. § 743.

SEC. 836. Said board shall keep a full record of their proceedings, and they shall finish their equalization on or before the first Monday of August, immediately after which the auditor of state shall transmit to each county auditor, a statement of the percentage to be added to, or deducted from the valuation of real property in his county, and a statement of the rate of state tax fixed as aforesaid. The county auditor shall add to or deduct from the valuation of each parcel of real property in his county the required percentage; rejecting all fractions of fifty cents or less in the result, and counting all over fifty cents as one dollar.

AUDITORS SHALL TRANSMIT ASSESSMENTS.

How. R. § 745.

SEC. 837. After the equalization in June, hereinbefore provided, and before the first Monday in November, the county auditor shall transcribe the assessments of the several townships into a suitable book, to be provided at the expense of the county, properly ruled and headed with distinct columns, in which shall

be entered the names of tax-payers, descriptions of lands, number of acres and value, number of town-lots and value, value of personal property, and each description of tax, with a column for polls, and one for payments.

Consolidated tax. C. 138, § 1, 13 G. A.

SEC. 838. All taxes which are uniform throughout any civil township or independent school district, shall be formed into a single tax, entered upon the tax list in a single column, and denominated a consolidated tax; and each tax-receipt shall show the percentage levied for each separate fund.

LEVY.

Time for making: entered of record. Same, § 2.

SEC. 839. At the regular meeting in September in each year, the board of supervisors shall levy the requisite tax for the current year in accordance with law, and shall record the same in the proper book, and the county auditor shall, as soon as practicable, complete the tax-list by carrying out in a column by itself the consolidated tax, highway tax, polls, irregular tax, if any be levied, and total tax, and after adding up each column of said taxes, he shall, in his abstract at the end of each township, incorporated town, or city list, apportion the consolidated tax among the respective funds to which it belongs, according to the number of mills levied for each of said funds, showing a summary of the total amount of each distinct tax.

To pay bonded indebtedness. C. 134, § 1, 10 G. A.

SEC. 840. It shall not be lawful for the board of supervisors of any county, to levy taxes in any one year for the payment of bonded indebtedness, except as provided in section two hundred and ninety-one, chapter one, title four of this code, including judgments founded on such indebtedness, of more than three mills on the dollar upon the last corrected valuation. But this shall not be construed to reduce the rate of taxation below the rate fixed for one year, in any county in which a specific rate was fixed by the vote of such county authorizing the issue of such bonds.

Errors corrected by auditor. R. § 747.

SEC. 841. The county auditor may correct any clerical or other error in the assessment or tax book, and when such correction, affecting the amount of tax, is made after the books shall have passed into the hands of the treasurer, he shall charge the treasurer with all sums added to the several taxes, and credit him with all the deductions therefrom and report the same to the supervisors.

TAX BOOK AND LIST.

Auditor to make: form of. C. 75, § 1, 12 G. A.

SEC. 842. The county auditor, when making up the tax-book of the county and before said book is placed in the hands of the county treasurer for collection of the taxes therein, shall designate each piece or parcel of real estate sold for taxes and not redeemed, by writing in a plain manner opposite to each such piece the word "sold."

Treasurer's authority: informality. R. § 748.

SEC. 843. The county auditor shall make an entry upon the tax-list showing what it is, and for what county and year it is, and shall then deliver it to the county treasury on or before the first

day of November, taking his receipt therefor; and such list shall be full and sufficient authority for the county treasurer to collect taxes therein levied. But no informality therein, and no delay in delivering the same after the time above specified, shall affect the validity of any taxes, or sales, or other proceedings for the collection of taxes under this title.

Aggregate certified to auditor of state R. § 748.

SEC. 844. At the time of the delivery of said list to the treasurer, the auditor shall make to the auditor of state a certified statement showing the aggregate valuation of lands town property, and personal property in the county, each by itself, and also the aggregate amount of each separate tax as shown by said tax book.

DUTY OF TREASURER.

To enter taxes unpaid for previous years: sale void. R. § 750.

SEC. 845. The treasurer, on receiving the tax book for each year, shall enter upon the same in separate columns, opposite each parcel of real property or person's name, on which, or against whom any tax remains unpaid for either of the preceding years, the year or years for which such delinquent tax so remains due and unpaid. And any sale for the whole or any part of such delinquent tax, not so entered, shall be invalid.

Treasurer to collect: illegality in proceedings. R. § 751.

SEC. 846. The treasurer, after making the above entry, shall proceed to collect the taxes, and the list shall be his authority and justification against any illegality in the proceedings prior to receiving the list; and he is also authorized and required to collect, as far as practicable, the taxes remaining unpaid on the tax books of previous years.

Notice when land has been sold. C. 75, § 2, 12 G. A.

SEC. 847. Each county treasurer shall, when any person offers to pay taxes on any real estate marked "sold" notify such person that such property has been sold for taxes, and inform him for what taxes said property was sold, and at what time said sale was effected.

To certify amount required to pay taxes and redeem: compensation for.

SEC. 848. The county treasurer shall certify, in writing, the entire amount of taxes and assessments due upon any parcel of real estate, and all sales of the same for unpaid taxes or assessments shown by the books in his office, with the amount required for redemption from the same, if still redeemable, whenever he shall be requested so to do by any person having any interest in said real estate, and paid or tendered his fees for such certificate at the rate of fifty cents for the first parcel in each township, incorporated town, or city, and ten cents for each subsequent parcel in the same township, town, or city. Each description in the tax-list shall be reckoned a parcel in computing the amount of such fees.

Effect of certificate.

SEC. 849. Such certificate, with the treasurer's receipt showing the payment of all the taxes therein specified, and the auditor's certificate of redemption from the tax-sales therein mentioned, shall be conclusive evidence for all purposes and against all persons, that the parcel of real estate in said certificate and receipt described, was, at the date thereof, free and clear of all taxes and assessments, and sales for taxes or assessments, except

sales whereon the time of redemption had already expired, and the tax purchaser had received his deed.

Treasurer liable for error.

SEC. 850. For any loss resulting to the county, or any subdivision thereof, or to any tax-purchaser, or tax-payer, from an error in said certificate or receipt, the treasurer and his sureties shall be liable on his official bond.

May assess property omitted. R. § 752. C. 104, 11 G. A.

SEC. 851. The county treasurer shall assess any real property subject to taxation, which may have been omitted by the assessor, board of equalization, or county auditor, and collect taxes thereon, and in such cases he is required to note opposite the tract or lot assessed, the words, "by treasurer;" *provided*, that such assessment shall be made within two years after the tax-list shall have been delivered to him for collection, and not afterwards.

Owner to have property omitted assessed: effect of errors or omissions. R. § 753.

SEC. 852. In all cases where real property subject to taxation shall not have been assessed by the township assessor or other proper officer, the owner thereof, by himself or his agent, shall have the same properly assessed by the treasurer and to pay the taxes thereon; and no failure of the owner to have such property assessed, or to have the errors in the assessment corrected, and no irregularity, error, or omission in the assessment of such property, shall affect in any manner the legality of the taxes levied thereon, or affect any right or title to such real property which would have accrued to any party claiming or holding under and by virtue of a deed executed by the treasurer as provided for by this title, had the assessment of such property been in all respects regular and valid.

When liens between vendor and vendee. C. 110, 9 G. A.

SEC. 853. All taxes upon real estate shall, as between vendor and purchaser, become a lien upon such real estate on and after the first day of November in each year.

CHAPTER 2.

OF THE COLLECTION OF TAXES.

What receivable in judgment. § 754.

SECTION 854. Auditor's warrants shall be received by the county treasurer in full payment of state taxes, and county warrants shall be received at the treasury of the proper county for the ordinary county tax, but money only shall be received for the school tax. Highway taxes may be discharged and highway certificates of work done received as provided by law.

Paid in legal tender and national bank notes. C. 43, § 1, 10 G. A.

SEC. 855. The county treasurers are authorized and required to receive in payment of all taxes by them collected, together with the interest and principal of the school fund, treasury notes issued as legal tender by the government of the United States, and the notes issued by the banks organized under, and in accordance with, the conditions of the act of the congress of the United States entitled, "An act to provide a national currency secured by a pledge of United States stocks, and to provide for the redemption thereof," approved February 25, 1863.

SEC. 856. The treasurer of state is hereby required to receive of the several county treasurers the above mentioned notes, in payment of any claims the state may have against any county for any part of the permanent school fund, or for any taxes due the state; and the said state treasurer shall pay out said notes in redemption of outstanding auditor's warrants.

Same received by treasurer of state. Same, § 4.

DISTRESS AND SALE.

SEC. 857. 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, unless otherwise provided, at some time between the second Monday of November and the first day of February, and pay his taxes; and if any one neglects to pay them before the first day of February following the levy of the tax, the treasurer is directed to make the same by distress and sale of his personal property, not exempt from taxation, and the tax-list alone shall be sufficient warrant for such distress.

When and how made. R. § 756.

SEC. 858. When the treasurer distrains goods, and the owner shall refuse to give a good and sufficient bond for the delivery of said goods on the day of sale, he may keep them at the expense of the owner, and shall give notice of the time and place of their sale within five days after the taking, in the manner constables are required to give notice of the sale of personal property under execution; and the time of sale shall not be more than twenty days from the day of taking, but he may adjourn the sale from time to time, not exceeding five days in all, and shall adjourn at least once when there are no bidders, and in case of 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.

Notice of sale given: expenses: proceeds. R. § 757.

SEC. 859. Immediately after the taxes become delinquent, each county treasurer shall proceed to collect the same by distress and sale of the personal property of the delinquent tax-payers, in the manner prescribed in the preceding section, and for this purpose he shall, within sixty days after the taxes become delinquent, appoint one or more deputies to aid and assist him in collecting the delinquent taxes in his county. Each deputy so appointed, shall receive as a compensation for his services, and expenses, the sum of five per cent. on the amount of all delinquent taxes collected and paid over by him, which percentage he shall collect from the delinquent, together with the whole amount of delinquent taxes and interest; and in the discharge of his duties as such assistant collector, should it become necessary to make the delinquent taxes by distress and sale, he shall be entitled to receive the same compensation, in addition to the five per cent. provided for in this section, as constables are entitled to receive for the sale of property on execution. But this section shall not apply, so far as it authorizes the appointment of deputies, to any county in which township collectors of taxes are elected, and the owners or agents of land that has been sold for delinquent taxes shall

Deputies: compensation: delinquent taxes. C. 173, § 17, 9 G. A. C. 137, § 6, 12 G. A.

have the same privilege and extension of time for paying taxes as other tax payers whose land has not been so sold.

When treasurer is resisted. R. § 758.

SEC. 860. If the treasurer, or his deputy, be resisted or impeded in the execution of his office, he may require any suitable person to assist 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 of the county, and the person resisting shall be liable as in the case of resisting the sheriff in the execution of civil process.

Taxes certified to treasurer of any other county. C. 190, § 1, 12 G. A.

SEC. 861. In all cases of delinquent taxes, in any county where the person upon whose property the same were levied, shall have removed into another county of the state, leaving no property within the county where the taxes were levied, out of which the same can be made, the treasurer of the county where said taxes are delinquent, shall make out a certified abstract of said taxes as they appear upon the tax-book, and forward the same to the treasurer of the county in which the person resides, or has property, who is owing said taxes, whenever the treasurer transmitting said abstract has reason to believe that said taxes can be collected thereby.

Force and effect of. Same, § 2.

SEC. 862. The treasurer forwarding, and the one receiving, said abstract, shall each keep a record thereof, and upon the receipt and filing of said abstract in the office of the treasurer to whom the same is sent, it shall have the full force and effect of a levy of taxes in that county, and the collection of the same shall be proceeded with in the same manner provided by law for the collection of other taxes.

Penalty. Same, § 3.

SEC. 863. The officer collecting taxes so certified into another county, shall, in addition to the penalties provided by law on delinquent taxes, assess and collect the further penalty of twenty per cent. on the whole amount of such taxes, inclusive of the penalties thereon.

Return made. Same, § 4.

SEC. 864. The officer receiving said abstract, shall, whenever in his opinion the taxes are uncollectable, return the abstract with the endorsement thereon of "uncollectable," and in case said taxes are collected, the officer receiving the same shall transmit the amount to the treasurer of the county where said taxes were levied, less the penalty provided by section eight hundred and sixty-three of this chapter.

DELINQUENT—LIEN—PENALTY.

When delinquent: liens on property. R. § 754. C. 24, § 6, Ex. S. G. A.

SEC. 865. On the first day of February, the unpaid taxes, of whatever description, for the preceding year shall become delinquent and shall draw interest as hereinafter provided; and taxes upon real property are hereby made a perpetual lien thereon against all persons except the United States and this state, and taxes due from any person upon personal property, shall be a lien upon any real property owned by such person or to which he may acquire a title. The treasurer is authorized and directed to collect the delinquent taxes by the sale of any property upon which the taxes are levied, or any other personal or real property belonging to the person against whom the taxes are assessed.

SEC. 866. The treasurer shall continue to receive taxes after they become delinquent, until collected by distress and sale; but if they are not paid before the first day of March, he shall collect, in addition to the tax of each tax-payer so delinquent, as a penalty for non-payment, at the rate of one per cent. a month on the amount of the tax for the first three months, two per cent. for the second three months, and three per cent. a month thereafter. But the penalty provided by this section shall not be construed to apply, and shall not apply, upon taxes levied by order of any court to pay judgments on city or county bonded indebtedness, and upon such taxes no other penalty than the interest which such judgments draw shall be collected.

Penalty after delinquent. C. 173, § 18, 9 G. A. C. 90, 18 G. A.

MISCELLANEOUS.

SEC. 867. The treasurer shall, in all cases, make out and deliver to the tax-payer a receipt, stating the time of payment, the description and assessed value of each parcel of land, and the assessed value of personal property, the amount of each kind of tax, the interest on each, and costs, if any, giving a separate receipt for each year; and he shall make the proper entries of such payments on the books of his office. Such receipt shall be in full of the party's taxes for that year, but the treasurer shall receive the full amount of any county, state, or school tax, whenever the same is tendered, and give a separate receipt therefor.

Form of receipt: effect of. R. § 760. C. 140, § 1, 12 G. A.

State, county or school tax paid separately.

SEC. 868. The treasurer of each county shall, on or before the tenth day of each month, apportion the consolidated tax of each civil township or independent school district in his county, collected during the preceding month, among the several funds to which it belongs, according to the number of mills levied for each fund contained in said consolidated tax, and having entered the amount of tax for each fund, including other taxes collected during the preceding month, upon his cash account, he shall report the amount of each distinct tax to the county auditor, who shall charge him up with the same.

Treasurer apportion consolidated tax and make report. C. 138, § 3, 18 G. A.

SEC. 869. The county auditor shall keep full and complete accounts with the county treasurer, with each separate fund or tax by itself, in each of which accounts he shall charge him with the amounts in his hands at opening of such account, whether it be delinquent taxes, notes, cash, or other assets belonging to such fund, the amount of each tax for each year when the tax-book is received by him, and all additions to each tax or fund, whether by additional assessments, interest on delinquent taxes, amount received for peddlers' licenses or other items, and shall credit the treasurer on proper vouchers, for money disbursed, for double and erroneous assessments, including all improper and illegal assessments, the correction or remission of which causes a diminution of the tax, and for unavailable taxes, or such as have been properly and legally assessed but which there is no prospect of collecting.

Auditor to keep accounts: each fund kept separate. R. § 761. C. 173, § 7, 9 G. A.

SEC. 870. The board of supervisors shall direct the treasurer to refund to the tax-payer, any tax, or any portion of a tax, found to have been erroneously or illegally exacted or paid, with all

Treasurer to refund taxes when directed by supervisors. R. § 762.

interest and costs actually paid thereon, and in case any real property subject to taxation shall be sold for the payment of such erroneous tax, interest or costs as above mentioned, the error or irregularity in the tax may at any time be corrected as above provided, and shall not affect the validity of the sale, or the right or title conveyed by the treasurer's deed, if the property was subject to taxation for any of the purposes for which any portion of the taxes for which the land was sold was levied, and the taxes were not paid before the sale, and the property had not been redeemed from sale.

TAX SALE.

When and how made. R. § 763.

SEC. 871. On the first Monday in October in each year, the county treasurer is required to offer at public sale at his office, all lands, town lots, or other real property on which taxes of any description for the preceding year or years shall remain due and unpaid, and such sale shall be made for and in payment of the total amount of taxes, interests, and costs due and unpaid on such real property.

Notice: what to contain. R. § 764. C. 24, § 5, Ex. S. 8 G. A.

SEC. 872. The notice to be given of such sale shall state the time and place thereof, and contain a description of the several parcels of real property to be sold for the delinquent taxes of the preceding year, and such real property as has not been advertised for the taxes of previous years and on which the taxes remain due and delinquent, and the amount of taxes and amount of interest and costs against each tract, and the name of the owner, when known, or person, if any, to whom taxed.

How published. R. § 764. C. 115, § 2, 10 G. A. C. 108, 11 G. A. C. 11, 14 G. A.

SEC. 873. The county treasurer shall give such notice by causing the same to be published once in each week for three successive weeks, the last publication to be at least one week prior to the day of sale, in some newspaper printed in such county, if any such there be, or if not, then in the nearest newspaper in this state having a general circulation in such county; and also by causing a copy of such notice to be posted on the door of the county court house at least four weeks before the day of sale. But no newspaper shall be selected unless it has two hundred regular weekly subscribers, and has been regularly printed and published for at least three months preceding the fifteenth of September of said year in the same county, and has had at least twenty actual subscribers in the county wherein the delinquent property is situated, for at least three months preceding the fifteenth of September of that year. And in all cases where the treasurer may doubt the qualifications of any paper as above fixed, he shall require proof thereof by the affidavit of the publisher.

Cost of publication: notice filed. R. § 764. C. 24, § 4, Ex S, 8 G. A. C. 11, § 2, 10 G. A. C. 173, § 10, 9 G. A.

SEC. 874. The treasurer shall charge and collect, in addition to the taxes and interest, a sum not exceeding twenty cents on each tract of real property advertised for sale, which sum shall be paid into the county treasury, and the county shall pay the costs of publication, but in no case shall the county be liable for more than the amount charged to the delinquent lands for advertising, and if the treasurer cannot procure the publication of said notice for that sum, or, if for any other reason the treasurer is unable to

procure the publication of said notice, he shall post up written notices of said sale in four of the most public places in his county four weeks before sale, and notice so given shall have the same force and effect as though the same had been published in a newspaper. In that case, he shall, before making such sale, file in the office of the auditor of his county, a copy of said notice with his certificate endorsed thereon, setting forth that said notice had been posted up in four of the most public places in his county four weeks before the sale, which said certificate shall be subscribed by him and sworn to before said auditor, and shall be presumptive evidence of the facts therein stated.

Hour and place of sale. R. § 765.

SEC. 875. The county treasurer shall, at his office on the day of the sale, at the hour of ten o'clock in the forenoon, offer for sale, separately, each tract or parcel of real property advertised for sale, on which the taxes and costs shall not have been paid.

Purchaser: homestead liable. R. § 766. C. 173, § 9, 9 G. A.

SEC. 876. The person who offers to pay the amount of taxes due on any parcel of land, or town lot, for the smallest portion of the same is to be considered the purchaser, and when such purchaser shall designate the portion of any tract of land or town lot for which he will pay the whole amount of taxes assessed against any such tract or lot, the portion thus designated shall, in all cases, be considered an undivided portion. In all cases where the homestead is listed separately as a homestead, it shall be liable only for the taxes thereon.

Sale continued. R. § 767.

SEC. 877. The treasurer shall continue the sale from day to day as long as there are bidders, or until the taxes are all paid.

Re-sale. R. § 768.

SEC. 878. The person purchasing any parcel or part thereof shall forthwith pay to the treasurer the amount of taxes and costs charged thereon, and on failure to do so, the said parcel shall at once again be offered as if no such sale had been made. Such payments may be made in the same fund receivable by law in payment of taxes.

Owner may pay before sale. R. § 769.

SEC. 879. Any person owning or claiming lands, or town lots, advertised for sale as aforesaid, may pay to the county treasurer, at any time before the sale thereof, the taxes due thereon with interest, cost of advertising, and all the costs which may have accrued up to the time of such payment.

Letters and figures used: informality: effect of. R. § 770.

SEC. 880. In all advertisements for the sale of real property for taxes, and in entries required to be made by the county auditor, treasurer, or other officer, letters and figures may be used as they have been heretofore, to denote townships, ranges, sections, parts of sections, lots, blocks, date, and the amount of taxes, interest, and costs. And no irregularity or informality in the advertisement shall affect in any manner the legality of the sale, or the title to any real property conveyed by the treasurer's deed under this chapter, but, in all cases, the provisions of this chapter shall be sufficient notice to owners of the sale of their property.

Certificate of publication. R. § 771.

SEC. 881. The treasurer shall obtain a copy of said advertisement, together with a certificate of the due publication thereof, from the printer or publisher of the newspaper in which the same shall have been published, and shall file the same in the office of the county auditor, and such certificate shall be substantially in the following form:

I, A. B., publisher (or printer) of the ..... a..... newspaper printed and published in the county of..... ...and state of Iowa, do hereby certify that the foregoing notice and list were published in said newspaper once in each week for three successive weeks, and the last of which publications was made on the .....day of..... A. D. 18...., and that copies of each number of said paper in which said notice and list were published, were delivered by carrier or transmitted by mail to each of the subscribers to said paper, according to the accustomed mode of business in this office.

A..... B.....,

Publisher (or printer) of the.....

STATE OF IOWA, }
.....County. } ss.

The above certificate of publication was subscribed and sworn to before me by the above named A. B., who is personally known to me to be the identical person described therein, on the..... day of..... A. D. 18....

C..... D.....,

County Auditor .....County, Iowa.

Auditor to attend sales: duty: treasurer to keep record. R. § 772.

SEC. 882. The county auditor shall attend all sales of real property for taxes made by the treasurer, and make a record thereof in a book to be kept by him for that purpose, therein describing the several parcels of real property on which the taxes and costs were paid by the purchaser, as they are described in the list or advertisement on file in his office, stating in separate columns the amount as obtained from the treasurer's tax-list, of each kind of tax, interest, and costs for each tract or lot, how much and what part of each tract or lot was sold, to whom sold, and date of sale. The treasurer shall also keep a book of sales in which, at the time of sale, he shall make the same records. He shall also note in the tax-list, opposite the description of the property sold, the fact and date of such sale.

Sale adjourned. R. § 773.

SEC. 883. When all the parcels of real property advertised for sale shall have been offered, and a portion thereof shall remain unsold for want of bidders, the treasurer shall adjourn the sale to some day not exceeding two months from the time of adjournment, due notice of which day shall be given at the time of adjournment, and also by keeping a notice thereof posted in a conspicuous place in the treasurer's office; but no further advertisement shall be necessary. On the day fixed for the re-opening of the sale, the same proceedings shall be had as provided hereby for the sale commencing on the first Monday of October. And further adjournments shall be made from time to time not exceeding two months, and the sales shall be thus continued until the next regular annual sale, or until all the taxes shall have been paid.

Penalty on auditor and treasurer for failure of duty. R. § 774.

SEC. 884. If any treasurer or auditor shall fail to attend any sale of lands as required by this chapter, either in person or by competent deputy, he shall be liable to a fine of not less than

fifty nor more than three hundred dollars, to be recovered by an action in the district court against the treasurer or auditor, as the case may be, and his bondsmen. And if such officer or deputy shall sell, or assist in selling, any real property, knowing the same to be not subject to taxation, or that the taxes for which the same is sold have been paid, or shall knowingly and wilfully sell, or assist in selling, any real property for payment of taxes to defraud the owner of such real property, or shall knowingly and wilfully execute a deed for property so sold, he shall be liable to a fine of not less than one thousand nor more than three thousand dollars, or to imprisonment not exceeding one year, or to both fine and imprisonment, and to pay the injured party all damages sustained by any such wrongful act, and all such sales shall be void.

Same. R. § 775.

SEC. 885. If any county treasurer or auditor shall hereafter be, either directly or indirectly, concerned in the purchase of any real property sold for the payment of taxes, he shall be liable to a penalty of not more than one thousand dollars, to be recovered in an action in the district court, brought in the name of the county against such treasurer or auditor, as the case may be, and his bondsmen; and all such sales shall be void.

Sale at any other time. R. 776.

SEC. 886. If, from neglect of officers to make returns, or from any other good cause, real property cannot be duly advertised and offered for sale on the first Monday of October, the treasurer shall make the sale on the first Monday of the next succeeding months in which it can be made, allowing time for the publication as provided in this chapter.

CERTIFICATE OF PURCHASE.

How made: what contain. R. § 777.

SEC. 887. The county treasurer shall make out, sign, and deliver to the purchaser of any real property sold for the payment of taxes as aforesaid, a certificate of purchase, describing the property on which the taxes and costs were paid by the purchaser, as the same was described in the records of sales, and also how much and what part of each tract or lot was sold, and stating the amount of each kind of tax, interest, and costs for each tract or lot for which the same was sold, as described in the records of sales, and that payment had been made therefor. If any person shall become the purchaser of more than one parcel of property, he may have the whole included in one certificate, but each parcel shall be separately described.

Certificate assignable. R. § 778. C. 173, § 12, 9. G. A.

SEC. 888. The certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee, or his legal representative, all the right and title of the original purchaser; and the statement in the treasurer's deed of the fact of the assignment shall be presumptive evidence of such assignment. In case said certificate is assigned, then the assignment of said certificate shall be placed on record in the office of the county treasurer in the register tax sales.

When purchaser pays subsequent taxes. C. 100, § 1, 10 G. A.

SEC. 889. The county treasurer shall also make out, sign, and deliver to the purchaser of any real property sold for taxes aforesaid, duplicate receipts for any taxes, interest, and costs, paid by said purchaser, after the date of said purchase for any subsequent

year or years, one of which receipts said purchaser shall present to the county auditor, to be by him filed in his office, and a memorandum thereof entered on the register of sales. And if he neglect to file such duplicate receipt with the auditor before the redemption, such tax shall not be a lien upon the land, and the person paying such tax shall not be entitled to recover the same of the owner of such real estate.

REDEMPTION.

How effected. C. 173, § 13, 9 G. A. C. 90, 13 G. A.

SEC. 890. Real property, hereafter sold under the provisions of this chapter, may be redeemed at any time before the right of redemption is cut off, as herein after provided, by the payment to the county auditor of the proper county, to be held by him subject to the order of the purchaser, of the amount for which the same was sold and twenty per centum of such amount immediately added as a penalty, with ten per cent. interest per annum on the whole amount thus made from the day of sale, and also the amount of all taxes, interest, and costs paid for any subsequent year or years, and a similar penalty of twenty per centum added as before on the amount of the payment for each subsequent year, with ten per cent. interest per annum on the whole of such amount or amounts from the day or days of payment, unless such subsequent taxes shall have been paid by the person for whose benefit the redemption is made, which fact may be shown by the treasurer's receipt; and provided further, that such penalty for the nonpayment of the taxes of any such subsequent year or years shall not attach, unless such subsequent tax or taxes shall have remained unpaid until the first day of March after they become due, so that they have become delinquent, nor shall any of said penalties apply in the cases mentioned in the last clause of section eight hundred and sixty-six of this chapter.

Certificate of redemption. R. § 780.

SEC. 891. The county auditor shall, upon application of any party to redeem any real property sold under the provisions of this chapter, and being satisfied that such party has a right to redeem the same, and upon the payment of the proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate of sale, the date of the redemption, the amount paid, and by whom redeemed, and he shall make the proper entries in the book of sales in his office, and shall immediately give notice of such redemption to the county treasurer. Such certificate of redemption shall then be presented to the treasurer, who shall countersign the same and make the proper entries in the books of his office, and no certificate of redemption shall be held as evidence of such redemption without such signature of the treasurer.

Countersigned by treasurer.

Minors and lunatics. C. 173, § 14, 9 G. A. C. 124, § 2, 11 G. A.

SEC. 892. If real property of any minor or lunatic is sold for taxes, the same may be redeemed at any time within one year after such disability is removed, in the manner specified in the following section, or such redemption may be made by the guardian or legal representative under section eight hundred and ninety, at any time before the delivery of the deed.

SEC. 893. Any person entitled to redeem lands sold for taxes after the delivery of the deed, shall redeem the same by an equitable action in a court of record, in which all persons claiming an interest in the land derived from the tax sale, as shown by the record, shall be made defendants, and the courts shall determine the rights, claims, and interest of the several parties, including liens for taxes and claims for improvements made on the land by the person claiming under the tax title. And no person shall be allowed to redeem land sold for taxes in any other manner after the service of the notice provided for by the next section, and the execution and delivery of the treasurer's deed.

How redeemed after deed made. C. 124, § 1, 11 G. A. C. 124, 14 G. A.

EXECUTION OF DEED—NOTICE GIVEN.

SEC. 894. After the expiration of two years and nine months after the date of sale of the land for taxes, the lawful holder of the certificate of purchase may cause to be served upon the person in possession of such land or town lot, and also upon the person in whose name the same is taxed, if such person resides in the county where the land is situated, in the manner provided by law for the service of original notices, a notice signed by him, his agent, or attorney, stating the date of sale, the description of the land or town lot sold, the name of the purchaser, and that the right of redemption will expire and a deed for said land be made, unless redemption from such sale be made within ninety days from the completed service thereof. Service may be made upon non-residents of the county by publishing the same three times in some newspaper printed in said county, and if no newspaper is printed in said county, then in the nearest newspaper published in this state. But any such non-resident may file with the treasurer of the county a written appointment of some resident of the county where his lands or lots are situated as agent upon whom service shall be made, and in such case, personal service of said notice shall be made upon said agent. Service shall be deemed completed when an affidavit of the service of said notice, and of the particular mode thereof, duly signed and verified by the holder of the certificate of purchase, his agent, or attorney, shall have been filed with the treasurer authorized to execute the tax-deed. Such affidavit shall be filed by said treasurer, and entered upon the records of his office, and said record or affidavit shall be presumptive evidence of the completed service of notice herein required, and, until ninety days after the service of said notice, the right of redemption from such sale shall not expire. Any person swearing falsely to any fact or statement contained in said affidavit, shall be deemed guilty of perjury and punished accordingly. The cost of serving said notice, whether by publication or otherwise, together with the cost of the affidavit, shall be added to the redemption money.

Before deed is made notice to be given: what contain: how served. C. 124, 14 G. A.

SEC. 895. Immediately after the expiration of ninety days from the date of service of the written notice hereinbefore provided, the treasurer then in office shall make out a deed for each lot or parcel of land sold and remaining unredeemed, and deliver

When deed shall be made. R. § § 781, 782.

the same to the purchaser upon the return of the certificate of purchase. The treasurer shall demand twenty-five 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, if desired by the purchaser.

Form of. R. § 793.

SEC. 896. Deeds executed by the treasurer shall be substantially in the following form:

Know all men by these presents, that whereas the following described real property, viz: (here follows the description) situated in the county of....., and State of Iowa, was subject to taxation for the year (or years) A. D.....; and whereas the taxes assessed upon said real property for the year (or years) aforesaid remained due and unpaid at the date of the sale hereinafter named; and whereas, the treasurer of said county did, on the ..... day of..... A. D. 18...., by virtue of the authority in him vested by law, at (an adjournment of) the sale begun and publicly held on the first Monday of.....A. D. 18...., expose to public sale at the office of the county treasurer in the county aforesaid, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described, for the payment of the taxes, interest, and costs then due and remaining unpaid on said property; and whereas, at the time and place aforesaid, A. B. of the county of..... and state of....., having offered to pay the sum of.....dollars and..... cents, being the whole amount of taxes, interest, and costs then due and remaining unpaid on said property, for (here follows the description of the property sold) which was the least quantity bid for; and payment of said sum having been by him made to said treasurer, said property was stricken off to him at that price; and whereas, the said A. B. did, on the ..... day of..... A. D. 18...., duly assign the certificate of the sale of the property as aforesaid and all his right, title, and interest to said property to E. F., of the county of.....and state of .....; and whereas, by the affidavit of....., filed in said treasurer's office on the.....day of.....A. D. ..... it appears that due notice has been given, more than ninety days before the execution of these presents, to ..... and ..... of the expiration of the time of redemption allowed by law; and whereas, three years have elapsed since the date of said sale, and said property has not been redeemed therefrom as provided for by law.

Now, therefore, I, C. D., treasurer of the county aforesaid, for and in consideration of said sum to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said A. B. [or E. F.] his heirs and assigns, the real property last hereinbefore described to have and to hold unto him the said A. B. [or E. F.] his heirs and assigns forever: subject, however, to all the rights of redemption provided by law. In witness whereof I, C. D., treasurer as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name on this.....day of.....18..

STATE OF IOWA, }
.....COUNTY. } ss.

I hereby certify that before me.....in and for said county, personally appeared the above named C. D., treasurer of said county, personally known to me to be the treasurer of said county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of said county, and acknowledged the execution of the same to be his voluntary act and deed as treasurer of said county, for the purposes therein expressed.

Given under my hand [and seal] this.....day of.....A. D., 18..

.....

EFFECT OF DEED.

SEC. 897. The deed shall be signed by the treasurer in his official capacity, and acknowledged by him before some officer authorized to take acknowledgments of deeds; and, when substantially thus executed and recorded in the proper record of titles to real estate, shall vest in the purchaser all the right, title, interest, and estate of the former owner in and to the land conveyed, and also all the right, title, interest, and claim of the state and county thereto, and shall be presumptive evidence in all the courts of this state, in all controversies and suits in relation to the rights of the purchaser, his heirs or assigns, to the land thereby conveyed, of the following facts:

Vests title in purchaser. R. § 784.

Is presumptive evidence.

1. That the real property conveyed was subject to taxation for the year or years stated in the deed;
2. That the taxes were not paid at any time before the sale;
3. That the real property conveyed had not been redeemed from the sale at the date of the deed;
4. That the property had been listed and assessed;
5. That the taxes were levied according to law;
6. That the property was duly advertised for sale;
7. That the property was sold for taxes as stated in the deed.

Is conclusive.

And it shall be conclusive evidence of the following facts:

1. That the manner in which the listing, assessment, levy, notice, and sale were conducted was in all respects as the law directed;
2. That the grantee named in the deed was the purchaser;
3. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed, or purporting to be conveyed, by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive, and that all things whatsoever required by law to make a good and valid sale, and to vest the title in the purchaser were done, except in regard to the points named in this section, wherein the deed shall be presumptive evidence only.

What must be proved to defeat title.

And in all controversies and suits involving the title to real property claimed and held under and by virtue of a deed executed substantially as aforesaid by the treasurer, the person claiming title adverse to the title conveyed by such deed, shall be required to prove, in order to defeat the said title, either that the said real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of this chapter, and that such redemption was had or made for the use and benefit of persons having the right of redemption under the laws of this state, or, that there had been an entire omission to list or assess the property, or to levy the taxes, or to give notice of the sale, or to sell the property; but no person shall be permitted to question the title acquired by a treasurer's deed without first showing that he, or the person under whom he claims title, had title to the property at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all taxes due upon the property have been paid by such person, or the person under whom he claims title as aforesaid; *provided*, that in any case where a person had paid his taxes, and through mistake in the entry made in the treasurer's books or in the receipt, the land upon which the taxes were paid was afterwards sold, the treasurer's deed shall not convey the title; *provided further*, that in all cases where the owner of lands sold for taxes shall resist the validity of such tax title, such owner may prove fraud committed by the officer selling the same or in the purchaser to defeat the same, and if fraud is so established such sale and title shall be void.

In case of mistake or fraud.

Previous sales not affected by code.

SEC. 898. The provisions of this title shall not affect sales heretofore made, or tax deeds given in pursuance of sales made before the taking effect of this code.

SALES WRONGFULLY MADE.

County to hold purchaser harmless. R. § 785.

SEC. 899. When, by mistake or wrongful act of the treasurer, land has been sold on which no tax was due at the time, or whenever land is sold in consequence of error in describing such land in the tax receipt, the county is to hold the purchaser harmless by paying him the amount of principal and interest and costs to which he would have been entitled had the land been rightfully sold, and the treasurer and his bondsmen will be liable to the county to the amount of his official bond; or the purchaser, or his assignee, may recover directly of the treasurer, in an action brought to recover the same in any court having jurisdiction of the amount, and judgment shall be against him and his bondsmen; but the treasurer or his bondsmen shall be liable only for his own or his deputies' acts.

Interest acquired by purchaser in school or university land. R. § 810, 811.

SEC. 900. Whenever any school or university land, bought on a credit, is sold for taxes, the purchaser at such tax sale shall only acquire the interest of the original purchaser in such lands, and no sale of any such lands for taxes shall prejudice the rights of the state or university therein, or preclude the recovery of the purchase money or interest due thereon; and in all cases where real estate is mortgaged or otherwise encumbered to the school or uni-

versity fund, the interest of the person who holds the fee shall alone be sold for taxes, and in no case shall the lien or interest of the state be affected by any sale of such encumbered real estate made for taxes.

When land not subject to taxation is sold. R. § 789.

SEC. 901. Whenever it shall be made to appear to the satisfaction of the county treasurer, either before the execution of a deed for real property sold for taxes, or if the deed be returned by the purchaser, that any tract or lot was sold which was not subject to taxation, or upon which the taxes had been paid previous to the sale, he shall make an entry opposite such tract or lot on the record of sales, that the same was erroneously sold, and such entry shall be evidence of the fact therein stated. And in such cases the purchase money shall be refunded to the purchaser as provided by this chapter.

LIMITATION OF ACTIONS.

Action must be brought within five years after recording deed: exceptions. R. § 790.

SEC. 902. No action for the recovery of real property sold for the non-payment of taxes shall lie, unless the same be brought within five years after the treasurer's deed is executed and recorded as above provided; *provided*, that where the owner of such real property sold as aforesaid, shall, at the time of such sale be a minor or insane, or convict in the penitentiary, five years after such disability shall be removed shall be allowed such person, his heirs, or legal representatives to bring their action.

Acts of officers in fact valid. R. § 786.

SEC. 903. In all suits and controversies involving the question of title to real property held under and by virtue of a treasurer's deed, all acts of assessors, treasurers, auditors, supervisors, and other officers *de facto* shall be deemed and construed to be of the same validity as acts of officers *de jure*.

When assessed to wrong person. R. § 787.

SEC. 904. No sale of real property for taxes shall be considered invalid on account of the same having been charged in any other name than that of the rightful owner, if the said property be in other respects sufficiently described.

Certified copies of books evidence. R. § 788.

SEC. 905. The books and records belonging to the offices of the county auditor and county treasurer, or copies thereof, properly certified, shall be deemed sufficient evidence to prove the sale of any real property for taxes, the redemption thereof, or the payment of taxes thereon.

PEDDLERS.

Amount of tax. R. § 791.

SEC. 906. A tax for state purposes shall be levied upon peddlers of merchandise not manufactured in this state, for a license to peddle throughout the state for one year as follows: upon each peddler of watches or jewelry, or either of them, thirty dollars; upon each peddler of clocks, fifty dollars; upon each peddler of dry goods, fancy articles, notions, or patent medicines, as follows: upon each peddler thereof, ten dollars; upon each peddler who pursues his occupation with a vehicle drawn by one animal, twenty-five dollars; if drawn by two and less than four, fifty dollars; if drawn by four or more animals, seventy-five dollars.

License: how obtained: penalty for selling without. R. § 782.

SEC. 907. Such license may be obtained from the auditor of the county upon paying the proper tax to the treasurer thereof, and may issue for a less period than one year for the proportionate amount of tax, and all such licenses shall state the date of the expiration of the same; and any person so peddling without a license, or after the expiration of his license, is guilty of a misdemeanor, and the person actually peddling is liable, whether he be the owner of the goods or not. Upon conviction of peddling without a license as aforesaid, the offender shall forfeit and pay to the county treasurer, in addition to the fine imposed upon him for the misdemeanor, double the amount of license for one year as fixed by section nine hundred and six of this chapter.

CHAPTER 3.

PROVISIONS FOR THE SECURITY OF THE REVENUE.

County responsible for state tax. R. § 793.

SEC. 908. Each county is responsible to the state for the full amount of tax levied for state purposes, excepting such amounts as are certified to be unavailable, double, or erroneous assessments, as hereinafter provided.

When treasurer is defaulter. R. § 794.

SEC. 909. If any county treasurer prove to be a defaulter to any amount of state revenue, such amount shall be made up to the state within the next three coming years by additional levies, in such manner as to annual amounts as the board of supervisors may direct. In such cases the county can have recourse to the official bond of the treasurer for indemnity.

Interest on warrants: how receipted. R. § 795.

SEC. 910. When interest is due and allowed by the treasurer of any county, or the state treasurer, on the redemption of auditor's warrants, or county warrants, the same shall be receipted on the warrants by the holder of the same, with the date of the payment, and no interest shall be allowed by the auditor of state or board of supervisors except such as is thus receipted.

Penalty for discounting warrants. R. § 796.

SEC. 911. If the state treasurer, or any county treasurer, discount auditor's warrants at less than the amount due thereon, either directly or indirectly, or through third persons, they shall be liable to a fine not exceeding one thousand dollars, to be prosecuted as other fines.

Penalty for loaning public money. R. § 797.

SEC. 812. County treasurers shall be liable to a like fine for loaning out, or in any manner using for private purposes, state or county funds in their hands, and the state treasurer shall be liable to a fine of not more than ten thousand dollars for a like misdemeanor, to be prosecuted by the attorney-general in the name of the state.

PAYMENTS BY COUNTY TREASURER.

Supervisors to settle with treasurer. R. § 798.

SEC. 913. At their regular meetings in January and June of each year, the board of supervisors shall make a full and complete settlement with the county treasurer, and they shall make and

certify to the auditor of state, all credits to the treasurer for double or erroneous assessments, and unavailable taxes, also all dues for state revenue, interest, or delinquent taxes, sales of land, peddler's licenses, and other dues, if any; also the amounts collected for these several items, and revenues still delinquent, each year to itself. Said reports shall be forwarded by mail.

When, and how payments made to treasurer of state: penalty for failure. R. § 799.

SEC. 914. The treasurer of each county shall, on or before the fifteenth day of each month, prepare a sworn statement of the amount of money in his hands on the first day of that month belonging to the state treasury, and forward the same by mail to the auditor of state, and he shall, each year, unless otherwise directed by the state auditor, pay into the state treasury, on or before the fifteenth day of March, all the money due the state remaining in his hands on the first day of March, and on or before the fifteenth day of November, all the money due the state remaining in his hands on the first day of November; he shall also, at any time when directed by the auditor of state, forthwith pay into the state treasury, or to the treasurer of any county, or to any bank incorporated under the laws of this state, or any national bank in this state, any or all the money due the state and remaining in his hands. In case the treasurer of any county shall fail to prepare and forward the statement required in this section, he shall forfeit and pay for each and every failure a sum not less than one hundred nor more than five hundred dollars, to be recovered in an action brought in the name of the state auditor, against him and his bondsmen, in any court of record.

SECURITY OF THE REVENUE.

When payments made through banks. R § 800. C. 6, § 1, 11 G. A.

SEC. 915. The state auditor may require any county treasurer to make his payment through any other county treasurer, or through any bank chartered by the laws of this state, or any national bank in this state; but no charge shall be made against the state by said bank on said amounts to exceed one-fourth of one per cent. for transportation; and any payments made in pursuance of such requirements by the auditor shall be a release to the county of its liabilities to the state, to the amount so paid.

Duty of auditor of state and supervisors. R. § 801.

SEC. 916. The state auditor shall make and transmit to each county auditor, on the first day of May of each year, a statement of the county treasurer's account with the state treasurer, which account shall be submitted by said auditor to the board of supervisors at their next meeting, and if they find the same to be incorrect in any particular, they shall forthwith certify the facts in relation to the same to the auditor of state.

Treasurer to settle with supervisors and deliver to successor all public property. R. § 802.

SEC. 917. When a county treasurer goes out of office, he shall make a full and complete settlement with the board of supervisors, and deliver up all books, papers, moneys, and all other property appertaining to the office, to his successor, taking his receipt therefor. The board of supervisors shall make a statement, so far as state dues are concerned, to the auditor of state, showing all charges against the treasurer during his term of office, and all credits made, the delinquent taxes and other unfinished business charged over to his successor, and the amout of money

paid over to his successor, showing to what year and to what account the amount so paid over belongs. They shall also see that the books of the treasurer are correctly balanced before passing into the possession and control of the treasurer elect.

State treasurer keep funds separate: state and county to account. R. § 804.

SEC. 918. The state treasurer shall keep each distinct fund coming into his possession as public money, in a separate apartment of his safe, and, at each quarterly settlement with the state auditor, he shall count each fund in the presence of the auditor to see if the same agrees with the balance found on the books. The total amount acknowledged to belong to each fund shall be exhibited before the count. County treasurers shall account with such persons as the board of supervisors may direct in like manner, and a report of such accounting shall be made to the board at their next meeting, by the person so appointed by them.

Penalty for failure to perform duty. R. §§ 744, 749, 805. C. 75, § 8, 12 G. A.

SEC. 919. If any county auditor, or county treasurer, or other officer shall neglect or refuse to perform any act or duty specifically required of him by any provision of this title, such officer shall be deemed guilty of a misdemeanor and indicted therefor; and, being found guilty, shall be fined in any sum not exceeding one thousand dollars, for the payment whereof his bondsmen shall also be liable; and he and his bondsmen shall also be liable to an action on his official bond for the damages sustained by any person through such neglect or refusal.

TITLE VII.

OF HIGHWAYS, FERRIES, AND BRIDGES.

CHAPTER 1.

OF ESTABLISHING HIGHWAYS.

SECTION 920. The board of supervisors 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. Jurisdiction over. R. § 819.

SEC. 921. Highways hereafter established must be sixty-six feet in width, unless otherwise directed; but the board of supervisors may, for good reasons, fix a different width, not less than forty feet, and they may be increased or diminished within the limits aforesaid, altered in direction, or discontinued, by pursuing substantially the steps herein prescribed for opening a new highway. Width. R. § § 820, 821.

SEC. 922. Any person desiring the establishment, vacation, or alteration of a highway, shall file in the auditor's office of the proper county, a petition in substance as follows: To the board of supervisors of..... county. The undersigned asks that a highway, commencing at....., and running thence.....and terminating at..... be established, vacated, or altered (as the case may be.) Petition.

SEC. 923. Before filing such petition the auditor shall require the petitioner to file in his office a bond, with sureties to be approved by such auditor, conditioned that all expenses growing out of the application will be paid by the obligors in case the contemplated highway is not finally established, altered, or vacated, as asked in the petition. Bond. R. § 826.

SEC. 924. If satisfied that the foregoing prerequisites have been complied with, the auditor shall appoint some suitable and disinterested elector of the county a commissioner to examine into the expediency of the proposed highway, alteration, or vacation thereof, and report accordingly. Auditor appoint commissioner. R. § 828.

DUTY OF COMMISSIONER.

SEC. 925. The commissioner is not confined to the precise matter of the petition, but may inquire and determine whether that or any highway in the vicinity, answering the same purpose and in substance the same, be required; but such highway must Not confined to matter of petition. R. § 830. C. 47, § 1, 12 G. A.

not be established through any burying ground which is exempt from execution; nor through any garden, orchard, or ornamental ground contiguous to any dwelling house, so as to cause the removal of any building without the consent of the owner.

Convenience considered. R. § 831.

SEC. 926. In forming his judgment, he must take into consideration both the public and private convenience, and also the expense of the proposed highway.

Report. R § 832.

SEC. 927. After a general examination, if he shall not be in favor of establishing the proposed highway, he will so report, and no further proceedings shall be had thereon.

To lay out highway. R. § 833.

SEC. 928. If he deems such establishment expedient, he may proceed at once to lay out the highway 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.

Survey made. R. § 834.

SEC. 929. If the precise location of the highway cannot be otherwise given, he must cause the line of the highway to be accurately surveyed and plainly marked out.

Commissioner sworn R. § 835. C. 27, 14 G. A.

SEC. 930. Any commissioner, other than the county surveyor, must be sworn to faithfully and impartially discharge his duty as such commissioner, and, after being thus qualified, he shall have power to swear the assistants employed to a faithful and impartial performance of their respective duties in laying out the highway described in his commission.

Mile posts and stakes set up. R. § 836.

SEC. 931. 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 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.

Bearing trees: monuments. R. § 837.

SEC. 932. Bearing trees must, when convenient, be established at each angle and mile post, and the position of the highway 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.

Plat and field notes. R. § 838.

SEC. 933. A correct plat of the highway, together with a copy of the field notes of the surveyor, if one has been employed, must be filed as part of the commissioner's report.

Report: day fixed for claiming damages. R. § § 840, 841.

SEC. 934. Within thirty days from the day of his appointment, the commissioner must file his report in the auditor's office, and if it be in favor of the establishment of the highway, the auditor must appoint a day, not less than sixty nor more than ninety days distant, when the matter will be acted upon; on or before which day, all objections to the establishment of the highway and claims for damages by reason of the establishment thereof, must be filed with the auditor.

Auditor fix day for commissioner to begin. R. § 839.

SEC. 935. The time for the commissioner to commence the examination shall be fixed by the auditor, and if he fails to so commence, or to report as prescribed in the preceding section, the auditor may fix another day or extend the time for making such report, or may appoint another commissioner.

NOTICE—HIGHWAY ESTABLISHED.

SEC. 936. Within twenty days after the day is fixed by the auditor as above provided, a notice shall be served on each owner or occupier of land lying in the proposed highway, or abutting thereon, as shown by the transfer books in the auditor's office, who resides in the county, in the manner provided for the service of original notice in actions at law; and such notice shall be published for four weeks in some newspaper printed in the county, if any such there be, which notice may be in the following form: Notice served on each land owner or published

To all whom it may concern: The commissioner appointed to locate, vacate, or alter (as the case may be) a highway commencing at ..... in ..... county, running thence (describe in general terms all the points as in the commissioner's report,) and terminating at ..... has reported in favor of the establishment, vacation, or alteration therof, and all objections thereto or claims for damages must be filed in the auditor's office on or before noon of the ..... day of ..... A. D. ...., or such highway will be established, vacated, or altered without reference thereto.

I.... R...., County Auditor.

SEC. 937. If no objections or claims for damages are filed on or before noon of the day fixed for filing the same, and the auditor is satisfied the provisions of the preceding section have been complied with, he shall proceed to establish such highway as recommended by the commissioner upon the payment of costs. If such costs are not paid within ten days, the auditor shall report his action in the premises to the board of supervisors at their next session, who may affirm the action of the auditor or establish such highway at the expense of the county. Auditor may establish highway.

SEC. 938. If the auditor is satisfied the notice has not been served and published as provided in section nine hundred and thirty-six of this chapter, he shall appoint another day, and cause such notice to be served or published as provided in said section, and thereafter proceed as provided in the preceding section. New notice given.

SEC. 939. If objections to the establishment of the highway or claims for damages are filed, the further hearing of the application shall stand continued to the next session of the board of supervisors, held after the commissioners appointed to assess damages have reported. When referred to supervisors.

DAMAGES CLAIMED.

SEC. 940. When claims for damages are filed, and on the day appointed for filing the same, the auditor must appoint three suitable and disinterested electors of the county as appraisers to view the ground on a day fixed by him, and report upon the amount of damages sustained by the claimants; such report shall be made and filed in the auditor's office within thirty days after the day they are appointed. Appraisers appointed. R. § § 843, 847. C. 141, 9 G. A. C. 160, § 2, 12 G. A.

SEC. 941. All claims for damages and objections to the establishment, vacation, or alteration of the highway must be in writing, In writing. R. § 842.

and the statements in the application for damages shall be considered denied in all the subsequent proceedings.

Appraisers notified. R. § 844.

SEC. 942. The auditor shall cause notice of their appointment to be given to each of the appraisers, fixing the hour at which they are to meet at the office of the auditor, or of some justice of the peace therein named.

Vacancies filled. R. § § 845, 846.

SEC. 943. If the appraisers are not all present within one hour of the time thus fixed, the auditor or justice, as the case may be, shall fill the vacancy by the appointment of others. The appraisers must be sworn to discharge their duty faithfully and impartially.

Time: final action postponed. R. § 848.

SEC. 944. Should the report not be filed in time, or should any other good cause for delay exist, the auditor may postpone the time for final action on the subject, and may, if expedient, appoint other commissioners.

Costs. R. § 850.

SEC. 945. Should no damages be awarded the applicant therefor, the whole of the costs growing out of his application shall be paid by him.

FINAL ACTION.

Testimony received: establish conditionally. R. § 851.

SEC. 946. When the time for final action arrives, the board of supervisors may hear testimony, receive petitions for and remonstrances against the establishment, vacation, or alteration, as the case may be, of such highway, and may establish, vacate, or alter, or refuse to do so, as in their judgment, founded on the testimony, the public good may require. Said board may increase or diminish the damages allowed by the appraisers, and may make such establishment, vacation, or alteration, conditioned upon the payment in whole or in part of the damages awarded, or expenses in relation thereto.

Unconditional order. R. § 852.

SEC. 947. In the latter case, a day shall be fixed for the performance of the condition, which must be before the next session of the board, and if the same is not performed by the day thus fixed, the board shall, at such session, make some final and unconditional order in the premises.

Order entered of record.

SEC. 948. Any order made or action taken in the establishment of a highway, shall be entered in the highway record, distinguishing between those made or taken by the auditor, and those by the board of supervisors.

Plat and field notes recorded. R. § 855.

SEC. 949. After the highway has been finally established, the plat and field notes must be recorded by the auditor, and the supervisors of highways shall be directed by the auditor to have the same opened and worked, subject to the provisions of the next section.

Fences. R. § § 856, 857.

SEC. 950. A reasonable time must be allowed to enable the owners of land to erect the necessary fences adjoining the new highway; and when crops have been planted or sowed before the highway is finally established, the opening thereof shall be delayed until the crop is harvested.

Minors: insane persons. R. § 860.

SEC. 951. The rights and interests of minors and insane persons, in relation to the establishment, vacation, and alteration of highways, and all matters connected therewith, are under the control of their guardians.

SEC. 952. All public streets of towns or villages not incorporated, are a part of the highway; and all supervisors of highways, or persons having charge of the same, in the respective districts of such towns or villages, shall work the same as provided by law. Streets in villages. C. 143, 12 G. A.

SEC. 953. Such portions of all highways as lie within the limits of any city or incorporated town, shall conform to the direction and grade and be subject to all regulations of other streets in such town or city. Cities or incorporated towns. R. § 916.

SEC. 954. Highways or streets shall not be established or opened across the lands reserved by the state for its various institutions lying adjacent thereto, without the express consent of the general assembly. Lands of state institutions. C. 110, 12 G. A.

IN TWO OR MORE COUNTIES.

SEC. 955. The establishment, vacation, or alteration of a highway, either along or across a county line, may be effected by the concurrent action of the respective boards of supervisors in the mode aboved prescribed; except that the auditor of neither county can make the final order in such case. The commissioners in such cases must act in concert, and the highway will not be deemed established, vacated, or altered in either county until it is so in both. Supervisors to act in concert. R. § 861.

SEC. 956. Hereafter there shall be no distinction between highways heretofore known as state roads and county roads; both are alike subject to the provisions of this chapter. Highways established by the concurrent action of the board of supervisors of two or more counties, can only be discontinued by the concurrent action of the board of supervisors of the several counties in which the same may be situated, but such highways shall be treated in all other respects as provided in this title. Distinctions abolished: concurrent action required. R. § 879.

CONSENT HIGHWAYS.

SEC. 957. Highways may be established without the appointment of a commissioner, provided the written consent of all the owners of the land to be used for that purpose be first filed in the auditor's office; and if it is shown to the satisfaction of the board of supervisors, that the proposed highway is of sufficient public importance to be opened and worked by the public, they shall make an order establishing the same, from which time only shall it be regarded as a highway. How established. R. § 858.

SEC. 958. If a survey for the establishment of the highway named in the preceding section is necessary, the board of supervisors, before ordering such survey, may require the parties asking for the establishment of such highway to pay, or secure the payment of, the expenses of such survey. When survey necessary. R. § 859.

APPEALS.

SEC. 959. Any applicant for damages claimed to be caused by the establishment of any highway, may appeal from the final decision of the board of supervisors to the circuit court of the From what taken: how perfected. R. § 873.

county in which the land lies; but notice of such appeal must be served on the county auditor within twenty days after the decision is made. If the highway has been established on condition that the petitioners therefor pay the damages, such notice shall be served on the four persons first named in the petition for the highway, if there are that many who reside in the county.

Same. R. § 874.

SEC. 960. An appeal may also be taken by the petitioner for the highway as to amount of damages, if the establishment of the highway has been made conditional upon his paying the damages, by his serving notice of such appeal on the county auditor and applicant for damages within twenty days after the decision of the board of supervisors, and filing a bond in the office of such auditor, with sureties to be approved by him, conditioned for the payment of all costs occasioned by such appeal, unless the appellant fails to recover a more favorable judgment in the circuit court than was allowed him by such board.

Transcript filed. R. § 873.

SEC. 961. In the cases contemplated in the two preceding sections, the auditor shall, within ten days after the notices aforesaid are served and filed in his office, make out and file in the office of the clerk of said court, a transcript of the papers on file in his office and proceedings of the board in relation to such damages. The claimant for damages shall be plaintiff, and the petitioner for the highway defendant, except the damages have been ordered paid, out of the county treasury, in which case the county shall be defendant.

Proceedings in circuit court.

SEC. 962. The amount of damages the claimant is entitled to, shall be ascertained by said circuit court in the same manner as in actions by ordinary proceedings, and the amount so ascertained shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk to the board of supervisors, who shall, thereafter, proceed as if such amount had been by them allowed the claimant as damages.

Judgment for costs. R. § 873.

SEC. 963. If the appeal has been taken by the claimant, the petitioner for the highway, or the county, must pay the costs occasioned by the appeal; but the county shall pay only when the damages have been ordered to be paid out of the county treasury. If the petitioner for the highway appeals, he must pay the costs, unless the claimant recovers a less amount than was allowed him by the board, in which case the costs shall be paid by the claimant. Judgment shall be rendered in accordance with the foregoing provisions.

LOST FIELD NOTES.

Re-survey ordered. R. § 913.

SEC. 964. When by reason of the loss or destruction of the field notes of the original survey, or in cases of defective surveys or record, or in cases of such numerous alterations of any highway since the original survey, that its location cannot be accurately defined by the papers on file in the proper office, the board of supervisors of the proper county may, if they deem it necessary, cause such highway to be re-surveyed, platted, and recorded as hereinafter provided.

SEC. 965. A copy of the field notes, together with a plat of any highway surveyed under the provisions of the preceding section, shall be filed in the office of the county auditor, and, thereupon, he shall give public notice by publication in some newspaper published within the county, or, if no paper is published in his county, by posting such notice in five of the most public places in the vicinity of such survey, that such survey has been made and that at some term of the board of supervisors, not less than twenty days from the publication, they will, unless good cause be shown against so doing, approve of such survey and plat and order them to be recorded as in cases of the original establishment of a public highway.

Plat and field notes filed: notice given. R. § 914.

SEC. 966. In case objection shall be made by any person claiming to be injured by the survey made, the board of supervisors shall have full power to hear and determine upon the matter, and may, if deemed advisable, order a change to be made in the survey. Upon the final determination of the board, or in case no objection be made at the term named in the notice of the survey, they shall approve of the same and cause the field notes and plat of the highway to be recorded as in case of the establishment or alteration of highways, and thereafter such records shall be received by all courts as conclusive proof of the establishment and existence of such highway, according to such survey and plat.

Power of supervisors: record evidence. R. § 915.

SEC. 967. If the same has not been heretofore done in any other manner, the county auditor shall, within six months after this code takes effect, cause every highway in his county, the legal existence of which is shown by the records and files of his office, to be platted in a book to be obtained and kept for that purpose, and known as the "highway plat-book." Each township shall be platted, separately, on a scale of not less than four inches to the mile, and such auditor shall have all changes in or additions to the highways legally established, immediately entered upon said plat-book, with appropriate references to the files in which the papers relating to the same may be found.

Highway plat book made.

SEC. 968. Within the time aforesaid, the auditor shall furnish to the township clerks a certified copy of said plat book, so far as the same relates to their respective townships, which shall be carefully preserved in the office of said clerks. The auditor shall notify said clerks of all changes made in the plat book relative to the highways, so far as the same relate to their townships respectively; on receipt of which, said clerks shall immediately make corresponding changes on the maps in their respective offices.

Copy furnished township clerks. R. § 889.

CHAPTER 2.

OF WORKING HIGHWAYS

SECTION 969. The township trustees of each township shall meet on the first Monday in April, or as soon thereafter as the

assessment book is received by the township clerk, and on the first Monday in October in each year. At the April meeting said trustees shall determine:—

Power and duties of trustees. R. § § 880, 891, 895. C. 96, § 5, 9 G. A. C. 100, § 2 12 G. A. C. 20, 13 G. A.

1. Upon the amount of property tax to be levied for highways, bridges, guide-boards, plows, scrapers, tools, and machinery adapted to the construction and repair of highways, and for the payment of any indebtedness previously incurred for highway purposes, and levy the same, which shall not be less than one nor more than five mills on the dollar on the amount of the township assessment for that year;

2. Whether any portion of said tax shall be paid in labor, and, if so, what portion may be so paid;

3. Upon the amount that will be allowed for a day's labor done by a man, and by a man and team, on the highway;

4. At the October meeting, said trustees shall divide their respective townships into such number of highway districts as they may deem necessary for the public good, and, at said meeting, they shall settle with the township clerk and supervisors of highways.

General township fund: clerk to give bond: custody of implements. C. 100, § § 1, 6, 12 G. A.

SEC. 970. The trustees shall set apart such portion of the tax specified in the preceding section of this chapter, as they deem necessary for the purpose of purchasing the tools and machinery and paying for the guide-boards mentioned in said section, and the same shall constitute a general township fund; and such trustees shall require the township clerk to give bond in such sum as they deem proper, conditioned as the bonds of county officers, which bond, and the sureties thereon, shall be approved by said trustees. Said clerk shall take charge of and properly preserve and keep in repair such tools, implements, and machinery as may be purchased with said general township fund, and shall have authority to determine at what time the supervisors of the several districts may have the custody and use of the same or any part thereof, and shall be responsible for the safe keeping of the same, when not in the custody of some one of the supervisors for use in working the highways in his district, and shall receive such compensation as the trustees shall provide to be paid out of such fund.

Control of fund.

SEC. 971. The trustees shall order and direct the expenditure of the general township fund.

TOWNSHIP CLERK.

Furnish supervisor with plat. R. § 880.

SEC. 972. The township clerk shall furnish each supervisor, to be by him transferred to his successor in office, with a copy of so much of the map or plat furnished such clerk by the auditor as relates to the highways in the district of such supervisor, and, from time to time, to mark thereon the changes in or additions to such highways as the same are certified to him by the auditor.

And tax list: duty of county auditor. R. § 892. C. 96, § 6, 9 G. A.

SEC. 973. The township clerk shall, within four weeks after the trustees have levied the property tax, make out a tax list for each highway district in his township, which list shall be in tabular form and in alphabetical order, having distinct columns for lands, town lots, and personal property, and carry out in a column the

amount of the tax on each piece of land and town lot, and on the amount of personal property belonging to each individual; and he shall carry out the amount of tax, to be paid in money, due from each individual in a column by itself; which list shall contain the names of all persons required to perform two days' labor upon the highway as a poll tax; and to enable the township clerk to make out such tax list, the assessor shall furnish the township clerk of each township, on or before the first day of April of each year, a correct copy of the assessment lists of said township for that year, which list shall be the basis of such tax list. The county auditor shall furnish the several township clerks of his county with printed blanks necessary to carry into effect the provisions of this chapter.

List: what to contain: authority to collect taxes. R. § 893.

SEC. 974. The township clerk shall make an entry upon such tax list showing what it is, for what highway district, and for what year, and shall attach to the list his warrant under his hand, in general terms, requiring the supervisor of such district to collect the taxes therein charged as herein provided; and no informality in the above requirements shall render any proceedings for the collection of such taxes illegal. The clerk is hereby required to cause such lists to be delivered to the proper supervisors of his township within thirty days after the levy, and take receipts therefor; and such list shall be full and sufficient authority for the supervisor to collect all taxes therein charged against resident property-holders in his district.

When taxes have not been paid. R. § 894. C. 76, 12 G. A.

SEC. 975. The township clerk shall, on or before the second Monday in October in each year, make out a certified list of all land, town lots, and personal property on which the highway tax has not been paid, and the amount of tax charged on each parcel of land, town lot, or personal property, designating the district in which the same is situated, and transmit the same to the auditor, who shall enter the amount of tax to each piece of land or town lot and person taxed for personal property in the column ruled for that purpose, the same as other taxes, and deliver the same to the county treasurer, charging him with the same, which shall be collected by such treasurer in the same manner that county taxes are collected; and in case the township clerk shall fail or neglect to make such return, he shall forfeit and pay to the use of the township, for highway purposes, a sum equal to the amount of tax on said land, which may be collected by suit on his official bond before any court having competent jurisdiction.

County treasurer to pay clerk. R. § 910.

SEC. 976. The county treasurer shall, on the last Monday in March and September in each year, pay to the township clerk all the highway taxes belonging to his township which are at such times in his hands, taking the duplicate receipts of such clerk therefor, one of which shall be delivered by such treasurer, on or before the first Monday in April and October in each year, to the trustees.

SUPERVISOR—POWER, DUTIES.

Where reside: who serve. R. § 881.

SEC. 977. The supervisor must reside in the district for which

he is elected or appointed, and no person shall be required to serve as supervisor who is exempt from performing labor on the highway.

To give bond. R. § 884.

SEC. 978. Each supervisor shall be required to give bond in such sum and with such security as the township clerk may deem requisite, conditioned that he will faithfully and impartially perform all the duties devolving upon him, and appropriate all moneys that may come into his hands by virtue of his office according to law. And in the event of a vacancy occurring in any highway district within a township, the township trustees shall fill such vacancy by appointment as soon as notified of the same.

Notice to: penalty for refusal to serve. R. § 883.

SEC. 979. The township clerk shall notify each supervisor within five days after his election or appointment, and if he shall fail to appear before said township clerk, unless prevented by sickness, within ten days, and give bond and take the oath of office, he shall forfeit and pay the sum of five dollars, and in case of his failing or refusing to pay the same, his successor in office shall collect the said amount by suit or otherwise, and apply the same to the repairing of highways in his district.

To post notices. R. § 894.

SEC. 980. The supervisor shall, within ten days after receiving the tax list specified in sections nine hundred and seventy-three and nine hundred and seventy-four, post up in three conspicuous places within his district, written notices of the amount of highway tax assessed to each tax-payer in said district.

How tax expended. C. 100, § 4, 12 G. A.

SEC. 981. The supervisor shall cause all tax collected by him to be expended for the purposes specified in section nine hundred and sixty-nine of this code, on or before the first day of October of that year, except the portion set apart for a general township fund as provided in said section, which shall be by the supervisor paid over to the township clerk from time to time as collected, and his receipt taken therefor.

Of each district expended therein. C. 100, § 5, 12 G. A.

SEC. 982. The money tax levied upon the property in each district, except that portion set apart as a general township fund, whether collected by the supervisor or county treasurer, shall be expended for highway purposes in that district, and no part thereof shall be paid out or expended for the benefit of another district.

Who to perform labor. C. 100, § 9, 12 G. A.

SEC. 983. The supervisor shall require all able bodied male residents of his district between the ages of twenty-one and forty-five, to perform two days' labor upon the highway between the first day of April and September of each year.

Notice of time and place of working: receipts given. R. § § 880, 896.

SEC. 984. The supervisor shall give at least three days notice of the day or days and place designated to work the highways to all persons subject to work thereon, or who are charged with a highway tax within his district, and all persons so notified must meet said supervisor at such time and place with such tools, implements, and teams as the supervisor may designate, and shall labor diligently under the direction of the supervisor for eight hours each day; and for such two days' labor performed, the supervisor shall give to the person a certificate, which certificate shall be evidence that such person has performed labor on the

public highway, and shall exempt such person from performing labor in payment of highway poll-tax in that or any other highway district for the same year. And the supervisor shall give any person who may perform labor in payment of his highway tax, if demanded, a receipt showing the amount of money earned by such labor, which shall be evidence of the payment of said tax to the amount specified in the receipt.

Penalty for failure to attend or work. R. § 887.

SEC. 985. Each person liable to perform labor on the public highway, who shall fail or neglect to attend, either in person or by satisfactory substitute, at the time and place appointed, with the designated tool, implement, or team, having had three days' notice thereof, or, having attended, shall spend his time in idleness, or disobey the supervisor, or fail to furnish to said supervisor, within five days thereafter, some satisfactory excuse for not so attending, shall forfeit and pay to said supervisor the sum of three dollars for each days' delinquency; and in case of failure to pay such forfeit within ten days, the supervisor shall recover the same by action in the name of the supervisor, before any justice of the peace in the proper township, which money, when collected, shall be expended on the public highway.

Supervisor to perform labor. R. § 888. C. 163, § 5, 9 G. A. C. 76, § 1, 10 G. A. C. 100, § 7, 12 G. A.

SEC. 986. The supervisor shall perform the same amount of labor as is required of an able-bodied man, for which he shall be allowed the sum fixed by the trustees for each day's labor, including the time necessarily spent in notifying the hands and making out his returns, which sum shall be paid out of the highway fund, after deducting his two days' work. When there is no money in the hands of the clerk with which to pay the said supervisor, he shall be entitled to receive a certificate for the amount of labor performed, which certificate shall be received in payment of his own highway tax for any succeeding year.

Supervisor to report: what contain. R. § 897.

SEC. 987. The supervisors of the several districts of each township shall report to the township clerk on the first Monday of April and October of each year, which report shall embrace the following items:

1. The names of all persons in his district required to perform labor on the public highway, and the amount performed by each;
2. The names of all persons against whom suits have been brought, as required by section nine hundred and eighty-five, and the amount collected of each;
3. The names of all persons who have paid their property highway tax in labor, and the amount paid by each;
4. The names of all persons who have paid their property tax in money, and the amount paid by each;
5. A correct list of all non-resident lands and town lots on which the highway tax has been paid, and the amount paid by each;
6. A correct list of all non-resident lands and town lots on which the highway tax has not been paid, and the amount of tax on each piece;
7. The amount of all moneys coming into his hands by virtue of his office, and from what sources;
8. The manner in which moneys coming into his hands by virtue of his office have been expended, and the amount, if any, in his possession;

9. The number of days he has been faithfully employed in the discharge of his duty;

10. The condition of the highways in his district, and such other items and suggestions as said supervisor may wish to make, which report shall be signed and sworn to by said supervisor and filed by the township clerk in his office.

Amount due for labor certified to auditor.

SEC. 988. If it appears from such report, that any person has failed to perform the two days' labor required, or any part thereof, and that the supervisor has neglected to collect the amount in money required to be paid in case of such failure, the clerk shall add the amount required to be paid in case of such failure to such person's property tax, and certify the same as required in section nine hundred and seventy-five, and the auditor shall enter the same on the proper tax list, and the treasurer shall collect the same as required in said section nine hundred and seventy-five.

Timber and material taken to be paid for. R. § 901.

SEC. 989. The supervisor is authorized to take timber or other material for use on the highway, from any unenclosed lands in the neighborhood of which it passes, but he is not permitted to cut down or injure any tree growing by the wayside which does not obstruct the highway, and which stands in front of any town lot, enclosure, or cultivated field, or any ground reserved for any 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 standing, and the person owning such timber or material thus taken, shall be paid out of the highway funds in the hands of the supervisor a fair value therefor; and in case there be no money in the hands of such supervisor, then such supervisor shall give him a certificate, stating the amount, kind, and value of such material taken, which certificate shall be received in payment of his highway tax for that or any succeeding year to the amount thereof.

Damages caused by unsafe bridge or highway. R. § 902.

SEC. 990. When notified in writing, that any bridge or any portion of the public highway is unsafe, the supervisor shall be liable for all damages resulting from the unsafe or impassable condition of the highway or bridge, after allowing a reasonable time for repairing the same.

Extraordinary repairs R. § 903.

SEC. 991. For making such extraordinary repairs, the supervisor may call out any or all the able-bodied men of the district in which they are to be made, but not more than two days at one time without their consent, and persons so called out shall be entitled to receive a certificate from the supervisor, certifying the number of days labor performed, which certificate shall be received in payment for highway tax for that or any succeeding year at the rate per day established for that year.

Penalty. R. § 904.

SEC. 992. If any able-bodied man, when duly summoned for any such purpose, fails to appear and labor diligently by himself or substitute, or send satisfactory excuse therefor, or to pay the value of such work in money at any time before suit is brought, 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 supervisor, and for the use of the highway fund of the district.

Obstructions moved. R. § 905.

SEC. 993. The supervisor shall remove obstructions in the 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 reasonable notice in writing, not exceeding six months, has been given to the owner of the land enclosed in part by such fence.

Highways to be kept in good condition: sign boards. R. § 907. C. 96, § 1, 9 G. A.

SEC. 994. The supervisor shall keep the highways in as good condition as the funds at his disposal will permit, and shall place guide-boards at cross-roads and at the forks of the highways in his district; said boards to be made out of good timber, the same to be well painted and lettered, and placed upon good substantial hard wood posts, to be set four feet in and to be at least eight feet above ground.

Canada thistles. C. 66, 14 G. A.

SEC. 995. The supervisor of highways, when notified in writing that any Canada thistles are growing upon any vacant or non-resident lands or lots within his district, the owner, agent, or lessee of which is unknown, shall cause the same to be destroyed and make return in writing to the board of supervisors of his county, with a bill for his expenses or charges therefor, which shall be audited and allowed by said board and paid from the county fund; and the amount so paid shall be entered up and levied against the lands or lots on which said thistles have been destroyed, and collected by the county treasurer the same as other taxes and returned to the county fund.

Supervisors settle with trustees. R. § 909. C. 96, § 3, 9 G. A.

SEC. 996. The supervisors are required to meet the township trustees at their meeting on the first Monday in October in each year, at which time there shall be a settlement of the accounts of such supervisors connected with the highway fund, for putting up guide-boards and for any other services; and after payment of the supervisors, the trustees shall order such distribution of the fund in the hands of the township clerk, as they may deem expedient for highway purposes, and the clerk shall pay the same out as ordered by the trustees.

When no funds, orders to be issued. Same, § 2.

SEC. 997. Should there be no money in the treasury on final settlement of the supervisors with the trustees, said trustees shall order the township clerk to issue orders for the amount due the supervisors. The orders so issued shall be numbered with the number of the district to which they belong, and shall be received the same as money in the payment of highway tax in the district to which they are issued.

Neglect to perform duty: penalty. R. § 900. C. 96, § 4, 9 G. A.

SEC. 998. Any supervisor failing or neglecting to perform the duties required by this chapter, shall forfeit and pay for the use of the highway fund of his district the sum of ten dollars; the township clerk shall, in case of such failure or neglect, commence suit in his name for the collection of the same, before any justice of the peace within the proper township.

Hedges may be planted in highway. C. 51, 9 G. A.

SEC. 999. Where any owner or occupant of land adjoining or abutting upon any highway may desire to plant a hedge upon the line of the same, he shall be allowed to build his fence upon such highway; but he shall not build the fence more than five feet within the outer line of said highway, and said fence may be built on both sides of all highways of fifty feet or more in width at the same time. Such owner or occupant shall not be allowed to occupy such highway as aforesaid for more than ten years, and not more than six months before such hedge shall be planted, and

at the expiration of such time he shall remove such fence upon the order of the supervisor of the district where such highway is situated.

Persons meeting to turn to right: penalty. R. § 908.

SEC. 1000. Persons meeting each other on the public highways, shall give one half of the same by turning to the right. All persons failing to observe the provisions of this section shall be liable to pay all damages resulting therefrom, together with a fine, not exceeding five dollars, which fine shall be appropriated to repairing the highways in the district where the violation occurred; but no prosecution shall be instituted except on complaint of the person wronged.

CHAPTER 3.

OF FERRIES AND BRIDGES.

BRIDGES.

Public: part highway. R. § 822.

SECTION 1001. Bridges erected or maintained by the public, constitute parts of the highway, and must not be less than sixteen feet in width.

Penalty for fast driving over. R. § 823. C. 112, § 1, 9 G. A.

SEC. 1002. Any person riding or driving faster than a walk across any bridge maintained at the public charge, shall be subject to pay the following penalties: When the bridge is twenty-five feet in length, and does not exceed one hundred, the sum of one dollar for each offense; when it is over one hundred, and does not exceed two hundred feet in length, the sum of three dollars for each offense; where it is over two hundred, and does not exceed three hundred feet in length, the sum of five dollars for each offense; and the further additional sum of one dollar for each offense for every hundred feet in length in excess of three hundred, to be recovered by civil action in the name and for the county in which the bridge is situated. If the bridge is situated in more than one county the action is maintainable in or by either.

TOLL BRIDGES.

How established. R. § 1214.

SEC. 1003. The board of supervisors may grant licenses for the erection of toll bridges across any water courses or other obstruction which justifies the establishment of such bridge, and which calls for an expenditure that cannot be met without serious inconvenience to the revenues of the county. In granting such licenses, preference shall be given to the owner of the land on which the bridge is proposed to be located, if he applies for the privilege, and is, in other respects, a competent person to erect such bridge.

Supervisors grant license: right of way. C. 115, § § 1, 2, 12 G. A.

SEC. 1004. When any corporation or individual shall obtain from the board of supervisors, license for the construction of a toll-bridge across any of the streams of this state, such corporation or individual may take and appropriate so much private

property as shall be necessary for a right of way therefor and all approaches thereto, in such width as such corporation or individual may desire, not exceeding sixty feet.

Damages assessed. Same. § 3.

SEC. 1005. If the owner of the property over which such way extends shall refuse to grant the same, and the damages therefor cannot be settled by agreement, all damages which the owner, or any person having an interest in or improvement upon the property to be taken, will sustain by reason of the appropriation of such property, shall be assessed, and the right of way taken on the application of either party under the provisions of chapter three, of title ten, of this code.

Where extremities lie in different counties or states. R. § 1216.

SEC. 1006. 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 boards of supervisors, 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.

Period for which licenses granted. R. § 1217.

SEC. 1007. 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; after that time it shall be under the control of the board of supervisors.

Other bridges or ferries. R. § 1218.

SEC. 1008. The board of supervisors is also authorized to stipulate in the license, that no other 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.

Failure of duty. R. § 1212.

SEC. 1009. When it is made to appear to the board of supervisors, after ten days notice to the person licensed, that he fails substantially to perform his duties according to law, the board may revoke his license.

Day or night: rate of toll. R. § 1222.

SEC. 1010. All toll bridges must be so regulated as to allow persons to pass at any hour of the night or day, but the board of supervisors may, in its discretion, in fixing the rates of toll, permit a greater amount to be collected during certain hours of the night time.

FERRIES.

License: supervisors power to grant. R. § 1200.

SEC. 1011. The board of supervisors has power to grant such ferry licenses as may be needed within its county, for a period not exceeding ten years.

Rates of ferries fixed by boards. R. § 1201.

SEC. 1012. The board 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 board.

Extent of privilege. R. § 1202.

SEC. 1013. In granting a ferry license, the board of supervisors 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 board 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.

Preference: to whom given. R. § 1203.

SEC. 1014. 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 no 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 board, he is an improper person to receive the same, it may be conferred on any other proper applicant.

Opposite shores in different counties. R. § 1204.

SEC. 1015. Where the opposite shores of the stream are in different counties, a license from either is sufficient, and the board of supervisors first exercising jurisdiction by granting a license, retains that jurisdiction during the term of such license.

One shore within the state. R. § 1205.

SEC. 1016. Where but one side of a river is within this state, the board of supervisors possesses the same power, so far as the shore of this state is concerned, as though the river lay wholly within this state.

License not to issue until bond is filed. R. § 1207.

SEC. 1017. The board of supervisors, upon being satisfied that the requirements of this chapter have been complied with, and 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 board or auditor, in a penalty not less than one hundred dollars, with the condition that he will keep the ferry in proper condition for ferrying, and attend the same at all times fixed by the board for running the same, that he will neither demand nor take any illegal tolls, and that he will perform all other duties which are, or may be enjoined on him by law, which bond shall be filed in the county auditor's office.

U. S. express and mail. R. § 1209.

SEC. 1018. 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.

PROVISIONS APPLICABLE TO BOTH FERRIES AND TOLL BRIDGES.

License entered of record. R. § 1208.

SEC. 1019. All licenses for ferries and toll bridges must be entered upon the records of the board of supervisors, and shall contain the rates of toll allowed.

Rates of toll: where posted. R. § § 1210, 1220.

SEC. 1020. The rates of toll must be conspicuously posted up at each extremity of the bridge, or on the boat, door of the ferry house, or some other conspicuous place near the ferry.

Failure to post: penalty for. R. 1211, 1220.

SEC. 1021. 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 bridge or ferry is liable to pay twenty-five dollars, and the action therefor may be brought in the name of the county against such proprietor, or on the bond of the proprietor of the ferry; the amount recovered in either case to be paid into the county treasury.

SEC. 1022. Before a license can be granted for either a bridge or ferry, notice of the intended application therefor must be posted up in at least three public places on each side of the river,

if both are within the state, and in the township and neighborhood in which the proposed bridge or ferry is to be erected or kept, at least twenty days prior to the making of such application.

Notice of application to be posted before granting license. R. § § 1206, 1219.

SEC. 1023. The taking of 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, or against him individually, by the person who paid the illegal toll for his own benefit, or he may bring suit in the name of the county, in which case the proceeds shall go into the county treasury.

Penalty for taking illegal toll. R. § 1236.

SEC. 1024. A failure in other respects to comply substantially with the terms fixed by the board, 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 liable on his bond.

Forfeiture. R. § 1237.

SEC. 1025. 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 the toll gates with a view of avoiding the payment of just tolls or dues, forfeits the sum of five dollars for every offense, which, together with costs of suit, may be recovered by the person entitled to such toll by civil action; but nothing herein contained shall prevent a person from fording a stream across which a toll bridge or ferry has been constructed.

Refusal to pay tolls: penalty. R. § 1238.

SEC. 1026. The proprietor of any bridge or ferry authorized by this chapter, 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 in the name of the proprietor aforesaid; but such rules must be published by being conspicuously posted up before they can be thus enforced.

Rules established. R. § 1239.

SEC. 1027. Any of the franchises contemplated in this chapter are subject to execution, and shall be sold as personal property, and be subject to the same rights and consequences, except that the purchaser may take immediate possession of the property.

Franchise sold. R. § 1240.

SEC. 1028. The sale of any such franchise carries with it all the material, implements, rights of way, and works of whatever kind, necessary for or ordinarily used in the exercise of such franchise.

What goes with it. R. § 1241.

SEC. 1029. Nothing in this chapter contained shall be so construed as to prevent any person, city, incorporated 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 further obligation in relation to the ferry. Bond and security shall be given in like manner by

Free ferry established. R. § 1245.

the person or company establishing the free ferry as required in this chapter.

Mill owners. R. § 1346.

SEC. 1030. Nothing in this chapter shall be so construed as to prevent owners of mills from crossing themselves or customers free of charge.

RAILWAY AND TOLL BRIDGES.

Supervisors to control location. C. 130, § § 1, 2, 10 G. A.

SEC. 1031. Any railway or bridge company that now is, or hereafter may be, incorporated in pursuance of the laws of this state, or of the states of Wisconsin, Illinois, Kansas, Nebraska, or Dakota, is authorized to construct a railway bridge across the Mississippi, Missouri or Big Sioux rivers, connecting with the eastern or western terminus, as the case may be, of any railway abutting on the Iowa bank of either of said rivers, at such place as shall be designated therefor by the board of supervisors of the county wherein such abutting is to be made, and extending toward a point on the opposite bank that may be selected by such company.

Plan to be approved. Same, § 3.

SEC. 1032. No bridge shall be built under the provisions of the preceding section, until the plan thereof has been submitted to and approved by the board of supervisors of the county in which the bridge is to be partly located.

For teams and passengers: toll for Same, § 6.

SEC. 1033. Any such company may, with the consent of said board of supervisors, construct such bridge with suitable highways and foot ways for teams and foot passengers, and charge such rates of toll therefor as may be approved by said board.

Ferry established. Same, § 7.

SEC. 1034. Any such company may establish a ferry across said rivers at or near the termini of its road, for the sole purpose of crossing the freight and passengers of such highway, until the bridge is ready for use.

Navigation. Same, § 11.

SEC. 1035. No bridge erected under the provisions of this chapter shall be so located or constructed as to unnecessarily impede, injure, or obstruct the navigation of said rivers.

Bonds and stock issued. Same, § 5.

SEC. 1036. Any such company may issue its bonds or obligations for an amount not exceeding the cost of such bridge, and of its road in the state, and may secure the payment thereof by a mortgage on the same, and may issue certificates of common and preferred stock; the preferred stock to be issued only on condition that the holders of the common stock give their written consent thereto.

Resident director: process served on. Same, § § 8, 9.

SEC. 1037. Each company acting under the provisions of this chapter shall elect at least one director, who shall be a citizen of and reside in the state of Iowa, and such company shall be liable to be sued in any court of competent jurisdiction in this state, and service of the original notice on said resident director shall be sufficient notice to the company of the pendency of the action.

TITLE VIII.

OF THE MILITIA.

CHAPTER 1.

SECTION 1038. The entire militia of the state is required to organize into companies of infantry, cavalry, or artillery. Organized. C. 84, § 1, 10 G. A.

SEC. 1039. All the able-bodied 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 military force of this state. Who compose. § 1, art. 6, constitution, joint res. 11, 12 G. A.

SEC. 1040. All officers, non-commissioned officers, and privates who have served in the United States service for the period of two years, and have been honorably discharged, are exempt from duty under the military laws of this state. But nothing in this section shall be so construed as to prohibit the executive from calling upon such persons in times of public danger to the state or national government. Who exempt. C. 122, 11 G. A.

SEC. 1041. Assessors in each township are required to make and return to the county auditor of their respective counties, at the time of making the annual assessment, a correct list of persons subject to military duty, and to post up in at least two public places in their respective townships, written or printed lists containing the names of all persons subject to military duty. Assessors to make list. C. 84, § 2, 10 G A.

SEC. 1042. The board of supervisors of each county are required at every regular meeting thereof, to act as a board of review on said lists, and may order the addition thereto of the names of any persons subject to military duty, and not found thereon, and order the name of any person improperly enrolled to be stricken from the lists. The county auditor shall keep a book in his office, to be called the militia register, in which he shall record by townships, in alphabetical order, the name and age of every person subject to military duty, and shall, annually, within ten days after the June meeting of said board, certify to the adjutant-general of the state a true copy of said list; and any county auditor neglecting or refusing to make the returns as provided in this section, shall forfeit and pay a fine of not less than twenty-five nor more than one hundred dollars, to be recovered before any court having jurisdiction, for the benefit of the school fund. List reviewed by supervisors: register kept. C. 84, § 3, 10 G. A.

SEC. 1043. The adjutant-general, on or before the first Monday in January after the taking of the state census, must report to the adjutant-general of the United States, the aggregate number of such military force. Report to adjutant general U. S. R § 1003.

Governor to make rules. C. 84, § 4, 10 G. A.

SEC. 1044. The governor shall cause the militia of the state to be organized into companies, and he is vested with full power and authority to make all necessary orders, rules, and regulations for the enrollment of the militia, and carrying out the provisions of this chapter.

Companies heretofore organized to be continued. Same, § 5.

SEC. 1045. The companies organized under the provisions of chapter seventeen, of the acts of the extra session of the ninth general assembly, approved September 11th, 1862, are hereby continued and constituted company organizations, and are authorized to retain their arms and accoutrements, subject to such orders as the governor may from time to time issue; *provided*, such companies shall execute such bond as is required by this chapter.

Number in company. Same, § 6.

SEC. 1046. Each company organized under this chapter shall be composed of not less than forty men.

Battalions and regiments formed: officers chosen. Same, § 6.

SEC. 1047. The governor may order and direct companies to form into battalions or regiments. The order for this purpose shall designate the companies and the number of companies to be formed into any such battalion or regiment, and fix the time and place for the election of officers, including, if a battalion, one major, one battalion quartermaster, and one battalion adjutant. The company officers shall be one captain, one first lieutenant, one second lieutenant, four sergeants, and four corporals. All company officers shall be elected by the members of the company. The regimental officers shall be one colonel, one lieutenant colonel, and one major, and such staff officers as are necessary, to conform, as near as may be, with the volunteer regiments of the United States service. All regimental officers shall be elected by the members of the companies composing the regiment. The returns of any election, company or regimental, shall be made to the office of the adjutant-general within ten days after said election. Company and regimental officers shall be commissioned by the governor, except sergeants and corporals, who shall receive warrants of rank from the commanders of their respective regiments.

Officer appoint judges and clerks. R. § 1009.

SEC. 1048. 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 the place of rendezvous.

Drill and discipline: arms and amunition. C. 84, § 8, 10 G. A.

SEC. 1049. Companies shall meet for drill and discipline two days in each year; the first meeting to be on the first Tuesday in June, at one o'clock P. M., at such place as the company commander shall fix. The other meeting to be held at such time and place as the commander of the company may designate. And when arms, ammunition, or military stores have been delivered to any company as provided in this chapter, the said companies shall meet at such other times and places as may be agreed upon by a majority of said company, for drill, discipline, and the inspection of arms and public property in their hands.

Military stores distributed. Same, § 9.

SEC. 1050. Arms, ammunition, munitions of war, and military stores belonging to the state, shall be distributed under the direction of the quartermaster-general, or acting quartermaster-general, to the commanders of companies, battalions, regiments, or bat-

teries, and when so distributed shall be and remain under the charge of such commander. When any arms, ammunition, or military stores are delivered to any such commander, he shall make and deliver to the quartermaster-general a good and sufficient bond, with sureties to be approved by the quartermaster, conditioned for the proper use and return, when required by the quartermaster-general or other proper officers, of all such arms, ammunition, or military stores, in good order; wear, use, and unavoidable loss excepted.

When called into actual service. Same, § 10.

SEC. 1051. The governor shall, as the commander-in-chief of the militia, in case of alarm, insurrection, invasion, or war, order out for actual service from time to time, as many of the militia, whether organized into companies, battalions, regiments, or not, as he may think the case demands; and the militia, when so called into actual service, shall receive the same pay and subsistence as is provided for like troops in the service of the United States. The commanders of companies, battalions, or regiments, shall, in case of sudden invasion or insurrection, and when the life, liberty, or property of the inhabitants of the state is in imminent peril, call out their respective commands, in whole or part, for the purpose of repelling any invasion, suppressing any insurrection, or preserving the lives, liberties, or property of the inhabitants of this state; but in no case when troops are called out by any authority other than upon the order of the governor, shall there be any pay or subsistence allowed, unless the necessity for such service shall first be duly shown to the satisfaction of the adjutant-general. The militia, whether organized or not, may be called out by the civil powers of the state, but in such case shall receive neither pay nor subsistence under the provisions of this chapter.

Every person to enroll himself. Same, § 11.

SEC. 1052. Every person liable to perform military duty shall enroll himself as a member of some company, and obey the orders of his commander while on drill or in actual service; and company commanders may compel, by force, the attendance and service of any such person to suppress an insurrection or repel an invasion.

Penalty for failure. Same, § 13.

SEC. 1053. Any person liable to perform military duty, who shall wilfully neglect or refuse to enroll himself as a member of some organized company, or who shall wilfully disobey the orders of the commander of his company, battalion, or regiment, in time of insurrection or invasion, or who shall neglect or refuse to meet at the place of rendezvous, for the purpose of drill and discipline, shall be liable to pay a fine of not less than one dollar nor more than one hundred dollars, to be recovered in the name of the state of Iowa before any civil court for the benefit of the school fund.

Governor's staff. Same, § 14. C. 48, 11 G. A.

SEC. 1054. The governor may appoint on his staff, one adjutant-general, with the rank of brigadier-general, who shall perform the duties of inspector-general and paymaster-general of the state; one quartermaster-general, who shall perform the duties of commissary-general, with the rank of colonel of cavalry; and four special aids, with the rank of lieutenant-colonel of cavalry, and one military secretary, with the rank of captain of cavalry.

SEC. 1055. The duties of the adjutant-general and inspector-general shall be as follows:

Adjutant general: duties. C. 84. § § 15, 16, 17, 18, 19, 20, 21, 10 G. A.

1. He shall issue, sign, and transmit all orders of the commander-in-chief, relative to the carrying into execution the laws of the United States or of this state, and perfecting the military discipline established by law;

2. He shall be charged with all the correspondence relating to the military affairs of the state, and keep a record or file of such correspondence;

3. He shall keep a record of all general and special orders and regulations, and cause the same to be published whenever the commander-in-chief shall direct;

4. He shall keep a roll of the commissioned officers of the militia of the state, with their residence, rank, and corps to which they belong, and the number and date of their commissions and promotions;

5. He shall provide the necessary books, forms, and blanks requisite to carry out the provisions of the laws of this state, and distribute the same to officers entitled thereto upon proper requisition;

6. He shall make returns in duplicate of the number of enrolled militia, with the arms, accoutrements, and ammunition, one copy of which he shall deliver to the commander-in-chief on or before the first day of January, and transmit the other to the adjutant-general of the United States, on or before the first day of January, annually;

7. He shall perform all the duties of the quartermaster-general until the governor deems it best for the public service to appoint that officer.

Quartermaster general: duties. Same, § § 21, 22, 23, 24, 10 G. A.

SEC. 1056. The quartermaster-general shall keep in good repair and attend to the due preservation, safe keeping, and cleaning, and transportation of the ordnance, arms, accoutrements, ammunition, and military supplies and stores which belong to the state.

2. He shall dispose of to the best advantage, under the direction of the governor, all powder, arms, ammunition, accoutrements, tools, implements, and warlike stores of every kind which are the property of the state that shall be deemed unsuitable for the use of the state, and, from time to time, render a just and true account of all sales made by him, and pay the proceeds into the state treasury.

3. He shall report, annually, on or before the first day of January, to the commander-in-chief, the condition and disposition of the ordnance, with the security therefor, of all arms, ammunition, and other munitions of war, which appertain to his department.

Rank. Same, § 25, 10 G. A.

SEC. 1057. In all cases not herein otherwise directed, the duties of general and staff officers, and all other commissioned and non-commissioned officers of the militia of this state, shall be made to conform, as nearly as possible, to the duties of the corresponding positions in the United States service; and questions of rank and the government of the militia while on drill, or in the actual service of the state, shall be determined and made to conform, as far as applicable, and not inconsistent with this chapter, to the rules and regulations provided for the government of the United States army.

TITLE IX.

OF CORPORATIONS.

CHAPTER 1.

OF CORPORATIONS FOR PECUNIARY PROFIT.

SECTION 1058. 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 improvement; but such incorporation confers no power or privilege not possessed by natural persons, except as hereinafter provided. **Who may incorporate. R. § 1150.**

SEC. 1059. Among the powers of such body corporate are the following: **Powers. R. § 1151.**

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.

SEC. 1060. 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; the recorder must record such articles as aforesaid, within five days after the same are filed in his office, and certify thereon the time when the same was filed in his office, and the book and page where the record thereof will be found. The said articles shall be then recorded in the office of the secretary of state, in a book kept for that purpose. **Articles to be recorded. R. § 1152. C. 172, § 2, 13 G. A.**

SEC. 1061. 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 risks of insurance companies, exceed two-thirds of its capital stock. **Highest amount of indebtedness fixed. R. § 1153. C. 172, § 3, 13 G. A.**

NOTICE PUBLISHED.

For what time. R. § 1154.

SEC. 1062. A notice must also be published, for four weeks in succession, in some newspaper as convenient as practicable to the principal place of business.

What it must contain. R. § 1155.

SEC. 1063. 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;

5. By what officers or persons the affairs of the corporation are to be conducted, and the times at which they will be elected;

6. The highest amount of indebtedness to which the corporation is at any time to subject itself;

7. Whether private property is to be exempt from corporate debts.

When it may commence business. R. § 1156. C. 172, § 4, 13 G. A.

SEC. 1064. 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 the secretary of state within three months from such filing in the recorder's office.

When changed. R. § 1157.

SEC. 1065. No change in any of the above matters shall be valid, unless recorded and published as the original articles are required to be.

Dissolution of. R. § 1159.

SEC. 1066. No corporation can be dissolved prior to the period fixed in the articles of incorporation, except by unanimous consent, unless a different rule has been adopted in their articles.

Notice of. R. § 1160.

SEC. 1067. The same period of newspaper publication must precede any such premature dissolution of a corporation as is required at its creation.

Individual property made liable. R. § § 1166, 1388.

SEC. 1068. A failure to comply substantially with the foregoing requisitions in relation to organization and publicity, renders the individual property of the stockholders liable for the corporate debts. But this section shall not be deemed applicable to railway corporations and corporators, and stockholders in railway companies shall be liable only for the amount of stock held by them in said companies.

DURATION.

How renewed. R. § 1158. C. 173, § 26, 12 G. A.

SEC. 1069. Corporations for the construction of any work of internal improvement, or for the business of life insurance, 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, if three-fourths of the votes cast at any regular election for that purpose be in favor of such renewal, and if those wishing a renewal will purchase the stock of those opposed to the renewal at its fair current value.

SEC. 1070. Corporations for agricultural and horticultural purposes, and cemetery associations, may be formed to endure any length of time that may be provided in the articles of incorporation; but the general assembly may, at any session, fix a time when all such corporations shall be dissolved. Such corporations shall not own to exceed nine sections of land, and the improvements and necessary personal property for the proper management thereof; and the articles of incorporation shall provide a mode by which any member may, at any time, withdraw therefrom, and also the mode of determining the amount to be received by such member upon withdrawal and for the payment thereof to such member, subject only to the rights of the creditors of such corporation.

For agricultural, horticultural, and cemetery purposes. R. § 1155

FRAUD—CONSEQUENCES OF.

SEC. 1071. 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, 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.

Penalty for. R. § 1163.

SEC. 1072. The diversion of the funds of the corporation to other objects than those mentioned in their articles and in the notices published as aforesaid, if 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 stock-holders shall be subject to said liabilities.

Diversions of funds deemed a fraud. R. § 1164.

SEC. 1073. 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.

Insurance companies. R. § 1165.

SEC. 1074. 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.

Forfeiture of. R. § 1167.

SEC. 1075. 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.

Penalty for keeping false books. R. § 1168.

BY-LAWS, INDEBTEDNESS, TRANSFER OF SHARES, NON-USER.

SEC. 1076. A copy of the by-laws of the corporation, with the name of all its officers appended thereto, must be posted in the principal places of business, and be subject to public inspection.

By-laws posted. R. § 1161.

SEC. 1077. A statement of the amount of capital stock subscribed, the amount of capital actually paid in, and the amount

Amount of capital stock and indebtedness posted. R. § 1162.

of the indebtedness in a general way, must also be kept posted up in a 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.

Transfer of shares: when valid. R. § 1169.

SEC. 1078. 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 as to show the name of the person 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 making it from any liability of said corporation created prior thereto. The books of the company must be so kept as to show intelligibly the original stock holders, their respective interests, the amount paid 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.

Forfeiture of franchise by non-user. R. § 1170.

SEC. 1079. Any corporation organized in accordance with the provisions of this chapter, 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 articles of incorporation or by-laws, provided such act be done within two years of the time appointed therefor.

Expiration of. R. § 1171.

SEC. 1080. Corporations, whose charters expire by their own limitation, or the voluntary act of the stockholders, may, nevertheless, continue to act for the purpose of winding up their concerns.

May create sinking fund. R. § 1176.

SEC. 1081. 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.

PRIVATE PROPERTY LIABLE FOR CORPORATE DEBTS.

Individual liability. R. § 1172. C. 172, § 6, 18 G. A.

SEC. 1082. Neither anything in this chapter contained, nor any provisions in the articles of incorporation, shall exempt the stockholders 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 execution against the company may, to that extent, be levied upon the private property of any such individual.

For corporate debts. R. § 1173.

SEC. 1083. 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 has been 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.

How enforced. R. § 1174.

SEC. 1084. Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against him, in any stage of which he 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 him stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but, if a demand of property has been made as contemplated in the preceding section, the costs of said action shall, in any event, be paid by the company or the defendant therein, but he shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion.

Stockholder may sue corporation. R. § 1175.

SEC. 1085. 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.

Franchise sold on execution. R. § 1177.

SEC. 1086. The franchise of a corporation may be levied upon under execution and sold, but the corporation shall not become thereby dissolved, and no dissolution of the original corporation shall affect the franchise, and the purchaser becomes vested with all the powers of the corporation therefor. Such franchise shall be sold without appraisement.

Books produced. R. § 1178.

SEC. 1087. 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.

Single person may incorporate. R. § 1179.

SEC. 1088. 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.

Want of legal organization can not be set up. R. § 1181.

SEC. 1089. 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 interest, be permitted to set up a want of such legal organization in his defense.

Legislative control of.

SEC. 1090. The articles of incorporation, by-laws, rules, and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall, at all times, be subject to legislative control, and may be, at any time, altered, abridged, or set aside by law, and every franchise obtained, used, or enjoyed by such corporation, may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good.

CHAPTER 2.

CORPORATIONS OTHER THAN THOSE FOR PECUNIARY PROFIT.

How created. R. § § 1187, 1190, 1191. C. 151, 13 G. A.

SECTION 1091. Associations for the establishment of seminaries of learning, churches, lyceums, libraries, lodges of odd fellows, or masons, and other institutions of a benevolent or charitable character; agricultural societies, subordinate granges of the patrons of husbandry, and associations for the detection of horse-thieves, and of other depredators upon property, may become incorporated in the manner directed in the preceding chapter, so far as applicable, and shall thereby become vested with all the powers and privileges, and subject to all the liabilities provided by that chapter, except as herein modified.

Articles recorded. R § 1188. C. 172, § 7, 13 G. A.

SEC. 1092. Their articles of incorporation shall be recorded by the recorder of deeds of the county where the principal place of business is kept only; but a newspaper publication is not requisite.

Dividend.

SEC. 1093. No dividend, nor distribution of property among the stockholders, shall be made until the dissolution of the corporation.

Degrees conferred. R. § 1189.

SEC. 1094. Corporations of an academical character are invested with authority to confer the degrees usually conferred by such institutions.

CHARITABLE, SCIENTIFIC, AND RELIGIOUS ASSOCIATIONS.

How formed. R. § 1193. C. 172, § 8, 13 G. A.

SEC. 1095. Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of this state, who desire to associate themselves for benevolent, charitable, scientific, religious, or missionary purposes, may make, sign, and acknowledge before any officer authorized to take the acknowledgments of deeds in this state, and have recorded in the office of the recorder of the county in which the business of such society is to be conducted, a certificate in writing, in which shall be stated the name or title by which such society shall be known, the particular business and objects of such society, the number of trustees, directors, or managers to conduct the same, and the name of the trustees, directors, or managers of such society for the first year of its existence.

Certificate recorded: powers. R. § 1194. C. 172, § 9, 13 G. A.

SEC. 1096. Upon filing for record the certificate as aforesaid, the persons who shall have signed and acknowledged such certificate, and their associates and successors, shall, by virtue hereof, be a body politic and corporate by the name stated in such certificate, and, by that, they and their successors shall and may have succession, and shall be persons capable of suing and being sued, and may have and use a common seal, which they may alter or change at pleasure; and they and their successors, by their corporate name, shall be capable of taking, receiving, purchasing, and holding real and personal estate; and of making by-laws for the management of its affairs, not inconsistent with law.

SEC. 1097. The society so incorporated, may, annually, or oftener, elect from its members its trustees, directors, or managers at such time and place, and in such manner as may be specified in its by-laws, who shall have the control and management of the affairs and funds of the society, a majority of whom shall be a quorum for the transaction of business; and whenever any vacancy shall happen among such trustees, directors, or managers, by death, resignation, or neglect to serve, such vacancy shall be filled in such manner as shall be provided by the by-laws of such society. When the body corporate consists of the trustees, directors, or managers of any benevolent, charitable, literary, scientific, religious, or missionary institution, which is or may be established in this state, and which is or may be under the patronage, control, direction, or supervision of any synod, conference, association, or other ecclesiastical body in such state, established agreeably to the laws thereof, such ecclesiastical body may nominate and appoint such trustees, directors, or managers, according to usages of the appointing body, and may fill any vacancy which may occur among such trustees, directors, or managers; and when any such institution may be under the patronage, control, direction, or supervison of two or more of such synods, conferences, associations, or other ecclesiastical bodies, such bodies may severally nominate and appoint such proportion of such trustees, directors, or managers as shall be agreed upon by those bodies immediately concerned. And any vacancy occurring among such appointees last named, shall be filled by the synod, conference, association, or body having appointed the last incumbent.

Trustees or managers of: how elected. R. § 1195. C. 12, 10 G. A.

When under the control of synod or other ecclesiastical body.

SEC. 1098. Any corporation in this state of an academical character, the memberships of which shall consist of lay members and pastors of churches, delegates to any synod, conference, or council, holding its annual meetings alternately in this and one or more adjoining states, may hold its annual meetings for the election of officers and the transaction of business in any adjoining state to this, at such place therein as the said synod, conference, or council shall hold its annual meeting; and the elections so held, and business so transacted, shall be as legal and binding as if held and transacted at the place of business of the corporation in this state.

Academical: meetings. C. 48, 14 G. A.

SEC. 1099. In case an election of trustees, directors, or managers shall not be made on the day designated by the by-laws, said society for that cause shall not be dissolved, but such election may take place on any other day directed by such by-laws.

Election. R. § 1196.

SEC. 1100. The provisions of this chapter shall not extend or apply to any association or individual who shall, in the certificate filed with the recorder, use or specify a name or style the same as that of any previously existing incorporated society in the county.

Name of. R. § 1197. C. 172, § 10, 13 G. A.

SEC. 1101. Any corporation formed under this chapter shall be capable of taking, holding, or receiving property by virtue of any devise or bequest contained in any last will or testament of any person whatsoever; but no person leaving a wife, child, or

Devise or bequest. R. § 1198.

parent, shall devise or bequeath to such institution or corporation more than one-fourth of his estate after the payment of his debts, and such devise or bequest shall be valid only to the extent of such one-fourth.

Existing societies may re-incorporate. R. § 1199.

SEC. 1102. The trustees, directors, or stockholders of any existing benevolent, charitable, scientific, missionary, or religious corporation, may, by conforming to the requirements of section ten hundred and ninety-five of this chapter, re-incorporate themselves, or continue their existing corporate powers, and all the property and effects of such existing corporation shall vest in and belong to the corporation so re-incorporated or continued.

CHAPTER 3.

OF STATE AND COUNTY AGRICULTURAL AND HORTICULTURAL SOCIETIES.

Meeting of directors of state agricultural society. R. § 1701.

SECTION 1103. There shall be held at the capitol of the state, on the second Wednesday of January in each year, a meeting of the board of directors of the Iowa State Agricultural Society, together with the president of each county society in the state, or other delegate therefrom duly authorized in writing, who shall, for the time being, be members of the board; and at such meeting, officers and directors shall be chosen, the place for holding the next annual exhibition shall be determined, premiums on essays and field crops shall be awarded, and all questions relating to the agricultural development of the state may be considered.

Officers: terms. R. § 1700.

SEC. 1104. The officers chosen at such meeting shall be a president, vice-president, secretary, treasurer, and five directors. The president, vice-president, secretary, and treasurer, shall serve one year, and shall be directors by virtue of their office. The other directors shall serve two years, so that the entire number of such directors in the board shall always be ten, one-half of whom shall be chosen annually. Any five members of the board shall constitute a quorum when regularly convened; and the president of the society shall have power to call meetings of the board whenever he may deem it expedient.

Appropriation. R. § 1705.

SEC. 1105. The sum of one thousand dollars is appropriated, annually, for the benefit of such society, and shall be paid by the auditor of state upon the order of the president of said society, in such sums and at such times as may be for the interest of said society.

Premium list. R. § 1702.

SEC. 1106. The premium list and rules of exhibition shall be determined and published by the board of directors prior to the first of April in each year.

Annual report. R. § 1703. C. 109, § 5, 10 G. A.

SEC. 1107. The said board of directors shall make an annual report to the governor, embracing the proceedings of said society and board of directors for the past year, and an abstract of the

proceedings of the several county societies, as well as a general view of the condition of agriculture throughout the state, accompanied with such essays, statements, and recommendations as they may deem interesting and useful, which reports shall be published by the state under the supervision of the secretary of the society. The number of copies to be published shall be three thousand, all of which shall be bound in a manner and style uniform with those bound by the state for the years one thousand eight hundred and fifty-nine and one thousand eight hundred and sixty; but said binding shall not cost more than thirty cents per copy.

Distribution of reports. C. 139, § 2, 12 G. A.

SEC. 1108. The secretary of state shall distribute the reports as follows: Ten copies to the state university, ten copies to the state library, ten copies to the state agricultural college, one copy to each member of the general assembly, the remainder to the secretary of the state agricultural society, by him to be distributed to the county agricultural societies; and one copy shall be sent to the board of supervisors of each organized county in which there is no agricultural society.

DISTRICT AND COUNTY SOCIETIES.

Premiums awarded. R. § 1697.

SEC. 1109. All county agricultural societies shall, annually, offer and award premiums for the improvement of stock, tillage, crops, implements, mechanical fabrics, articles of domestic industry, and such other articles and improvements as they may deem proper. And they shall also regulate the amount of premiums and the different grades of the same, that small as well as large farmers and artizans may compete therefor.

List of awards: abstract of treasurers account published: report to state society. R. § 1698.

SEC. 1110. Each county society shall publish, annually, a list of the awards and an abstract of the treasurer's account, in one or more newspapers of the county or adjoining counties, and a report of their proceedings during the year, and a synopsis of the awards. They shall also make a report of the condition of agriculture in their county, to the board of directors of the Iowa state agricultural society, which shall be forwarded by mail or otherwise to the secretary of said society on or before the first of December of each year. And the auditor of state, before issuing his warrant in favor of said societies for any amount, shall demand the certificate of the secretary of the state society that such report has been made.

Supervisors may appropriate aid C. 128, § 1, 11 G. A.

SEC. 1111. Whenever any county agricultural society, organized according to law, shall have procured in fee simple, free from incumbrance, land for fair grounds not less than ten acres in extent, the board of supervisors of said county may appropriate and pay to such society, a sum not exceeding one hundred dollars for every thousand inhabitants in said county, to be expended by such society in fitting up such fair grounds, but for no other purpose; but not more than one thousand dollars shall in the aggregate be appropriated to any one society.

Entitled to aid from state. R § 1704. C. 136, § 1, 12 G. A.

SEC. 1112. When any county or district agricultural society, composed of one or more counties, have made their report to the state society as provided in the preceding section, and raised during the year any sum of money for actual membership, they shall

be entitled to an equal sum, not exceeding two hundred dollars, from the state treasury, upon affidavit of the president, secretary, or treasurer of said society, that such sum was raised for the legitimate purposes of the society during the current year, accompanied by the certificate of the secretary of the state agricultural society that they have reported according to law.

Make report to supervisors. C. 128, § 2, 11 G. A.

SEC. 1113. Each society receiving such appropriation, shall, through its secretary, make to the board of supervisors a detailed statement, with vouchers, showing the legal disbursement of all the moneys so received.

FAIRS.

Gambling, horse-racing, liquors, wine, and beer prohibited. C. 109, § 2, 10 G. A.

SEC. 1114. No person shall be permitted to sell any intoxicating liquors, wine, or beer, of any kind, or be engaged in any gambling or horse-racing, either inside the enclosure where any county or district agricultural society fair is being held, or within one hundred and sixty rods thereof, during the time of holding such fair; and any person found guilty of any of the offenses herein enumerated, shall be fined in a sum not less than five nor more than fifty dollars for every such offense.

Permits to sell provisions on fair grounds. Same, § 3.

SEC. 1115. The president of any district or county agricultural society, may grant a written permit to such persons as he may deem necessary, to sell fruit, provisions, and other necessaries to such persons as may be in attendance at any such fair, under such regulations and restrictions as the board of directors may prescribe.

Power to arrest, seize, remove, and fine given. Same, § 4.

SEC. 1116. The president of any such society shall be empowered to arrest, or cause to be arrested, any person, or persons, engaged in violating any of the provisions contained in section eleven hundred and fourteen of this chapter, and cause them forthwith to be taken before some justice of the peace, there to be dealt with as provided for in said section; and he may seize, or cause to be seized, all intoxicating liquors, wine, or beer, of any kind, with the vessels containing the same, and all tools or other implements used in any gambling, and may remove, or cause to be removed, all shows, swings, booths, tents, carriages, wagons, vessels, boats, or any other nuisance that may obstruct, or cause to be obstructed, by collecting persons around or otherwise, any thoroughfare leading to the enclosure in which such agricultural fair is being held; and any person owning or occupying any of the causes of obstruction herein specified, who may refuse or fail to remove such obstruction or nuisance, when ordered to do so by the president of such society, shall be liable to a fine of not less than five and not more than twenty dollars for every such offense.

HORTICULTURAL SOCIETY.

Meeting of. C. 95, § 1, 14 G. A.

SEC. 1117. There shall be held on the third Tuesday in January in each year, a meeting of the Iowa State Horticultural Society, for the transaction of business and the election of officers and directors, corresponding in numbers and titles to those of the Iowa agricultural society, and for like periods of time, at which the

place of holding the next meeting, and the times and places of holding exhibitions shall be determined; premiums on essays may be awarded and all questions relating to horticultural development considered.

SEC. 1118. Such society shall encourage the organization of district and county societies and give them representation therein, and in every proper way further the fruit and tree growing interests of the state. District and county societies. Same, § 2.

SEC. 1119. The secretary of said society shall make an annual report to the governor of the state, embracing the proceedings of the society, with a bill of items showing for what purposes the money hereinafter appropriated was paid out for the past year, the general condition of horticultural interests throughout the state, together with essays, statements of facts, and recommendations as he may deem useful, to be published by the state under the supervision of the society. Annual report. Same, § 4.

SEC. 1120. The number of copies of said report shall be three thousand, all of which shall be bound in a style uniform with the reports of said society for the year eighteen hundred and sixty-nine and eighteen hundred and seventy, and shall be distributed by the secretary of state as follows: Ten copies each to the governor, lieutenant-governor, secretary of state, auditor of state, state treasurer, register of state land office, attorney-general, judges of the supreme court, and to each member of the general assembly; two hundred copies to the Iowa state agricultural college, five copies to the Iowa state university, five copies to the Iowa state historical society, two copies to each incorporated college in the state, one copy each to the auditor and clerk of the district court of each county, to be kept in the office, and one copy to each newspaper published in the state; the remainder to be distributed by direction of said society. Printing and distribution of. Same, § 5.

SEC. 1121. The sum of one thousand dollars is appropriated annually, for the use and benefit of said society, and shall be paid by the auditor of state upon the order of the president of said society, in such sums, and at such times, as may be for the interests of said society; but two hundred dollars of said amount shall be awarded in premiums for the growing of forest trees in this state. Appropriation for. Same, § 6.

CHAPTER 4.

OF INSURANCE COMPANIES.

SECTION 1122. When any number of persons associate themselves together for the purpose of forming an insurance company or for any other purpose than life insurance, under the provisions of chapter one of this title, they shall publish a notice of such intention, once in each week for four weeks, in some public news- How formed: notice: certificate: attorney general. C. 138, § 1, 12 G A.

paper in the county in which such insuarnce company is proposed to be located; and they shall also make a certificate, under their hands, specifying the name assumed by such company, and by which it shall be known, the object for which said company shall be formed, the amount of its capital stock, and the place where the principal office of said company shall be located; which certificate shall be acknowledged before and certified by some notary public or clerk of a court of record, and forwarded to the auditor of state, who shall submit the same to the attorney-general for examination, and if it shall be found by the attorney-general to be in accordance with the provisions of this chapter, and not in conflict with the constitution and laws of the United States, and of this state, he shall make a certificate of the fact and return it to the auditor of state, who shall reject the name or title applied for by any company when he shall deem the same too similar to any one already appropriated by any other company, or likely to mislead the public.

Approval of certificate: the same recorded: powers. Same, § 2.

SEC. 1123. When the certificate of said company shall have received the approval of the attorney-general and auditor of state, the company shall cause the same to be recorded as required by law for recording articles of incorporation; and said persons, when incorporated, and, having in all respects complied with the provisions of this chapter, are hereby authorized to carry on the business of insurance as named in such certificate of incorporation, and by the name and style provided therein, and shall be deemed a body corporate with succession; they and their associates, successors, and assigns, to have the same general corporate powers, and be subject to all the obligations and restrictions of said chapter one of this title except as may be herein otherwise provided.

CAPITAL REQUIRED.

Amount: shares: notes: when payable: certificate. Same, § 3.

SEC. 1124. No joint stock company shall be incorporated under the provisions of this chapter, with a smaller capital than fifty thousand dollars, or a larger one than one million dollars, as may be specified in the certificate of incorporation, which stock shall be divided into shares of one hundred dollars each, of which capital not less than twenty-five per cent., and in no case less than twenty-five thousand dollars, shall be paid up in cash. The balance of the capital of said company may consist of the bonds or notes of the stockholders; nor shall any company, on the plan of mutual insurance, commence business in this state until agreements have been entered into for insurance with at least two hundred applicants, the premiums upon which shall amount to not less than twenty-five thousand dollars; of which at least five thousand dollars shall have been paid in actual cash, and for the remainder of which, notes of solvent parties, founded upon actual application for insurance made in good faith, shall have been received. No one of the notes received as aforesaid, shall amount to more than five hundred dollars; and no two thereof shall be given for the same risk, or made by the same person or firm, except where the whole amount of such notes does not exceed the sum of five

hundred dollars; nor shall any note be regarded or represented as capital stock, unless a policy be issued upon the same within thirty days after the organization of the company taking the same, upon a risk that shall be for no shorter period than twelve months. Each of said notes shall be payable, in whole or in part, at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said company. And no note shall be accepted as part of such capital stock, unless the same shall be accompanied by a certificate of a justice of the peace, notary public, or clerk of the district court of the county in which the person executing such note shall reside, that the person making the same is, in his opinion, pecuniarily good and responsible for the same, in property not exempt from execution by the laws of their state; and no such note shall be surrendered while the policy for which it was given continues in force.

Subscription books opened. Same, § 4.

SEC. 1125. Having published the notice, and filed the publisher's affidavit of the publication thereof with the auditor of state, together with the certificate required by section eleven hundred and twenty-two of this chapter, the persons named in the certificate of incorporation, or a majority of them, shall be commissioners to open books for the subscription of stock to the company, at such times and places as to them may seem convenient and proper, and shall keep the same open until the full amount specified in the certificate is subscribed; or, in case the business of said company is proposed to be conducted on the plan of mutual insurance, then to open books to receive propositions and enter into agreements in the manner and to the extent specified in section eleven hundred and twenty-four of this chapter.

DIRECTORS—OFFICERS.

Election of and number. Same, § 5.

SEC. 1126. The affairs of any company organized under the provisions of this chapter, shall be managed by not more than twenty-one, nor by less than five, directors, all of whom shall be stockholders. Within thirty days after the subscription book shall have been filled, a majority of the subscribers shall hold a meeting for the election of directors—each share entitling the holder thereof to one vote; and the directors then elected shall continue in office until their successors have been duly chosen and have accepted the trust.

Annual meeting of. Same, § 9.

SEC. 1127. The annual meetings for the election of directors, shall be holden during the month of January, at such time as the by-laws of the company may direct: *provided, however*, that if for any cause the stockholders shall fail to elect at any annual meeting, then they may hold a special meeting some day subsequent thereto for that purpose, by giving thirty days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company shall be located, and the directors chosen at any such annual or special meeting, shall continue in office until the next annual meeting and until their successors, duly elected, shall have accepted.

Elect a president and fill all vacancies. Same, § 10.

SEC. 1128. The directors shall choose, by ballot, a president from their own number, and shall fill all vacancies which shall arise in the board or in the presidency thereof; and the board of directors thus constituted, or a majority of them, when convened at the office of the company, shall be competent to exercise all the powers vested in them by this chapter.

Appoint officers and establish by-laws. Same, § 11.

SEC. 1129. The directors of any such company shall have power to appoint a secretary, and any other officers or agents necessary for transacting the business of the company, paying such salaries, and taking such securities as they may deem reasonable; they may ordain and establish such by-laws and regulations, not inconsistent with this chapter, or with the constitution and laws of the United States and of this state, as shall appear to them necessary for regulating and conducting the business of the company; and they shall keep full and correct entries of their transactions, which shall, at all times, be open to the inspection of the stockholders, and to the inspection of persons invested by law with the right thereof.

INVESTMENTS—EXAMINATION—INSURANCE.

Funds invested: security for loans required: changes therein. Same, § 6.

SEC. 1130. It shall be lawful for any insurance company organized under this chapter, to invest its capital and the funds accumulated in the course of its business, or any part thereof, in bonds and mortgages on unincumbered real estate within the state of Iowa, worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company, and the policy transferred to said company, and also in stocks of this state, or stocks or treasury notes of the United States,—in the stocks or bonds of any county or incorporated city in this state authorized to be issued by the legislature of this state; and to lend the same, or any part thereof, on the security of such stocks or bonds, or treasury notes, or upon bonds and mortgages as aforesaid and not otherwise; and to change and re-invest the same in like securities as occasion may, from time to time, require; but any surplus money over and above the paid-up capital stock of any such company organized under this chapter, or incorporated under any law of this state, may be invested in or loaned upon the pledge of the public stock or bonds of the United States, or any one of the states, or the stocks, bonds, or other evidences of indebtedness of any solvent, dividend-paying institutions incorporated under the laws of this state or of the United States, except their own stock; if the current market value of such stock, bonds, or other evidences of indebtedness, shall be at all times, during the continuance of such loans, at least ten per cent. more than the sum loaned thereon.

Assets examined by auditor: officers to certify under oath. Same, § 7.

SEC. 1131. Upon receiving notification that the requirements of the preceding sections have been complied with, the auditor of state shall make an examination, or cause one to be made by some disinterested person officially appointed by him for that purpose; and if it shall be found that the capital herein required of the company named, according to the nature of the business proposed to be transacted by such company, has been paid in

and is possessed by it in money, or in such stock, notes, bonds, and mortgages as are required by sections eleven hundred and twenty-four and eleven hundred and thirty of this chapter, then he shall so certify; and if the examination be made by any other than the auditor, then the finding shall be certified under oath; or, if it is proposed to be a mutual insurance company, such certificate shall be to the effect that it has received and is in actual possession of the capital, premiums, or actual engagements of insurance or other securities, as the case may be, to the extent and value required by sections eleven hundred and twenty-four and eleven hundred and thirty of this chapter. The name and residence of the maker of each premium note forming part of the capital of any such proposed mutual insurance company, and the amount of such note, shall be returned to the auditor. The corporators or officers of any such company, or proposed company, shall be required to certify, under oath, to the auditor of state, that the capital exhibited to the person making the examination directed in this section, was, actually and in good faith, the property of the company so examined. The certificates above contemplated shall be filed in the office of said auditor, who shall thereupon deliver to such company a certified copy of the same, with his written permission for them to commence the business proposed in their written certificate of incorporation, which, being recorded by the recorder of the county in which the company is to be located, in a book prepared by him for that purpose, shall be their authority to commence business and issue policies; and such certified copy of said certificates may be used in evidence for or against said company with the same effect as the originals.

Kinds of Insurance. Same, § 8.

SEC. 1132. It shall be lawful for any company organized under this chapter, or doing business in this state:

Fire and marine.

1. To insure houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and to make all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or on water, or any vessel or boat, wherever the same may be;

Health and accident.

2. To make insurance on the health of individuals, and against the personal injury, disablement, and death, resulting from traveling, or general accidents by land or water;

Fidelity of persons.

3. To insure the fidelity of persons holding places of private or public trust;

Personal property.

4. To receive on deposit and insure the safe keeping of books, papers, moneys, stocks, bonds, and all kinds of personal property;

Live stock.

5. To insure horses, cattle, and other live stock against loss, or damage by accident, theft, or any unknown or contingent event whatever which may be the subject of legal insurance; to lend money on bottomry or respondentia, and to cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property, by means of any loan which it may have made on mortgage, bottomry, or respondentia, and generally to do and perform all other matters and things proper to promote these objects.

Loan money on bottomry.

Confined to one kind of insurance.

But no company shall be organized to issue policies of insurance for more than one of the above five mentioned purposes, and no company that shall have been organized for either one of said purposes, shall issue policies of insurance for any other; and no company organized under this chapter, or transacting business in this state, shall expose itself to loss on any one risk or hazard to an amount exceeding ten per cent. on its paid up capital, unless the excess shall be reinsured by the same in some other good and reliable company. But the restrictions as to the amount of risk any company shall assume, shall not apply to any companies organized to guarantee the fidelity of persons in places of public or private trust, nor to companies that receive on deposit and guarantee the safe keeping of books, papers, moneys, and other personal property.

Limit of risk.

Policies of. Same, § 12.

SEC. 1133. All policies or contracts of insurance made or entered into by the company, may be made either with or without the seal of said company; but said policies shall be subscribed by the president, or such other officers as may be designated by the directors for that purpose, and shall be attested by the secretary thereof.

Transfer of stock. Same, § 13.

SEC. 1134. Transfers of stock may be made by any stockholder, or his legal representative, subject to such restrictions as the directors shall establish in their by-laws, except as hereinafter provided.

CAPITAL INCREASED—REAL ESTATE.

How: certify to auditor. Same, § 14.

SEC. 1135. Whenever any company organized under this chapter, with less than the maximum capital limited in section eleven hundred and twenty-four hereof, shall, in the opinion of the directors thereof, require an increased amount of capital, they shall, if authorized by the holders of a majority of the stock to do so, file with the auditor of state a certificate setting forth the amount of such desired increase, not exceeding said maximum, and thereafter such company shall be entitled to have the increased amount of capital fixed by said certificate, and the examination of securities composing the capital stock thus increased, shall be made in the same manner as provided in section eleven hundred and thirty-one of this chapter for the capital stock first paid in.

Dividends: amount of reservation: forfeiture of charter. Same, § 15.

SEC. 1136. The directors, trustees, or managers of any insurance company organized under this chapter, or incorporated under any law of this state, shall not make any dividends, except from the surplus profit arising from their business; and, in estimating such profits, there shall be reserved therefrom a sum equal to forty per cent. of the amount received as premiums on unexpired risks and policies, which amount, so reserved, is hereby declared to be unearned premiums; and there shall also be reserved all sums due the corporation on bonds and mortgages, bonds, stocks, and book account, of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and on which

interest shall not have been paid; and, in case of any such judgment, the interest due or accrued thereon and remaining unpaid, shall also be reserved. Any dividends made contrary to these provisions, shall subject the company making it to a forfeiture of their charter.

SEC. 1137. No company organized under this chapter shall purchase, hold, or convey any real estate, save for the purposes and in the manner herein set forth:

May own real estate. Same, § 16.

1. Such as shall be requisite for its convenient accommodation in the transaction of its business;

For accommodation of business.

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for money due;

Mortgaged as security.

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company, or for money due;

When taken in satisfaction of debts.

4. Such as shall have been purchased at sales upon judgments, decrees, or mortgages obtained or made for such debt; and it shall not be lawful for any such company to purchase, hold, or convey real estate in any other case, or for any other purpose, or acquired in any other manner, except that it may convey real estate which shall be found in the course of its business not necessary for its convenient accommodation in the transaction thereof; and all such last mentioned real estate shall be sold and conveyed within three years after the same has been deemed by the auditor of state unnecessary for such accommodation, unless the company shall procure a certificate from the said auditor, that the interest of said company will materially suffer by a forced sale, in which event the sale may be postponed tor such a period as the said auditor may direct in such certificate.

When purchased to secure debt.

When to be sold.

DEPOSIT NOTES—LOSSES—POLICY.

SEC. 1138. All notes deposited with any mutual insurance company at the time of its organization, as provided in section eleven hundred and twenty-four hereof, shall remain as security for all losses and claims until the accumulation of the profits invested, as required by section eleven hundred and thirty of this chapter, shall equal the amount of cash capital required to be possessed by stock companies organized under this chapter, the liability of each note decreasing proportionately as the profits are accumulating; but any note which may have been deposited with any mutual insurance company subsequent to its organization, in addition to the cash premiums on any insurance effected with such company, may, at the expiration of the time of such insurance, or upon the cancellation by the company of the policy, be relinquished and given up to the maker thereof, or his legal representatives, upon his paying his proportion of losses and expenses which may have accrued thereon during such term. The directors or trustees of any such company shall have the right to determine the amount of the note to be given, in addition to the cash premium, by any person insured in such company; and every person effecting insurance in any mutual company, and also his heirs, executors, administrators, and assigns, continuing to be so insured,

Mutual companies: notes given at organization and subsequently. Same, § 17.

shall thereby become members of said company during the period of insurance, and shall be bound to pay for losses, and such necessary expenses as aforesaid, accruing to said company in proportion to his or their deposit note. But any person insured in any mutual company, except in the case of notes required by this chapter to be deposited at the time of its organization, may, at any time return his policy for cancellation, and, upon payment of the amount due at such time upon his premium note, shall be discharged from further liability thereon.

Settlement of losses: to what extent members are liable. Same, § 18.

SEC. 1139. The directors shall, as often as they deem necessary, after receiving notice of any loss or damage, settle and determine the sums to be paid by the several members thereof as their respective portion of such loss, and publish the same in such manner as they shall deem proper, or the by-laws shall have prescribed; but the sum to be paid by each member shall always be in proportion to the original amount of his deposit note, and shall be paid to the officers of the company within thirty days after the publication of said notice; and if any member shall, for the space of thirty days after personal demand, or by letter, for payment shall have been made, neglect or refuse to pay the sum assessed upon him as his proportion of any loss aforesaid, the directors may sue for and recover the whole amount of his deposit note, with costs of suit; but execution shall issue for assessments and costs as they accrue only, and every such execution shall be accompanied by a list of losses for which the assessment was made. If the whole amount of deposit notes shall be insufficient to pay the loss occasioned, the sufferers insured by said company shall receive, toward making good their respective losses, a proportionate share of the whole amount of said notes, according to the sums to them respectively insured; but no member shall ever be required to pay for any loss more than the whole amount of his deposit note.

Policies to show whether it is a mutual or stock company. Same, § 19.

SEC. 1140. Every insurance company hereafter organized as provided in this chapter, shall, if it be a mutual company, embody the word "mutual" in its title, which shall appear upon the first page of every policy and renewal receipt; and every company doing business as a cash stock company, shall, upon the face of its policies, express in some suitable manner that such policies were issued by stock companies.

ANNUAL STATEMENT.

When and to whom made: what to contain. Same, § 20.

SEC. 1141. The president, or the vice-president and secretary, of each company organized under this chapter, or incorporated under any law of this state, or doing business in this state, shall, annually, on the first day of January of each year, or within thirty days thereafter, prepare, under oath, and deposit in the office of the auditor of state, a full, true, and complete statement of the condition of such company on the last day of the month preceding that in which such statement is filed, which last statement shall exhibit the following items and facts in the following form, to-wit:

First—The amount of capital stock of the company; Capital.
Second—The name of the officers; Name of officers.
Third—The name of the company, and where located; Of company and location.
Fourth—The amount of its capital stock paid up; Capital paid up.
Fifth—The property or assets held by the company, specifying: Assets.
1. The value, as nearly as may be, of the real estate owned by such company; Real estate.
2. The amount of cash on hand and deposited in banks to the credit of the company, and in what bank the same is deposited; Cash on hand.
3. The amount of cash in the hands of agents, and in the course of transmission; In transit.
3. The amount of loans secured by first mortgage on real estate, with the rate of interest thereon; Mortgages.
5. The amount of all other bonds and loans, and how secured, with the rate of interest thereon; Loans.
6. The amount due the company on which judgment has been obtained; Judgments.
7. The amount of stocks of this state, of the United States, of any incorporated city of this state, and of any other stocks owned by the company, specifying the amount, number of shares, and par and market value of each kind of stock; Stocks.
8. The amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value; Collaterals.
9. The amount of assessments on stock and premium notes, paid and unpaid; Assessments.
10. The amount of interest actually due and unpaid; Interest.
11. All other securities and their value; Securities.
12. The amount for which premium notes have been given on which policies have been issued. Notes.
Sixth—Liabilities of such company, specifying: Liabilities.
1. The losses adjusted and due; Losses.
2. The losses adjusted and not due;
3. Losses unadjusted;
4. Losses in suspense and the cause thereof;
5. Losses resisted and in litigation;
6. Dividends, either in script or cash, specifying amount of each, declared but not due; Dividends.
7. Dividends declared and due;
8. The amount required to reinsure all outstanding risks, on the basis of forty per cent. of the premium on all unexpired risks; Re-insurance.
9. The amount due banks or other creditors; Amounts due.
10. The amount of money borrowed and the security therefor; Money borrowed.
11. All other claims against the company. Other claims.
Seventh—The income of the company during the previous year, specifying: Income.
1. The amount received for premiums, exclusive of premium notes; Premiums.
2. The amount of premium notes received; Notes.
3. The amount received for interest; Interest.
4. The amount received for assessments, or calls on stock notes, or premiun notes; Assessments.

Other sources.

5. The amount received from all other sources.

Expenditures.

Eighth—The expenditures during the preceding year, specifying:

Losses paid.

1. The amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which losses were estimated in such statement;

Dividends.

2. The amount paid for dividends;

Salaries.

3. The amount paid for commissions, salaries, expenses, and other charges of agents, clerks, and other employes;

Charges.

4. The amount paid for salaries, fees, and other charges of officers and directors;

Taxes.

5. The amount paid for local, state, national, internal revenue, and other taxes and duties;

Other expenses.

6. The amount paid for all other expenses, expenditures, including printing, stationery, rents, furniture, &c.;

Risks.

Ninth—The largest amount insured in any one risk.

Tenth—The amount of risks written during the year then ending.

Eleventh—The amount of risks in force, having less than one year to run.

Twelfth—The amount of risks in force, having more than one, and not over three years to run.

Thirteenth—The amount of risks having more than three years to run.

Question.

Fourteenth—The following question must be answered, viz: Are dividends declared on premiums received for risks not terminated?

Accident companies: ticket register.

Fifteenth—Each accident insurance company, or company insuring against accidents in this state, shall keep a register of tickets sold by its officers or agents, which register shall show the name and residence of the person insured, the amount of such insurance, the date of issue of such ticket, and the time the same will remain in force, and every such company shall file in the office of the auditor of state, in January in each year, a report, sworn to by the president or secretary of the company, showing the above items of the business of such company during the preceding year, and the auditor of state shall withhold the certificate of authority from any such company neglecting or failing to comply with the provisions of this section.

Auditor may require information.
Same, § 21.

SEC. 1142. The auditor of state is hereby authorized and empowered to address any inquiries to any insurance company in relation to its doings and condition, or any other matter connected with its transactions, which he may deem necessary for the public good, or for a proper discharge of his duties, and any company so addressed shall promptly reply in writing thereto.

Additional exhibit.
Same, § 22.

SEC. 1143. The statement of any company, the capital of which is composed in whole, or in part, of notes, shall, in addition to the foregoing, exhibit the amount of notes originally forming the capital, and also what proportion of said notes is still held by such company and considered capital.

FOREIGN COMPANIES—CAPITAL REQUIRED.

SEC. 1144. No insurance company, association, or partnership, organized or associated for any of the purposes specified in this chapter, incorporated by, or organized under, the laws of any other state or any foreign government, shall, directly or indirectly, take risks or transact any business of insurance in this state, unless possessed of two hundred thousand dollars of actual paid-up capital, exclusive of any assets of any such company deposited in any other states or territories for the special benefit or security of the insured therein; and any such company, desiring to transact any such business as aforesaid, by an agent or agents in this state, shall file with the auditor of state a written instrument, duly signed and sealed, authorizing any agent or agents of such company in this state, to acknowledge service of process for and in behalf of such company in this state, consenting that service of process, original, mean, or final, upon any such agent or agents, shall be taken and held as valid as if served upon the company according to the laws of this or any other state, and waiving all claim or right of error, by reason of such acknowledgment or service; and also a certified copy of their charter or deed of settlement, together with a statement, under oath, of the president or vice-president, or other chief officer, and the secretary of the company for which they may act, stating the name of the company and the place where located, the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this state, as per section eleven hundred and forty-one hereof; also a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by liabilities as stated in section eleven hundred and forty-one of this chapter, to the extent of twenty per cent. thereof, while such deficiency shall continue.

Amount: prerequisites to insuring. Same, § 23. C. 106, § 2, 14 G. A.

RISKS—AGENTS.

SEC. 1145. No agent shall act for any insurance company referred to herein, directly or indirectly, in taking risks or transacting business of insurance in this state, without procuring from the auditor of state a certificate of authority, stating that such company has complied with all the requisitions of this chapter.

Certificate required before risks taken. C. 138, § 24, 12 G. A.

SEC. 1146. The statements and evidences of investment required of foreign companies as above, shall be renewed, annually, in such manner and form as required hereby and as said auditor may direct, with any additional statement of the amount of the losses incurred or premiums received in this state during the preceding period, so long as such agency continues. And the said auditor, on being satisfied that the capital, securities, and investments remain secure, as hereinbefore provided, shall furnish a renewal of his certificates as aforesaid. All notes taken for policies of insurance in any company doing business in this

Make annual statements. Same, § 25.

Notes given for insurance: when not collectable.

state, shall state upon their face that they have been taken for insurance, and shall not be collectable unless the company and its agents have fully complied with the laws of this state relative to insurance.

Conform to provisions of this chapter: penalty for failure. Same, § 26.

SEC. 1147. Every insurance company organized under the laws of, or doing business in, this state, shall conform to all the provisions of this chapter applicable thereto, and, when necessary, any existing company shall change its charter and by-laws, so as to conform hereto, by a vote of a majority of its board of directors; and any president, secretary, or other officer of any company organized under the laws of Iowa, or any officer or person doing, or attempting to do, business in this state for any insurance company organized without this state, failing to comply with any of the requirements of this chapter, or violating any of the provisions thereof, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding one thousand dollars, and be imprisoned in the county jail for a period not less than thirty days nor more than six months.

Advertisements: what to contain. Same, § 27.

SEC. 1148. Every agent of any insurance company, shall, in all advertisements of such agency, publish the location of the company, giving the name of the city, town, or village in which the company is located, and the state or government under the laws of which it is organized. The term agent, used in the foregoing sections, shall include any other person who shall, in any manner, directly or indirectly, transact the insurance business of any insurance company not incorporated by the laws of this state. The provisions of the foregoing sections relative to foreign companies, shall apply to all such companies, partnerships, associations, or individuals, whether incorporated or not.

EXAMINATION BY AUDITOR.

Auditor may appoint examiners: their powers: proceedings when assets are impaired. Same, § 28.

SEC. 1149. The auditor of state shall, whenever he deems it expedient so to do, appoint one or more persons, not officers, agents, or stockholders of any insurance company doing business in this state, to examine into the affairs and condition of any insurance company incorporated or doing business in this state, or to make such examination himself; and the officers or agents of such company or companies shall cause their books to be opened for the inspection of the auditor or the person or persons so appointed, and otherwise facilitate such examination so far as may be in their power so to do; and for the purpose of arriving at the truth in such case, the auditor, or the person or persons so appointed by him, shall have power to examine, under oath, the officers or agents of any company, or others if necessary, relative to the business and condition of said company; and whenever the auditor shall deem it best for the interest of the public so to do, he shall publish the result of such investigation in one or more papers in this state; and whenever it shall appear to the auditor, from such examination, that the assets and funds of any company incorporated in this state are reduced or impaired by the liabilities of said company, as described under the head of liabilities in the statement required by this chapter, more than twenty per cent.

below the paid-up capital stock required hereby, he may direct the officers thereof to require the stockholders to pay in the amount of such deficiency, within such a period as he may designate in such requisition, or he shall communicate the fact to the attorney-general, who shall apply to the district or circuit court, or, if in vacation, to one of the judges thereof, for an order requiring said company to show cause why their business should not be closed; and the court, or judge, as the case may be, shall thereupon proceed to hear the allegations and proofs of the respective parties; and in case it shall appear to the satisfaction of said court, or judge, that the assets and funds of said company are not sufficient, as aforesaid, or that the interest of the public requires it, the said court, or judge, shall decree a dissolution of said company and a distribution of its effects. The said court, or judge, shall have power to refer the application of the attorney-general to a referee, to inquire into and report upon the facts stated therein.

Requisition on stockholders: liability of directors. Same, § 29.

SEC. 1150. Any company receiving the aforesaid requisition from the auditor, shall forthwith call upon its stockholders for such amounts as will make its paid-up capital equal to the amount fixed by this chapter, or the charter of said company; and in case any stockholder shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement in such time and manner as said auditor shall approve, it shall be lawful for the said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said company; the value of such shares for which new certificates shall be issued to be ascertained under the direction of the said auditor, the company paying for the fractional parts of shares; and it shall be lawful for the directors of such company to create new stock and dispose of the same, and to issue new certificates therefor, to an amount sufficient to make up the original capital of the company. And in the event of any additional losses accruing upon new risks, taken after the expiration of the period limited by the said auditor in the aforesaid requisition for the filling up of the deficiency in the capital of such company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof.

Examination and proceedings in case of mutual companies. Same, § 30.

SEC. 1151. If, upon such examination, it shall appear to the auditor, that the assets of any company, chartered upon the plan of mutual insurance under this chapter, are insufficient to justify the continuance of such company in business, he shall proceed in relation to such company in the same manner as herein required in regard to joint-stock companies; and the trustees or directors of such company are made personally liable for any losses which may be sustained upon risks taken after the expiration of the period limited by the auditor for filling up the deficiency in the capital, and before such deficiency shall have been made up. Any transfer of the stock of any company organized under this chapter, made during the pending of any investigation required above, shall not release the party making the transfer from his

liability for losses, which may have accrued previous to such transfer.

Revocation of certificate. Same, § 31.

SEC. 1152. The auditor of state shall be authorized to examine into the condition and affairs of any insurance company, as provided for in this chapter, doing business in this state, not organized under the laws of this state, or cause such examination to be made by some person or persons appointed by him, having no interest in any insurance company; and, whenever it shall appear to the satisfaction of said auditor that the affairs of any such company are in an unsound condition, he shall revoke the certificates granted in behalf of such company, and shall cause a notification thereof to be published in some newspaper of general circulation published in the city of Des Moines, and the agent or agents of such company are, after such notice, required to discontinue the issuing of any new policy, or the renewal of any previously issued.

FEES.

Amount of.

SEC. 1153. There shall be paid by every company doing business in this state, except companies organized under the laws of this state, the following fees:

Upon filing declaration, or certified copy of charter, twenty-five dollars;

Upon filing the annual statement, twenty dollars;

For each certificate of authority, and certified copy thereof, two dollars;

For every copy of any paper filed in the department, the sum of twenty cents per folio, and for affixing the official seal to such copy, and certifying the same, one dollar;

For valuing policies of life insurance companies, ten dollars per million of insurance or for any fraction thereof;

For official examinations of companies under this act, the actual expense incurred.

And companies organized under the law of this state, shall pay the following fees:

For filing and examination of the first application of any company, and the issuing of the certificate of license thereon, ten dollars;

For filing each annual statement, and issuing the renewal of license required by law, three dollars;

For each certificate of authority to its agents, fifty cents.

Laws of other states.

SEC. 1154. When, by the laws of any other state, any taxes, fines, penalties, licenses, fees, deposits of moneys or of securities, or other obligations or prohibitions, are imposed, or would be imposed, on insurance companies of this state, doing, or that might seek to do, business in such other state, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions, of whatever kind, shall be imposed upon all insurance companies of such other state doing business within this state, or upon their agents here.

Certificate of auditor to be published annually.

SEC. 1155. Every insurance company of the kind provided for in this chapter, doing business in this state, organized under the

laws of this state or any other state or country, shall publish, annually, in two newspapers of general circulation, one of which shall be published at the capital of this state, and in case of any company organized in the state of Iowa, one of which shall be published in the county where the principal office is located, a certificate from the auditor of state that such company has, in all respects, complied with the laws of this state relating to insurance. Said certificate shall also contain a statement, under the oath of the president or secretary of such insurance company, of the actual amount of paid-up capital, the aggregate amount of assets and liabilities at the date of such certificate, together with the aggregate income and expenditures of such company for the year preceding the date of such certificate.

Expenses: by whom paid.

SEC. 1156. The necessary expenditure of any examination made, or ordered to be made, by the auditor of state under this chapter, shall be certified to by him and paid on his requisition, by the company which is the subject of such examination.

STATEMENTS PUBLISHED.

Auditor to furnish printed forms. C. 138, § 36, 12 G. A.

SEC. 1157. The auditor of state shall cause to be prepared and furnished to each company organized under the laws of this state, and to the attorney or agent of each company incorporated by other states and foreign governments, who may apply for the same, printed forms of statements required by this chapter, and he may, from time to time, make such changes in the forms of these statements as shall seem to him best adapted to elicit from the companies a true exhibit of their condition, in respect to the several points hereinbefore enumerated.

Auditor to make and publish report. C. 106, § 7, 14 G. A.

SEC. 1158. The auditor of state shall cause the information contained in the statements required of the companies organized in this state, to be arranged in a tabular form, and prepare the same in a single document for printing, which report shall be made on or before the first day of May of each year, and fifteen hundred copies shall be printed for the use of the auditor, who shall furnish a copy to each member of the general assembly and one to each newspaper printed in the state.

Must be stock or mutual. C. 138, § 39, 12 G. A.

SEC. 1159. No company organized upon the mutual plan, shall do business or take risks upon the stock plan; neither shall a company organized as a stock company, do business upon the plan of a mutual insurance company.

Mutual associations: number and powers limited. Same. § 40. C. 108, 13 G. A. C. 107, 14 G. A.

SEC. 1160. Nothing in this chapter shall be so construed as to prevent any number of persons, not exceeding two thousand, from making mutual pledges and giving valid obligations to each other for their own insurance from loss by fire or death; but such association of persons shall in no case insure any property not owned by one of their own number, and no life except that of their own members, nor shall the provisions of this chapter be applicable to such associations or companies; but such associations or companies shall receive no premiums nor make any dividends.

CHAPTER 5.

OF LIFE INSURANCE COMPANIES.

Conditions. C. 173, § 1, 12 G. A.

SECTION 1161. Every company formed for the purpose of insuring the lives of individuals, whether organized under the laws of this state or of any other state, or foreign country, shall, before issuing any policies on lives within this state, comply with the conditions and restrictions of this chapter.

Stock companies: capital: amount to be paid up. Same, § 2.

SEC. 1162. Joint-stock companies, organized under the laws of this state, shall have not less than one hundred thousand dollars of capital stock subscribed, twenty-five per cent. of which shall be paid up and invested in stocks of the United States, or of this state, or in bonds and mortgages upon unencumbered real estate in the state of Iowa, worth, exclusive of improvements, at least double the sum loaned thereon, which said securities shall be deposited with the auditor of state, and, upon said deposit, and satisfactory evidence to the auditor that the capital stock is all subscribed in good faith, he shall issue to said company the certificate hereinafter provided for. But no part of the twenty-five per cent. aforesaid, shall be loaned to any stockholder or officer of the company; the remainder of such stock shall be paid in such time as the directors or trustees of the company may direct, and the same shall be secured by the notes of the stockholders of said company. No note shall be accepted as part of such capital stock, unless the same shall be accompanied by a certificate of a justice of the peace, notary public, or clerk of the district court of the county in which the person executing such note shall reside, that the person making the same is, in his opinion, pecuniarily good and responsible for the same in property not exempt from execution by the laws of this state.

Mutual companies: application for insurance: conditions. Same, § 3.

SEC. 1163. Companies organized under the laws of this state upon the mutual plan, shall, before issuing any policies, have actual applications on at least two hundred and fifty individual lives, for an average amount of one thousand dollars each, a list of which applications, giving the name, age, residence, amount of insurance, and annual premium of each applicant, shall be filed with the auditor of state, and a deposit made with said auditor of an amount equal to three-fifths of the whole annual premium on said applications, either in cash or the securities required by the foregoing section, and, on compliance with said provisions, the auditor shall issue to said mutual company the certificate hereinafter prescribed.

AGENTS—RISKS.

Foreign companies: pre-requisites to insurance. Same, § 4.

SEC. 1164. No person shall act within this state as agent, or otherwise, in receiving or procuring applications for insurance, or in any manner to aid in transacting the business of insurance referred to in section eleven hundred and sixty-one hereof, for any company or association incorporated by, or organized under, the

laws of any state or government, unless such company is possessed of the amount of actual capital required of any company in this state, and the same is invested in stocks or treasury notes of the United States, or this state, or of interest-paying bonds of the state in which said company is located, or where said deposits are made, or in bonds and mortgages on unencumbered real estate within the state where such company is located, but all mortgages deposited by any company under this section, shall be upon unencumbered real estate worth double the amount loaned thereon; which stock and securities shall be deposited with the auditor, controller, or chief financial officer of the state by whose laws said company is incorporated, or some other state, and the auditor of this state furnished with a certificate of such auditor, controller, or chief financial officer aforesaid, under his hand and official seal, that he, as such auditor, controller, or chief financial officer of such state, holds in trust and on deposit, for the benefit of all the policy-holders of such company, the security before mentioned, which certificate shall embrace the items of security so held, and that he is satisfied that such securities are worth one hundred thousand dollars; but nothing herein contained shall be construed to invalidate the agency of any company incorporated in another state, by reason of such company having from time to time exchanged the securities so deposited with the auditor, controller, or chief financial officer of the state in which such company is located for other stock or securities authorized by this chapter, or by reason of such company having drawn its interest and dividends from time to time, for such stocks and securities.

Must appoint agent upon whom legal process can be served. Same; § 5.

SEC. 1165. Such company shall also appoint an attorney or agent in each county in this state, in which the company has an agency, on whom process of law can be served, and such company shall file with the auditor of state a certified copy of the charter or articles of incorporation of said company, and also a certified copy of the certificate of appointment of such agent, or agents, which appointment shall continue until another agent or attorney be substituted. And in case any such insurance corporation shall cease to transact business in this state according to the laws thereof, the agents last designated, or acting as such for such corporation, shall be deemed to continue agents for such corporation for the purpose of serving process for commencing actions upon any policy or liability issued or contracted while such corporation transacted business in this state; and service of such process for the causes aforesaid upon any such agent, shall be deemed a valid personal service upon such corporation, and such company shall also file a statement of its condition and affairs in the office of the auditor of state, in the same form and manner required for the annual statements of similar companies organized under the laws of this state.

Must obtain auditor's certificate before risks taken. Same; § 6.

SEC. 1166. No agent shall act for any company referred to in the foregoing section, directly or indirectly, in taking risks, collecting premiums, or in any manner transacting the business of life insurance in this state without procuring from said auditor a certificate of authority, stating that the foregoing requirements have

been complied with, and setting forth the name of the attorney for each company, a certified copy of which certificate shall be filed in the county recorder's office of the county where the agency is to be established, and shall be the authority of such company and agent to commence business in this state, and such company, or its agent or attorney, shall, annually, in the month of January, or within thirty days thereafter, file with the auditor of this state, a statement of its affairs for the preceding year, in the same manner and form provided for similar companies in this state.

ANNUAL STATEMENT.

By whom made. Same, § 7.

SEC. 1167. The president, or vice-president, and secretary or actuary, or a majority of the trustees or directors of each company organized under this chapter, or doing business in this state, shall, annually, on the first day of January, or within thirty days thereafter, prepare, under oath, and deposit in the office of the auditor of state, a statement, showing:—

FIRST—NAME AND CAPITAL.

Name. 1. The name of the company and where located;
2. The name of the officers;
Capital. 3. The amount of capital stock;
4. The amount of capital stock paid in.

SECOND—ASSETS.

Real estate. 1. The value of real estate owned by such company;
Cash. 2. The amount of cash on hand;
3. The amount of cash deposited in bank, giving name of bank or banks;
4. The amount of cash in the hands of agents, and in the course of transmission;
Bank stock. 5. The amount of bank stocks, with the name of each bank, giving par and market value of the same;
Stocks and bonds. 6. The amount of stocks and bonds of the United States, and all other bonds, giving names and amounts, with the par and market value of each kind;
Mortgages. 7. The amount of loans secured by first mortgage on real estate;
Other loans. 8. The amount of all other bonds and loans, and how secured, with the rate of interest;
Premium notes. 9. The amount of premium notes on policies in force;
Other notes. 10. The amount of notes given for unpaid stock, and how secured;
Assessments. 11. The amount of assessments unpaid on stock or premium notes;
Interest. 12. The amount of interest due and unpaid;
Securities. 13. All other securities.

THIRD—LIABILITIES.

1. The amount of losses due and unpaid; Losses.
2. The amount of losses adjusted but not due;
3. The amount of losses unadjusted;
4. The amount of claims for losses resisted;
5. The amount of money or evidences of investment borrowed; Money borrowed.
6. The amount of dividends unpaid; Dividends unpaid.
7. The amount required to safely reinsure all outstanding risks; Reinsurance.
8. All other claims against the company. Other sources.

FOURTH—INCOME DURING THE YEAR.

1. The amount of net cash premiums received; Premiums.
2. The amount of premium notes received; Notes.
3. The amount of interest received from all sources; Interest.
4. The amount received from all other sources. Other sources.

FIFTH—EXPENDITURES DURING THE YEAR.

1. The amount paid for losses; Losses.
2. The amount of dividends paid to policy-holders, and amount to stockholders; Dividends.
3. The amount of commissions and salaries paid to agents; Companies.
4. The amount paid to officers for salaries and other perquisites; To officers.
5. The amount paid for taxes; Taxes.
6. The amount of all other payments and expenditures. Other payments.

SIXTH—MISCELLANEOUS.

1. The greatest amount insured on any one life; Maximum insurance.
2. The amount deposited in other states or territories as security for policy-holders therein, stating the amount in each state or territory; Amount deposits.
3. The amount of premiums received in this state during the year; Premiums in state.
4. The amount paid for losses in this state during the year; Losses paid in.
5. The whole number of policies issued during the year, with the amount of insurance effected thereby, and total amount of risk; Policies issued.
6. All other items of information necessary to enable the auditor to correctly estimate the cash value of policies, or to judge of the correctness of the valuation thereof. Other items.

SEC. 1168. The auditor of state is authorized to amend the form of annual statement, and to propose such additional inquiries as he may think necessary to elicit a full exhibit of the standing of companies doing business in this state. Additional inquiries. Same, § 8.

SEC. 1169. As soon as practicable after the filing of said statement of any company organized or doing business under the laws of this state, in the office of the auditor of state, he shall proceed to ascertain the net cash value of each policy in force, upon the basis of American Experience Table of Mortality, and four and Value of policies ascertained: evidence of. Same, § 9. C. 106, § 3, 14 G. A.

one-half per cent. interest, or Actuary's Combined Experience Table of Mortality, with interest at four per cent.; but in case such valuation has been made in New York, or any other state, upon the basis above specified, a certificate of the auditor, controller, or chief financial officer of such state, shall be taken by the auditor of this state as sufficient evidence of the valuation of such policies, and of the amount so required for such re-insurance. For the purpose of making such valuations, when not already made as aforesaid, the auditor may employ a competent actuary to do the same, who shall be paid by the company for which the service was rendered; but nothing herein shall prevent any company from making said valuation herein contemplated, which shall be received by the auditor upon such proof as he may determine. Upon ascertaining the net cash value of policies in force in any company organized under the laws of this state, or doing business in this state, and which has not made the deposit required in section eleven hundred and sixty-four of this chapter, the auditor shall notify said company of the amount, and within thirty days after the date of such notification, the officers of such company shall deposit with the auditor the amount of such ascertained valuation of all policies within this state, in stocks of the United States or of this state, or any other state, or in bonds and mortgages on real estate within the limits of this state, or within the state where such company is located, of at least double the value loaned thereon. But no joint stock company organized under the laws of this state, or doing business therein, shall be required to make such deposit until the cash value of the policies in force, as ascertained by the auditor, exceeds the amount deposited by said company under section eleven hundred and sixty-two hereof. Foreign companies doing business in this state are not required to make a deposit in this state, provided such deposit has been made in the state where located, or in any other state, when they shall have complied with section eleven hundred and sixty-four of this chapter.

Annual certificate recorded: copy furnished agents. Same, § 10.

SEC. 1170. On receipt of the deposit and statement from any company as provided in the preceding sections, and the statement and evidences of investment according to law of foreign companies, which shall be renewed annually, the auditor shall issue a certificate setting forth the corporate name of the company; its principal office or agency in the state; that it has fully complied with the laws of this state in relation to life insurance companies, and is authorized to transact the business of life insurance for twelve months from the date of such certificate, or until the expiration of the thirty days' notice given by the auditor of the next annual valuation of its policies. The certificate shall be recorded in the recorder's office in the county in which such principal office is located, in a book prepared for that purpose. A copy of the certificate, certified by the auditor, shall be, by the general agent of said company, furnished to each of its local or traveling agents, and said copy shall be their authority for soliciting applications for policies.

SEC. 1171. Upon the failure of any company to make the deposit, or file the statement in the time stated herein, the audi-

tor shall notify the attorney-general of the default, who shall at once apply to the district or circuit court, if in session, or, if in vacation, to any judge thereof, for an order requiring said company to show cause why its business shall not be closed; and, if upon hearing, the company shall fail to show sufficient cause for neglecting to make the deposit, or file the certificate required by this chapter, then if said company was organized under the laws of this state, the court shall decree its dissolution, and if organized and chartered by the laws of any foreign state or country, shall enjoin said company perpetually from transacting business of any life insurance within this state.

Penalty for failure to make deposit or statement: how enforced. Same, § 11.

EXAMINATION BY AUDITOR.

SEC. 1172. The auditor may at any time make a personal examination of the books, papers, and securities of any life insurance company doing business in this state, or may authorize or empower any other suitable person to make such examination, and for the purpose of securing a full and true exhibit of its affairs, he, or the person selected by him to make such examination, shall have power to examine, under oath, any officer or agent of said company, or others if necessary, relative to its business and management. If, upon such examination, the auditor is of opinion that the company is insolvent, or that its condition is such as to render its further proceedings hazardous to the public or to the holders of its policies, he shall communicate the facts to the attorney-general, who shall at once apply to a judge of the supreme or district court to issue an injunction, restraining such company from transacting further business, except the payment of losses already ascertained and due, until a full hearing can be had. It shall be discretionary with the judge, either to issue the injunction forthwith or to give notice to the company, and cause a hearing to be had as in ordinary proceedings for an injunction. Upon the final hearing of the cause, he may dissolve or modify the injunction, or make it perpetual, and, if made perpetual, shall also decree what disposition shall be made of the deposit of the company in the hands of the auditor, subject to the provisions of the following section.

When insolvent to procure injunction, certificates from other states received. Same, § 12. C. 106, § 1, 14 G. A.

SEC. 1173. The securities of a defaulting or insolvent company, on deposit with the auditor of state, shall vest in the state for the benefit of the policies on which such deposits were made, and the proceeds of the same shall, upon the order of the court, be divided among the holders of said policies in the proportions of the last annual valuation of the same, or applied to the purchase of re-insurance for the benefit of the policy-holders.

When securities vest in state for benefit of insured. Same, § 13.

SEC. 1174. Companies shall have the right at any time to change their securities on deposit, by substituting for those withdrawn a like amount in other securities of the character provided for in this chapter, and whenever the annual valuation of policies outstanding and in force against any company, is less than the amount of security then on deposit with the auditor, said company shall have the right to withdraw such excess; but twenty-five thousand dollars shall remain on deposit.

Change of securities. Same, § 14.

Interest collected. Same, § 15.

SEC. 1175. The auditor shall permit companies, having on deposit with him stock or bonds as security, to collect the interest accruing on such deposits, delivering to their authorized agents, respectively, the coupons or other evidences of interest as the same become due, but upon default by any company to deposit additional security as called for by the auditor, or pending any proceedings to close up or enjoin it, he shall collect the interest as it becomes due, and add the same to the securities in his hands belonging to such company.

Auditor's report. Same, § 16.

SEC. 1176. At the earliest practicable date after the returns are received from the several insurance companies, the auditor shall make a report to the general assembly, of the general conduct and condition of the corporations visited by him since his last annual report, and shall include therein an aggregate of the calculated value of all outstanding policies of life insurance, and in connection therewith, shall prepare an abstract of all the returns and statements made to him by insurance companies and agents.

Penalty for doing business without certificate. Same, § 17.

SEC. 1177. Any company doing business in this state without the certificate required by section eleven hundred and seventy of this chapter, shall forfeit one hundred dollars for every day's neglect to procure said certificate. Any agent making insurance, or soliciting applications for any company having no certificate from the auditor, shall forfeit the sum of three hundred dollars, and any person acting for a company authorized to transact business in this state, without having a certified copy of the company's certificate, issued by the auditor of state, in his possession, shall be liable to pay twenty-five dollars for each day's neglect to procure such copy.

Penalties: disposition of amount recovered. Same, § 18.

SEC. 1178. The penalties provided for in this chapter shall be sued for and recovered in the name of the state of Iowa, by the district attorney in the district or circuit court of the county in which the company or agent violating shall be situated or reside. Three-fourths of said penalty, when recovered, shall be paid into the county treasury for the use of the school fund, and one-fourth to the informer of such violation. In case of non-payment of the penalty, the individual offending shall be liable to imprisonment in the county jail for a period not exceeding three months.

INVESTMENTS—REAL ESTATE.

Funds: how invested. Same, § 22.

SEC. 1179. No company organized under the provisions of this chapter, shall invest its funds in any other manner than in the stocks of the United States, of this state, or any other state, if at, or above par; in bonds and mortgages on unencumbered real estate within this state, or in the state in which such company is located, worth at least twice the amount loaned thereon, exclusive of improvements; and all stocks, bonds, or mortgages owned or held by any company doing business under the provisions of this chapter, whether organized under the laws of this state or not, shall be equal, or made to be equal to six per cent. stocks.

Real estate. Same, § 23.

SEC. 1180. No company organized under this chapter, shall be permitted to purchase, hold, or convey real estate, except for the purposes and in the manner herein set forth:

1. Such as shall be requisite for its immediate accommodation in the transaction of its business; or, When requsite for business.

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for moneys due; or, When mortgaged as security to.

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or,

4. Such as shall have been purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts; and no company incorporated as aforesaid, shall purchase, hold, or convey real estate in any other case, or for any other purpose.

SEC. 1181. All such real estate as may be acquired as aforesaid, and which shall not be necessary for the accommodation of such company in the convenient transaction of its business, shall be sold and disposed of within five years after such company shall have acquired title to the same; no such company shall hold such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the auditor of state, that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the said auditor shall direct in said certificate. When to be sold. Same, § 24.

SEC. 1182. A policy of insurance on the life of an individual, in the absence of an agreement or assignment to the contrary, shall inure to the separate use of the husband or wife and children of said individual, independently of his or her creditors; and an endowment policy, payable to the assured on attaining a certain age, shall be exempt from liability for any of his or her debts. Powers of policy exempt from execution. Same, § 18.

SEC. 1183. Each company contemplated in this chapter shall pay the same fees, and be liable to the same obligations as provided in sections eleven hundred and fifty-three and eleven hundred and fifty-four of chapter four of this title. Fees. C. 106, § § 4, 5, 14 G. A.

CHAPTER 6.

OF MUTUAL BUILDING ASSOCIATIONS.

SECTION 1184. Any number of persons, not less than five, may associate themselves and become incorporated as provided in chapter one of this title, for the purpose of raising moneys to be loaned to the members of the corporation, and to other persons, and for use in buying lots or houses, or in building or repairing houses or other purposes. How formed. C. 30, § 1, 14 G. A.

SEC. 1185. Such corporation shall be authorized and empowered to levy, assess, and collect from its members such sums of money, by rates of stated dues, fines, interest on loans advanced, and premiums bid by members for the right of precedence in taking loans, as the corporation by its by-laws shall adopt; also to Powers. Same, § 2. C. 101, 14 G. A.

acquire, hold, encumber, and convey all such real estate and personal property as may be legitimately pledged to it on such loans, or may otherwise be transferred to it in due course of its business; and the dues, fines, and premiums so paid by members, in addition to the legal rate of interest on loans taken by them, shall not be construed to make the loans so taken usurious; but no person shall hold more than twenty shares in any such association.

Similar societies heretofore organized. C. 90, § 8, 14 G. A. C. 101, 14 G. A.

SEC. 1186. When mutual loan societies, or other associations heretofore organized under the laws of this state, with objects similar to those contemplated in the preceding sections, and permitting not more than twenty shares of their stock to be owned by any one member, have loaned, or shall hereafter loan, their capital or funds, or any part thereof, to their members, and have taken, or shall take, notes or obligations therefor, secured by mortgages, or otherwise, in accordance with the terms of their articles of incorporation and by-laws, such notes, obligations, and securities shall not be construed or held to be usurious by reason of any dues, fines, or premiums for the right of preference in taking such loans paid in addition to the legal rate of interest, but the same shall be valid and binding in all respects, the payment of such dues, fines, or premiums in addition to a rate of interest not exceeding ten per centum per annum, payable annually, or at any less period, notwithstanding.

Earnings to pay expenses and purchase real estate. C. 90, § 4, 14 G. A. C. 101, 14 G. A.

SEC. 1187. So much of the earnings of such corporations as may be necessary, not exceeding ten per cent. per annum, may be set apart to defray the current expenses of said association, and for the purchsse of such real estate as may be necessary for the convenient transaction of its business, and the residue of said earnings shall be transferred to the credit of the shareholders, and when said shares are fully paid, then to be paid ratably to the shareholders.

TITLE X.

OF INTERNAL IMPROVEMENTS.

CHAPTER 1.

OF MILL DAMS AND RACES.

SECTION 1188. Any person who owns land on one or both sides of a water course, who desires to erect or heighten any dam thereon, or construct or enlarge a race therefrom, for the purpose of propelling any mill or machinery to be erected on such stream by the water thereof, may file a petition in the office of the clerk of the district or circuit court of the county in which such mill or machinery is to be erected.

Owner of land to file petition. R. § § 1264, 1274. C. 31, 10 G. A.

SEC. 1189. Such petition shall describe with reasonable certainty the locality where such mill or machinery is to be erected, together with that of such dam or race, and also of the lands that will be overflowed or otherwise affected thereby, and the names of the owners thereof. The person filing the petition shall be known as plaintiff and the owners of the land as defendants.

What to contain. R. § 1265.

SEC. 1190. The clerk shall thereupon issue an order, to which shall be attached a copy of the petition, directed to the sheriff, commanding him to summon a jury composed of twelve disinterested electors of his county to meet on a day fixed in said order upon the lands therein described, which order, including the copy of the petition, shall be served on the defendants in the same manner and for the same length of time previous to the day fixed in the order as is required for the service of original notices. If any of said defendants are non-residents of the state, they may be served by publication as original notices in like cases are required to be served. And if any defendant is a minor or insane person who has no guardian, the clerk, at the time of issuing the order, may appoint a guardian to defend for him by endorsement on such order.

Order to issue for a jury: notice of served on defendants. R. § § 1266, 1270.

SEC. 1191. If any of the lands are situate in a county other than that in which the petition is required to be filed, the proceedings herein referred to may take place to the same extent and in the same manner as if such lands were situated in the county where the petition is filed.

When lands are in another county. R. § 1270.

SEC. 1192. The jury shall be sworn to impartially and to the best of their skill and judgment view the lands described in the petition, and ascertain and appraise the damages each of the

Jury to appraise damages. C. 119, § 1, 11 G. A.

defendants will sustain by reason of such lands being overflowed or otherwise injuriously affected by the dam or race, or the heightening or enlarging the same, and whether the dwelling house, out-house, orchard, or garden of any defendant will be so affected, and if so, whether the same has been placed there for that purpose.

Hear witnesses and report finding. Same, § 2.

SEC. 1193. The jury may, in addition to examining the premises, hear and examine witnesses. They shall report their findings in writing and attach the same to the order, which shall be returned by the sheriff to the clerk, and if it appears therefrom that the dwelling house, out-house, orchard, or garden of any defendant will be injuriously affected, and that the same was placed on the premises for that purpose, such fact shall not be considered any bar or hindrance to the construction or building of the race or dam.

Appeal.

SEC. 1194. Either party may appeal from such assessment of damages to the circuit court within thirty days after the assessment is made, in the manner, and the proceedings on such appeal shall be, as provided in chapter four of this title.

Cause shown. R. § 1268.

SEC. 1195. When said report is filed, the clerk shall issue an order directed to the defendants, requiring them to appear at the next term of the court and show cause, if any they have, why a license should not be granted to construct the dam or race, which order shall be served in the same manner as hereinbefore directed.

Objections filed: pleadings: amendment of: another jury.

SEC. 1196. On or before the day fixed in the order for the defendants to show cause, they may file any objections to the prior proceedings or to granting he license they see proper. The petition and objections filed thereto shall constitute the pleadings, and the same may be amended upon such terms as the court deems just, and if the proceedings of the jury are found informal or defective in substance, the court may order a new jury to be empanelled upon such terms as to notice as it may direct. The return of the sheriff may be amended at any stage of the proceedings in accordance with the facts.

Written testimony. C. 119, § 2, 11 G. A.

SEC. 1197. Testimony may be taken to be introduced on the final hearing before the court, in the same manner that testimony is taken in equitable actions triable on written testimony.

License granted. R. § 1269.

SEC. 1198. If it shall appear to the court that neither the dwelling-house, out-house, garden, or orchard of any defendant will be overflowed or injuriously affected, and the court shall judge it reasonable and for the public benefit, license shall be granted to construct such dam or race, on the plaintiff paying to the proper parties the damages found by the jury and decreed by the court.

Forfeiture of. Same.

SEC. 1199. If the plaintiff does not begin within one year thereafter to construct said dam or race, and finish and have in operation the mill and machinery in three years thereafter, and afterwards keep it in good repair for the accommodation of the public, or in case said dam, race, mill or machinery be destroyed, he shall not begin to repair or rebuild it within one year, and finish it in three years, then said license shall be forfeited.

Continuance. R. § 1270.

SEC. 1200. If the order shall not be executed by the sheriff on the day therein mentioned, he may, from time to time, appoint

another day, notice thereof being given to the parties interested as hereinbefore provided; and if inquest cannot be completed in one day, the sheriff shall adjourn the jury, from day to day, until its completion.

No bar to action. R. § 1271.

SEC. 1201. No proceeding under this chapter shall bar an action which could have been maintained if this chapter had not been enacted, unless the prosecution or action was actually foreseen and estimated upon the inquest.

New party made. R. § 1272.

SEC. 1202. Any owner of land affected by any proceedings under this chapter, who has not been made party by reason of want of notice, or from any other cause, may be made party thereto by proper proceedings at any time thereafter.

Costs. R. § 1273.

SEC. 1203. Costs and fees under this chapter shall be the same as in other cases for like services, and shall be paid by the plaintiff.

Repair of injured banks or race by owner of machinery. R. § § 1275, 1276.

SEC. 1204. Where the water backed up by any dam belonging to any mill or machinery is about to break through or over the banks of the stream or race, or to wash a channel, so as to turn the water of such stream or race, or any part thereof, out of its ordinary channel, whereby such mills or machinery will be injured or affected, the owner or occupier of such mill or machinery, if he do not own such banks, or the lands lying contiguous thereto, may, if necessary, enter thereon, and erect and keep in repair such embankments and other works as shall be necessary to prevent such water from breaking through or over the banks of such stream or race, or washing a channel as aforesaid, such owner or occupier committing thereon no unnecessary waste or damage, and being liable to pay any damages which the owner of the lands may actually sustain by the erection and repair aforesaid.

Penalty for injuring embankment. R. § 1277.

SEC. 1205. If any person shall injure, destroy, or remove any such embankment, or other works, the owner or occupier of such mill or machinery may recover of such person all damages he may sustain by reason of such injury, destruction, or removal.

Utilizing fall below dam.

SEC. 1206. Any person owning and using a water power for the purpose of propelling machinery, shall have the right to acquire, maintain, and utilize the fall below such power for the purpose of improving the same, in like manner and to the same extent as provided in this chapter for the erection or heightening of mill dams. After such right has been acquired, the fall shall be considered part and parcel of said water power or privilege, and the deepening or excavating of the stream or tail race as herein contemplated shall in no way affect any rights relating to such water power acquired by the owner thereof prior thereto.

CHAPTER 2.

OF DRAINS, DITCHES, AND WATER-COURSES.

Supervisors to locate. C. 120, § 1, 14 G. A.

SECTION 1207. The board of supervisors of any county having a population of ten thousand inhabitants, as shown by the last preceding census, may locate and cause to be constructed ditches

or drains, or change the direction of any water-course in such county, whenever the same will be conducive to the public health, convenience, or welfare.

Proceedings: bond filed: survey made: notice given. Same, § 2.

SEC. 1208. A petition signed by a majority of persons resident in the county, owning land adjacent to such improvement, shall be first filed in the office of the county auditor, setting forth the necessity of the same, the starting point, route, and termini. A bond shall be filed in said office with sufficient sureties to be approved by the auditor, and conditioned to pay all costs and expenses incurred in case the supervisors refuse to grant the prayer of the petition. The auditor shall thereupon place a copy of said petition in the hands of the county surveyor, or a competent engineer, who shall take with him the necessary assistants and proceed to make a survey of the proposed ditch, drain, or change in the direction of the water-course, and return a plat and profile of the same to the auditor; such return shall set forth a full and detailed description of the proposed improvement, its availability, necessity, and probable cost, with a description of each tract of land owned by different persons through which the proposed improvement is to be located, how it will be affected thereby, and its situation and level as compared with that of adjoining lands, together with such other facts as he may deem material. The county auditor shall, immediately thereafter, cause notice in writing to be served on the owner of each tract of land along the route of the proposed ditch, drain, or change in the direction of such water-course, who is a resident of the county, of the pendency and prayer of said petition, and the session of the board of supervisors at which the same will be heard, which notice shall be served ten days prior to said session, in the same manner that original notices are required to be served. In case any such owner is a non-resident of the county, such notice shall be published for two consecutive weeks in some newspaper published in the county.

Supervisors to view premises: damages claimed: how assessed. Same, § 4.

SEC. 1209. The supervisors, at the session set for the hearing of said petition, shall, if they find the preceding section to have been complied with, proceed to hear and determine said petition; and, if they deem it necessary, shall view the premises, and, if they find such ditch, drain, or change in the direction of the water-course to be necessary, and that the same will be conducive to the public health, convenience, or welfare, and no application shall have been made for compensation as provided in the next section, shall proceed to locate and establish such ditch, drain, or water-course, on the route specified in the plat and return of said county surveyor or engineer. But, if any application for compensation has been made, further proceedings shall be adjourned to the next regular session; and the county auditor shall forthwith proceed to appoint appraisers to assess and determine the damages and compensation of such claimant, who shall proceed in the manner as provided by law for the assessment of damages in the opening of highways; and the compensation so found and assessed in favor of said claimant, shall be paid, in the first instance, by the parties benefited by such improvement, or secured to be paid upon such terms and conditions as the county auditor may deem just and proper; and the said supervisors shall, at the next regular session

after such compensation shall have been assessed and paid, or secured as aforesaid, proceed to locate and establish such ditch, drain, or water-course, as herein before provided.

When and how claimed. Same, § 3.

SEC. 1210. Any person claiming compensation for land required for the purpose of constructing any such ditch, drain, or water-course, shall make his application in writing therefor to the county supervisors on or before the first day of the session at which the petition has been set for hearing, and, on failure to make such application, shall be deemed and held to have waived his, her, or their right to such compensation.

Supervisors to divide the work. Same, § 5.

SEC. 1211. Said supervisors, whenever they shall have established any such ditch, drain, or water-course, shall divide the same into suitable sections, not less in number than the number of owners of land through which the same may be located, and shall also prescribe the time within which work upon each section shall be completed.

Auditor to let the work: to be paid for out of county treasury. Same, § 6.

SEC. 1212. The county auditor shall cause notice to be given of the time and place of letting, and of the kind and amount of work to be done upon each section, and the time fixed for its completion, by publication for thirty days in some newspaper printed and of general circulation in said county, and shall let the work upon the sections respectively to the lowest bidder therefor; and the person or persons taking such work at such letting, shall on the completion thereof to the satisfaction of the county supervisors, be paid for such work out of the county treasury, upon the order of the county auditor, as provided in the following section. If any person to whom any portion of said work shall be let as aforesaid, shall fail to perform said work, the same shall be relet by the county auditor, in the manner hereinbefore provided. But no water-course shall be so changed as to deprive the owner of any adjacent lands of the benefit thereof, unless he consents thereto.

Costs and fees: how paid. Same, § 8.

SEC. 1213. The auditor and surveyor, or engineers, shall be allowed such fees for services under the preceding sections of this chapter as the supervisors shall in each case deem reasonable and allow; and all other fees and costs accruing under the preceding sections shall be the same as provided by law for like services in other cases; and all costs, expenses, cost of construction, fees, and compensation for property appropriated, which shall accrue and be assessed and determined, shall be paid out of the county treasury, from the fund collected for that purpose, on the order of the county auditor.

Equitable apportionment made of expenses, costs, and fees. Same, § 9.

SEC. 1214. The supervisors shall make an equitable apportionment of the costs, expenses, costs of construction, fees, and compensation for property appropriated, which shall accrue and be asssessed, among the owners of the land benefited by the location and construction of such ditch, drain, or water-course, in proportion to the benefit to each of them through, along the line, or in the vicinity of whose lands the same may be located and constructed respectively. And the same may be levied upon the lands of the owners so benefited in said proportions, and collected in the same manner that other taxes are levied and collected for county purposes.

Record kept. Same, § 7.

SEC. 1215. The auditor shall keep a full and complete record of all proceedings had in each case.

Appeal.

SEC. 1216. The petitioners, or any of them, or the applicant for compensation for land taken, may appeal from the amount allowed as damages by pursuing the same method provided for appeals from assessment of damages in the location of highways, and the auditor shall make out transcripts as provided in appeals taken from the assessment of damages in case of highways.

DRAINAGE OF SWAMP OR MARSH LAND.

Application for, made by petition to township trustees C. 159, § 1, 18 G. A.

SEC. 1217. Any person owning any swamp, marsh, or wet land, desiring to drain the same by cutting a ditch through the land of others, and who is unable to agree upon the terms thereof with such other persons, may make application in writing to the township trustees of the township where such swamp or marsh land is situated, with a description of such land, the commencement and termini of the proposed ditch, and a description of the land belonging to others, with their names, through which it will pass. Such petition shall be filed by the township clerk.

Meeting of trustees: notice thereof given: land owners. Same, § 3.

SEC. 1218. When the application is filed the clerk shall notify the trustees, who shall immediately determine upon the time and place they will meet to consider the application, and shall cause the applicant and all persons owning land through which said ditch is to pass, who are residents of the county, to be notified of the time and place of said meeting, which notice shall be served ten days previous to such day in the same manner as original notices, and if any of such owners of land are non-residents of the county, said notice shall be served on them by posting up copies thereof in three public places in the township, satisfactory proof by affidavit of such posting, and places where posted, shall be furnished said trustees and filed with the clerk.

Hearing: adjournment of. Same, § 3.

SEC. 1219. Upon the day fixed for the hearing, the trustees, if satisfied that the requirements of the preceding section have been complied with, may proceed to hear and determine the matter of the application, or they may adjourn the same to a future day, and, if necessary, may cause another notice to be served in the manner above required. But such adjournment shall not be for a longer period than twenty days.

Trustees determine course, width, and depth of ditch: record of made. Same, § § 1, 3, 6.

SEC. 1220. If the trustees are satisfied from a personal examination of the premises, or from evidence of witnesses, that such swamp or marsh lands are a source of disease, that the public health will be promoted by draining the same, that such ditch is necessary for the proper cultivation of such lands, that the permanent value thereof will be increased thereby, and that it is necessary, in order to drain said lands, that such ditch should pass through the lands of others, they shall determine the direction, depth, and width of such ditch, as near as may be, and, if necessary, may employ the county surveyor to assist them, and after such examination, or hearing such evidence, said trustees may order or refuse the construction of said ditch. All the findings and doings of the trustees shall be reduced to writing, and entered of record by the clerk.

SEC. 1221. The applicant shall pay all costs of the proceedings before the trustees, and they may require, before fixing the day of meeting as above provided, such applicant to give bond with sureties to be approved by the township clerk, conditioned to pay all such costs and expenses. Costs: by whom paid: bond required. Same, § 9.

SEC. 1222. If the trustees are satisfied the ditch will damage the land of any person, other than the applicant for the ditch, through which it has been located, they shall assess the amount to be paid the owner, and after payment, or tender of the same, to the person entitled thereto within thirty days after the same is assessed or ascertained on appeal in the circuit court, or, in case no damages are assessed, the applicant may enter upon the land through which the ditch passes, with the necessary implements to accomplish the work. Trustees to assess damages to land owner. Same, § 5.

SEC. 1223. The applicant, or any person through whose land the ditch is located, may appeal from so much only of the order or action of the trustees as relates to the assessment of damages to the circuit court, in the same manner as to bond, the conditions thereof, notice of appeal, and the time within which it is to be taken, as is provided by law in cases of appeals from the assessment of damages on the location of highways. The township clerk shall approve the bond and make out a transcript of the proceedings before the trustees within ten days after the bond is filed and approved, and file the same with the clerk. Appeal: how taken. Same, § 7.

SEC. 1224. On the trial of such appeal, the person claiming damages shall be plaintiff and the applicant defendant, and if the appeal is taken by any person other than the applicant, judgment shall be rendered by the court for the amount found due such person as damages, which may be enforced as are other judgments; and if the appeal is taken by the applicant, no judgment shall be rendered for the amount found due any person as damages, but the amount thereof shall be certified to the township clerk, and the same shall thereafter be regarded as if the same had been assessed by the trustees at the time so certified. The court shall make such disposition of the costs, as is required in similar cases in appeals from the assessment of damages on the location of highways. But the payment or acceptance of the damages assessed by the trustees shall bar the right to appeal. Trial of: in circuit court.

SEC. 1225. If said drain shall cross a highway, it shall be bridged or covered at the expense of the applicant. Drain bridged. Same, § 10.

SEC. 1226. If the ditch becomes out of repair, the applicant, or any one interested therein, may make application in writing to the township trustees for leave to repair the same, whereupon such trustees shall make such orders in relation thereto as they deem proper, and may empower such applicant or other interested person to enter upon the land of another for the purpose of repairing such ditch. Ditch repaired. Same, § 8.

SEC. 1227. Any person who shall dam up, obstruct, or in any way injure any ditch or ditches so opened, shall be liable to pay to the person owning or possessing the swamp, marsh, or other low lands for the draining of which such ditch or ditches shall have been opened, double the damages that shall be assessed by the Penalty for obstructing. Same, § 11.

jury for such injury, and in case of a second or other subsequent offense by the same person, treble such damages.

DRAINAGE OF COAL LANDS.

How done: damages assessed. C. 91, 10 G. A. C. 66, 11 G. A.

SEC. 1228. Any person, or corporation, owning or possessing any land underlaid with coal, who is unable to mine such coal by reason of the accumulation of water in such mine, may drain the same through, over, or under the surface of land belonging to another person, and if such person or corporation and the owner of the land cannot agree as to the amount of damages that will be sustained by such owner, the parties may proceed to have the necessary right of way condemned and the damages assessed under the provisions of chapter four of this title.

DRAINAGE OF LEAD MINES.

Compensation for. C. 37, § 1, 10 G. A.

SEC. 1229. Any person, or corporation, who, by machinery, such as engines or pumps, or by making drains or adit levels, or in any other way, shall rid any lead bearing mineral lands or lead mines of water, thereby enabling the miners and the owners of mineral interest in said lands to make them productive and available for mining purposes, shall be entitled to receive one-tenth of all the lead mineral taken from said lands as compensation for said drainage.

To be set apart: miners to allow examination of mines. Same, § 2.

SEC. 1230. The owners of the mineral interest in said lands, and persons mining upon and taking lead mineral from said lands, shall jointly and severally set apart and deliver from time to time, when demanded, the said one-tenth part of said mineral taken from said lands to the person or corporation entitled thereto as compensation for drainage. The owners of the mineral interest in said lands, shall allow the party entitled to such compensation, and his agents, at any and all times to descend into and examine said mines and to enter any building occupied for mining purposes upon any of said lands and examine and weigh the mineral taken therefrom.

Penalty. Same, § 3.

SEC. 1231. Upon the failure or refusal of any owner of the mineral interest in said lands, or of any person taking the mineral therefrom, to comply with the provisions of the preceding section, the person or corporation entitled to said compensation for drainage may sue for and recover the value of said mineral in any court of competent jurisdiction. And upon the hearing of any such case, if it shall appear that the defendant obstructed the plaintiff in the exercise of the right to examine the said mines, and to weigh said mineral, or concealed or secretly carried away any mineral taken from said lands, the court shall render judgment for double the amount proved to be due from such defendant.

Notice to smelters: effect of. Same, § 4.

SEC. 1232. The person or corporation entitled to said drainage compensation, may, at any time, leave with any smelter of lead mineral in this state, a written notice stating that said person, or corporation, claim of the persons named in said notice, the amount to which said person or corporation may be entitled,

which notice shall have the effect of notices in garnishment, and also authorize the said smelter to retain, for the use of the persons entitled thereto, the one-tenth part of the mineral taken from said land and received from the person named in said notice; the payment or delivery of the one-tenth part of the mineral taken from any of said lands by any one of the persons whose duty it is made hereby to pay or deliver the same, shall discharge the parties liable jointly with him except their liability to contribute among themselves.

Right of way. Same, § 5.

SEC. 1233. Any person, or corporation, engaged as aforesaid, in draining such mines and lead bearing mineral lands, whenever he or they shall deem it necessary for the prosecution of their work, shall have the right-of-way upon, over, or under the surface of such mineral lands and the contiguous and neighboring lands, for the purpose of conveying the water from said mineral lands by troughs, pipes, ditches, water races, or tunnels, and the right to construct and use shafts and air holes in and upon the same, doing as little injury as possible in making said improvements.

Damages for. Same, § 6.

SEC. 1234. If the said person, or corporation, engaged in draining as aforesaid, and the owner of any land upon which said right-of-way may be deemed necessary cannot agree as to the amount of damages which will be sustained by the owner by reason thereof, the parties may proceed to have the same assessed under the provisions of chapter four of this title.

Consent of owners required. Same, § 7.

SEC. 1235. The foregoing provisions shall not be construed to require the owners of the mineral interest in any of said lands to take mineral therefrom, or to authorize any other person to take the mineral from said lands without the consent of the said owners.

CHAPTER 3.

OF WATER-POWER IMPROVEMENTS.

Powers of corporations organized for. C. 79, § 1, 14 G. A.

SECTION 1236. There is granted to any corporation hereafter organized in accordance with law, for the purpose of utilizing and improving any water-power within this state, or in the streams lying upon the borders thereof, the right to take and hold so much real estate as may be necessary for the location, construction, and convenient use of its canals, conduits, mains, and waterways, or other means employed in the utilization of such water-power, and for the construction of such buildings and their appurtenances as may be required for the purposes aforesaid. Such corporation may also take, remove, and use for the construction and repair of its said canals, water-ways, buildings, and appurtenances, any earth, gravel, stone, timber, or other materials, on or from the land so taken. Compensation shall be made for the lands and materials so taken and used by such corporation, to the

owner, in compliance with and in the manner provided in chapter four of this title.

Same: consent of cities required. Same, § 2.

SEC. 1237. Such corporations may use, raise, or lower, any highway for the purpose of having their said canals, water-ways, mains, and pipes, pass over, along, or under the same; and in such case shall put such highway, as soon as may be, in good repair and condition, for the safe and convenient use of the public. And such corporation may construct and carry their canals, conduits, water-ways, mains, or water-pipes, across, over, or under any railway, canal, stream, or water-course, when it shall be necessary for the construction or operation of the same, but shall do so in such manner as not to impede the travel, transportation, or navigation upon, or other proper use of, such railway, canal, or stream. But the powers conferred in this section, can only be exercised in cities and towns with the consent and under the control of the city council or trustees of said municipal corporations.

Right of way over lands belonging to public: granted. Same, § 3.

SEC. 1238. Such corporations are authorized to pass over, occupy, and enjoy, any of the school, university, and saline, or other lands of this state, whereof the fee, or any use, easement, or servitude therein is in the public, making compensation therefor. But no more of such land shall be taken than is required for the necessary use and convenience of such corporations.

Powers enumerated. Same, § 4.

SEC. 1239. Such corporations, in addition to other powers, shall have the following: To borrow money for the purpose of constructing, renewing, or repairing their works, and to make, execute, and deliver contracts, bonds, notes, bills, mortgages, deeds of trust, and other conveyance, charging, or encumbering their property, including all and singular their franchises, or any part or parcel thereof; to erect, maintain, and operate canals, conduits, mains, water-ways, mills, factories, and other buildings and machinery, including water-ways, sluices, and conduits, for the purpose of carrying waste water off from said premises to the stream from which the same was taken, or other convenient place; to let, lease, or sell, and convey any portion of their water supply, and any of the buildings, mills, or factories, or machinery aforesaid, for such sums, rents, tolls, and rates, as shall be agreed upon between the parties; and to lay down, maintain, and operate, such water mains, conduits, leads, and service pipes as shall be necessary to supply any building, village, town, or city, with water; and the grantee of any such corporations, or purchaser of the said property, franchise, rights, and privileges, under and by virtue of any judicial sale, shall take and hold the same as fully and effectually, to all intents and purposes, as the same were held and enjoyed by such corporations.

Must commence in two and complete in five years; legislative control of corporation retained. Same, § 5.

SEC. 1240. Such corporation shall take, hold, and enjoy the privilege of utilizing and improving the water power, and the rights, powers, and privileges aforesaid, which shall be specifically mentioned and described in its articles of incorporation; *provided*, it shall proceed in good faith to make the improvements and employ the powers in its said articles of incorporation mentioned, and shall, within two years from the date of its organization, provide the necessary capital, complete the preliminary surveys, and

actually commence the work of improving and utilizing the water-power and furnishing the supply of water so mentioned in its articles of incorporation; and said water works and canals shall be completed within five years from the time when said corporation has been organized; and, *provided further*, that the rights, powers, and privileges conferred by this chapter shall be at all times subject to legislative control.

CHAPTER 4.

TAKING PRIVATE PROPERTY FOR WORKS OF INTERNAL IMPROVEMENT.

By railway: limit of R. § 1314.

SECTION 1241. Any railway corporation organized in this state, may take and hold, under the provisions of this chapter, so much real estate as may be necessary for the location, construction, and convenient use of its railway, and may also take, remove, and use for the construction and repair of said railway and its arpurtenances, any earth, gravel, stone, timber, or other materials, on or from the land so taken; the land so taken otherwise than by the consent of the owners, shall not exceed one hundred feet in width, except for wood and water stations, unless where greater width is necessary for excavation, embankment, or depositing waste earth.

Dams constructed to obtain water: limitation on right. C. 117, § 1, 12 G. A.

SEC. 1242. It may, also, take and hold additional real estate at its water-stations, for the purpose of constructing dams and forming reservoirs of water to supply its engines. Such real estate shall, if the owner requests it, be set apart in a square or rectangular shape, including all the overflowed land, by the commissioners as hereafter provided; but the owner of the land shall not be deprived of access to the water or the use thereof in common with the company on his own land. And the dwelling-house, outhouse, orchards, and gardens of any person shall not be overflowed or otherwise injuriously affected by any proceeding under this section.

Pipes laid down and kept in repair: damages caused recovered by suit. Same, § 2.

SEC. 1243. Any such railway corporation may lay down pipes through any land adjoining the track of the railway, not to a greater distance than three-fourths of a mile therefrom, unless by consent of the owners of the land through which the pipes may pass beyond that distance, and maintain and repair such pipes, and thereby conduct water for the supply of its engines from any running stream; and shall, without unnecessary delay, after laying down or repairing such pipes, cover the same so as to restore the surface of the land through which they may pass to its natural grade; and shall, as soon as practicable, replace any fence that it may be necessary to open in laying down or repairing such pipes; and the owner of the land through which the same may be laid, shall have a right to use the land through which such pipes pass in any manner so as not to interfere therewith; said pipes shall not be laid to any spring, nor be used so as to injuriously with-

draw the water from any farm; *provided*, that such corporation shall be liable to the owner of any such lands for any damages occasioned by laying down, regulating, keeping open, or repairing such pipes, such damages to be recoverable from time to time as they may accrue in any ordinary action in any court of competent jurisdiction.

MANNER OF CONDEMNATION.

Sheriff to summon jury on demand of either party: proceedings by. R. § 1317.

SEC. 1244. If the owner of any real estate, necessary to be taken for either of the purposes mentioned in the three preceding sections, refuse to grant the right of way, or other necessary interest in said real estate required for such purposes, or, if the owner and the corporation cannot agree upon the compensation to be paid for the same, the sheriff of the county in which said real estate may be situated, shall, upon the application of either party, appoint six disinterested freeholders of said county, not interested in a like question, who shall inspect said real estate and assess the damages which said owner will sustain by the appropriation of his land for the use of said corporation, and make report in writing to the sheriff of said county, and if said corporation shall, at any time before it enters upon said real estate for the purpose of constructing said railway, pay to said sheriff for the use of said owner, the sum so assessed and returned to him as aforesaid, it may construct and maintain its railway over and across such premises.

Jury to assess all damages in county: notice of meeting. R. § 1318.

SEC. 1245. The application to the sheriff shall be in writing, and the freeholders appointed shall be the commissioners to assess all damages to the owners of real estate in said county, and said corporation, or the owner of any land therein, may, at any time after their appointment, have the damages assessed in the manner herein prescribed by giving the other party five days notice thereof in writing, specifying therein the day and hour when such commissioner will view the premises, which shall be served in the same manner as original notices.

Minor or insane owner. R. § 1316.

SEC. 1246. If the owner of any lands is a minor, insane, or other person under guardianship, the guardian of such minor, insane, or other person, may, under the direction of the circuit judge, agree and settle with said corporation for all damages by reason of the taking of such lands for any of the purposes aforesaid, and may give valid conveyances of such land.

Notice to non-resident owner. C. 62, § § 2, 3, 13 G. A.

SEC. 1247. If the owner of such lands is a non-resident of the county in which the same are situate, no demand of the right of way, or other purpose for which such lands are desired, shall be necessary, except the publication of a notice which may be in the following form:

NOTICE.—For the appropriation of lands for railway purposes. To (here name each person whose land is to be taken or affected,) and all other persons having any interest in, or owning any of the following real estate, (here describe the land by its congressional numbers in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots in a town or city, by the numbers of the lot and block.) You are hereby notified that the..... has located its railway over the above described real estate, and

desires the right of way over the same, to consist of a strip or belt of land .. feet in width, through the center of which the centre line of said railway will run, together with such other land as may be necessary for bermes, waste banks, and borrowing pits, and for wood and water stations, (or desires the same for the purposes mentioned in sections twelve hundred and forty-two, and twelve hundred and forty-three of this chapter, as the case may be) and unless you proceed to have the damages to the same appraised on or before.....day of....., A. D., 18..., (which time must be at least four weeks after the first publication of the notice,) said company will proceed to have the same appraised on the.... day of····, (which must be at least eight weeks after the first publication of the notice), at which time you can appear before the appraisers that may be selected.

.....Railway Company.

By.....attorney, or.....agent.

Notice published. Same, § 3.

SEC. 1248. Said notice shall be published in some newspaper in the county, if there be one, if there is none, then in a newspaper published in the nearest county through which the proposed railway is to run, for at least eight successive weeks prior to the day fixed for the appraisement at the instance of the corporation.

Appraisement: how made and returned. Same, § 4.

SEC. 1249. At the time fixed in either aforesaid notices, the appraisement may be made and returned in tracts larger than forty acres, and all the lands appearing of record to belong to one person and lying in one tract, may be included in one appraisement and return, unless the agent or attorney of the corporation, or the commissioners, has actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisement shall be made of the different parcels, as they are known to be owned.

Where dwelling house, garden, or orchard is affected. C. 117, § 3, 12 G. A.

SEC. 1250. If it appears from the finding of the commissioners that the dwelling-house, out-house, orchard, or garden, of the owner of any land taken will be overflowed or otherwise injuriously affected by any dam or reservoir to be constructed under section twelve hundred and forty-two of this chapter, such dam shall not be erected until the question of such overflowing or other injury has been determined upon appeal in favor of the corporation.

Talesmen. R. § 1319.

SEC. 1251. In case of the death, absence, neglect, or refusal, of any of said freeholders to act as commissioners as aforesaid, the sheriff shall summon other freeholders to complete the panel.

Costs: how paid. R. § 1317. C. 219, 14 G. A.

SEC. 1252. The corporation shall pay all the costs of the assessment made by the commissioners and those occasioned by the appeal, unless on the trial thereof a less amount of damages is awarded than was allowed by the commissioners.

Commissioners report may be recorded. C. 125, § 1, 13 G. A.

SEC. 1253. The report of the commissioners, where the same has not been appealed from, and the amount of damages assessed and costs have been deposited with the sheriff, or, if an appeal is taken and the amount of damages assessed on the trial thereof has been paid to the sheriff, may be recorded in the record of deeds in the county where the land is situate, and such record shall be presumptive evidence of title in the corporation to the property so taken, and shall constitute constructive notice of the rights of such corporation therein.

APPEALS.

How taken. R. § 1317.

SEC. 1254. Either party may appeal from such assessment of damages to the circuit court within thirty days after the assessment is made, by giving the adverse party, or, if such party is the corporation, its agent or attorney, and the sheriff, notice in writing that such appeal has been taken; the sheriff shall thereupon file a certified copy of so much of the appraisement as applies to the part appealed from, and said court shall thereupon take jurisdiction thereof and try and dispose of the same as in actions by ordinary proceedings. The land owner shall be plaintiff and the corporation defendant.

Not to delay work if amount assessed is deposited with sheriff. R. § 1317.

SEC. 1255. An appeal shall not delay the prosecution of the work upon said railway, if said corporation pays or deposits with the sheriff the amount assessed by the commissioners; said sheriff shall not pay such deposit over to the person entitled thereto after the service of notice of an appeal, but shall retain the same until the determination thereof.

When barred.

SEC. 1256. An acceptance by the land owner of the damages awarded by the commissioners shall bar his right to appeal.

Trial of: judgment.

SEC. 1257. On the trial of the appeal, no judgment shall be rendered except for costs; the amount of damages shall be ascertained and entered of record, and, if no money has been paid or deposited with the sheriff, the corporation shall pay the amount so ascertained, or deposit the same with the sheriff before entering upon the premises.

Same.

SEC. 1258. If, on the trial of the appeal, the damages awarded by the commissioners are increased, the corporation shall pay or deposit with the sheriff the whole amount of damages awarded before entering on, or, in any manner whatever, using or controlling the premises. And said sheriff, upon being furnished with a certified copy of such assessment, may remove said corporation, its agents, servants, or contractors, from said premises unless the amount of the assessment is forthwith paid or deposited with him.

Same.

SEC. 1259. If the amount of the damages awarded by the commissioners is decreased on the trial of the appeal, the amount assessed on the trial of such appeal only shall be paid the land owners.

NON-USER.

By railway corporations of right of way. C. 91, § 1, 18 G. A.

SEC. 1260. In any case where a railway, constructed in whole or in part, has ceased to be operated or used for more than ten years, or in any case where the construction of a railway has been commenced, and work on the same has ceased for more than ten years, and the same remains unfinished, it shall be deemed and taken that the corporation or person thus in default has abandoned all right and privilege over so much as remains unfinished as aforesaid.

How right of way may be condemned. Same, § 2.

SEC. 1261. In every such case of abandonment, any other corporation may enter upon such abandoned work, or any part thereof, and acquire the right of way over the same and the right to any unfinished work or grading found thereon and the title thereto,

by proceeding in the manner provided, and conforming in all particulars as near as may be to the provisions of this chapter; but parties who have previously received compensation in any form for the right of way on the line of such abandoned railway, which has not been refunded by them, shall not be permitted to recover the second time, but the value of such road-bed and right of way, excluding the work done thereon, when taken for a new company, shall be assessed to the former company or its legal representative.

CROSSING HIGHWAYS.

SEC. 1262. Any such corporation may raise or lower any turnpike, plank road, or other highway, for the purpose of having its railway pass over or under the same; and in such cases said corporation shall put such highway, as soon as may be, in as good repair and condition as before such alteration. By railways: rights and duty of. R. § 1321.

SEC. 1263. If the supervisor, trustees, city council, or other person having jurisdiction over such highway require further or different repairs or alterations made thereon, or, if the same, in their opinion, is unsafe, they shall give notice thereof in writing to any agent or officer of the corporation, and if the parties are unable to agree respecting the same, either may apply by petition, setting out the facts, to the circuit court, or judge thereof, and such court or judge shall cause reasonable notice to be given the adverse party of the application; the petition shall be filed in the clerk's office, and may be answered as in other cases. The court shall determine the matter in a summary way and make the necessary orders in relation thereto, giving such corporation a reasonable time to comply therewith, and upon failure to do so, said court may enjoin the corporation from using so much of its road as interferes with any such highways, and the court may award costs in favor of the prevailing party. Further repairs required by supervisors or council of cities: proceedings in such cases. R. § § 1322, 1323.

SEC. 1264. Every such corporation, when employed in raising or lowering any highway, or in making any other alteration by means of which the same may be obstructed, shall provide and keep in good order suitable temporary ways to enable travelers to avoid or pass such obstructions. Temporary ways. R. § 1324.

SEC. 1265. Any such corporation may construct and carry its railway across, over, or under any railway, canal, or water course, when it may be necessary in the construction of the same; and in such cases said corporation shall so construct its crossings as not unnecessarily to impede the travel, transportation, or navigation upon the railway, canal, or stream so crossed; said corporation shall be liable for the damages occasioned by any corporation or party injured by reason of said crossing. Crossings so constructed as not to impede travel. R. § 1325.

SEC. 1266. Every such corporation shall maintain and keep in good repair all bridges, with their abutments, which it may construct for the purpose of enabling its railway to pass over or under any turnpike, highway, canal, water course, or other way. Bridges. R. § 1326.

SEC. 1267. Every such corporation shall be liable for all damages sustained by any person in consequence of any neglect of the provisions of this chapter. Damages R. § 1327.

Cattle guards. R. § 1329.

SEC. 1268. When any person owns land on both sides of any railway, the corporation owning the same, shall, when requested so to do, make and keep in good repair one cattle guard and one causeway or other adequate means of crossing the same, at such reasonable place as may be designated by the owner.

Right of way granted other works of internal improvement. R. § § 1378 to 1388.

SEC. 1269. When any corporation or person desires to construct a canal, turnpike, graded, macadamized, or plank road, or a bridge, as a work of public utility, although for private profit, such corporation or person may take such private property as may be deemed necessary for right of way, not exceeding one hundred feet in width, by pursuing the course prescribed in this chapter, all the provisions of which are made applicable in similar cases.

Cities and towns.

SEC. 1270. Cities and incorporated towns may exercise the powers herein conferred for the purpose of taking private property for streets, alleys, and market house sites.

STATE MAY CONDEMN.

How done and for what purposes. C. 189, § § 1, 2, 12 G. A.

SEC. 1271. Whenever, in the opinion of the governor, the public interest requires the construction of any drains, sewers, or other conveniences for the benefit of the penitentiary, hospitals for the insane, or any other institutions of the state, upon or across lands being private property, the same proceedings may be had in the name of the state as provided in this chapter, and for that purpose the state shall be considered a person, and the proceedings shall be conducted by the district attorney of the district in which the land is situated whenever directed by the governor, or, the governor may appoint some other person for that purpose.

Damages: how certified and paid. Same, § 4.

SEC. 1272. Whenever the amount of the damages contemplated in the preceding section is finally determined, the sheriff or clerk, as the case may be, shall certify the amount thereof to the governor, who shall, by an order endorsed thereon, direct the payment of the same, and the auditor of state shall issue a warrant on the treasury for the amount, which shall be paid with any money not otherwise appropriated. When the money is paid to the sheriff or person entitled thereto, the state, through its proper agent or officer, may enter on the premises and construct the desired work.

CHAPTER 5.

OF RAILWAYS.

ORGANIZATION.

Change of corporate name: how made and effect of. C. 41, § § 3, 4, 10 G. A.

SECTION 1273. Any corporation organized under the laws of this state for the purpose of constructing and operating a railway, may, with the assent of two-thirds of all the stockholders in interest, change the corporate name thereof. But no change in the

name of any such corporation shall be deemed complete until the president and secretary thereof shall file in the office of the secretary of state, a statement, under oath, showing the assent of the stockholders to such change, and the new name adopted, and a certified copy of the proceedings had by the corporation and stockholders in relation thereto as the same appears in the records thereof; from the time of such filing, the corporation by its new name shall be entitled to all the rights, powers, and franchises that it possessed under the old name, and by the new name shall be liable upon all contracts and obligations of every kind and description entered into by or binding upon such corporation by or under its old name to the same extent and manner as if no change in the name of such corporation had been made.

Record made by secretary of state.

SEC. 1274. The secretary of state shall immediately record in the proper book in his office the matters filed under the preceding section, and make intelligible references to the record of the articles of incorporation as originally recorded.

May intersect, join, merge, and consolidate. R. § 1333.

SEC. 1275. Any such corporation may join, intersect, and unite its railway with the railway of any other corporation at such point on the boundary line of this state as may be agreed upon by such corporations. And with the assent of three-fourths in interest of all the stockholders, may, by purchase or sale, or otherwise, merge and consolidate the stock, property, franchises, and liabilities of such corporations, making the same one joint stock corporation upon such terms as may be agreed upon not in conflict with the laws of this state.

May connect and make contracts with reference thereto. R. § 1334.

SEC. 1276. Any such corporation which has or may construct its railway so as to meet or connect with any other railway in an adjoining state at the boundary line of this state, shall have power to make such contracts and agreements with the corporations controlling such railways in an adjoining state, for the transportation of freight and passengers, or for the use of its railway by such foreign corporation, as the board of directors may see proper.

Extension of into other states. R. § 1338.

SEC. 1277. Any such corporation organized for the purpose of constructing a railway from a point within the state may construct or extend the same into or through any other state under such regulations as may be prescribed by the laws of such state; and the rights and privileges of such corporation over said extension in the construction and use thereof, and in controlling and applying the assets, shall be the same as if its railway was constructed wholly within this state.

Duties and liabilities apply to lessees C. 172, § 2, 12 G. A.

SEC. 1278. All the duties and liabilities imposed upon corporations owning or operating railways by this chapter, shall apply to all lessees or other persons owning or operating such railways as fully as if they were expressly named herein, and any action which might be brought, or penalty enforced, against any such corporation by virtue of any provision of this chapter, may be brought or enforced against such lessees or other persons.

Officers of to reside in the state: office books: transfer of stock. C. 159, §§1, 2, 6, 9 G. A.

SEC. 1279. The offices of secretary and treasurer, or assistant treasurer and general superintendent, of every railway corporation organized under the laws of this state, shall be kept where the principal place of business of such corporation is to be, in which

offices the original record, stock, and transfer books, and all the original papers and vouchers of such corporation shall be kept; and such treasurer or assistant treasurer shall keep a record of the financial condition of the corporation which may be inspected at all reasonable hours by any stockholder, or any committee appointed by the general assembly. Such corporation may keep in any other state a transfer office, in which may be kept a duplicate transfer book; but no transfer of shares of stock shall be legal or binding until the same is entered in the transfer book kept in this state. The secretary and treasurer, or assistant treasurer and general superintendent aforesaid, shall reside in this state.

Annual report of to be laid before general assembly. Same, § § 3, 9.

SEC. 1280. Every such corporation shall, annually, under the oath of the president, in the month of January, make a full report of the condition of its affairs to the secretary of state, and shall have the same published in some newspaper printed in the place of its general business office, showing the amount of the capital stock of such corporation, and the amount paid thereon, the amount of bonds issued, and how secured, and all other indebtedness; the length of such railway when completed, and how much is built and in use; the number of acres of land donated or granted to them, by whom, and what disposition has been made of said grants or donations, the gross amount of receipts and how disbursed, the net amount of profit and the dividends made, with such other facts as may be necessary to a full statement of the affairs and condition of such corporation, and the secretary of state shall present the said report to the general assembly.

District or circuit court may by order compel report to be filed. Same, § 4.

SEC. 1281. In case any such corporation shall neglect to make such report as required in the preceding section, any stockholder may file his petition in the district or circuit court in the county where the principal business office is kept, stating that said report has not been made, and praying that an order may issue against the corporation commanding it to make said report; said petition, shall be under oath and filed at least ten days before the next term of the district or circuit court in said county, and notice thereof shall be given such corporation for the same length of time, and in the same manner as is now required to be given in other suits in the district or circuit court, and upon the filing of such petition, the clerk shall issue such order and make the same returnable at the next term of the district or circuit court in said county, and costs shall be recoverable by either party as in ordinary actions.

Same: examination ordered. Same, § § 5, 9.

SEC. 1282. If it appears such report has not been filed, the court shall, during the term, appoint three disinterested and competent persons near the place of the general business office of the corporation as an investigating committee, who shall examine into its affairs and report at as early a day as practicable its condition, in manner and form as prescribed in section twelve hundred and eighty of this chapter; one copy of said report to be filed in the office of the clerk of the district court of the county where the proceedings are had, and one copy to be filed in the office of the secretary of state. The compensation for the services of such committee shall be paid by the corporation thus

investigated, but it shall not exceed three dollars per day and mileage at the rate of ten cents per mile, counting one way.

OF STOCK AND DEBTS.

SEC. 1283. Any such corporation shall have power to issue its bonds for the construction and equipment of its railway, in sums not less than fifty dollars, payable to bearer or otherwise, and bearing interest at a rate not exceeding ten per cent. per annum, and make the same convertible into stock, and may sell the same at such rates or prices as is deemed proper; if such bonds are sold below the par value thereof, they shall, nevertheless, be valid and binding, and no plea of usury shall be allowed such corporation in any action or proceeding brought to enforce the collection of said bonds; such corporation may also secure the payment of said bonds by executing mortgages or deeds of trust of the whole or any part of its property and franchises.

May issue bonds, borrow money, and execute mortgages. R § 1339. C. 20, 10 G. A.

SEC. 1284. Said mortgages or deeds of trust, may, by their terms, include and cover, not only the property of the corporation making them at the time of their date, but property both real and personal which may thereafter be acquired, and shall be as valid and effectual for that purpose, as if the property were in possession at the time of the execution thereof.

Mortgages may cover after acquired property. R. § 1340.

SEC. 1285. Said mortgages or deeds of trust shall be executed in such manner as the articles of incorporation or by-laws of the corporation may provide, and shall be recorded in the office of the recorder of each county through which the railway of the corporation may run, or in which any property mortgaged or conveyed by such deeds of trust may be situated, and shall be notice to all the world of the rights of all parties under the same, and for this purpose, and to secure the rights of mortgagees or parties interested under deeds of trust so executed and recorded, the rolling stock and personal property of the company properly belonging to the road and appertaining thereto, shall be deemed a part of the road, and said mortgages and deeds so recorded, shall have the same effect both as to notice and otherwise, as to the personal, as to the real estate covered by them.

How executed, recorded, and effect of. R. § 1341.

SEC. 1286. Any such corporation, with the assent of two-thirds of all the stockholders in interest, may issue in payment of debts, preferred stock, not exceeding ten thousand dollars for each mile of railway constructed, which stock shall be entitled to such dividends as the directors of the corporation may determine, not exceeding eight per cent. per annum, if the same is earned in any one year after payment of all interest on the bonds of the corporation before any dividend is made to the common stock.

May issue preferred stock. C. 44, § 1, 10 G. A. C. 102, 11 G. A.

SEC. 1287. Such preferred stock, and any income or mortgage bond of the corporation, shall, at the option of the holder, be convertible into common stock in such manner and on such terms as the board of directors thereof may prescribe; but the aggregate amount of the common and preferred stock shall not exceed the total amount of stock which the corporation may be by law, or the articles of incorporation thereof, authorized to issue.

Mortgages and preferred stock convertible into common stock. C. 44, § 5, 10 G. A.

OF THE TRACK.

Cattle guards: crossings: signs at: penalty. R. § 1331. C. 169, §§ 3, 4, 5, 9 G. A.

SEC. 1288. Every corporation constructing or operating a railway, shall make proper cattle guards where the same enters or leaves any improved or fenced land, and construct at all points where such railway crosses any public highway, good, sufficient, and safe crossings and cattle guards, and erect at such points at a sufficient elevation from such highway to admit of free passage of vehicles of every kind, a sign, with large and distinct letters placed thereon, to give notice of the proximity of the railway and warn persons of the necessity of looking out for the cars; and any railway company neglecting or refusing to comply with the provisions of this section, shall be liable for all damages sustained by reason of such neglect and refusal, and in order for the injured party to recover, it shall only be necessary for him to prove such neglect or refusal.

Liability for stock killed where road is not fenced. C. 169, § 6, 9 G. A.

SEC. 1289. Any corporation operating a railway, that fails to fence the same against live stock running at large at all points where such right to fence exists, shall be liable to the owner of any such stock injured or killed by reason of the want of such fence for the value of the property or damage caused, unless the same was occasioned by the wilful act of the owner or his agent. And, in order to recover, it shall only be necessary for the owner to prove the injury or destruction of his property; and if such corporation neglects to pay the value of or damage done to any such stock within thirty days after notice in writing, accompanied by an affidavit of such injury or destruction, has been served on any officer, station or ticket-agent employed in the management of the business of the corporation in the county where the injury complained of was committed, such owner shall be entitled to recover double the value of the stock killed or damages caused thereto; *provided*, that no law of this state, nor any local or police regulations of any county, township, city, or town, regulating the restraint of domestic animals, or, in relation to the fences of farmers or land owners, shall be applicable to railway tracks, unless so specifically stated in the law or regulation. The operating of trains upon depot grounds necessarily used by the company and public, where no such fence is built, at a greater rate of speed than eight miles per hour, shall be deemed negligence and render the company liable under this section.

And provided further, that any corporation operating a railway shall be liable for all damages by fire that is set out or caused by operating of any such railway, and such damage may be recovered by the party damaged in the same manner as set forth in this section in regard to stock, except to double damages.

Railway crossings near shore of Mississippi river. C. 33, 14 G. A.

SEC. 1290. Whenever it becomes necessary in the construction of any railway to cross any other railway near the shore of the Mississippi river, each shall be so constructed and maintained at the point of crossing so that the respective road-beds thereof shall be above high water in such river. But where such crossings occur within the limits of cities containing six thousand inhabitants as shown by the last preceding census, the city council of such cities may establish the grade at such crossings.

SEC. 1291. In all cases where taxes have been voted under chapter forty-eight, of twelfth general assembly, or chapter one hundred and two of thirteenth general assembly, to aid in the construction of any railway, or where said tax has been transferred under chapter eighty-one of the fourteenth general assembly, and said tax has been voted or transferred under any condition or contract with the railway company which the township may desire to have changed or modified, said township is hereby authorized upon agreement of its trustees with the railway company constructing said proposed railway, to submit to a vote of the electors of the township, the question whether the conditions or contract under which said tax was voted or transferred, shall be changed or modified, and said trustees, upon petition of one-third of the legal voters of the township, as shown by the vote cast at the last general election, asking such change or modification, shall order an election, submitting the agreement to the electors, at a speciel election called therefor, said election to be conducted in all respects as to notice and manner of holding, as the election at which the tax was originally voted.

Terms and conditions on which taxes have been voted in aid of may be changed.

OF THE OPERATION.

SEC. 1292. Any railway corporation operating a railway in this state, shall, on request, permit the railway operated by any other company to connect therewith, and shall draw over its railway the cars of such connecting railway, at reasonable terms and for a compensation not exceeding its ordinary rates.

Cars of other roads drawn over. C. 158, § 1, 9 G. A.

SEC. 1293. When such corporations are unable to agree upon terms of connection and rates of transportation, either may make application to the district or circuit court in any county in which said connection may be located, or to the judge of said courts, if in vacation, after ten days' notice in writing to the other company; after hearing the parties, or on default, the said judge may appoint three disinterested persons, being presidents or superintendents of railways, or experts in railway business, without regard to their place of residence, as commissioners, to determine the terms of connection, and rules and regulations necessary thereto. *Provided*, that the rates so fixed by the said commission for freights offered or transported in the cars of the company offering the same, shall in no case exceed the local rates per mile as set forth in the carrying company's freight tariff, prepared and made public in accordance with the laws of the state.

Commissioners appointed to fix rates: how done. Same, § 2.

SEC. 1294. Said commissioners shall meet at such time and place as may be ordered by said court or judge, and shall hear the parties and any testimony brought before them, and make and sign their report, prescribing the things to be done. Such report made by them, or a majority of them, shall, within such time as ordered by said court or judge, be returned to and filed in said court, to be confirmed thereby; and, when so confirmed, it shall be binding upon the parties until another report shall be made upon a new application, which cannot be made within two years after such confirmation.

Testimony taken by: report of: confirmation. Same, § 3.

Duty, power, and compensation of commissioners. Same, § 4.

SEC. 1295. Said commissioners shall have such compensation as shall be deemed reasonable by the court, and shall be governed by the same rules and have the same power in compelling the attendance of witnesses, and shall themselves be sworn, as is now provided in cases of referees in civil actions at law in the district court, and exceptions may be taken to their report in the same manner; and such exceptions shall have the same effect, and the proceedings upon their report shall be the same as on reports of referees in cases referred from said court, and the costs shall be paid by the parties in such proportion as to the court may seem equitable and just.

Penalty. Same, § 5.

SEC. 1296. If the officers of, or, any person in the employ of said corporation, refuse to comply with the terms of such confirmed report, they may be punished as for a contempt of said court.

Parallel railways cannot pool earnings: penalty.

SEC. 1297. It shall be unlawful for any railway company to make any contract, or enter into any stipulation with any other railway company running in the same general direction, by which either company shall, directly or indirectly, agree to divide in any manner or proportion the joint earnings upon the whole or any part of the freight transported over such roads, and any violation of this provision shall render the railway company violating the same, liable to a penalty of five thousand dollars for each month for which such earnings are divided, to be recovered for the use of the permanent school fund in the name of the state.

Drawback. C. 86, § 1, 10 G. A.

SEC. 1298. Contracts between any such corporations operating a railway, allowing a drawback of not exceeding fifteen per cent. on the gross earnings of the railway on business coming from or going to any other railway, shall be legal and binding.

Same: on roads partially constructed. Same, § 2. C. 39, 14 G. A.

SEC. 1299. Any such corporation owning and operating a railway partially constructed, may, for the purpose of inducing the investment of capital in the extention or completion of its railway, contract with the party furnishing such means, or the trustees who may represent them, allowing a drawback not exceeding twenty per cent. of the gross earnings of all business coming from and going to any part of the extension or portion to be aided or completed with the money or means thus obtained; or such railway company may lease of the trustees or said parties, the portion to be built with means thus furnished, subject to the same rights and liabilities as are provided in the next section.

Sale, lease or joint running arrangements. C. 86, § 4, 10 G. A.

SEC. 1300. Any such corporation may sell or lease its railway property and franchises to, or may make joint running arrangements with, any corporation owning or operating any connecting railway, and the corporation operating the railway of another, shall, in all respects, be liable in the same manner and extent as though such railway belonged to it, subject to the laws of this state.

Mortgaged. Same, § 3.

SEC. 1301. Any contract, lease, or benefit derived therefrom, contemplated in either of the three preceding sections, may be mortgaged for the purpose of securing construction bonds in the same manner as other property of the corporation.

Change of ownership or name: rights and remedies.

SEC. 1302. Where any railway company shall be organized under a corporate name, and shall have made contracts for payments to it upon delivery of stock in such company, and shall,

subsequent to such contracts, have changed their corporate name, or when the real ownership in the property, rights, powers, and franchises have passed legally or equitably into any other company, no such contracts shall be enforced in law or equity until tender or delivery of stock in such last named corporation or company.

Report to general assembly made. C. 169, § 1, 9 G. A.

SEC. 1303. When any railway has been completed and opened for use, the corporation constructing the same shall report to the next general assembly, under oath, the total cost thereof, specifying the amount expended for construction, engines, cars, depots, and other buildings, and the amount of all other expenses, together with the length of the railway, the number of planes, with their inclination to the mile, the greatest curvature, the average width of grade, and the number of ties per mile.

Maximum rates to be annually fixed and posted up: penalty. C. 139, 13 G. A.

SEC. 1304. In the month of June in each year, every corporation operating a railway in this state shall fix its maximum rates of fare for passengers and freight, for transportation of timber, wood, and coal, per ton, cord, or thousand feet per mile; also its fare and freight per mile for transporting merchandise and articles of the first, second, third, and fourth classes of freight; and, on the first day of July following, shall put up at all the stations and depots on its railway, a printed copy of such fare and freight, and cause a copy to remain posted during the year. For wilfully neglecting so to do, or for wilfully receiving higher rates of fare or freight than those posted, the company shall forfeit and pay to the state of Iowa, for the use of the school fund, not less than one hundred dollars nor more than two hundred dollars, to be recovered in any civil action in the name of the state; and it is hereby made the duty of the several district-attorneys within their respective districts to sue for and recover all sums forfeited as aforesaid; and such corporation shall also forfeit and pay to the person injured, double the amount of compensation or charge illegally taken, to be recovered by such person in a civil action.

Maximum passenger fare.

SEC. 1305. For the transportation of passengers, no railway company shall charge to exceed three and one-half cents per mile per passenger.

Rights reserved.

SEC. 1306. All contracts, stipulations, and conditions, regarding the right of controlling and regulating the charges for freight and passengers upon railways, heretofore made in granting land or other property or voting taxes to aid in the construction of, or franchises to, railway corporations, are expressly reserved, continued, and perpetuated in full force and effect, to be exercised by the general assembly, whenever the public good and the public necessity requires such exercise thereof.

Liable for injuries done employes: contracts restricting void. C. 169, § 7, 9 G. A. C. 121, 13 G. A. C. 65, 14 G. A.

SEC. 1307. Every corporation operating a railway shall be liable for all damages sustained by any person, including employes of such corporation, in consequence of the neglect of agents, or by any mismanagement of the engineers or other employes of the corporation, and in consequence of the wilful wrongs, whether of commission or omission of such agents, engineers, or other employes, when such wrongs are in any manner connected with the use and operation of any railway, on or about

which they shall be employed, and no contract which restricts such liability shall be legal or binding.

Liability cannot be lessened by contract or rule. C. 113, 11 G. A.

SEC. 1308. No contract, receipt, rule, or regulation, shall exempt any corporation engaged in transporting persons or property by railway from liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation, been made or entered into.

Judgment against: when a lien. C. 169, § 9, 9 G. A.

SEC. 1309. A judgment against any railway corporation for any injury to any person or property, shall be a lien within the county where recovered on the property of such corporation, and such lien shall be prior and superior to the lien of any mortgage or trust-deed executed since the fourth day of July, A. D. 1862.

Provisions in relation to railways terminating at or near Council Bluffs. C. 6, § 1, 14 G. A.

SEC. 1310. All railway corporations that have been, or may hereafter be organized, under the laws of this state, that operate or may hereafter operate, a line of railway in this state terminating at or near the city of Council Bluffs, and making a connection with any railway, which, either by its charter or otherwise, extends to a point on the boundary or within the limits of this state, be, and they are hereby prohibited from making any transfer of freights, passengers, or express matters to or with any other railway corporation at or near such terminus—either by delivering or receiving the same—at any other place than in this state, at or near the said point at which the said railway extending to the boundary of this state terminates.

Transfer of freights and passengers prohibited at any place out of the state. Same, § 2.

SEC. 1311. Every railway corporation, which, by its charter or otherwise, has its terminus at any point on the boundary or within the limits of this state, or which has authority to bridge or ferry the Missouri river for the purpose of having a continuous line of its railway, and for connecting with other railways in this state, is hereby prohibited from making any transfer of freights, passengers, or express matters to or with any other railway corporation, either by delivering or receiving the same at any other place than in this state, at or near its legal terminus; and every such corporation extending to the boundary or within this state, or having authority to bridge or ferry said Missouri river, shall erect and maintain at or near its legal terminus within the limits of this state, all its depots, stations, and other buildings necessary for such transfer.

Contracts with municipal corporations enforced. Same, § 3.

SEC. 1312. Every railway corporation which has heretofore made, or which shall hereafter make, any contract with any municipal corporation in this state, is hereby prohibited from, in any manner, violating any of the provisions of such contract; and every railway corporation which has heretofore made, or which shall hereafter make, any contract with any municipal corporation in this state, is hereby required to perform each and all of the provisions of any and every such contract, specifically as agreed therein. In every case in which any such municipal corporation has complied with its obligations relating to such contract at any stage of the progress of its fulfillment, so far as it has agreed to do, such municipal corporation shall not be required to furnish any further tender or guarantee of compliance on its part in order to secure its rights in the courts; but in case anything

remains to be done by such municipal corporation under such contract, after the completion of the sameon t e part of the railway corporation contracting therewith, then it shall, after the enforced compliance on the part of such corporation as hereinafter provided, be required to fully comply on its part.

Penalty for failure to comply. Same, § 4.

SEC. 1313. In case of a refusal of any railway corporation to comply with the provisions of section thirteen hundred and ten of this chapter, or its failure to perform the duties required in the preceding section, or their doing or having done any act at variance with such performance or duties, then the municipal corporation affected thereby, or with which the contract in that particular case was made, may, in an action provided by mandamus, in any court of record in the county in which such municipal corporation is situate, proceed against such corporation so failing or refusing, and such corporation shall, on proper proof, be required by such court to perform all the duties required by this and the three preceding sections, and said law pertaining to mandamus shall apply in such a case with the same force that it does in all other cases, except as it is herein enlarged.

Proceedings to enforce contracts. Same, § 5.

SEC. 1314. In case any municipal corporation affected as before stated, or with which any such contract has been made, should not desire to seek the remedy given in the last preceding section, it may proceed in equity by the action of specific performance, in any court in the county in which such municipal corporation is situate, and in case such court should find that a contract had been made, it shall, by decree, require such company so violating or offering to violate its contract, or failing or refusing to perform the provisions thereof, to specifically perform the same.

Injunction. Same, § 5.

SEC. 1315. Any court or judge in this state to whom application shall be made, shall, at the suit of any municipal corporation as aforesaid, restrain by injunction the violation of any provisions of the five preceding sections of this chapter, or of the provisions of any contract as aforesaid; and in such proceeding, it shall not be necessary for such municipal corporation to give bond.

Remedies not exclusive. Same, § 6.

SEC. 1316. The remedies provided for in the two preceding sections shall not be construed to be exclusive, and any order, judgment, or decree made by any court in pursuance of any provisions of the six preceding sections, shall be enforced in the usual manner.

OF ASSESSMENT AND TAXATION.

Executive council to assess. C. 26, § 1, 14 G. A.

SEC. 1317. On the first Monday of March in each year, the executive council shall assess all the property of each railway corporation in this state, excepting the lands, lots, and other real estate belonging thereto not used in the operation of any railway.

Officers to furnish statement: what it shall contain. Same, § 2.

SEC. 1318. The president, vice-president, or general superintendent, and such other officers as such council may designate of any corporation operating any railway in this state, shall furnish said council on or before the fifteenth day of February in each year, a statement, signed and sworn to by one of such officers, showing in detail for the year ending on January the first preceding:

1. The whole number of miles owned, operated, or leased in the state by such corporation making the return, and the value thereof per mile, with a detailed statement of all property of every kind, and the value, located in each county in the state;

2. Also a detailed statement of the number and the value thereof of engines, passenger, mail, express, baggage, freight, and other cars, or property used in operating or repairing such railway in this state; and on railways which are part of lines extending beyond the limits of this state, the return shall show the actual amount of rolling stock in use on the corporation's line in the state during the year for which return is made.

The return shall show the amount of rolling stock, the gross earnings of the entire railway, and the gross earnings of the same in this state, and all property designated in the next section, and such other facts as such council may, in writing, require. If such officers fail to make such statement, said council shall proceed to assess the property of the corporation so failing, adding thirty per cent. to the assessable value thereof.

How assessment made and value ascertained. Same, § 3.

SEC. 1319. The said property shall be valued at its true cash value, and such assessment shall be made upon the entire railway within the state, and shall include the right of way, road-bed, bridges, culverts, rolling-stock, depots, station-grounds, shops, buildings, gravel beds, and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, said council shall take into consideration the gross earnings per mile for the year ending January the first, preceding, and any and all other matters necessary to enable said council to make a just and equitable assessment of said railway property. If a part of any railway is without this state, then, in estimating the value of its rolling-stock and movable property, they shall take into consideration the proportion which the business of that part of the railway lying within the state bears to the business of the railway without the state; such valuation shall be in the same ratio as that of the property of individuals.

Statement sent auditor of each county. Same, § 4.

SEC. 1320. On or before the fifteenth day of March in each year, said council shall transmit to the county auditor of each county through which any railway may run, a statement showing the length of the main track of such railway within the county, and the assessed value per mile of the same as fixed by a pro rata distribution per mile of the assessed value of the whole property named in the preceding section. Said statement shall be entered on the proper record of the county.

Duty of auditor, board of supervisors, and county treasurer. Same, § 5.

SEC. 1321. At the first meeting of the board of supervisors held after said statement is received by the county auditor, they shall make, and cause the same to be entered in the proper record, an order, stating and declaring the length of the main track, and the assessed value of such railway lying in each city, town, township, or lesser taxing disirict in their county through which said railway runs, as fixed by the executive council, which shall constitute the taxable value of said property for taxable purposes, and the taxes on said property when collected by the county treasurer shall be paid over to the persons or corporations entitled thereto as other taxes, and the county auditor shall transmit a

copy of said order to the city council or trustees of such city, incorporated town, or township.

SEC. 1322. All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, cities, towns, townships, and lesser taxing districts. Taxes levied. Same, § 6.

SEC. 1323. The provisions of this chapter in relation to transporting of passengers, shall not apply to any railway in this state until the gross earnings of the preceding year, reckoning from the first day of January of each year, shall equal or exceed the sum of four thousand dollars per mile average for all the miles of road operated during the whole of that preceding year. Shall not apply.

CHAPTER 6.

OF TELEGRAPHS.

SECTION 1324. 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; *provided*, that when any highway along which said line has been constructed shall be changed, said person or company shall, upon ninety days notice in writing, remove said line to said highway as established. Said notice contemplated herein may be served on any agent or operator in the employ of said person or company. Who may construct: right of way granted. R. § 1348.

SEC. 1325. Such fixtures must not be 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. How constructed. R. § 1349.

SEC. 1326. If the person over whose lands such telegraph line passes claims more damage 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 chapter four of this title. Damages assessed. R. § 1350.

SEC. 1327. 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. Liability of proprietor for refusing to transmit messages. R. § 1351.

For wilful failure: guilty of misdemeanor. R. § 1352.

SEC. 1328. Any person employed in transmitting messages by 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.

Liable for mistakes. R. § 1353.

SEC. 1329. The proprietor of a telegraph is liable for all mistakes in transmitting messages made by any person in his employment, and for all damages resulting from a failure to perform any other duties required by law.

TITLE XI.

OF THE POLICE OF THE STATE.

CHAPTER 1.

OF THE SETTLEMENT AND SUPPORT OF THE POOR.

SEC. 1330. The father, mother, and children of any poor person who is 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; but these officers shall have no control unless the poor person has applied for aid. Who liable to maintain. R. § 1355.

SEC. 1331. In the absence or inability of nearer relatives, the same liability shall extend to the grandparents, if of ability without personal labor, and to the male grandchildren who are of ability by personal labor or otherwise. Same.

SEC. 1332. The word "father," in this chapter includes the putative father of an illegitimate child, and the question of his being the father may be tried in any action or proceeding 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. Putative father: illegitimate child. R. § 1356.

SEC. 1333. Upon the failure of such relatives so to relieve or maintain a poor person who has made application for relief, the township trustees may apply to the circuit court of the county where such poor person resides, for an order to compel the same, and all provisions of this chapter relating to trustees shall apply to any other officers of a county, township, or incorporated town, or city, charged with the oversight of the poor. Proceeding to compel. R. § 1357.

SEC. 1334. At least ten days' notice of the application shall be given in writing, which shall be served as original notice in an action. In such proceedings the county is plaintiff, and the person to be charged is defendant. Notice given. R. § 1358.

SEC. 1335. The court shall make no order affecting a person not served, but may notify him at any stage of the proceedings. Same. R. § 1359.

SEC. 1336. 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. Hearing order of court. R. § 1360.

Same. R. § 1361.

SEC. 1337. Such order may be for the entire or partial support of the poor person, and it may be for the support, either by money or by taking the poor person to a 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; but no person shall be sent to the house of any relative who shall be willing to pay the amount necessary for his support.

Same. R. § 1362.

SEC. 1338. If the court order the relief in any other manner than in money, it shall fix a just weekly value upon it.

Same. R. § 1363.

SEC. 1339. 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 ten days' notice being given,

Same. R. § 1364.

SEC. 1340. When money is ordered to be paid, it shall be paid to such officer as the court may direct.

Failure to comply. R. § 1365.

SEC. 1341. If any person fails to render the support ordered, on the affidavit of one of the proper trustees showing the fact, the court may order execution for the amount due, rating any support ordered in kind as before assessed.

Appeal. R. § 1366.

SEC. 1342. Any appeal may be taken from such judgment as from other judgments of the circuit court.

Abandonment: property ordered seized. R. § 1367.

SEC. 1343. Whenever a father, or mother, abandons children, or husband abandons his wife, or wife her husband, leaving them chargeable, or likely to become chargeable, upon the public for their support, the trustees of the township where such abandoned person may be, upon application being made to them, may apply to the clerk of the circuit court or judge of any county in which the parties reside, or in which any estate of such absconding father, mother, husband or wife, may be, for an order to seize the same, and, upon due proof of the above facts, the clerk of the court or judge may issue an order authorizing the trustees or the sheriff of the county to take into their possession the goods, chattels, things in action, and lands of the person absconding.

Seizure of. R. § 1368.

SEC. 1344. By virtue of such order, the trustees or sheriff may take the property wherever the same may be found, 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.

When affecting real estate. R. § 1369.

SEC. 1345. Such order, when affecting any real estate, may be entered in the encumbrance book, and all sales, leases, and transfers of any such property, real and personal, made by the person after the issuing and entry of the order shall be void.

Inventory of. R. § 1370.

SEC. 1346. The trustees or sheriff 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.

Discharge of: sale ordered. § 1371.

SEC. 1347. 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, wife, or husband, of the person so absconding.

Security given: property restored. R. § 1372.

SEC. 1348. If the party against whom such order issued, return and support the person so abandoned, or give security to the county, satisfactory to the clerk of the circuit court, that such person shall not become chargeable to the county, the order shall be discharged by another order from such clerk, and the property taken and remaining restored.

Trial by jury. R. § 1373.

SEC. 1349. 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 question of abandonment and liability to become a public charge as provided above, which demand may be made upon the inquiry contemplated above, and such inquiry shall take place on the request of the defendant unless it be ordered on the motion of the court itself with notice to the defendant.

Action by county. R. § 1374.

SEC. 1350. Any county having expended any money for the relief of a poor person under the provisions of this chapter, may recover the same from any of his kindred mentioned in sections one thousand three hundred and thirty and one thousand three hundred and thirty-one of this chapter, by an action brought in any court having jurisdiction within two years from the payment of such expenses.

By a relative. R. § 1375.

SEC. 1351. 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.

How acquired. R. § 1376. C. 40, 10 G. A.

SEC. 1352. Legal settlements may be acquired in the counties as follows:

1. Any person having attained majority, and residing in this state one year without being warned as hereinafter provided, gains a settlement in the county of his residence;

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, may acquire a settlement as if she were unmarried;

4. Legitimate minor 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.

Lost.
R. § 1377.

SEC. 1353. A settlement once acquired continues until it is lost by acquiring a new one.

Foreign paupers.
R. § 1379.

SEC. 1354. 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 state whence he came, at the expense of the county, under an order of the circuit court, or judge, otherwise he is to be relieved in the county where he applies.

Warning to depart.
R. § 1380.

SEC. 1355. 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 from the same or any township thereof, and thereafter they shall not acquire a settlement except by the requisite residence for one year uninterrupted by another warning.

How given and served.
R. § 1381.

SEC. 1356. Such warning shall be in writing, and may be served upon the order of the trustees of the township, or of the board of supervisors, by any person; and such person shall make a return his doings thereon to the board of supervisors; and, if not made by a sworn officer, it must be verified by affidavit.

Removal when settlement is in another county.
R. § 1382.

SEC. 1357. 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 trustees of the township or board of supervisors of the county where he applied for relief, and delivered to any officer charged with the oversight of the poor in the county where his settlement is, giving written notice of the fact to the county auditor; or the trustees of the township, or board of supervisors of the county where he applied for relief, may, in their discretion, cause the auditor of the county where he has a settlement to be notified of his being a county charge, and, thereupon, it will become the duty of the latter board 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 and for all expenses incurred in his behalf.

County of settlement liable.
R. § 1383.

SEC. 1358. 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.

Order binding unless notice of contest given.
R. § 1384.

SEC. 1359. Such order of removal shall be binding on the county to which the removal is to be made, unless, within thirty days after receipt of the notice provided by section thirteen hundred and fifty-seven, it gives notice to the auditor of the county making such order of its intention to contest the same. In such case, the proper settlement of the pauper in such county may be tested and determined in an action brought to recover the amount already expended in his behalf. A notice of such action, signed by the county auditor, shall be served on the auditor of the other county, specifying the amount claimed and the facts out of which the claim arises, and no other proceeding shall be necessary to commence the action. The notice hereinbefore provided for, and

a transcript of whatever other proceedings or papers there may be relative to the matter, shall be filed in the office of the clerk of the circuit court, and the cause may be entitled as of the county issuing the order as plaintiff against the county contesting the same as defendant.

Trial: manner of. R. § 1385.

SEC. 1360. The cause may be tried as other actions at law, but no pleadings are necessary, the only issues being whether the pauper had a settlement in the county to which he was ordered to be removed at the time of such order, and whether the amount claimed, or any part thereof, was actually and properly expended by the plaintiff county in his behalf; and the burden of proof shall be on the county making the order of removal.

When trustees shall afford relief. C. 95, § 1, 12 G. A.

SEC. 1361. The township trustees of each township shall provide for the relief of such poor persons in their respective townships as should not, in their judgment, be sent to the county poor-house. But where a city of the first or second class is embraced within the limits of any township, the board of supervisors may appoint an overseer of the poor, who shall have within said city all the powers and duties conferred by this chapter on the township trustees. The relief may be either in the form of food, rent, or clothing, fuel and lights, medical attendance, or in money; and shall not exceed two dollars per week for each person for whom relief is thus furnished, exclusive of medical attendance. When medical services are rendered by order of the trustees or overseers of the poor, no more shall be charged or paid therefor than is usually charged for like services in the neighborhood where such services are rendered.

Families of Iowa soldiers. Same, § 2.

SEC. 1362. In no case shall the widows or families of Iowa soldiers, or other persons in families requiring public relief, be sent to the county poor-house when they can and prefer to be relieved out of the poor-house, to the extent above provided.

Expense to be paid out of county treasury: limit. Same, § 3.

SEC. 1363. All moneys expended as contemplated in the two preceding sections, shall be paid out of the county treasury, after the proper account rendered thereof shall have been approved by the board of supervisors of the respective counties, and in all cases the necessary appropriations therefor shall be made by the respective counties. But the board of supervisors may limit the amount of relief thus to be furnished.

WHERE THERE IS NO POOR-HOUSE.

Township trustees have charge of. R. § 1387.

SEC. 1364. 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, and shall see that they receive proper care, until provided for by the board of supervisors.

Application: how made. R. § 1388.

SEC. 1365. 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 afford such relief as the necessities of the person require, and shall report the case forthwith to the board of supervisors, who may continue or deny relief as they find cause.

Expense paid by county. R. § 1389.

SEC. 1366. 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 board of supervisors, and, if they are satisfied that they are reasonable and proper, they are to be paid out of the county treasury. In no case shall a trustee, or either of the trustees, nor overseer of the poor, draw an order upon himself, or upon either of the board, for supplies for the poor, except such trustees or overseer has a contract to furnish such supplies.

Allowance for. R. § 1390.

SEC. 1367. The board 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.

Appeal to board of supervisors. R. § 1391.

SEC. 1368. If any poor person, on application to the trustees, is refused the required relief, he may apply to the board of supervisors, who, on examination into the matter, may direct the trustees to afford relief, or they may direct specific relief.

SUPERVISORS MAY CONTRACT.

Supervisors may contract. R. § 1393.

SEC. 1369. The board of supervisors may enter into contract with the lowest bidder, through proposals opened and examined at a regular session of the board, for the support of all the poor of the county for one year at a time, and may make all requisite orders to that effect; and shall require such contractor to give bonds in such sum as they deem sufficient to secure the faithful performance of the same.

Supervision of. R. § 1394.

SEC. 1370. When such a contract is made, the board 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 board find that the poor are not reasonably and properly supported or cared for, they may, at a regular session, set aside the contract, making proper allowances for the time it has been in force.

Employment of paupers. R. § 1395.

SEC. 1371. Any such contractor may employ a poor person in any work for which his age, health, and strength is competent, subject to the control of the trustees, and in the last resort of the board of supervisors.

SUPERVISORS MAY ESTABLISH POOR-HOUSE.

People to vote. R. § 1396.

SEC. 1372. The board of supervisors of each county may order the establishment of a poor-house in such county whenever it is deemed advisable, and also the purchase of such land as may be deemed necessary for the use of the same, and may make the requisite contracts and carry such order into effect, provided the cost of said poor-house and land shall be first estimated by said board and approved by a vote of the people.

Contracts: government of. R. § 1401.

SEC. 1373. The board of supervisors, or any committee appointed by them for that purpose, may make all contracts and purchases requisite for the poor-house, and may prescribe rules or regula-

tions for the management and government of the same, and for the sobriety, morality, and industry of its occupants.

Steward appointed. R. § 1402.

SEC. 1374. The board may appoint a steward of the poor-house, who shall be governed in all respects by the rules and regulations of the board and its committees, and may be removed by the board at pleasure, and who shall receive such compensation, perform such duties, and give such security for his faithful performance as the board may appoint.

Duty of. R. § 1403.

SEC. 1375. 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.

Employment of paupers. R. § 1404.

SEC. 1376. He may require of persons so admitted, such reasonable and moderate labor as may be suited to their ages and bodily strength, the proceeds of which, together with the receipts of the poor farm, if there be one, shall be appropriated to the use of the poor-house in such manner as the board may determine.

Admission to poor house. R. § 1405.

SEC. 1377. No person shall be admitted to the poor-house, unless upon the written order of a township trustee or member of the board of supervisors, and relief is to be furnished in the poor-house only, when the person is able to be taken there, unless in the cases hereinbefore provided.

Binding out. R. § 1407.

SEC. 1378. The board may bind out such poor children of the poor-house as they believe are likely to remain a permanent charge on the public, males until eighteen and females until the age of sixteen, 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.

Discharge of. R. § 1408.

SEC. 1379. When any inmate of the poor-house becomes able to support himself, the board may order his discharge.

Visitation of poor house. R. § 1410.

SEC. 1380. The board 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.

Expenses: how paid. R. § 1412.

SEC. 1381. The expense of supporting the poor-house shall be paid out of the county treasury in the same manner with other disbursements for county purposes; and in case the ordinary revenue of the county prove insufficient for the support of the poor, the board 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.

Supervisors: power. R. § 1415.

SEC. 1382. The board is 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.

CHAPTER 2.

OF THE CARE OF THE INSANE.

Hospitals established: trustees: members of general assembly not eligible. C. 109, § 1, 13 G. A.

SECTION 1383. The hospital for the insane, located at Mount Pleasant, in Henry county, shall be known by the name of the Iowa hospital for the insane at Mount Pleasant; and the hospital for the insane, located at Independence, in Buchanan county, shall be known by the name of the Iowa hospital for the insane at Independence. Each of said hospitals shall be under the charge of five trustees, two of whom may be women, three of whom shall constitute a quorum for the transaction of business; and in future no member of the general assembly shall be eligible to that office. When the term of a trustee expires, his successor shall be appointed by the general assembly for four years; but no vacancy shall be filled until the number of trustees is reduced to the number provided in this section. No trustee shall receive pay for more than thirty days in any year.

Trustees: compensation: meetings of. Same, § 3. C. 135, § 1, 14 G. A.

SEC. 1384. The trustees shall be paid five cents per mile for each mile traveled, and five dollars per day during the time they are actually engaged in the discharge of their official duties from the state treasury, out of any moneys not otherwise appropriated, by an order drawn by the secretary of the board and approved by the board. Each board of trustees shall hold an annual meeting upon the first Wednesday of December at the hospital, when they shall choose one of their number president and another secretary, and shall also choose a treasurer for the year then ensuing and until their successors are elected and qualified. They shall also hold quarterly meetings on the first Wednesdays in March, June, and September.

Trustees to visit: keep record: report of. C. 109, § 4, 13 G. A.

SEC. 1385. The board of trustees, or a majority thereof, shall inspect the hospital under their charge at each quarterly meeting; and a committee may visit the hospital monthly. The trustees shall make a record of their proceedings in books kept for the purpose; and at the annual meetings preceding the regular sessions of the general assembly, they shall make a report to the governor of the condition and wants of the hospital, which shall be accompanied by full and accurate reports of its superintendent and treasurer, and an account of all moneys received and disbursed.

Trustees to control and manage hospitals. Same, § 6. C. 135, § 1, 14 G. A.

SEC. 1386. The trustees shall have the general control and management of the hospital under their charge; shall make all by-laws necessary for the government of the same, not inconsistent with the laws and constitution of the state, and conduct the affairs of the institution in accordance with the laws and by-laws regulating the same. They shall appoint a medical superintendent, an assistant physician or physicians, a steward, and a matron, who shall reside in the hospital and be styled resident officers of the same, and be governed and subject to all the laws and by-laws for the government of the said institution. But the same person shall not hold the office of superintendent and steward. They may, also, in their discretion, and upon the nomination of the superintend-

ent, appoint a chaplain and prescribe his duties. The board of trustees shall, from time to time, fix the salaries and wages of the officers and other employes of the hospital, and certify the same to the auditor of state; and they may remove any officer or other employe of such institution.

Trustees may take land in trust. C. 109, § 7, 12 G. A.

SEC. 1387. The board of trustees may take, in the name of the state, and hold in trust for the hospital, any land conveyed or devised, and any money or other personal property given or bequeathed, to be applied for any purpose connected with the institution.

Officers cannot be interested in contracts. Same, § 8.

SEC. 1388. No trustee, or officer of the hospital, shall be, either directly or indirectly, interested in the purchase of building material, or any article for the use of the institution.

Trustee ineligible. Same, § 9.

SEC. 1389. No trustee shall be eligible to the office of steward or superintendent of the hospital during the term for which he was appointed, nor within one year after his term shall have expired.

Trustees to give bond. Same, § 10. C. 135, § 1, 14 G A.

SEC. 1390. The treasurer shall execute a bond to the state of Iowa for the use of the hospital, (naming which) in double the highest amount of money likely to come into his hands, and with such securities as the executive council shall require, conditioned that he will faithfully perform the duties of his office, and pay over and account for all money that shall come into his hands, and shall be filed with the secretary of state. He shall receive such compensation as the board shall fix, not exceeding one-half of one per cent. on all moneys paid out by him. Upon authority granted by the board, he may draw from the state treasury, out of money not otherwise appropriated, upon his order, approved by the superintendent and not less than two of the trustees, and under seal of the hospital, a sufficient amount from time to time for the purpose of defraying any deficiencies that may arise in the current expenses of the hospital, but the amount of each requisition shall in no case exceed twenty dollars per month for each public patient in the hospital, taking the number of such patients on the fifteenth day of each month as the average number on which the estimate shall be made, the number then in the hospital to be certified to the auditor of state by the superintendent and steward, which certificate shall accompany the requisition. But no part of the money so drawn for current expenses shall be used in making improvements. Upon the presentation of such order to the auditor of state, he shall draw a warrant upon the treasurer of state for the amount therein specified, not exceeding the amount for each patient hereinbefore specified.

Compensation: draw money from state treasury.

Superintendent of: chief executive officer. C. 109, § 11.

SEC. 1391. The superintendent of the hospital shall be a physician of acknowledged skill and ability in his profession. He shall be the chief executive officer of the hospital, and shall hold his office for six years unless sooner removed as above provided. He shall have the entire control of the medical, moral, and dietetic treatment of the patients, and he shall see that the several officers of the institution faithfully and diligently discharge their respective duties. He shall employ attendants, nurses, servants, and such other persons as he may deem necessary for the efficient and economical administration of the affairs of the hos-

pital, assign them their respective places and duties, and may, at any time, discharge any of them from service.

Steward to make purchases: keep accounts: take and preserve vouchers. C. 135, § 1, 14 G. A.

SEC. 1392. The steward, under the direction of the trustees, shall make all purchases for the hospital where and in such manner as they can be made on the best terms, keep the accounts, pay all employes, and have a personal superintendence of the farm. He shall take duplicate vouchers for all purchases made, and for all wages paid by him, which he shall submit to the trustees at each of their quarterly meetings, for their examination and approval. Such settlement of accounts shall be made by the board of trustees in open session, and shall not be entrusted to a committee. The trustees shall, after examining and approving such vouchers, file one set of them with the auditor of state. The books and papers of the steward and treasurer shall be open at all times to the inspection of any one of the trustees, state officers, or members of the general assembly.

Seal. C. 109, § 13.

SEC. 1393. The superintendent shall provide an official seal, upon which shall be inscribed the statute name of the hospital under his charge, and the name of the state.

Assistant physicians. C. 109, § 14, 13 G. A.

SEC. 1394. The assistant physicians shall be medical men of such character and qualifications as to be able to perform the ordinary duties of the superintendent during his necessary absence, or inability to act.

COMMISSIONERS OF INSANITY.

Who may be: judge of circuit court to appoint. Same, § 15.

SEC. 1395. In each county there shall be a board of three commissioners of insanity. The clerk of the circuit court shall be a member of such board and clerk of the same. The other members shall be appointed by the judge of said court. One of them shall be a respectable practicing physician, and the other a respectable practicing lawyer; and the appointment shall be made of persons residing as convenient as may be to the county seat. Such appointment may be made during the session of the court or in vacation; and, if made in vacation, it shall be by written order, signed by the judge and recorded by the clerk of the court. The appointment shall be for two years, and so that the term of one commissioner shall expire every year. The appointment of successors may be made at any time within three months prior to the expiration of the term of the incumbent, who shall hold his office until his successor is appointed and qualified. In the temporary absence or inability to act of two commissioners, the judge of the circuit court, if present, may act in the room of one, or the commissioner present may call to his aid a respectable practicing physician or lawyer, who, after qualifying as in other cases, may act in the same capacity. The record in such cases must show the facts.

Organization of. Same, § 16.

SEC. 1396. They shall organize by choosing one of their number president. They shall hold their meetings for business at the office of the clerk of said court, unless, for good reasons, they shall fix on some other place, and shall also meet on notice from the clerk.

SEC. 1397. The clerk of said board of commissioners shall sign and issue all notices, appointments, warrants, subpœnas, or other process required to be given or issued by the commissioners, affixing thereto his seal as clerk of the circuit court. He shall file and preserve in his office all papers connected with any inquest by the commissioners, and properly belonging to his office, with all notices, reports, and other communications. He shall keep separate books in which to minute the proceedings of the board, and his entries therein shall be sufficiently full to show, with the papers filed, a complete record of their findings, orders, and transactions. The notices, reports, and communications herein required to be given or made, may be sent by mail, unless otherwise expressed or implied; and the facts and date of such sending and their reception, must be noted on the proper record.

Clerk of: duty. Same, § 17.

SEC. 1398. The said commissioners shall have cognizance of all applications for admission to the hospital, or for the safe keeping otherwise of insane persons within their respective counties, excepting in cases otherwise especially provided for. For the purpose of discharging the duties required of them, they shall have power to issue subpœnas and compel obedience thereto, to administer oaths, and do any act of a court necessary and proper in the premises.

Jurisdiction and power. Same, § 18.

SEC. 1399. Applications for admission to the hospital must be made in the form of an information, verified by affidavit, alleging that the person in whose behalf the application is made, is believed by the informant to be insane, and a fit subject for custody and treatment in the hospital; that such a person is found in the county, and has a legal settlement therein, if such is known to be the fact; and, if such settlement is not in the county, where it is, if known; or where it is believed to be, if the informant is advised on the subject.

Applications for admission. Same, § 19.

SEC. 1400. On the filing of such information, the commissioners may examine the informant, under oath, and, if satisfied there is reasonable cause therefor, shall at once investigate the grounds thereof. For this purpose they may require that the person for whom such admission is sought be brought before them, and that the examination be had in his presence; and they may issue their warrant therefor, and provide for the suitable custody of such person until their investigation shall be concluded. Such warrant may be executed by the sheriff, or any constable of the county; or, if they shall be of opinion, from such preliminary inquiries as they may make—and in making which they shall take the testimony of the informant, if they deem it necessary or desirable, and of other witnesses if offered,—that such course would probably be injurious to such person, or attended with no advantage, they may dispense with such presence. In their examination they shall hear testimony for and against such application, if any is offered. Any citizen of the county, or any relative of the person alleged to be insane, may appear and resist the application, and the parties may appear by counsel, if they elect. The commissioners, whether they dispense with the presence before them of such person or not, shall appoint some regular practicing physician of the county

Investigation: warrant: certificate of physician. Same, § 20.

to visit such person and make a personal examination touching the truth of the information, and the actual condition of such person, and forthwith report to them thereon. Such physician may, or may not, be of their own number; and the physician so appointed and acting shall certify, under his hand, that he has, in pursuance of his appointment, made a careful personal examination as required; and that, on such examination, he finds the person in question insane, if such is the fact, and if otherwise, not insane; and in connection with his examination, the said physician shall endeavor to obtain from the relatives of the person in question, or from others who know the facts, correct answers, so far as may be, to the interrogatories hereinafter required to be propounded in such cases, which interrogatories and answers shall be attached to his certificate.

Finding of commissioners. Same, § 21, 13 G. A.

SEC. 1401. On the return of the physician's certificate, the commissioners shall, as soon as practicable, conclude their investigation, and shall find whether the person alleged to be insane, is insane; whether, if insane, a fit subject for treatment and custody in the hospital; whether the legal settlement of such person is in their county, and, if not in their county, where it is, if ascertained. If they find such person is not insane, they shall order his immediate discharge, if in custody. If they find such person insane, and a fit subject for custody and treatment in the hospital, they shall forthwith issue their warrant, and a duplicate thereof, stating such finding, with the settlement of the person, if found; and, if not found, their information, if any, in regard thereto, authorizing the superintendent of the hospital to receive and keep such person as a patient therein. Said warrant and duplicate, with the certificate and finding of the physician, shall be delivered to the sheriff of the county, who shall execute the same by conveying such person to the hospital, and delivering him, with such duplicate and physician's certificate, and finding, to the superintendent thereof. The superintendent, over his official signature, shall acknowledge such delivery on the original warrant, which the sheriff shall return to the clerk of the commissioners, with his costs and expenses endorsed thereon. If neither the sheriff nor his deputy is at hand, or if both are otherwise engaged, the commissioners may appoint some other suitable person to execute the warrant in his stead, who shall take and subscribe an oath faithfully to discharge his duty, and shall be entitled to the same fees as the sheriff. The sheriff, or any other person so appointed, may take to his aid such assistance as he may need to execute such warrant; but no female shall thus be taken to the hospital without the attendance of some other female, or some relative. The superintendent, in his acknowledgment of delevery, must state whether there was any such person in attendance, and give the name or names, if any. But if any relative or immediate friend of the patient who is a suitable person, shall so request, he shall have the privilege of executing such warrant in preference to the sheriff, or any other person, and without taking such oath; and for so doing he shall be entitled to his necessary expenses but to no fees. The requirements of this and preceding sections are modified by the provisions of the next section.

Discharge.

Issue warrant.

Execution of.

Superintendent to acknowledge.

Female: how taken.

Relative may execute warrant.

SEC. 1402. If the commissioners find that the person so committed to the hospital has, or probably has, a legal settlement in some other county, they shall immediately notify the auditor of such county of such finding and commitment; and the auditor so notified shall thereupon inquire and ascertain, if possible, whether the person in question has a legal settlement in that county, and shall immediately notify the superintendent of the hospital and the commissioners of the county from which such person was committed, of the result of such inquiry. If the legal settlement of a person so committed cannot for a time be ascertained, and is afterwards found, the notices so required shall then be given.

When settlement is in another county: proceedings. Same, § 22.

SEC. 1403. If any person found to be insane and a fit subject for custody and treatment in the hospital, cannot at once be admitted therein for want of room, or for any other cause, and cannot with safety be allowed to go at liberty, the commissioners shall require that such patient shall be suitably provided for otherwise until such admission can be had, or until the occasion therefor no longer exists. Such patients may be cared for either as private or as public patients. Those shall be treated as private patients, whose relations or friends will obligate themselves to take care of and provide for them without public charge. In such case, the commissioners shall appoint some suitable person a special custodian, who shall have authority, and who shall, in all suitable ways, restrain, protect, and care for such patient, in such manner as to best secure his safety and comfort, and to best protect the person and property of others. In the case of public patients, the commissioners shall require that they be in like manner restrained, protected, and cared for by the board of supervisors at the expense of the county, and they may, accordingly, issue their warrant to such board who shall forthwith comply with the same. If there is no poor-house for the reception of such patients, or if no more suitable place can be found, they may be confined in the jail of the county in charge of the sheriff.

When person cannot be sent to hospital: special custodian appointed. Same, § 8.

SEC. 1404. On application to the commissioners in behalf of persons alleged to be insane, and whose admission to the hospital is not sought, made substantially in the manner above prescribed, and asking that provision be made for their care as insane—either public or private—within the county, and on proof of their insanity and need of care as above pointed out, the commissioners may provide for their restraint, protection, and care, as in the case of other applications.

When admission to hospital is not desired. Same, § 29.

SEC. 1405. On information laid before the commissioners of any county that a certain insane person in the county is suffering for want of proper care, they shall forthwith inquire into the matter, and, if they find the information well founded, they shall make all needful provisions for the care of such person, as provideded in other cases.

When suffering from want of care. Same, § 30.

SEC. 1406. Insane persons who have been under care, either as public or private patients, outside of the hospital, by authority of the commissioners of any county, may, on application to that effect, be transferred to the hospital whenever they can be admit-

May be transferred to hospital. Same, § 33.

ted thereto, on the warrant of such commissioners. Such admission may be had without another inquest, at any time within six months after the inquest already had, unless the commissioner shall deem further inquest advisable.

Interrogatories to be answered. Same, § 34.

SEC. 1407. In each case of application for admission to the hospital, correct answers to the following interrogatories, so far as they can be obtained, shall accompany the physician's certificate; and if, on further examination after the answers are stated, any of them are found to be erroneous, the commissioners shall cause them to be corrected:

1. What is the patient's name and age? Married or single? If any children, how many? Age of youngest child?
2. Where was the patient born?
3. Where is his (or her) place of residence?
4. What has been the patient's occupation?
5. Is this the first attack? If not, when did the others occur, and what was their duration?
6. When were the first symptoms of this attack manifested, and in what way?
7. Does the disease appear to be increasing, decreasing, or stationary?
8. Is the disease variable, and are there rational intervals? If so, do they occur at regular periods?
9. On what subjects, or in what way is derangement now manifested? State fully.
10. Has the patient shown any disposition to injure others?
11. Has suicide ever been attempted? If so, in what way? Is the propensity now active?
12. Is there a disposition to filthy habits, destruction of clothing, breaking of glass, etc?
13. What relatives, including grandparents and cousins, have been insane?
14. Did the patient manifest any peculiarities of temper, habits, disposition, or pursuits, before the accession of the disease?—any predominant passion, religious impressions, etc?
15. Was the patient ever addicted to intemperance in any form?
16. Has the patient been subject to any bodily disease; epilepsy, suppressed eruptions, discharges of sores, or ever had any injury of the head?
17. Has restraint or confinement been employed? If so, what kind, and how long?
18. What is supposed to be the cause of the disease?
19. What treatment has been pursued for the relief of the patient? Mention particulars and effects.
20. State any other matter supposed to have a bearing on the case.

Discharge on application of friends. Same, § 41.

SEC. 1408. On the application of the relations or immediate friends of any patient in the hospital who is not cured, and who cannot be safely allowed to go at liberty, the commissioners of the county where such patient belongs, on making provision for the care of such patient within the county as is in other cases, may authorize his discharge therefrom; *provided*, no patient who may

be under criminal charge or conviction shall be discharged without the order of the district court or judge, and notice to the district attorney of the proper district as hereinbefore provided.

Discharge of: cared for in county. Same, § 47.

SEC. 1409. Whenever it shall be shown to the satisfaction of the commissioners of insanity of any county, that cause no longer exists for the care within the county of any particular person as an insane patient, they shall order the immediate discharge of such person.

Expenses estimated and paid in advance from county treasury. Same, § 48.

SEC. 1410. Whenever the commissioners issue their warrant for the admission of a person to the hospital, and funds to pay the expense thereof are needed in advance, they shall estimate the probable expense of conveying such person to the hospital, including the necessary assistance, and not including the compensation allowed the sheriff; and on such estimate, certified by the clerk, the auditor of the county shall issue his order on the treasury of the county in favor of the sheriff or other person entrusted with the execution of such warrant; the sheriff, or other person executing such warrant, shall accompany his return with a statement of the expenses incurred; and the excess or deficiency may be deducted from or added to his compensation, as the case may be. If funds are not so advanced, such expenses shall be certified and paid in the manner above prescribed on the return of the warrant. When the commissioners order the return of a patient, compensation and expenses shall be in like manner allowed.

Warrant and certificate: superintendent not liable to prosecution. Same, § 51.

SEC. 1411. The warrant of the commissioners of insanity, authorizing the admission of any person to the hospital as a patient, accompanied by a physician's certificate as herein provided, shall operate to shield the superintendent and other officers of the hospital against all liability to prosecution of any kind on account of the reception and detention of such person in the hospital; *provided*, such detention shall be otherwise in accordance with the laws and by-laws regulating its management.

INSANE PRISONERS.

Commissioners to make inquiry: may be sent to hospital and restored to reason. R. §§ 1458, 1459.

SEC. 1412. If any person in prison charged with a crime, shall, at any time before indictment is found against him, at the request of any citizen be brought before the commissioners in the manner provided by law, and if it shall be found by them that such person was insane when he committed the offense; or if any person in prison shall, after the commission of an offense, and before conviction, become insane, and if at the request of any citizen an inquest be instituted as provided for in this chapter, and if the commissioners shall find that such person became insane after the commission of the crime of which he stands charged or indicted, and is still insane, they shall issue their warrant authorizing and requiring the superintendent of either hospital to receive and keep the person as a patient therein. In such case the warrant can only be executed by the sheriff or his deputy; and no delivery of the insane prisoner to any other person than the superintendent of the hospital shall exonerate the sheriff from his liability for the custody of such prisoner, and any such lunatic may, when

restored to reason, be prosecuted for any offense committed by him previous to such insanity.

Cannot be discharged until district attorney is notified. R. § 1460.

SEC. 1413. When any lunatic shall be confined in either hospital under the preceding section, the superintendent in whose charge he may be, shall, as soon as such lunatic is restored to his reason, give notice thereof to the district attorney of the proper county, and retain such lunatic in custody for such reasonable time thereafter as may be necessary for said attorney to cause a warrant to issue and to be served, by virtue whereof the said person so restored to reason shall again be returned to the jail of the proper county to answer to the offense alleged against him.

Becoming insane after conviction: governor suspend execution of sentence. R. § 1464.

SEC. 1414. If any person, after being convicted of any crime or misdemeanor, and before the execution in whole or part of the sentence of the court, becomes insane, the governor shall inquire into the facts, and he may pardon such lunatic, or cummute or suspend, for the time being, the execution in such manner and for such a period as he may think proper, and may, by his warrant to the sheriff of the proper county or warden of either penitentiary, order such lunatic to be conveyed to the hospital and there kept until restored to reason. If the sentence of any such lunatic be suspended by the governor, the sentence of the court shall be executed upon him after such period of suspension has expired, unless otherwise directed by the governor.

CUSTODIAN OF INSANE PERSONS.

Guilty of misdemeanor. C. 109, § 32, 18 G. A.

SEC. 1415. Any person having care of an insane person, and restraining such person either with or without authority, who shall treat such person with wanton severity, harshness, or cruelty, or shall in any way abuse such person, shall be guilty of a misdemeanor, besides being liable in an action for damages.

Insane cannot be restrained except by authority. Same, § 31.

SEC. 1416. No person supposed to be insane shall be restrained of his liberty by any other person, otherwise than in pursuance of authority obtained as herein required, excepting to such extent and for such brief period as may be necessary for the safety of person and property until such authority can be obtained.

SUPERINTENDENTS—TRUSTEES—REGULATIONS.

When sent from one county whose settlement is in another. Same, § 23.

SEC. 1417. When the superintendent of the hospital has been duly notified as herein required, that a patient sent to the hospital from one county has a legal settlement in another county, he shall thereafter hold and treat such patient as from the latter county; and such holding shall apply to expenses already incurred in behalf of such patient and remaining unadjusted.

Expenses may be recovered of the county of the settlement. Same, § 24.

SEC. 1418. Expenses incurred as hereinafter provided by one county on account of an insane person whose legal settlement is in another county, shall be refunded, with lawful interest thereon, by the county of such settlement, and shall be presented to the board of supervisors of the county sought to be charged, allowed, and paid the same as other claims. If the settlement is denied by the latter board, they may serve a notice similar to that provided for in section thirteen hundred and fifty-nine, of chapter one

of this title for cases of removal; and all the provisions of that chapter in regard to the determination of a disputed claim upon an order of removal shall apply to the change of settlement of an insane person.

When no settlement state to pay. Same, § 25.

SEC. 1419. Patients in the hospital having no legal settlement in the state, or whose legal settlement cannot be ascertained, shall be supported at the expense of the state, and the trustees may authorize the superintendent to remove any patient at the expense of the state if they see proper.

Special care may be given when paid for by relatives. Same, § 26.

SEC. 1420. All patients in the hospital shall be regarded as standing upon an equal footing; and the several patients, according to their different conditions of mind and body, and their respective needs, shall be provided for and treated with equal care; but if the relative or friends of any patient shall desire it, and shall pay the expense thereof, such patient may have special care, and may be provided with a special attendant, as may be agreed upon with the superintendent. In such cases, the charges for such special care and attendance shall be paid quarterly in advance.

Expenses paid by relatives. Same, § 27.

SEC. 1421. The relatives or friends of any patient in the hospital shall have the privilege of paying any portion or all of the expenses of such patients therein; and the superintendent shall cause the account of such patient to be credited with any sums so paid.

Discrimination between patients. Same, § 35.

SEC. 1422. If at any time it may become necessary, for want of room or other cause, to discriminate in the general reception of patients into the hospital, a selection shall be made as follows:

1. Recent cases, *i. e.*, cases of less than one year's duration, shall have the preference over all others;

2. Chronic cases, *i. e.*, where the disease is of more than one year's duration, presenting the most favorable prospects of recovery shall be next preferred;

3. Those for whom application has been longer on file, other things being equal, shall be next preferred;

4. Where cases are equally meritorious in all other respects, the indigent shall have the preference.

Escape of. Same, § 39.

SEC. 1423. If any patient shall escape from the hospital, the superintendent shall cause immediate search to be made for him; and, if he cannot soon be found, shall cause notice of such escape to be forthwith given to the commissioners of the county where the patient belongs; and if such patient is found in their county, the commisioners shall cause him to be returned, and shall issue their warrant therefor as in other cases, unless the patient shall be discharged, or unless, for good reasons, they shall provide for his care otherwise, of which they shall notify the superintendent.

Discharge of when cured. Same, § 40.

SEC. 1424. Any patient who is cured shall be immediately discharged by the superintendent. Upon such discharge, the superintendent shall furnish the patient, unless otherwise supplied, with suitable clothing and a sum of money, not exceeding twenty dollars, which shall be charged with the other expenses in the hospital of such patient. The relatives of any patient not susceptible of cure by remedial treatment in the hospital, and not dangerous to be at large, shall have the right to take charge of and

remove such patient on consent of the board of trustees. In the interim of the meetings of the board, the consent of two of the trustees shall be sufficient.

Incurable and harmless removed. Same, § 42.

SEC. 1425. The board of trustees shall order the discharge or removal from the hospital of incurable and harmless patients, whenever it is necessary to make room for recent cases; in the interim between the meetings of the board, the superintendent, in connection with two trustees, shall possess and exercise the same power.

Notice of discharge sent commissioners. Same, § 43.

SEC. 1426. When patients are discharged from the hospital by the authorities thereof without application therefor, notice of the order of discharge shall at once be sent to the commissioners of the county where they belong; and the commissioners shall forthwith cause them to be removed, and shall at once provide for their care in the county as in other cases, unless such patients are discharged as cured.

Compensation for keeping fixed. Same, § 44. C. 135, § 1, 14 G. A.

SEC. 1427. The trustees shall, from time to time, fix the sum to be paid per week for the board and care of the patients, which shall not exceed the sum of three dollars and twenty cents per week, and the weekly sum so fixed, shall be the sum the said hospital shall be entitled to demand for keeping any patient; and the certificate of the superintendent, attested by the seal of the hospital, shall be evidence in all places of the amount due as fixed.

Superintendent to certify to auditor of state. C. 109, § 45, 13 G. A.

SEC. 1428. The superintendent shall certify to the auditor of state on the first day of January, April, July, and October, the amount, not previously certified by him, due to said hospital, from the several counties having patients chargeable thereto; and said auditor shall pass the same to the credit of the hospital. The auditor shall, thereupon, notify the county auditor of each county so owing of the amount thereof, and charge the same to said county; and the board of supervisors shall levy a tax in said county for said amount, and pay the amount due the state into the state treasury.

Fees of superintendent when attending court. Same, § 52.

SEC. 1429. When the superintendent of the hospital, in obedience to a subpœna, attends any court of the county in which the hospital is situated as witness for either party in the case of a person on trial for a criminal offense, and the question of the sanity of such person is raised, he shall be allowed, on such account, his necessary and actual expenses, and such daily pay as is allowed to other witnesses, and such expenses and pay shall be paid by the state. When compelled so to attend in civil cases, he shall be entitled to the same compensation, to be paid by the party requiring his attendance.

Seal of affixed. Same, § 53.

SEC. 1430. The superintendent shall affix the seal of the hospital to any notice, order of discharge, or other paper required to be given by him or issued.

Blanks sent commissioners. Same, § 55.

SEC. 1431. The trustees of the hospital shall provide for furnishing the commissioners of the counties entitled to send patients to the hospital with such blanks for warrants, certificates, etc., as will enable them with regularity and facility to comply with the provisions of this chapter; and, also, with copies of the by-laws of the hospital when printed.

SEC. 1432. The superintendents of the two hospitals and the governor of the state, shall adopt such regulations as they may deem expedient in regard to what patients, or class of patients, shall be admitted to and provided for in the respective hospitals; or from what portion of the state patients, or certain classes of patients, may be sent to each or either hospital; and they may change such regulations from time to time as they may deem best; and they shall make such publication of these regulations as they may beem necessary for the information of those interested. The regulations so adopted shall be conformed to by the parties interested.

Rules adopted: who to form. Same, § 56.

SEC. 1433. The provisions herein made for the support of the insane at public charge, shall not be construed to release the estates of such persons nor their relatives from liability for their support; and the auditors of the several counties, subject to the direction of the board of supervisors, are authorized and empowered to collect from the property of such patients, or from any person legally bound for their support, any sums paid by the county in their behalf, as herein provided; and the certificate from the superintendent, and the notice from the auditor of state, stating the sums charged in such cases shall be presumptive evidence of the correctness of the sums so stated. If the board of supervisors, in the case of any insane patient who has been supported at the expense of the county, shall deem it a hardship to compel the relatives of such patient to bear the burden of his support, they may relieve such relatives from any part or all of such burden. as may seem to them reasonable and just.

Estates of patients and relatives bound for support. Same, § 46.

SEC. 1434. The term "insane," as used in this chapter, includes every species of insanity or mental derangement. The term "idiot," is restricted to persons foolish from birth, supposed to be naturally without mind. No idiot shall be admitted to the hospital.

Meaning of term "insane:" idiots not admitted. Same, § 54.

VISITING COMMITTEE.

SEC. 1435. There shall be a visiting committee of three, one of whom at least shall be a woman, appointed by the governor, to visit the insane asylums of the state at their discretion, and without giving notice of their intended visit; who may, upon such visit, go through the wards unaccompanied by any officer of the institution, with power to send for persons and papers, and to examine witnesses on oath, to ascertain whether any of the inmates are improperly detained in the hospital, or unjustly placed there, and whether the inmates are humanely and kindly treated, with full power to correct any abuses found to exist; and any injury inflicted upon the insane shall be treated as an offense, misdemeanor, or crime, as the like offense would be regarded when inflicted upon any other citizen outside of the insane asylums. They shall have power to discharge any attendant or employe who is found to have been guilty of misdemeanor meriting such discharge; and in all these trials for misdemeanor, offense, or crime, the testimony of patients shall be taken and considered for what it is worth, and no employe at the asylum shall be allowed to sit

Appointed by governor. power and duties. C. 91, § 1, 14 G. A.

upon any jury before whom these cases are tried. Said committee shall make an annual report to the governor.

Inmates of hospital allowed to write. Same, § 2.

SEC. 1436. The names of this visiting committee and their post-office address, shall be kept posted in every ward in the asylum, and every inmate in the asylum shall be allowed to write when and what he pleases to this committee, and to any other person he may choose; but the superintendent may, if he thinks proper, send letters addressed to other parties to the visiting committee for inspection before forwarded to the individual addressed. And any member of this committee who shall neglect to heed the calls of the patient to him for protection, when proved to have been needed, shall be deemed unfit for his office, and shall be discharged by the governor.

Superintendent to furnish writing material. Same, § 3.

SEC. 1437. Every person confined in any insane asylum, shall be furnished by the superintendent or party having charge of such person, at least once in each week, with suitable materials for writing, enclosing, sealing, and mailing letters, if they request the same, unless otherwise ordered by the visiting committee, which order shall continue in force until countermanded by said committee.

Letters to be deposited in P. O. Same, § 4.

SEC. 1438. The superintendent or party having charge of any person under confinement, shall receive, if requested to do so by the person so confined, at least one letter in each week without opening or reading the same, and without delay to deposit it in a post-office for transmittal by mail, with a proper postage stamp affixed thereto; and to deliver to said person any letter or writing to him or her directed, without opening or reading the same; *provided*, this letter has been forwarded by the visiting committee.

Inquest held. Same, § 6.

SEC. 1439. In the event of the sudden and mysterious death of any person so confined, a coroner's inquest shall be held as provided for by law in other cases.

Punishment for violation of law. Same, § 7.

SEC. 1440. Any person neglecting to comply with, or wilfully and knowingly violating any of the provisions of the five preceding sections, shall, upon conviction thereof, be punished by imprisonmont for a term not exceeding three years, or by fine not exceeding one thousand dollars, or by both fine and imprisonment in the discretion of the court, and by ineligibility for this office in the future, and, upon trial had for such offense, the testimony of any person, whether insane or otherwise, shall be taken and considered for what it is worth.

Visits of. Same, § 8.

SEC. 1441. At least one member of said committee shall visit the asylums for the insane every month.

WHEN ILLEGALLY CONFINED.

May be discharged by district judge. C. 100, § 36, 13 G. A.

SEC. 1442. On a statement in writing, verified by affidavit, addressed to a judge of the district or circuit court of the county in which the hospital is situated, or of the county in which any certain person confined in the hospital has his legal settlement, alleging that such person is not insane, and is unjustly deprived of his liberty, such judge shall appoint a commission of not more than three persons, in his discretion, to inquire into the merits of the case, one of whom shall be a physician, and if two or more

are appointed, another shall be a lawyer. Without first summoning the party to meet them, they shall proceed to the hospital and have a personal interview with such person, so managed as to prevent him, if possible, from suspecting its object; and they shall make any inquiries and examinations they may deem necessary and proper of the officers and records of the hospital touching the merits of the case. If they shall judge it prudent and advisable, they may disclose to the party the object of their visit, and either in his presence or otherwise, make further investigation of the matter. They shall forthwith report to the judge making the appointment, the result of their examination and inquiries. Such report shall be accompanied by a statement of the case, made and signed by the superintendent. If, on such report and statement, and the hearing of the testimony, if any is offered, the judge shall find the person not insane, he shall order his discharge. If the contrary, he shall so state, and authorize his continued detention. The finding and order of the judge, with the report and other papers, shall be filed in the office of the clerk of the court over which such judge presides, who shall enter a memorandum thereof on his record, and forthwith notify the superintendent of the hospital of the finding and order of the judge, and the superintendent shall carry out the order. The commissioners appointed as provided in this section, shall be entitled to their necessary expenses and a reasonable compensation, to be allowed by the judge, and paid by the state out of any funds not otherwise appropriated: *provided*, that the applicant shall pay the same if the judge shall find that the application was made without probable grounds, and shall so order.

Commission: when appointed. Same, § 37.

SEC. 1443. The commission so provided for, shall not be repeated oftener than once in six months in regard to the same party; nor shall such commission be appointed in the case of any patient within six months of the time of his admission.

Habeas corpus. Same, § 38.

SEC. 1444. All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be decided at the hearing, and if the judge shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person has been restored to reason.

Failure of duty: punished. Same, § 49.

SEC. 1445. Any officer required herein to perform any act, and any person accepting an appointment under the provisions of this chapter, and wilfully refusing or neglecting to perform his duty as herein prescribed, shall be guilty of a misdemeanor, besides being liable to an action for damages.

CHAPTER 3.

OF DOMESTIC AND OTHER ANIMALS.

Swine and sheep restrained. C. 59, § 2, 14 G. A.

SECTION 1446. Every owner of swine or sheep shall restrain the same from running at large, and in the event of a failure so

to do, shall be liable for any damages done by said animals or any of them, and the sheep or swine so committing damages shall be subject to the provisions of sections fourteen hundred and fifty-one to fourteen hundred and fifty-six, inclusive, of this chapter.

Male animals running at large taken up. R. § 289. C. 59, § 3, 14 G. A.

SEC. 1447. Any person may take possession of any stallion, jack, bull, boar, or buck, found at large in the county in which such person resides, and give notice thereof to any constable in the county, who shall sell the animals so taken at public auction to the best bidder for cash, having given ten days notice of the time and place of sale, by posting the same in writing in three public places in the township wherein such animals were found at large. Out of the proceeds of sale he may pay all costs and charges of keeping and any damage done by said animals, and shall pay the remainder of said proceeds into the county treasury, to be applied to the use of the county, unless legal proof be made to the county auditor by the owner of said animals of his right thereto; such proof may be made at any time within twelve months from the sale, and thereupon said auditor shall order the proper amount to be paid to the owner out of any money in the treasury not otherwise appropriated. But if the owner, or any person for him, shall, on or before the day of sale, pay the costs and charges thus far made, and all damages, and make satisfactory proof of his ownership, the constable shall release the animals to him without proceeding further.

Domestic animals doing damage restrained. R. § 1488.

SEC. 1448. When any person is injured in his lands by any kind of domestic animal, he may recover his damages by an action against the owner, or by distraining the animals doing the damage; but if they 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 animals shall not be liable for such damage; *provided*, that if the party injured elects to recover by action against the owner of the stock, no appraisement need be made by the trustees as in cases of distraint.

Adjoining owner: neglect of. R. § 1549.

SEC. 1449. And if the animals are not lawfully upon the adjoining close and came thereupon, or if they escaped therefrom into the injured enclosure 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 animals.

Horses: cattle. C. 26, § 1, 18 G. B

SEC. 1450. The owners of cattle, horses, mules, and jennies, shall be liable for all damages done by such stock.

Lien for damage. Same, § 2.

SEC. 1451. The owners, or person in actual possession, of any cultivated lands in this state, shall have a lien from the time of distraint on all and any stock that shall trespass on such lands.

Payment of. Same, § 3.

SEC. 1452. The owner of any stock trespassing on the improved lands of another, shall pay to the owner or person in actual possession of the lands so damaged, the actual amount of damages so sustained.

Person in possession may restrain. Same, § 4.

SEC. 1453. The person who is in possession of the lands so trespassed upon, may distrain any trespassing stock and retain the same in some safe place at the expense of the owner thereof until said damages are paid, as provided in the three following sections.

SEC. 1454. Within twenty-four hours after the stock has been distrained, Sunday not being included, the party so injured, or his agent, shall notify the owner of said stock, when known, and if said owner shall fail to satisfy the owner of, or occupant cultivating said land, he shall, within twenty-four hours thereafter, notify the township trustees to be and appear upon the premises to view and assess the damages; such notices to be either verbal or in writing. When two or more trustees have assembled, they shall proceed to view and assess the damages and the amount to be paid for keeping said stock; and if the person or persons owning such distrained stock refuse to pay such damages so assessed, then the trustees shall post up notices in three conspicuous places in the township where such damages were done, that the said stock, or so much thereof as is necessary to pay said damages with costs of sale, will be sold to the highest bidder; any money or stock left after satisfying such claims shall be returned to the owner of the stock so disposed of; said sale shall take place at the enclosure where such stock was distrained between the hours of one and three P. M. on the tenth day after the posting of said notice; *provided*, that if any one or more of said trustees are interested in said damages, the trustee or trustees not so interested shall appoint some one or more, as the case may require, to act in the place of the person or persons so interested; the owner of the stock, or the person entitled to the possession thereof, when known, shall also be notified of the time and place of the meeting of said trustees to assess said damages. When either trustee is absent so that notice cannot be served upon him, then any justice of the peace shall appoint a suitable person, having the qualifications of a juror, to supply the place of the absent trustee, and the person so appointed shall serve as such trustee for all the purposes of this and the following sections.

Township trustees notified to assess damages: sale of stock. Same, § 5.

Absent trustees.

SEC. 1455. The trustees shall make their assessment in writing and file the same with the township clerk, to be of record in his office. Any person aggrieved by the action of the trustees under this chapter, may appeal to the circuit court of the proper county. The bond shall be filed with the clerk of the township in a penalty double the value of the property distrained, or if the value of the property exceed the amount of the damage claimed, then double the amount of the damage. Notice of such appeal shall be given in the same time and manner as in appeals from a judgment of a justice of the peace, with good and sufficient securities, to be approved by the clerk; and from and after the filing of the appeal bond, the same shall operate as a supersedeas. In case the owner of such be appellant the same shall be delivered to him. The clerk, after the appeal is taken, shall certify all the original papers to the clerk of the circuit court within the time prescribed for the appeal.

Assessment filed with clerk: appeal from. Same, § 6.

SEC. 1456. If the owners of such distrained stock are not known, it shall be treated as estrays.

Estrays. Same, § 7.

SEC. 1457. At the regular meeting of the board of supervisors in June of each year, a majority of the board shall determine whether the question of restraining stock from running at large shall be submitted to the voters of the county at the ensu-

To apply to counties which vote to adopt only. Same, § 8.

Recently repealed

ing general election, and if the supervisors so declare, there may be written or printed on each ballot either of the sentences following: "For restraining stock from running at large," "Against restraining stock from running at large;" and if a majority of all the votes cast for and against said proposition at said election be for restraining stock from running at large, then, and not otherwise, shall the provisions of sections fourteen hundred and fifty to fourteen hundred and fifty-six, inclusive, of this chapter be in full force in such county, and shall be in full force in ninety days after said election, if it shall have been decided by a majority to restrain stock from running at large.

Townships may adopt.

SEC. 1458. It shall be lawful for any civil township to adopt the provisions of the foregoing sections in relation to restraining stock from running at large by vote.

Proceedings.

SEC. 1459. When a petition shall be presented to the trustees of any township, signed by one third of the voters thereof, asking the question of restraining stock from running at large to be submitted to the voters of the township at the next general election, the trustees shall publish a notice of the submission of said question at least four weeks before said election in some newspaper published in the county, if there be one, and also by posting a copy of such notice in five public places in said township.

Same.

SEC. 1460. The question shall be submitted as set forth in section fourteen hundred and fifty-seven of this chapter, for counties; and, if a majority of all the votes cast for and against the proposition for restraining stock from running at large, be for restraining said stock, then all the provisions set forth in this chapter applicable to counties having voted to restrain stock from running at large, shall be alike applicable to said township; notice of the result of said election, if stock is to be restrained, shall be posted by the township clerk in five public places in the township within ten days thereafter.

Restraining stock in night time submitted to vote.

SEC. 1461. When a petition shall be presented to the board of supervisors of any county asking the question of restraining stock from running at large between the hours of sunset and sunrise to be submitted to the voters of said county at the next general election, said board shall submit such question as set forth in said petition.

SEC. 1462. There may be written or printed on each ballot either of the sentences following: "For restraining stock from running at large between the hours of sunset and sunrise," "Against restraining stock from running at large between the hours of sunset and sunrise." And if a majority of all the votes cast for and against said proposition at said election be for restraining stock from running at large between the hours set forth in said petition, then, and not otherwise, shall stock be restrained between the hours as set forth; the liabilities of owners of trespassing stock, and the manner of procedure for distraining stock shall be the same as set forth in sections fourteen hundred and fifty to fourteen hundred and fifty-six, inclusive, of this chapter.

"Stock" meaning of.

SEC. 1463. The word "stock," as used in connection with the foregoing section, when the question is submitted, shall mean horses, mules, and cattle.

SEC. 1464. No person shall take up an unbroken animal as a stray, between the first day of May and the first day of November, unless the same be found within his lawful enclosure; nor shall any person take up any stray unless he be a householder.

Unbroken animals. C. 102, § 1, 9 G. A.

SEC. 1465. If any horse, mule, neat cattle, or other animal, liable to be taken up as a stray, come upon any person's premises, any other person may notify him of the fact, and if he fail to take up such stray for more than five days after such notice, any other person being a householder in the same township, may take up such stray and proceed with it as if taken upon his own premises; *provided*, that he shall produce to the justice of the peace proof of the service of such notice, and all persons taking up stray animals shall state to the justice, under oath, where such stray was taken up.

Who may take up strays. Same, § 2.

SEC. 1466. Any person taking up a stray, shall, within five days thereafter, post up written notices in three of the most public places in the township, containing a full description of said animal, and, unless such stray shall have been previously reclaimed by the owner, he shall, within ten days, go before a justice of the peace in the township in which such stray was taken up, or, in case there is no justice in the township, he shall go before the nearest justice in the county, and make oath as to where said stray was taken up, and that the marks or brands have not been altered to his knowledge either before or after the same was taken up.

Notices containing description of animal posted up. Same, § 3.

SEC. 1467. If necessary, the justice shall issue a notice to three disinterested householders in the township, to appear at the time and place mentioned in said notice to appraise the stray. The persons so notified, or any two of them attending, shall take an oath that they will fairly and impartially appraise said stray, and their appraisement, embracing a description of the size, age, color, sex, marks, and brands of the stray, shall be entered by the justice in a book to be kept by him for that purpose.

Appraisers: oath: duty of justice. Same, § 4.

SEC. 1468. The justice shall, within ten days thereafter, send a certified copy of said entry to the county auditor, who shall immediately enter the same in an estray book, to be kept by him for that purpose. If the appraised value of the stray is ten dollars, or more, the auditor shall cause a copy of said entry to be posted on the court house door, and a copy of said notice to be inserted three times in some newspaper in the county, if there be one, if not, he shall cause to be posted up written notices in three public places in the county, and he shall, within ten days after receiving the notice of appraisement, unless the animal shall have been previously reclaimed by the owner, forward a certified copy of the same to the public printer hereafter provided; together with the amount required to pay for two insertions of said notice in the paper published by such printer.

Justice to send copy of to county auditor: his duty. Same, § 5.

SEC. 1469. The secretary of state shall select and contract with a printer to print all such advertisements of strays, and shall immediately notify the auditor of each county of the name and residence of such printer, and the price of such advertisements. In making the contract the secretary shall select an agricultural paper, published at the capital, if there be one. Such contract

Secretary of state to contract for publishing notices: auditor notified. Same, § § 7, 11.

shall be renewed on the first day of January, annually; and if a vacancy should from any cause occur, the secretary shall immediately fill it with a new contract.

Publication of notice: county auditor to subscribe for paper. Same, § § 8, 9.

SEC. 1470. The printer thus selected, shall, once in each week, issue a newspaper or printed sheet, in which he shall give two successive insertions of all estray notices sent to him, and shall send one copy of each paper issued to the auditor of each county, who shall receive, file, and preserve the same, to be examined by any person who may desire to see them. The auditor is hereby required to subscribe for one copy of the paper selected by the secretary of state for the publication of estray notices, and the amount of the subscription price shall be allowed and paid out of the treasury of the county.

When value is less than five dollars. Same, § 12.

SEC. 1471. When the appraised value of any stray does not exceed five dollars, no further proceedings need be had than for the justice to enter a description of said stray on his estray book, and if no owner appear within six months, the right of the property shall vest in the finder, if he has complied with the law and paid all costs.

When title to property vests. Same, § 13.

SEC. 1472. Where the appraised value of the stray exceeds five dollars and is less than ten, and the finder shall have complied with the provisions of this chapter, and paid all costs, the property shall vest in him after the expiration of nine months, if no owner appear.

Taker up may use and work animal. Same, § 16.

SEC. 1473. Any person legally taking up a stray may use or work, if he does so with care and moderation, and does not abuse or injure it. But if any person unlawfully take up any stray, or take up any stray and fail to comply with the provisions of this chapter, or use or work it in a manner contrary to this chapter, or work it before having it appraised, or keep such stray out of the county for more than five days at any one time, before he acquires a title to said stray, such offender shall forfeit to the county twenty dollars, to be sued for by any person in the county; and the owner of the stray may also recover of such offender double the amount of all injury sustained, with costs.

Penalty for failure to comply with law.

Owner may prove property: proceeding. Same, § 17.

SEC. 1474. The owner of any stray may, within one year from the time of taking up, prove his ownership of the same before a justice of the peace, (and if the title shall not have already vested in the finder by sections fourteen hundred and seventy-one or fourteen hundred and seventy-two of this chapter,) and upon payment of all costs, the reward, and a reasonable allowance, he shall be entitled to recover the stray. If the owner and finder cannot agree upon the amount of such allowance, it shall be settled by some justice of the peace, who shall take into consideration the trouble and expense incurred by the finder, and whatever use he may have had of the stray.

Title to vest in finder: exceptions. Same, § 18.

SEC. 1475. If the owner fail to claim and prove his title to any stray for one year after the time of taking up, and the finder shall have complied with this law, a complete title to the stray shall vest in the finder; but if the owner shall appear within eighteen months from the time of taking up, and prove his ownership of such stray, and pay all costs and expenses as above provided, the

finder shall pay him the appraised value of such stray, or may, at his option, deliver up the stray.

Finder not liable for accidents. Same, § 19.

SEC. 1476. If any stray legally taken up, escape from the finder, or die, without any fault on his part, he shall not be liable for the loss.

Penalty. Same, § 20.

SEC. 1477. If any person shall sell, or trade, or take out of the state, any stray before the legal title shall have vested in him, he shall forfeit to the owner double the value of said stray, and shall be punished by fine not exceeding ninety dollars, or imprisonment in the county jail not exceeding thirty days.

Same. C. 102, § 21, 9 G. A.

SEC. 1478. If any printer, auditor, or justice of the peace, fail to perform the duties enjoined upon him by this chapter in relation to strays, he shall forfeit to the county not less than five or more than fifty dollars, to be sued for by any person in the county.

Marks and brands: book for. R. § 1555.

SEC. 1479. The board of supervisors 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.

Recorded. R. § 1556.

SEC. 1480. 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.

Mark of another. R. § 1557.

SEC. 1481. 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, unless on their joint application.

Abandoned animals taken care of at owners expense. C. 176, § 4, 13 G. A.

SEC. 1482. Any person may take charge of any animal whose owner has abandoned it, or fails to properly take care and provide for it, and may furnish the same with proper shelter, nourishment, and care, at the owner's expense, and shall have a lien on such animal for the same; which lien, at the expiration of three months, shall become a perfect title to the property as provided in the case of a stray.

Cruelty to animals: food and water to be supplied. Same, § 9.

SEC. 1483. In case any creature impounded or otherwise confined, shall be without necessary food or water for more than twelve successive hours, it shall be lawful for any person, as often as necessary, to enter the pound, enclosure, or building, and supply it with necessary, food and water so long as it shall remain so confined; and the reasonable cost of such food and water may be collected by him of the owner of such creature.

Diseased animals killed. Same, § 10.

SEC. 1484. The sheriff, constable, police officer, officer of any society for the prevention of cruelty to animals, or any magistrate, shall destroy any horse or other animal having the disease called and known as the glanders, or any disabled creature unfit for further use.

Dogs may be killed. C. 76, § 9, 9 G. A.

SEC. 1485. It shall be lawful for any person to kill any dog caught in the act of worrying, maiming, or killing any sheep or lambs, or other domestic animal, or any dog attacking or attempting to bite any person, and the owner shall be liable to the party injured for all damages done by his dog, except when the party is doing an unlawful act.

Animals seized released on execution of bond.

SEC. 1486. Any animal, or other property, taken up, held, distrained, or seized under this chapter, may be released at once by the owner, upon execution and filing of a bond in double the value of the property held, conditioned for the payment of all costs and damages for which the same is held, and to which the one taking up, holding, or distraining, may be legally entitled, within twenty days from the filing and approval of such bond, said bond shall be filed and approved by any constable, sheriff, or other officer having custody of the property, or by the nearest acting justice of the peace, or by the justice before whom any legal proceedings relating to such property is pending. Said bond shall be for the use of any person having any right or interest in or to said property so released.

Bounty: paid from county treasury. R. § 2193, 2195.

SEC. 1487. A bounty of one dollar shall be allowed on each scalp of a wolf, lynx, swift, or wild-cat, to be paid out of the treasury of the county in which the animal was taken, upon a verified statement of the facts showing the claimant to be entitled thereto.

Proceedings to obtain. R. § 2194.

SEC. 1488. The person claiming the bounty shall produce such statement, together with the scalp or scalps, with the ears thereon, to the county auditor, or a justice of the peace of the county wherein such wolf, lynx, swift, or wild-cat, may have been taken and killed; and the officer before whom such scalps are produced shall deface or destroy the scalps when so produced, so as to prevent the use of the same to obtain for a second time the bounty herein provided for.

CHAPTER 4.

OF FENCES.

Partition maintained. R. § 1526.

SECTION 1489. The respective owners of lands enclosed with fences, shall keep up and maintain partition fences, between their own and the next adjoining enclosure so long as they improve them in equal shares, unless otherwise agreed between them.

Neglect to build or repair. R. § 1527.

SEC. 1490. 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.

Penalty, if order of fence viewers is not complied with. R. § 1528.

SEC. 1491. 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 interest by action.

SEC. 1492. 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.

Disputes: fence viewers to settle. R. § 1529.

SEC. 1493. 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.

Failure to comply. R. § 1531.

SEC. 1494. All partition fences shall be kept in good repair throughout the year, unless the owners on both sides otherwise agree.

Repair. R. § 1531.

SEC. 1495. No person not wishing his land enclosed and not occupying nor using it otherwise than in common, shall be compelled to contribute to erect or maintain any fence between him and an adjacent owner; but when he encloses or uses his land otherwise than in common, he shall contribute to the partition fences as in this chapter provided.

Who required to maintain. R. § 1532.

SEC. 1496. When lands owned in severalty have been enclosed 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 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 for the season of the year for making the fence, and if either party neglect to comply with the decisions of the viewers, the other, after making his own part, may make the other part and recover as directed above.

Enclosed in common: proceedings where division is sought. R. § 1533.

SEC. 1497. In the case mentioned in the preceding section, when one of the owners desires to throw open any portion of his field not less than twenty feet in width, and leave it unenclosed to be used in common by the public, he shall first give the other party six months notice thereof.

When it is desired not to enclose. R. § 1534.

SEC. 1498. When land which has lain unenclosed is enclosed, the owner thereof shall pay for one-half of each partition fence between his lands 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 of the fence, and if he neglect so to do for two months after making such election he shall be liable as above provided.

When owner encloses he must pay for partition fence. R. § 1535.

SEC. 1499. When a division of fence between the owners of improved lands may have been made, either by fence viewers, or by agreement in writing, 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

Division of fence recorded R. § 1536.

proceedings shall be as directed in the case where lands owned in severalty have been enclosed in common without a partition fence.

Definition of "owner" and "fence viewers." R. § 1537.

SEC. 1500. 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 term "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 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.

Fence on another's land may be removed. R. § 1538.

SEC. 1501. When a person has made a fence or other improvement on an enclosure, 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 damages the fence viewers may determine them as in other cases.

Same. R. § 1539.

SEC. 1502. 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.

Disputes: fence viewers to determine. R. § 1540.

SEC. 1503. 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.

Lines: fence on. R. § 1541.

SEC. 1504. A person building a fence, may lay the same upon the line between him and the adjacent owners, 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.

Same. R. § 1542.

SEC. 1505. The foregoing provisions concerning partition fences shall apply to a fence standing wholly upon one side of the division line.

Other proceedings. R. § 1543.

SEC. 1506. 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.

Lawful fence defined. R. § 1545.

SEC. 1507. A fence made of three rails of good substantial material, or three boards not less than six inches wide, and three-quarters of an inch thick, such rails or boards to be fastened in or to good substantial posts, not more than ten feet apart, where rails are used, and not more than eight feet apart, where boards

are used, wire either wholly or in part, substantially built and kept in good repair, or any other kind of fence, which in the opinion of the fence viewers shall be equivalent thereto, shall be declared a lawful fence; *provided*, that the lowest or bottom rail or board shall not be more than twenty nor less than sixteen inches from the ground, and that such fence shall be fifty-four inches in height; *provided further*, that all partition fences may be made tight at the expense of the party desiring it, and such party may take from such fence the same material by him added thereto whenever he may elect; and, *provided further*, that when the owner or occupants of adjoining land use the same for the purpose of pasturing swine or sheep, each of said owners or occupants shall keep their respective share of the partition fence sufficiently tight to restrain such swine or sheep.

Where stock is restrained.

SEC. 1508. That all the provisions of this chapter in relation to partition fences, shall be alike applicable to counties or townships having restrained, or which may restrain, stock from running at large.

CHAPTER 5.

OF LOST GOODS.

Rafts, logs, and lumber: proceedings when taken up. C. 30, § 1, 14 G. A.

SECTION 1509. If any person shall hereafter stop or take up any raft of logs, or part thereof, or any logs suitable for making lumber, or hewn timber or sawed lumber, found adrift on any water-course within the limits or upon the boundaries of this state, such person, within five days thereafter, provided the same shall not have been previously restored to the owner, shall go before some justice of the peace or notary public of the county in which the same was taken up, and make affidavit in writing, setting forth an exact description of the articles found, and stating when and where the same were found, the number of logs or other pieces, and the marks and brands thereon, and that the same have not been altered or defaced since the taking-up by him or by any other person to his knowledge. And such justice of the peace or notary public, within five days thereafter, shall transmit such affidavit to the the clerk of the district court of said county, and the said clerk shall thereupon file the same in his office, and enter in his estray-book the description of the said property, the time and place, when and where, and the name and residence of the person by whom the same was taken up, and the said auditor shall also publish a notice thereof for three weeks successively in some newspaper printed in the county.

Disposition of property unclaimed. Same, § 2.

SEC. 1510. In all cases where the value of the articles so taken up shall not exceed five dollars, and no person shall appear to claim and prove the same within three months after the publication of such notice, then the property in the same shall vest in the person taking them up; but if the value thereof shall exceed

five dollars, and the same be not claimed or proven within six months after such publication, then the finder shall deliver them to the sheriff of said county, and thereupon the same proceedings shall be had, and the same disposition be made of the proceeds arising from the sale thereof, as is provided for in section fifteen hundred and thirteen of this chapter, in relation to boats, vessels, &c., the value of which exceeds twenty dollars.

Compensation for. Same, § 3.

SEC. 1511. As a reward for the taking up of any such boards, timber, logs, rafts of logs, or any part thereof, there shall be paid by the owner to the person taking up the same, for each log, not exceeding ten, twenty-five cents; for each log exceeding ten and not exceeding fifty, twenty cents; and for sawed lumber, fifty cents per thousand feet.

Vessels and water crafts: value. R. § 1508.

SEC. 1512. If any person shall stop or take up any vessel or water-craft found adrift within the limits or upon the boundaries of this state, of the value of five dollars or upwards, including her cargo, tackle, rigging, and other appendages, such person, within five days thereafter, provided the same shall not have been previously proven and restored to the owner, shall go before some justice of the peace in the township where the craft or vessel is found of the proper county, and make affidavit in writing, setting forth the exact description of such vessel or water craft; where and when the same was found; whether any, and if so, what cargo, tackle, rigging, or other appendages, were found on board or attached thereto; and that the same has not been altered or defaced, either in the whole or in part, since the taking up, either by him, or by any other person, to his knowledge; and the said justice shall thereupon issue his warrant, directed to some constable of his township or district, commanding him to summon three respectable householders of the neighborhood, who shall proceed, without delay, to examine and appraise such boat or vessel, her cargo, or tackle, rigging, and all other appendages as aforesaid, and to make report thereof, under their hands, to the justice issuing such warrant, who shall enter the same, together with the affidavit of the taker-up at large in his estray book; and, within five days, shall transmit a certified copy thereof to the county auditor of the proper county, to be by him recorded in his estray book and filed in his office.

Affidavit.

Justice to issue warrant.

Report.

Estray book.

Record.

Value less than twenty dollars: advertisement. R. § 1507.

When value is over twenty dollars.

Title vest.

Notice.

Newspapers.

SEC. 1513. In all cases where the appraisement of any such boat or vessel, including her cargo, tackle, rigging, or other appendages, shall not exceed the sum of twenty dollars, the taker up shall advertise the same on the door of the court house and in three other of the most public places in the county within five days after the appraisement, and if no person shall appear to claim and prove such boat or vessel within six months from the time of taking up, the property in the same shall vest in the taker up; but if the value thereof shall exceed the sum of twenty dollars, the county auditor, within five days from the time of reception of the justice's certificate at his office, shall cause an advertisement to be set up on the door of the court house, and at three other of the most public places of the county; and, also, a notice thereof to be published for three weeks successively in some public newspaper printed in this state, and if the said boat or vessel be not

claimed or proven within ninety days after the advertisement of the same as aforesaid, the taker up shall deliver the same to the sheriff of the county wherein such boat or vessel may have been taken up, who shall thereupon proceed to sell the same at public auction to the highest bidder for ready money, having first given ten days' notice of the time and place of sale; and the proceeds of all such sales, after deducting the cost and other necessary expenses, shall be paid into the county treasury.

Sale.

Proceeds.

SEC. 1514. If any person shall find any lost goods, money, bank notes, or other things of any description whatever, of the value of five dollars and upwards, such person shall inform the owner thereof, if known, and make restitution of the same without any compensation whatever, except the same be voluntarily given; but if the owner be unknown, such person shall, within five days after such finding, take such goods, money, bank notes, or other things, before some justice of the peace of the proper county, and make affidavit of the description thereof, the time and place, when and where the same was found, and that no alteration had been made in the appearance thereof since the finding of the same; whereupon the justice shall enter a description of the property, and the value thereof, as near as he can ascertain, in his estray book, together with the affidavit of the finder; and shall, also, within five days transmit to the clerk of the district court a certified copy thereof, to be by him recorded in his estray book and filed in his office.

Money, bank notes, etc.: description of. R. § 1508.

Duty of justice.

SEC. 1515. In all cases where such lost goods, money, bank notes, or other things, shall not exceed the sum of ten dollars in value, the finder shall advertise the same on the door of the court house, and three other of the most public places in the county; and if no person shall appear to claim and prove such money, goods, bank notes, or other things, within tweive months from the time of such advertisement, the right to such property, when the same shall consist in goods, money, or bank notes, shall be vested in the finder; but if the value thereof shall exceed the sum of ten dollars, the county auditor, within five days from the receipt of the justice's certificate, shall cause an advertisement to be set upon the court house door, and in three of the most public places in the county; and also a notice thereof to be published for three weeks successively in some public newspaper printed in this state; and if the said goods, money, bank notes, or other things, be not reclaimed within six months after the finding, the finder, if the same shall consist in money or bank notes, shall deliver the same to the county treasurer, after deducting the necessary expenses hereinafter provided for; if in bills, notes of hand, patents, deeds, mortgages, or other instruments of value, the same shall be delivered to the county auditor, to be preserved in his office for the benefit of the owner, whenever legal application shall be made therefor; if in goods, or merchandise, the same shall be delivered to the sheriff of the county, who shall thereupon proceed to sell the same at public auction to the highest bidder for ready money, having first given ten days' notice of the time and place of such sale; and the proceeds of all such sales, after deducting the costs and other expenses, shall be paid into the county treasury.

When value exceeds ten dollars: advertisement. R. § 1509.

Title vests.

When more than ten dollars.

Newspaper.

Proceeds.

County Auditor.

Sheriff to sell.

Notice

When value is less than five dollars. R. § 1510.

SEC. 1516. In all cases where any vessel or water craft shall be taken up, or any goods, money, or bank notes shall be found as aforesaid, which shall be of a value less than five dollars, the finder shall advertise the same by setting up three advertisements in the most public places in the neighborhood; but in such cases he shall keep and preserve the same in his possession, and shall make restitution thereof to the owner, without fee or reward, except the same be given voluntarily, whenever legal application be made for the same, provided it shall be done in three months from such taking up or finding; but if no owner shall appear to claim such property within the time aforesaid, the exclusive right to the same shall be vested in the finder or taker up.

Ownership settled. R. § 1504.

SEC. 1517. In any case where a claim is made to property found or taken up, and the ownership of the property cannot be agreed upon by the finder and claimant, they may make a case before 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 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.

Compensation. R. § 1514.

SEC. 1518. As a reward for the taking up of all boats and other vessels, and for finding of lost goods, money, bank notes, and other things, before restitution of the property or proceeds thereof shall be made, the finder shall be entitled to ten per cent. upon the value thereof, in addition to which said allowance the owner shall also be required to pay to the taker up, or finder, all such costs and charges as may have been paid by him for services rendered as aforesaid, including the cost of publication, together with reasonable charges for keeping and taking care of such property, which last mentioned charge, in case the taker up, or finder, and the owner cannot agree, shall be assessed by two disinterested householders of the neighborhood, to be appointed by some justice of the peace of the proper county, whose decision, when made, shall be binding and conclusive on all parties.

Proceeds paid into county treasury. R. § 1516.

SEC. 1519. The net proceeds of all sales made by the sheriff, and all money or bank notes paid over to the county treasurer, as directed in this chapter, shall remain in the hands of the county treasurer in trust for the owner, if any such shall apply in one year from the time the same shall have been paid over; but if no owner shall appear within the time aforesaid, the said money shall be considered as forfeited, and the claim of the owner thereto forever barred, in which event the money shall remain in the county treasury for the use of common schools in said county.

Taker up not accountable for accidents. R. § 1517. C. 20, § 4, 14 G. A.

SEC. 1520. If the taker-up of any water craft, raft, logs, timber or boards, or finder of lost goods, bank notes, or other things, shall be faithful in taking care of the same, and if any unavoidable accident shall happen thereto, without the fault or neglect of the finder or taker-up before the owner shall have an opportunity of reclaiming the same, such taker-up or finder shall not be account-

able therefor; *provided*, that in cases of accident as aforesaid, the taker-up or finder, within ten days thereafter, shall certify the same under his hand to the county auditor, who shall make an entry thereof in his estray book.

Penalty for disposing of property. R. § 1518. C. 20, § 4, 14 G. A.

SEC. 1521. If any person shall trade, sell, or loan, out of the limits of this state, any such property as may at any time be taken up or found as aforesaid before he shall be vested with the right to the same, agreeably to the foregoing provisions, he shall forfeit and pay double the value thereof, to be recovered by any person who shall sue for the same, in any court, or before any justice of the peace having jurisdiction thereof; one half thereof shall go to the person suing, and the other half to the county aforesaid.

Penalty for failure to comply. R. § 1519. C. 20, § 4, 14 G. A.

SEC. 1522. If any person shall take up any boat or vessel, or any raft, logs, timber or boards, or shall find any goods, money, bank notes, or other things, and shall fail to comply with the requisitions of this chapter, every such person so offending shall forfeit and pay the sum of twenty dollars, to be recovered before any justice of the peace by any person who will sue for the same, one half for the use of the person suing, and the other half to be deposited in the county treasury for the use of common schools; but nothing herein contained shall prevent the owner from having and maintaining his action for the recovery of any damage he may sustain.

CHAPTER 6.

OF INTOXICATING LIQUORS.

Sale of prohibited: declared a nuisance. R. § 1559.

SECTION 1523. No person shall manufacture or sell, by himself, his clerk, steward, or agent, directly or indirectly, any intoxicating liquors except as hereinafter provided. And the keeping of intoxicating liquor, with the intent on the part of the owner thereof, or any person acting under his authority, or by his permission, to sell the same within this state contrary to the provisions of this chapter, is hereby prohibited, and the intoxicating liquor so kept, together with the vessels in which it is contained, is declared a nuisance, and shall be forfeited and dealt with as hereinafter provided.

Importer: limitation on. R. § 1560.

SEC. 1524. Nothing in this chapter shall be construed to forbid the sale by the importer thereof, of foreign intoxicating liquor imported under the authority of the laws of the United States regarding the importation of such liquors and in accordance with such laws; *provided*, that the said liquor at the time of said sale by said importer, remains in the original casks or packages in which it was by him imported, and in quantities not less than the quantities in which the laws of the United States require such liquors to be imported, and is sold by him in said original casks or packages and in said quantities only; and nothing contained in this law shall prevent any persons from manufacturing in this

Distillers.

state, liquors for the purpose of being sold according to the provisions of this chapter, to be used for mechanical, medicinal, culinary, or sacramental purposes.

Penalty for manufacturing. R. § 1561.

First offense.

Second.

Third.

SEC. 1525. Every person who shall manufacture any intoxicating liquors as in this chapter prohibited, shall be deemed guilty of a misdemeanor, and shall pay, on his first conviction for said offense, a fine of one hundred dollars and the costs of prosecution, or shall stand committed thirty days, unless the fine be sooner paid; on his second conviction, he shall pay a fine of two hundred dollars, and the costs of prosecution, and shall stand committed sixty days unless the fine be sooner paid. And on the third and every subsequent conviction for said offense, he shall pay a fine of two hundred dollars and the costs of prosecution, and shall be imprisoned in the county jail ninety days.

Permit to sell: how obtained. R. § 1575.

SEC. 1526. Any citizen of the state, except hotel-keepers, keepers of saloons, eating-houses, grocery keepers, and confectioners, is hereby permitted within the county of his residence to buy and sell intoxicating liquors for mechanical, medicinal, culinary, and sacramental purposes only, provided he shall first obtain permission from the board of supervisors of the county in which such business is conducted as follows.

Same. C. 24, § 1, 14 G. A.

SEC. 1527. He shall first procure a certificate signed by a majority of the legal electors of the township, town, or ward, in which he desires to sell said liquors, that he is a citizen of the county and state, that he is of good moral character, and that they believe him to be a proper person to buy and sell intoxicating liquors for the purposes named in the preceding section.

Bond. Same, § 2.

SEC. 1528. He shall also make and file a bond, to be approved by the auditor of the county where application is made, in the sum of three thousand dollars, with two or more sureties, who shall justify in double the amount of said bond, conditioned that he will carry out the provisions of all laws now or hereafter in force relating to the sale of intoxicating liquors, and which said bond shall run in the name of the county for the benefit of the school fund.

Auditor fix time for hearing: publication in newspaper. R. § 1576. C. 128, § 1, 12 G. A.

SEC. 1529. Upon the presentation of such certificate and bond to the county auditor, a day shall be fixed by said auditor for the final hearing of the application by the board of supervisors, and notice thereof given by publication in at least one newspaper published in the county, or by posting such notice in the township, town, or ward, in which the business is to be conducted. Such publication or posting shall be at least ten days prior to the time of final hearing, and the applicant shall pay the expenses thereof in advance.

Action by board: cause shown. Same, § 2.

SEC. 1530. At such final hearing, any resident of the county may appear and show cause why such permit should not be granted, and the same shall be refused unless the board shall be fully satisfied that the requirements of the law have, in all respects, been fully complied with, that the applicant is a person of good moral character, and that, taking into consideration the wants of the locality, and the number of permits already granted, such permit would be necessary and proper for the accommodation of the neighborhood.

SEC. 1531. Every permission so granted shall specify the house in which intoxicating liquors may be sold by virtue of the same, and the length of time the same shall be in force, which in no case shall exceed twelve months.

Permit to specify place: time. C. 94, § 2, 9 G. A.

SEC. 1532. The bond shall be deposited with the county auditor, and suit shall be brought thereon at any time by the district attorney, in case the conditions thereof, or any of them, shall be broken. The principal and sureties therein, shall also be jointly and severally liable for all civil damages, costs, and judgments, that may be obtained against the principal in any civil action, brought by a wife, child, parent, guardian, employer, or other person, under the provisions of sections fifteen hundred and fifty-six, fifteen hundred and fifty-seven, and fifteen hundred and fifty-eight of this chapter. All other moneys collected on such bond shall go to the school fund of the county.

Action on bond: to what extent: sureties liable. R. § 1576. C. 47, § 8, 9 G. A.

SEC. 1533. The account book of purchases and sales, from which the reports hereinafter mentioned are made, shall at all times be subject to the inspection of the district or circuit judge, district attorney, sheriff, or any constable or marshal, grand jurors, or of all justices of peace of the county, and such other persons as may be authorized by law to examine the same, and shall be produced by the party keeping the same, to be used as evidence on the trial of any prosecution against him, or against liquors alleged to have been seized from him or his house, on notice duly served that the same will be required as evidence.

Book of sales kept: subject to inspection: production of. C. 943, § 3, 9 G. A.

SEC. 1534. Any permit procured or obtained under this chapter by any person not entitled to the same by the provisions hereof, shall be deemed fraudulent and void; and any one who, after obtaining such permit, shall enter upon or be engaged in any pursuit, in consequence of which he would not be eligible to obtain such permit, shall be deemed to have abandoned the same, and shall thereafter claim no protection thereby.

Fraudulent, or abandoned permit. Same, § 8.

SEC. 1535. When any resident of the county shall file a written information, on oath, before any district judge, charging any one now holding, or who may hereafter hold such privilege, with violating the law, either by failing to keep a correct record of purchase or sale, or by making false entries in such record or account, or by selling colorably, and under pretence of complying with the law, but substantially in violation thereof, or when any sheriff, constable, or marshal of the county, shall, in his official character, make, sign, and file such written information, the district judge shall issue his notice to the accused, to appear before him in court, at a time fixed, to show cause why his permit shall not be vacated; and for the purpose of trial, either party may have witnesses summoned as in other cases. The defendant may answer the complaint or charge, and the district court, either on default or on answer, or on finding any of the charges sustained by proof, shall revoke the permission to the party to sell liquor, and shall adjudge the defendant to pay the costs; and no person whose permission shall be revoked by the district court, shall be capable of holding such privilege again within this state for the space of two years thereafter.

Permit vacated. Same, § 4.

For false record: selling colorably.

Information.

Trial.

Permit no bar to destruction of liquors. Same, § 5.

SEC. 1536. When intoxicating liquor shall be seized under a search warrant by virtue of the laws now in force, it shall be no bar to the confiscation and destruction of the same, that the party claiming the same has a permit under this or any former law, if the court or jury trying the facts shall be satisfied from the proof, that the defendant has sold such liquors in violation or evasion of law and at the time of the seizure had the liquors in question, with the intention of selling the same contrary to law, and any judgment of a competent tribunal condemning liquors seized under such warrant, from any person holding such permit, or convicting him of selling contrary to law, shall work a forfeiture of his privilege.

Profit on sales of. C. 24, § 3, 14 G. A.

SEC. 1537. No person having a permit to sell intoxicating liquors under this chapter, shall sell the same at a greater profit than thirty-three per cent. on the cost of the same, including freights, and every person having such permit, shall make on the last Saturday of every month, a return in writing to the auditor of the county, showing the kind and quantity of the liquors purchased by him since the date of his last report, the price paid, and the amount of freights paid on the same; also the kind and quantity of liquors sold by him since the date of his last report, to whom sold, for what purpose, and what price, also the kind and quantity of liquors remaining on hand, which report shall be sworn to by the person having the said permit, and shall be kept by the auditor, subject at all times to the inspection of the public.

Monthly return.

Contents.

Penalty. Same, § 4.

SEC. 1538. Any person having such permit, who shall sell intoxicating liquors at a greater profit than is herein allowed, or who shall fail to make monthly return to the auditor as herein required, or shall make a false return, shall forfeit and pay to the school fund of the county the sum of one hundred dollars for each and every violation of the provisions of this chapter, to be collected by civil action upon his bond by any citizen of the county, before any court having jurisdiction of the amount claimed, and for the second conviction under the provisions of this chapter the person convicted shall forfeit his permit to sell.

Penalty for selling or giving to minors or intoxicated persons. Same, § 5.

SEC. 1539. It shall be unlawful for any person to sell or give away by agent or otherwise, any spirituous or other intoxicating liquors, including wine or beer, to any minor for any purpose whatever, unless upon the written order of his parent, guardian, or family physician, or to sell the same to any intoxicated person, or to any person who is in the habit of becoming intoxicated, and any person violating the provisions of this section shall forfeit and pay to the school fund the sum of one hundred dollars for each offense, to be collected by action against him, or by action against him and the sureties on his bond, if one has been given, by any citizen in the county.

Sales: penalty. R. § 1562.

SEC. 1540. If any person, not holding such a permit, by himself, his clerk, servant, or agent, shall, for himself, or any person else, directly or indirectly, or on any pretense, or by any device, sell, or in consideration of the purchase of any other property, give to any person any intoxicating liquor, he shall be deemed guilty of a misdemeanor, and shall pay, on his first conviction for

said offense, a fine of twenty dollars and the costs of prosecution, and shall stand committed ten days, unless the same be sooner paid; on the second conviction for said offense, he shall pay a fine of fifty dollars and the costs of prosecution, and shall stand committed thirty days, unless the same be sooner paid, and on the third and every subsequent conviction for said offense, he shall pay a fine of one hundred dollars and the costs of prosecution, or shall be imprisoned in the county jail not less than three nor more than six months. And in default of the payment of the fines and costs provided for the first and second convictions under this section, the person so convicted shall not be entitled to the benefit of chapter forty-seven, title twenty-five of this code, until he shall have been imprisoned sixty days. All clerks, servants, and agents, of whatsoever kind, engaged or employed in the manufacture, sale, or keeping for sale, in violation of this chapter, of any intoxicating liquor, shall be charged and convicted in the same manner as principals may be, and shall be subject to the penalties herein provided. Indictments and informations for violations under this section may allege any number of violations of its provisions by the same party, but the various allegations must be contained in separate counts, and the person so charged may be convicted and punished for each of the violations so alleged as on separate indictments or informations; but a separate judgment must be entered on each count on which a verdict of guilty is rendred. The second and third convictions mentioned in this section shall be construed to mean convictions on separate indictments or informations.

First offense. Second. Third. Clerks: agents. Any number of violations charged in same indictment.

SEC. 1541. Any person who shall mix any intoxicating liquor with any beer ,wine, or cider by him sold, and shall sell, or keep for sale, as a beverage, such mixture, shall be deemed guilty under the preceding section, and shall be punished accordingly.

Sale of mixed liquors: punished. R. § 1587.

SEC. 1542. No person shall own, or keep, or be in any way concerned, engaged, or employed, in owning or keeping any intoxicating liquor with intent to sell the same in this state, or to permit the same to be sold therein in violation of the provisions hereof, and any person who shall so own or keep, or be concerned, engaged, or employed in owning or keeping such liquor with any such intent, shall be deemed guilty of a misdemeanor, and shall, on his first conviction for said offense, pay a fine of twenty dollars and the cost of prosecution, and stand committed until the same be paid. On his second conviction for said offense, he shall pay a fine of fifty dollars and the costs of prosecution, and shall stand committed until the same be paid, and on his third and every subsequent conviction for said offense, he shall pay a fine of one hundred dollars and the costs of prosecution, or shall be imprisoned in the county jail not less than three nor more than six months. And upon the trial of every indictment or information for violations of the provisions of this section, proof of the finding of the liquor named in the indictment or information in the possession of the accused in any place except his private dwelling house, or its dependencies, or in such dwelling house or dependencies if the same be a tavern, public eating house, grocery, or other place of public resort, shall be received and acted upon

Owning or keeping with intent to sell. R. § 1583. Penalty: first offense. Second. Third. Presumptive evidence.

by the court as presumptive evidence that such liquor was kept or held for sale contrary to the provisions hereof.

Building declared nuisance. R. § 1564.

SEC. 1543. In cases of violation of the provisions of either of the three preceding sections, or of section fifteen hundred and twenty-five of this chapter, the building or erection of whatever kind, or the ground itself, in or upon which such unlawful manufacture or sale, or keeping with intent to sell, of any intoxicating liquor is carried on, or continued, or exists, is hereby declared a nuisance, and may be abated as the law provides; and, in addition to the penalties prescribed in said sections, whoever shall erect, or establish, or continue, or use any building, erection, or place for any of the purposes prohibited in said sections, shall be deemed guilty of a nuisance, and may be prosecuted and punished accordingly, in the manner provided by law. And proof of the manufacture, sale, or keeping with intent to sell, of any intoxicating liquor in violation of the provisions of this chapter, in or upon the premises described by the party accused, or by any other person under the authority or by the permission of the party accused, shall be presumptive evidence of the offense provided for in this section.

Information: search warrant. R. § 1565. C. 94, § 9, 9 G. A.

SEC. 1544. If any credible resident of any county, shall, before a justice of the peace for the same county, make written information, supported by his oath or affirmation, that he has reason to believe, and does believe, that any intoxicating liquor described, as particularly as may be, in said information, is in said county, in any place described, as particularly as may be, in said information, owned or kept by any person named or described in said information, as particularly as may be, and is intended by him to be sold in violation of the provisions of this chapter, said justice shall, upon finding probable cause for such information, issue his warrant of search, directed to any peace officer in said county, describing as particularly as may be, the liquor and the place described in said information, and the person named or described in said information as the owner or keeper of said liquor, and commanding the said officer to search thoroughly said place, and to seize the said liquor, with the vessels containing it, and to keep the same securely until final action be had thereon; whereupon, the said peace officer to whom such warrant shall be delivered, shall forthwith obey and execute, so far as he shall be able, the commands of said warrant, and make return of his doings to said justice, and shall securely keep all liquors so seized by him, and the vessels containing it, until final action be had thereon; *provided, however*, that if the place to be searched be a dwelling house in which any family resides, and in which no tavern, eating house, grocery, or other place of public resort is kept, such warrant shall not be issued unless said complainant shall, on oath or affirmation, declare before said justice that he has reason to believe, and does believe, that within one month next before the making of said information, intoxicating liquor has been, in violation of this chapter, sold in said house, or in some dependency thereof, by the person accused in said information, or by his consent or permission; nor unless from the facts and circumstances disclosed by such complaint to said justice, the said justice

Seizure.

Return of warrant.

Dwelling house.

shall be of opinion that said complainant has adequate reason for such belief.

SEC. 1545. The information and search warrant in such case, shall describe the place to be searched, as well as the liquors to be seized, with reasonable particularity. When any liquors shall have been seized by virtue of any such warrant, the same shall not be discharged or returned to any person claiming the same, by reason of any alleged insufficiency of description in the warrant of the liquor or place, but the claimant shall only have a right to be heard on the merits of the case. Information: what contain. C. 94, 9 G. A.

SEC. 1546. Whenever upon such warrant such liquors shall have been seized, the justice who issued such warrant shall, within forty-eight hours after such seizure, cause to be left at the place where said liquor was seized, if said place be a dwelling house, store, or shop, posted in some conspicuous place on or about said buildings, and also to be left with or at the last known and usual place of residence of the person named or described in said information as the owner or keeper of said liquor, if he be a resident of this state, a notice, summoning such person and all others whom it may concern, to appear before said justice at a place and time named in said notice, which time shall not be less than five nor more than fifteen days after the posting and leaving of said notices, and show cause, if any they have, why said liquor, together with the vessels in which the same is contained, should not be forfeited; and said notice shall, with reasonable certainty, describe said liquor and vessels, and shall state where, when, and why, the same were seized. At the time and place prescribed in said notice, the person named in said information, or any other person claiming an interest in said liquor and vessels, or any part thereof, may appear and show cause why the same should not be forfeited. If any person shall so appear, he shall become a party defendant in said case, and said justice shall make a record thereof. Whether any person shall so appear or not, said justice shall, at the prescribed time, proceed to the trial of said case, and said complainants, or either of them, may, and upon their default, the officer having such liquor in custody shall appear before said justice and prosecute said information, and show cause why such liquor should be adjudged forfeited. The proceeding in the trial of such case may be the same, substantially, as in cases of misdemeanor triable before justices of the peace, and if any person shall appear and be made a party defendant as herein provided, and shall make written plea that said liquor, or the part thereof claimed by him, was not owned or kept with intent to be sold in violation of this chapter, such party defendant may, at his option, demand a jury to try the issue, and, if upon the evidence then and there presented, the said justice or jury as the case may be, shall find for verdict that said liquor was, when seized, owned or kept by any person, whether said party defendant or not, for the purpose of being sold in violation of this chapter, the said justice shall render judgment that said liquor, or said part thereof, with the vessels in which it is contained, is forfeited. If no person be made defendant in manner aforesaid, or if judgment be in favor of all the defendants who appear and are made such, then

Notice of seizure served. R. § 1566.

Requiring owner to appear.

Time and place.

Trial.

By jury.

Judgment.

Costs.

the costs of the proceeding shall be paid as in ordinary criminal prosecutions where the prosecution fails. If the judgment shall be against only one party defendant appearing as aforesaid, he shall be adjudged to pay all the costs of proceedings in the seizure and detention of the liquor claimed by him up to that time, and of said trial. But, if such judgment shall be against more than one party defendant claiming distinct interests in said liquor, then the costs of said proceedings and trial shall be according to the discretion of said justice equitably apportioned among said defendants, and execution shall be issued on said judgments against said defendants for the amount of the costs so adjudged against them. Any person appearing and becoming party defendant as aforesaid, may appeal from said judgment of forfeiture as to the whole, or any part, of said liquor and vessels claimed by him and so adjudged forfeited to the district court as in ordinary cases of misdemeanor.

Appeal.

Destruction of liquor and vessels. R. § 1567.

SEC. 1547. Whenever it shall be finally decided that liquor seized as aforesaid is forfeited, the court rendering final judgment of forfeiture, shall issue to the officer having said liquors in custody, or to some other peace officer, a written order, directing him forthwith to destroy said liquor and vessels containing the same, and immediately thereafter to make return of said order to the court whence issued, with his doings endorsed thereon, and sworn to. Whenever it shall be finally decided that any liquor so seized is not liable to forfeiture, the court by whom such final decision shall be rendered, shall issue a written order to the officer having the same in custody, or to some other peace officer, to restore said liquor, with the vessels containing the same, to the place where it was seized, as nearly as may be, or to the person entitled to receive it, which order, the officer, after obeying the commands thereof, shall return to the said court with his doings thereon endorsed; and the costs of the proceedings in such case attending the restoration, as also the costs attending the destruction of such liquor in case of forfeiture, shall be taxed and paid in the same manner as is provided in case of ordinary criminal prosecution, where the prosecution fails.

Restoration of when adjudged not liable.

Intoxicated person punished. R. § § 1568, 1586.

SEC. 1548. If any person shall be found in a state of intoxication, he shall be deemed guilty of a misdemeanor, and any peace officer may, without warrant, and it is hereby made his duty to, take such person into custody, and to detain him in some suitable place, till an information can be made before a magistrate and a warrant issued in due form, upon which he may be arrested and tried, and, if found guilty, he shall pay a fine of ten dollars and the costs of prosecution, or shall be imprisoned in the county jail thirty days. But the magistrate before whom such person is tried and convicted may remit any portion of such penalty, and order the prisoner to be discharged upon his giving information, under oath, stating when, where, and of whom he purchased or received the liquor which produced the intoxication, and the name and character of the liquor obtained. In cases arising under this section, appeals may be allowed as in cases of ordinary misdemeanor within the jurisdiction of the justices of the peace.

SEC. 1549. In any indictment or information arising under this chapter, it shall not be necessary to set out exactly the kind or quantity of intoxicating liquors manufactured or sold, or kept for purposes of sale, nor the exact time of the manufacture, or sale, or keeping with intent to sell, but proof of the violation by the accused of any provision of this chapter, the substance of which violation is briefly set forth, within the time mentioned in said indictment or information, shall be sufficient to convict such person; nor shall it be necessary in any indictment or information to negative any exceptions contained in the enacting clause, or elsewhere, which may be proper ground of defence; and, in any prosecution for a second or subsequent offense as provided herein, it shall not be requisite to set forth in the indictment or information the record of a former conviction, but it shall be sufficient briefly to allege such conviction, nor shall it be necessary in every case to prove payment in order to prove a sale within the true meaning and intent of this chapter, and the person purchasing any intoxicating liquor sold in violation of this chapter, shall, in all cases, be a competent witness to prove such sale.

Requisities of indictment or information. R. § 1569.

SEC. 1550. All payments or compensation for intoxicating liquor sold in violation of this chapter, whether such payments or compensation be in money, goods, land, labor, or any thing else whatsoever, shall be held to have been received in violation of law and against equity and good conscience, and to have been received upon a valid promise and agreement of the receiver in consideration of the receipt thereof, to pay on demand to the person furnishing such consideration the amount of said money or the just value of such goods, land, labor, or other thing. All sales, transfers, conveyances, mortgages, liens, attachments, pledges, and securities of every kind, which either in whole or in part shall have have been made for or on account of intoxicating liquors sold in violation of this chapter, shall be utterly null and void against all persons in all cases, and no rights of any kind shall be acquired thereby, and no action of any kind shall be maintained in any court in this state for intoxicating liquors, or the value thereof, sold in any other state or country contrary to the law of said state or country, or with intent to enable any person to violate any provision of this chapter, nor shall any action be maintained for the recovery or possession of any intoxicating liquor, or the value thereof, except in cases where persons owning or possessing such liquor with lawful intent, may have been illegally deprived of the same. Nothing, however, in this section shall affect in any way negotiable paper in the hands of holders thereof in good faith for valuable consideration, without notice of any illegality in its inception or transfer, or the holder of land or other property who may have taken the same in good faith, without notice of any defect in the title of the person from whom the same was taken, growing out of a violation of the provisions of this chapter, and all evidence given in actions brought by or against such holders, shall be in no way affected by the provisions of this section.

Payments for liquor illegal. R. § 171.

Sales and transfers in consideration of liquors void.

Negotiable paper.

Officers to give information of violations. R. § 1578.

SEC. 1551. All peace officers shall see that the provisions of this chapter are faithfully executed, and when informed that the law has been violated, or when they have reason to believe that the law has been violated, and that proof of the fact can be had, such officers, shall go before a magistrate and make information of the same and of the person so violating the law. Upon the filing of such information before a magistrate he shall institute a suit and proceed to the arrest, and trial thereof, according to law. Upon trials before a magistrate, it shall be the duty of the district attorney to appear for the state, unless the person filing such information shall select some other attorney. Any peace officer failing to comply with the provisions of this section, shall be guilty of a misdemeanor, and pay a fine of not less than ten nor more than fifty dollars, and a conviction shall work a forfeiture of his office.

Attorney.

Penalty.

Principal and securities liable. R. § 1579.

SEC. 1552. The principal and securities in the bond mentioned in sections fifteen hundred and twenty-eight and fifteen hundred and twenty-nine, shall be jointly and severally liable for all fines and costs that may be adjudged against the principal for any violation of any of the provisions of this chapter, and shall also jointly and severally be liable for all civil damages and costs that may be adjudged against such principal in any civil action authorized to be brought against him by the provisions of this chapter.

Common carriers and others liable for bringing liquors into the state: exception. R. § 1580.

SEC. 1553. If any railway conductor, freight agent, expressman, depot master, or other person in the employment, or in any manner connected with any railway corporation, or any teamster, stage driver, or common carrier of any kind, or any person professing to act as agent for any other person or persons, whether within or without this state, or any other individual of whatever calling, shall bring within this state for any other person or persons, any intoxicating liquor, without first having been furnished with a copy of the certificate authorizing such person or persons to sell such intoxicating liquors, certified by some justice of the peace to be correct, such person or persons so offending, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, forfeit and pay a fine for the first offense of twenty dollars, or be imprisoned in the county jail thirty days; for the second and each subsequent offense, shall forfeit and pay a fine of fifty dollars, or be imprisoned in the connty jail ninety days.

Evasions. R. § 1581.

SEC. 1554. Courts and jurors shall construe this chapter so as to prevent evasion, and so as to cover the act of giving as well as selling by persons not authorized.

Definition of "intoxicating liquors." R. § 1583.

SEC. 1555. Wherever the words intoxicating liquors occur in this chapter, the same shall be construed to mean alcohol and all spirituous and vinous liquors: *provided*, that nothing herein shall be so construed as to forbid the manufacture and sale of beer, cider from apples, or wine from grapes, currants, or other fruits grown in this state.

Taking care of intoxicated person: expense of. C. 47, § 1, 9 G. A.

SEC. 1556. Any person who shall by the manufacture or sale of intoxicating liquors, contrary to the provisions of this chapter, cause the intoxication of any other person, shall be liable for and compelled to pay a reasonable compensation to any person who

may take charge of and provide for such intoxicated person, and one dollar per day in addition thereto for every day such intoxicated person shall be kept in consequence of such intoxication, which sums may be recovered in a civil action before any court having jurisdiction thereof.

Action by persons injured by intoxicated person. Same, § 2.

SEC. 1557. Every wife, child, parent, guardian, employer, or other person, who shall be injured in person or property, or means of support, by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her own name, against any person who shall, by selling intoxicating liquors, cause the intoxication of such person, for all damages actually sustained as well as exemplary damages; and a married woman shall have the same right to bring suits, prosecute, and control the same and the amount recovered as if a single woman; and all damages recovered by a minor under this section, shall be paid either to such minor or his parent, guardian, or next friend, as the court shall direct, and all suits for damages under this section shall be by civil action in any court having jurisdiction thereof.

Damages recovered: property liable for. Same, § 3.

SEC. 1558. For all fines and costs assessed, or judgments rendered, of any kind, against any person for any violation of the provisions of this chapter, the personal and real property, except the homestead as now provided by law, of such person as well as the premises and property, personal or real, occupied and used for that purpose with the consent and knowledge of the owner thereof or his agent, by the person manufacturing or selling intoxicating liquors contrary to the provisions of this chapter, shall be liable, and all such fines, costs, or judgments, shall be a lien on such real estate until paid; and where any person is required by sections fifteen hundred and twenty-eight and fifteen hundred and twenty-nine of this chapter to give a bond with sureties, the principal and sureties in the bond mentioned, shall be jointly and severally liable for all civil damages, costs, and judgments, that may be adjudged against the principal in any civil action authorized to be brought against him for any violation of the provisions of this chapter; *provided*, there shall be exempt such personal effects as may be necessary for the support of the family of defendant for six months, to be determined by the township trustees.

Penalty for making false statement to person authorized to sell. R. § 1577.

SEC. 1559. If any one purchasing intoxicating liquors of a person authorized to sell, shall make to such person any false statement regarding the use to which such liquor is intended by the purchaser to be applied, such person so obtaining such liquor shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, forfeit and pay a fine of ten dollars, together with costs of prosecution, or shall stand committed until the same is paid. For the second offense he shall pay a fine of twenty dollars and costs of prosecution, and be imprisoned in the county jail not less than ten nor more than thirty days.

CHAPTER 7.

OF FIRE COMPANIES.

Members exempt from military duty and working highways. R. § 1763. C. 18, § 1, 13 G. A.

SEC. 1560. Any person who is an active member of any fire engine, hook and ladder, hose, or any other company, for the extinguishment of fire, or the protection of property at fires under the control of the corporate authorities of any city or incorporated town, shall, during the time he shall continue an active member of such company, be exempted from the performance of any military duty, and from the performance of labor on the highways on account of poll-tax, and from serving as a juror; and any person who shall have been an active member of such company in any city or town as aforesaid, and shall have faithfully discharged his duties as such for the term of ten years, shall be forever thereafter exempted from the performance of military duty in the time of peace, from serving as a juror, and from the performance of labor on the highways.

Same. R. § 1764.

SEC. 1561. Any person who has served in any company for the term of ten years, as provided in the preceding section, shall be entitled to receive from the foreman of the company of which he shall have been a member, a certificate to that effect, and on the presentation of such certificate to the clerk or recorder of the proper city or town, such clerk or recorder shall file the same in his office, and give his certificate, under the corporate seal, to the person entitled thereto, setting forth the name of the company of which such person shall have been a member, and the duration of such membership; and such certificate shall be received in all courts and places as evidence that the person legally holding the same is entitled to the exemption hereinbefore mentioned.

Same. C. 18, § 2, 13 G. A.

SEC. 1562. To entitle any person to exemption from labor on the highway before the expiration of the aforesaid term of ten years, he shall, on or before the first day of April of each year, file with the clerk or recorder of the proper city or town, a certificate signed by the foreman of the company of which said person is a member, that the person holding said certificate is an active member of said fire company, and thereupon the clerk or recorder shall enter said exemption upon the street tax list for that year.

Misrepresentation: punished. R. § 1765.

SEC. 1563. Any person who shall either by misrepresentation or by the use of a false certificate, or the certificate of any other person, endeavor to avail himself of the benefits of this chapter, upon conviction thereof before any mayor, recorder, or magistrate of any incorporated city or town, or before any district court, shall be sentenced to imprisonment in the county jail for a period of not more than six months, or less than one month, and to pay a fine of not less than ten dollars, or more than one hundred dollars.

Destruction of fire apparatus punished. R. § 1766.

SEC. 1564. Any person or persons who shall wilfully destroy or injure any engines, hose carriage, hose, hook and ladder carriage, or anything whatever, used for the extinguishment of fires,

belonging to any fire company, on conviction thereof shall be sentenced to imprisonment in the penitentiary for a period of not less than one year, nor more than three years.

Removal of fire apparatus punished. R. § 1767.

SEC. 1565. It shall not be lawful for any person to remove any engine or other apparatus for the extinguishment of fire, from the house or other place where the same shall be kept or deposited, except in time of fire or alarm of fire, unless properly authorized so to do by the president and director, or foreman, of the company to whom the same shall belong, or their duly authorized agent; and any person offending against the provisions of this section shall forfeit and pay a sum not less than five dollars, nor more than twenty dollars, to be sued for and recovered in the name of the state, for the use of the school fund, before any mayor, recorder, or magistrate of the city or town wherein the offense has been committed.

False alarm of fire punished. R. § 1768.

SEC. 1566. It shall not be lawful for any person or persons to cause false alarm of fire, either by setting fire to any combustible material, or by giving an alarm of fire without cause, and any person offending against the provisions of this section shall be fined a sum of not less than five dollars or more than twenty dollars, to be sued for and recovered as specified in the foregoing sections.

CHAPTER 8.

OF THE INSPECTION OF COAL MINES.

Supervisors to appoint inspector: duties of. C. 44, § 1, 14 G. A.

SECTION 1567. The board of supervisors of each county where coal or other minerals are mined, shall, at their regular session in each year, appoint a competent inspector of mines, who shall, before entering upon the duties of his appointment, take an oath for the faithful and impartial discharge of the duties of his office, and who shall, on the application in writing of the owners, operators, or employes of such mines, examine and apply such scientific tests as may be necessary to ascertain the condition of the atmosphere in such mines, as affecting the life and health of employes and miners; and when he shall be satisfied of the prevalence of choke damps, (carbonic acid gas,) or fire damps, (light carbureted hydrogen gas,) in sufficient quantities to jeopardize the health or life of such employes or miners, he shall determine the number and capacity of additional entrances or shafts, or other means necessary for the proper ventilation of such mines, and to afford ingress and egress to such mines in case of explosions, or the falling-in of the entrance or shaft to such mines.

Penalty for refusal to comply with order of inspector. Same, § § 3, 4.

SEC. 1568. The owners or operators of such mines, who shall neglect or refuse to make such entrances, or provide such other means as the said inspector shall in writing notify them to be necessary to protect the life or health of such employes or miners, shall be liable in full damages to said employes or miners, or their

families, for any injury resulting from such neglect to such miners or employes; and such damages may be recovered by an action in any court in this state having competent jurisdiction.

Compensation of inspector. Same, § 2.

SEC. 1569. Said inspector shall receive four dollars per day for the time necessarily employed in the discharge of his duties, to be paid by the owner or owners, operator or operators, of such mines, subject to the approval of the board of supervisors. But where the miners employed in any mine apply for the inspection provided for in this chapter, and the inspector decides that the same was unnecessary, then the fees to the inspector shall be paid by the person applying for the same.

CHAPTER 9.

OF QUARTERLY BANK STATEMENTS.

When, to whom made, and what to contain. R. § 1636.

SECTION 1570. All associations organized under the general incorporation laws of this state, for the purpose of transacting a banking business, buying or selling exchange, receiving deposits, discounting notes, etc., shall make a full, clear, and accurate statement of the condition of the association as hereinafter provided which shall be verified by the oath of the president or vice-president, cashier or secretary, and two of the directors, which statement shall contain:

1. The amount of capital stock actually paid in, and then remaining as the capital of such association;
2. The amount of debts of every kind due to banks, bankers, or other persons, other than regular depositors;
3. The total amount due depositors, including sight and time deposits;
4. The amount subject to be drawn at sight then remaining on deposit with solvent banks or bankers of the country, specifying each city and town and the amount deposited in each and belonging to such association;
5. The amount of gold and silver coin and bullion belonging to such association at the time of making the statement;
6. The amount then on hand of bills of solvent specie-paying banks;
7. The amount of bills, bonds, notes, and other evidences of debt, discounted or purchased by such association, and then belonging to the same, specifying particularly the amount of suspended debts, the amount considered good, the amount considered doubtful, and the amount in suit or judgment;
8. The value of real or personal property held for the convenience of such association, specifying the amount of each;
9. The amount of the undivided profits, if any, then on hand;
10. The total amount of all liabilities to such associations on the part of the directors thereof; which statement shall be forthwith

transmitted to the auditor of state, and be by him filed in his office.

SEC. 1571. The auditor of state shall, at any time he may see proper, make, or cause to be made, an examination of any association, as hereinafter provided, contemplated in this chapter, or he shall call upon any such association for a report of its state and condition as hereinbefore provided, upon any given day which has passed, as often as four times a year, and which reports the auditor shall cause to be published for one day in some daily newspaper published in the county where such association shall be located, or if there be no such newspaper published in said county, then such report shall be published in some weekly newspaper printed in said county for one week; the expenses of such publication shall be paid by each institution. Auditor of state may require additional reports.

SEC. 1572. If such auditor is satisfied from said examination or reports that any such institution is insolvent, he shall direct the attorney general to commence the proper proceedings, to have a receiver appointed and said institution wound up, and the assets thereof ratably distributed among the creditors thereof, giving preference in payment to depositors. Insolvent: receiver appointed.

SEC. 1573. Any wilful failure or neglect of the proper officers of such association to comply with the provisions of this chapter, shall be regarded as a forfeiture of all the rights and privileges of such associtiaon. Forfeiture. R. § 1638.

SEC. 1574. Any officer whose duty it is made to make statement and publication as aforesaid, who shall wilfully neglect, or refuse to do so shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not less than one hundred dollars nor more than one thousand dollars, or by imprisonment not less than three months nor more than three years in the penitentiary. Failure to report: officer criminally liable. R. § 1639.

SEC. 1575. The provisions of sections fifteen hundred and seventy-three and fifteen hundred and seventy-four, of this chapter, shall not apply to or be enforced against any such banking institution, or the officers thereof, who heretofore have been incorporated and come under the provisions of this chapter; *provided*, that on or before the first day of September, 1873, any such institution shall have shown by a statement of its condition to the satisfaction of the auditor of state, that it is now in a sound condition. In no case shall more than four statements in one year be required. Existing associations: how effected: four statements required each year.

SEC. 1576. No association shall be organized under the provisions of this chapter with a less amount of paid up capital than fifty thousand dollars, except in cities or towns having a population not exceeding three thousand, where such association may be organized with a paid up capital of not less than twenty-five thousand dollars. But no such association shall have the right to commence business until its officers elect, or its stockholders, shall have furnished to the auditor of state a sworn statement of the paid up capital, and when the auditor of state is satisfied as to the fact, he shall issue to such association a certificate authorizing such association to commence business, a copy of which shall be published as provided in section fifteen hundred and seventy-one of this chapter. Amount of capital required.

TITLE XII.

OF EDUCATION.

CHAPTER 1.

OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

Duties. C. 162, § 2, 12 G. A.

SECTION 1577. The superintendent of public instruction shall be charged with the general supervision of all the county superintendents and all the common schools of the state. He may meet county superintendents in convention at such points in the state as he may deem most suitable for the purpose, and by explanation and discussion endeavor to secure a more uniform and efficient administration of school laws. He shall attend teachers' institutes in the several counties of the state, as far as may be consistent with the discharge of other duties imposed by law, and assist by lecture or otherwise in their instruction and management. He shall render a written opinion to any school officer asking it, touching the exposition or administration of any school law, and shall determine all cases appealed from the decision of county superintendents.

Office: to file papers and documents. C. 52, § 4, 10 G. A.

SEC. 1578. An office shall be provided for him at the seat of government, in which he shall file all papers, reports, and public documents, transmitted to him by the county superintendents each year, separately, and hold the same in readiness to be exhibited to the governor, or to a committee of either house of the general assembly, at any time when required; and he shall keep a fair record of all matters pertaining to his office.

Publish amendments to school law: prepare certificate. C. 52, § 8, 10 G. A. C. 162, § 2, 12 G. A.

SEC. 1579. He shall, if deemed necessary, have published after adjournment of each regular session of the general assembly, a sufficient number of copies of all amendments to the school laws passed at such session, to furnish each school officer in this state with a copy thereof. Appropriate references shall be made to the previous law that has been amended or changed so as to clearly indicate the effect of such amendments or changes. He shall also prepare and cause to be distributed to the several county superintendents, a form of certificate in blank to be granted to teachers, also all other blank forms necessary to be used in carrying out the school laws.

Compensation. C. 162, § 3, 12 G. A.

SEC. 1580. For indexing and distributing the school laws, and for the expense of traveling required by section one thousand five hundred and seventy-seven of this chapter, the superintendent shall receive five hundred dollars per annum, for which warrants shall be drawn on his order by the auditor of state.

SEC. 1581. He may, if he deem it expedient, subscribe for a sufficient number of the Iowa School Journal, or of such other educational journal published in the state as he may select to furnish each county superintendent with one copy, and his certificate of having thus subscribed, shall be authority for the auditor of state to issue his warrant for the amount of said subscriptions; *provided*, he shall cause to be inserted in the journal he may so select a correct copy of any decision he may deem it necessary to make for the efficient carrying out of the school law.

May subscribe for Iowa School Journal. C. 52, § 7, 10 G. A.

SEC. 1582. He shall, annually, on the first day of January, report to the auditor of state the number of persons in each county between the ages of five and twenty-one years.

Report to auditor. C. 52, § 9, 10 G. A.

SEC. 1583. He shall make a report to the general assembly at each regular session thereof, which shall embrace, first, a statement of the condition of the common schools of the state; the number of district townships and sub-districts therein; the number of teachers; the number of schools; the number of school-houses and the value thereof; the number of persons between five and twenty-one years of age; the number of scholars in each county that have attended school the previous year, as returned by the several county superintendents; the number of books in the district libraries; and the value of all apparatus in the schools, and such other statistical information as he may deem important. Second, such plans as he may have matured for the more perfect organization and efficiency of common schools. He shall cause one thousand copies of his report to be printed, and shall present it to the general assembly on the second day of its session.

Report to each regular session of general assembly Same, § 10.

SEC. 1584. Whenever reasonable assurance shall be given by the county superintendent of any county to the superintendent of public instruction, that not less than twenty teacners desire to assemble for the purpose of holding a teachers' institute in said county, to remain in session not less than six working days, he shall appoint the time and place of said meeting, and give due notice thereof to the county superintendent; and for the purpose of defraying the expenses of said institute there is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, a sum not exceeding fifty dollars annually for one such institute in each county held as aforesaid, which the said superintendent shall immediately transmit to the county superintendent in whose county the institute shall be held, who shall therewith defray the necessary expenses of the institute, and, if any balance remains, he shall pay the same into the county treasury and the same shall be credited to the teachers' fund.

May appoint teachers institutes: appropriation for. Same, § 11.

CHAPTER 2.

OF THE STATE UNIVERSITY.

SECTION 1585. The objects of the state university, established by the constitution at Iowa City, shall be to provide the best and most efficient means of imparting to young men and women on

Objects of: course of study in. C. 87, § 1, 13 G. A.

equal terms, a liberal education and thorough knowledge of the different branches of literature, the arts and sciences, with their varied applications. The university, so far as pracitcable, shall begin the courses of study in its collegiate and scientific departments, at the points where the same are completed in high schools; and no student shall be admitted who has not previously completed the elementary studies, in such branches as are taught in the common schools throughout the state.

Control of. Same, § 2.

SEC. 1586. The university shall never be under the exclusive control of any religious denomination whatever.

Governed by board of regents: who composes. Same, § 3.

SEC. 1587. The university shall be governed by a board of regents, consisting of the governor of the state, who shall be president of the board by virtue of his office, and the president of the university, who shall also be a member by virtue of his office, together with one person from each congressional district of the state, who shall be elected by the general assembly.

Members classed. Same, § 12.

SEC. 1588. The members of said board shall be divided into three classes, consisting of two each. The number in each class, as the congressional districts of the state increase, shall be kept as nearly equal as practicable, and the members in each class shall hold office for the term of six years from their election and until their successors are elected and qualified. The general assembly shall elect members every two years, as the terms of office of the respective classes expire. The board of regents shall fill all vacancies occurring therein, except when the legislature is in session, and the persons so appointed shall hold their offices until the next session of the general assembly.

May purchase apparatus, library, etc. Same, § 13.

SEC. 1589. The university shall include a collegiate, scientific, normal, law, and such other departments, with such courses of instruction and elective studies as the board of regents may determine; and the board shall have authority to confer such degrees, and grant such diplomas and other marks of distinction as are usually conferred and granted by other universities.

Meeting of: special: how called. Same, § 6.

SEC. 1590. The meetings of the board of regents shall be held at such times as the board may appoint. The president of the board may call special meetings when he deems it expedient, or special meetings may be called by any three members of the board.

Executive committee appointed: power: duty of. Same, § 7.

SEC. 1591. An executive committee, consisting of three competent and responsible persons, shall be appointed by the board of regents, who shall audit all claims, and whose chairman shall draw all orders for such audited claims on the treasurer, but before payment such orders shall be countersigned by the secretary. Said committee shall keep a specific and complete record of all matters involving the expenditure of money, which record shall be submitted to the board of regents at each regular meeting of the same.

Elect secretary: to keep records of proceedings: books of what to show. Same, § 8.

SEC. 1592. The board of regents shall elect a secretary, who shall hold his office at the pleasure of the board. He shall record all the proceedings of the board of regents, and carefully preserve all its books and papers. His books shall exhibit what parts of the university lands have been sold, when the same were sold and at what price, and to whom, on what terms, what portion of

the purchase money has been paid, and when paid, on each sale, how much is due on each sale, by whom and how secured, and when payable, what lands remain unsold, where situated, and their appraised value, if appraised, or their estimated value, if not appraised. His books shall also show how the permanent fund of the university has been invested, the amount of each kind of stocks, if any, with the date thereof and when due, and the interest thereon and when and where payable, the amount of each loan, if any, and when made, and payable to whom, and how secured, and at what rate of interest, and when and where payable. When any further sales of lands, or further instruments shall be made, the secretary shall enter the same upon his books as above set forth. The secretary shall countersign and register all orders for money on the treasurer, and the treasurer shall not pay an order on him for money unless the same be countersigned by the secretary.

Countersign orders on treasurer.

SEC. 1593. The board of regents shall elect a treasurer, who shall hold his office at the pleasure of the board. He shall keep a true and faithful account of all moneys received and paid out by him, and before entering upon the duties of his office he shall take and subscribe an oath that he will faithfully perform the duties of treasurer; and he shall also give a bond in the penalty of not less than fifty thousand dollars, conditioned for the faithful discharge of his duties as treasurer, and that he will at all times keep and render a true account of moneys received by him as such treasurer, and of the disposition he has made of the same, and that he will at all times be ready to discharge himself of the trust, and to pay over when required; which bond shall have two or more good securities, and shall be approved as to its form and the sufficiency of its sureties by the board of regents, and also the auditor and secretary of state, and shall be filed in the office of the latter.

Elect treasurer: to give bond: how approved: where filed: duty of. Same, § 9.

SEC. 1594. The treasurer of the university shall have a set of books, in which he shall keep an accurate account of all transactions relative to the sale and disposition of university lands, and the management of the fund arising therefrom; which books shall exhibit what parts and portions of land have been sold, at what prices and to whom, and how the proceeds have been invested, and on what securities, and what lands still remain unsold, where situated, and of what value respectively.

Books of: what accounts kept by treasurer. Same, § 10.

SEC. 1595. The treasurer shall, on the first day of June and December of each year, notify in writing each person in default of payment of either principal or interest of funds loaned by or due to the university, and shall cause suit to be commenced against such delinquents, when, in his judgment, the best interest of the institution requires it.

Notify persons in default owing university. Same, § 11.

SEC. 1596. The board of regents shall enact laws for the government of the university, and shall appoint a president and the requisite number of professors and tutors, together with such other officers as they may deem expedient, and shall determine the salaries of such officers, the compensation of the secretary

Regents to appoint a president and professors and fix compensation of officers. Same, § 12.

and treasurer, and the amount of fees to be paid for tuition. They shall remove any officer connected with the university, when, in their judgment, the good of the institution requires it.

Purchase apparatus, library, etc. Same, § 13.

SEC. 1597. The board of regents is authorized to expend such portion of the income of the university fund as it may deem expedient, in the purchase of apparatus, library, and a cabinet of natural history, in providing suitable means to keep and preserve the same; and in procuring all other necessary facilities for giving instruction.

Cabinet of natural history. Same, § 14.

SEC. 1598. All specimens of natural history and geological and mineralogical specimens, which are or hereafter may be collected by the state geologist of Iowa, or by any others appointed by the state to investigate its natural history and physical resources, shall belong to and be the property of the state university, and shall form a part of its cabinet of natural history, which shall be under the charge of the professor of that department.

Lands of: how sold and proceeds invested. Same, § 15.

SEC. 1599. No sales of lands belonging to the university shall hereafter take place unless the same shall have been decided upon at a regular meeting of the board of regents, or at one called for that particular purpose, and then only in the manner, upon the notice, and on the terms which the board shall prescribe; and no member of the board shall be either directly or indirectly interested in any purchase of such lands upon sale, nor shall the secretary or treasurer be so interested. It shall be lawful for the board to invest any portion of the permanent endowment fund, not otherwise invested, as well as any surplus income which is not immediately required for other purposes in, United States stock, or stocks of the state of Iowa, or by note and mortgage on unencumbered real estate, the value of which, after deducting the value of all perishable improvements thereon, shall be double the amount of the sum loaned, and hold the same for the university, either as a permanent fund, or as an income to defray current expenses, as said board of regents may deem expedient. It shall not be lawful for the board to use any portion of the permanent fund for the ordinary expenses of the institution.

Permanent fund.

President to report to regents. Same, § 16.

SEC. 1600. The president of the university shall make a report on the fifteenth day of September preceding the meeting of the general assembly, to the board of regents, which shall exhibit the condition and progress of the institution in its several departments, the different courses of study pursued therein, the branches taught, the means and methods of instruction adopted, the number of students, with their names, classes, and residences, and such other matters as he may deem proper to communicate.

Regents report to superintendent of public instruction. Same, § 17.

SEC. 1601. The board of regents shall, on the first day of October preceding each regular meeting of the general assembly, make a report to the superintendent of public instruction, which report, with that of the president of the university, shall be embodied in the said superintendent's report to the general assembly. The report of the board of regents shall contain the number of professors, tutors, and other officers, with the compensation of each, the condition of the university fund, and the income received therefrom, the amount of expenditures, and the items thereof,

with such other information and recommendations as they may deem expedient to lay before the general assembly.

Compensation of. Same, § 18.

SEC. 1602. The regents shall receive no compensation except for mileage in traveling to and from the meetings of the board, which shall be at the same rate, and computed in the same manner, as the mileage allowed to members of the general assembly. The auditor of state is hereby authorized to audit and allow the claims for such attendance, for not more than three meetings annually.

Member of general assembly not eligible.

SEC. 1603. No member of the general assembly shall be eligible to the office of regent during the term for which he was so elected.

CHAPTER 3.

OF THE STATE AGRICULTURAL COLLEGE AND FARM.

Controlled by board of five trustees.

SECTION 1604. The lands, rights, powers, and privileges, granted to and conferred upon the state of Iowa by the act of congress entitled, "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July 2d, 1862, are hereby accepted by the state of Iowa, upon the terms, conditions, and restrictions contained in said act, and there is hereby established an agricultural college and model farm, to be connected with the entire agricultural and mechanical interests of the state; the said college and farm to be under the control and management of a board of five trustees, no two of whom shall be elected from the same congressional district.

Board, when and how elected: who ineligible.

SEC. 1605. The present board of trustees shall continue in office until the first day of May, A. D. 1874, and the general assembly at their regular session in said year, shall elect three trustees to serve for four years, and two trustees to serve for two years, from the first day of May, A. D. 1874; and the general assembly at each regular session thereafter shall elect the number of trustees which may be necessary to keep the board full. Any vacancies in said board caused by death, removal from the district or state, resignation, or failure to qualify within sixty days after election, may be filled by appointment by the governor, *provided*, that neither the president nor any other officer or employe of the college and farm, nor any member of the general assembly, shall be eligible as such trustee.

Power.

SEC. 1606. The board of trustees shall have power:

Elect chairman.

1. To elect a chairman from their own number, a president of the college and farm, a secretary, a treasurer, professors and other teachers, superintendents of departments, a steward, a librarian, and such other officers as may be required for the transaction of the business of the board; also to fix the salaries of officers and prescribe their duties; and to appoint substitutes who shall

discharge the duties of such officers during their temporary absence;

Manage property.

2. To manage and control all the property of the college and farm, whether real or personal;

Make rules.

3. To make all rules and regulations for the government of the college and farm;

4. To establish rules regulating the number of hours, to be not less than two in winter and three in summer, which shall be devoted to manual labor, and to fix the compensation therefor; *provided*, no student shall be exempt from labor except in cases of sickness or other infirmity, or where students from the advanced classes may be employed as teachers;

Arrange courses of study.

5. To arrange courses of study and practice, and to establish such professorships as they may deem best to carry into effect the provisions of this chapter; also to prescribe conditions of admission to the college;

Grant diplomas.

6. To grant diplomas, on the recommendation of the faculty, to any student who has completed either of the industrial courses prescribed by said board, or an equivalent thereof;

Remove officers.

7. To remove any officer by a majority vote of all the members of the board of trustees;

Direct expenditures.

8. To direct the expenditure of all appropriations which the general assembly shall from time to time make to said college and farm, and the income arising from the congressional grant, and from all other sources;

Keep record of proceedings.

9. To keep a full and complete record of their proceedings, and to do such other acts as are found necessary to carry out the intent and meaning of this chapter;

Quorum.

SEC. 1607. A majority of the trustees shall be a quorum for the transaction of business.

Compensation.

SEC. 1608. The trustees shall receive as their compensation five dollars a day for each and every day actually employed in the discharge of their duties, and five cents per mile for each and every mile actually traveled on such business; *provided*, that no member shall receive compensation for more than thirty days in each year.

Annual meetings of.

SEC. 1609. The annual meetings of the board of trustees shall be held at the agricultural college on the second Wednesday of November.

College year: report of trustees to governor.

SEC. 1610. The college year shall begin on Thursday after the second Wednesday in November of each year, and end on the second Wednesday of November of the following year. The biennial report of the board of trustees shall be filed in the office of the governor, not later than the first day of December preceding the regular meeting of the general assembly. The governor shall cause three thousand copies of the report to be printed and bound in paper, and distributed as follows: one thousand copies to the agricultural college, and the balance to be distributed as provided by chapter ten of title two of part first of this code.

Power and duty of president.

SEC. 1611. The president of the college and farm shall control, manage, and direct the affairs of the college and farm herein established, subject to such rules as may be prescribed by the board of trustees, and shall report to said board at their annual

meeting in November, and at such other times as they shall direct, all his acts as such president, and the condition of the several departments of the college and farm, together with his recommendations for the future management thereof.

Of secretary.

SEC. 1612. The secretary shall keep the documents and a record of the proceedings of the board of trustees, and conduct their official correspondence. All acts of the board of trustees as to the management, disposition, or use of the lands, funds, or other property of the institution shall be entered in the record of its proceedings, and said record shall show how each member voted on each proposition. He shall also make the biennial report of the board to the general assembly. Upon the election of any person to an office under said board, he shall give notice thereof to the secretary of state. He shall also keep an account with the treasurer, charging him with all money paid to him from any source, and crediting him with the amounts paid out by him upon the order of the board of audit, which account shall be balanced monthly.

President and secretary compose board of audit.

SEC. 1613. The president and secretary shall constitute a board of audit, who shall, under the rules of the board of trustees, examine all bills presented for payment, and no bills shall be paid without their joint endorsement thereon; *provided*, that no bill shall be so audited for whose payment the board of trustees has not made appropriation; also, the said board of audit shall examine the treasurer's books and vouchers monthly, and at such other times and so often as they shall deem necessary. All the proceedings as contemplated in this section shall be reported by the secretary to the board of trustees at each meeting thereof.

Treasurer to have custody of money, notes, and contracts.

SEC. 1614. The treasurer shall receive and keep all notes and other evidence of indebtedness, contracts, and all moneys arising from the income of the congressional grant, from the appropriations of the general assembly, from the sales of the products of the farm, from the payments of students, and from all other sources, and shall pay out the same upon bills duly audited as above prescribed, and he shall retain such bills with the receipt for their payment as his vouchers; but no bill shall be paid for which appropriation had not been made by the board of trustees. He shall keep an accurate account of the revenue and expenditures of said college and farm from all sources, and in such manner that the receipts and disbursements of each and every one of the several departments thereof shall be apparent at all times, and the gains or losses in such departments shall be carefully set forth; and he shall report to the board of trustees at their annual meeting in November, and at such other times as they shall direct. He shall also execute duplicate receipts of all money received by him, specifying the source from which received, and the fund to which it belongs, one of which must be filed with the secretary, and no receipt for money paid him shall be valid unless the duplicate is so filed. The treasurer shall be elected annually, and give a bond every year in double the highest amount of money likely to be in his hands at any one time, with such sureties as the executive council shall prescribe, and said bond shall be filed in the office of secretary of state, and the treasurer may appoint a deputy

Pay audited bills.

Keep accounts.

Elected annually: to give bond: may appoint deputy.

who shall reside at the college, and the board of trustees shall fix the compensation to be paid to such deputy, and the treasurer shall be responsible on his official bond for all acts done by such deputy.

President and secretary: oath of treasurer.

SEC. 1615. The president and secretary shall have their respective offices at the college, and they, with the treasurer, shall take and prescribe the oath provided in section one hundred and twenty-six, chapter nine, title two of this code.

Trustees may lease lands.

SEC. 1616. The board of trustees are authorized to lease all of the lands granted to the state of Iowa by the act of congress above named, in amounts not to exceed one hundred and sixty acres to any one man, for any term not exceeding ten years, the lessees to pay eight per cent. per annum in advance upon the price of said land, which is hereby declared to be not less than fifty per cent. additional to the price at which each piece of said lands respectively was appraised by the trustees in the year eighteen hundred and sixty-five. The lessee failing to pay the interest upon said lease within sixty days from the time the same becomes due, shall forfeit his lease, together with the amount of the interest he has paid and the improvements thereon; *provided*, that the board of trustees shall have the power to release any lands the lease of which shall have expired, but in such case the rate to be paid for the term of renewal shall be ten per cent. upon the valuation, and such leasehold shall thereafter be taxable in the same manner as if a deed in fee of said land had been executed and delivered to the lessee.

Lease forfeited.

Release by trustees.

Money arising from sales paid to state treasurer and invested.

SEC. 1617. The money arising from the sale of said lands shall be paid into the state treasury, which shall be invested by the state treasurer in bonds of the state of Iowa, or United States registered bonds, as directed by the act of congress granting said lands. And the money arising from the interest on said bonds, on the deferred payments, and on the leases of said lands, shall be paid over to the board of trustees, to be loaned by said board on good and sufficient security, until needed to defray the expenses of the college.

Agents appointed: to give bond.

SEC. 1618. The trustees are hereby endowed with all the necessary authority to appoint agents, or do any other acts necessary to carry out the provisions of the three preceding sections. But no such agent shall be appointed with authority to receive any money until he has executed a good and sufficient bond to be approved by the trustees in a sum double the amount he will be likely to receive. And every such agent shall make a monthly statement under oath to the college treasurer of the amount received by him, and transmit therewith all funds shown to be in his hands.

Tuition free: prior right of counties.

SEC. 1619. Tuition in the college herein established shall be forever free to pupils from this state over sixteen years of age, who have been residents of the state six months previous to their admission. Each county in this state shall have a prior right to tuition for three scholars from such county, the remainder equal to the capacity of the college shall be by the trustees distributed among the counties in proportion to the population, subject to the

above rule. Transient scholars otherwise qualified may at all times receive tuition.

SEC. 1620. No person shall open, maintain, or conduct any shop or other place for the sale of wine, beer, or spiritous liquors, or sell the same at any place within a distance of three miles from the agricultural college and farm; *provided*, that the same may be sold for sacramental, mechanical, medical, or culinary purposes; and any person violating the provisions of this section shall be punished, on conviction by any court of competent jurisdiction, by a fine not exceeding fifty dollars for each offense, or by imprisonment in the county jail for a term not exceeding thirty days, or by both such fine and imprisonment.

Sale of liquors or wine and beer prohibited.

Penalty.

SEC. 1621. The course of instruction and practice in said college shall include the following branches: Natural philosophy, chemistry, botany, horticulture, fruit growing, forestry, animal and vegetable anatomy, geology, mineralogy, meteorology, entomology, zoology, the veterinary art, plane mensuration, leveling, surveying, book keeping, and such mechanic arts as are directly connected with agriculture; also, such other studies as the trustees may from time to time prescribe not inconsistent with the purposes of this chapter.

Branches of study.

SEC. 1622. No money shall be diverted from the fund to which it belongs, or used for any purpose other than is provided by law, and any trustee, officer, or employe of said institution who may, by vote, direction, or act, violate the provisions of this section, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the penitentiary or county jail not less than six months.

Money cannot be diverted from appropriate fund.

Penalty.

CHAPTER 4.

OF THE SOLDIERS' ORPHANS' HOMES.

SECTION 1623. The board of trustees of the Iowa soldiers' orphans' homes shall consist of one person from each of the counties in which the said homes are located, and one from the state at large, who shall be appointed by the general assembly for two years and until their successors are elected and qualified.

Trustees: how appointed. C. 75, 14 G. A.

SEC. 1624. Said board shall govern and manage said homes, and shall have power to enact laws and rules for the regulation of all their concerns, and power also to alter the same from time to time as shall seem to them proper; and shall also have full power to carry on and manage all the affairs in said homes; *provided*, that the county recorder of the county in which each home is located, shall act in connection with the resident trustee in making quarterly settlements with the orphans' home superintendents, for which service he shall be allowed three dollars per day, to be audited and drawn in the same manner with the mileage of trustees.

Make rules and manage affairs of. C. 92, § 3, 11 G. A. C. 75, 14 G. A.

Recorder to act with.

Members of general assembly.

SEC. 1625. No member of the general assembly shall be eligible to the office of trustee during the term for which he was elected.

Compensation of board. C. 92, § 4, 11 G. A.

SEC. 1626. The members of said board shall each receive the same mileage, going to and returning therefrom, as members of the general assembly.

Oath of. Same, § 5.

SEC. 1627. Said trustees shall, before entering upon the discharge of their duties, take and subscribe an oath or affirmation to support the constitution of the United States and of this state, and also faithfully to discharge the duties required of them by law, and the by-laws that may be established.

Superintendents of to give bond.

SEC. 1628. The board of trustees of the soldiers' orphans' homes shall require the respective superintendents of the soldiers' orphans' homes, to give a good and sufficient bond with sureties thereto for the faithful performance of their respective duties.

President, secretary, treasurer: bonds.

SEC. 1629. Said board shall have all the power of reception, transmission, and succession which belongs to an incorporation, and shall choose a president, treasurer, and secretary from their own body, and determine the bonds to be given.

Appropriation for. C. 66, § 2, 12 G. A.

SEC. 1630. For the support of the several orphans' homes, there is appropriated out of any money in the state treasury not otherwise appropriated, the sum of ten dollars per month for each orphan actually supported, counting the average number sustained in the several homes for the month, and upon the presentation to the auditor of state each month of a sworn statement of the average number of orphan children supported by the institution for the preceding month, the auditor shall draw his warrant upon the treasurer of state in favor of the treasurer of the board of trustees of the Iowa soldiers' orphans' homes, for the sum hereinbefore provided.

Expenses. C. 92, § 9, 11 G. A.

SEC. 1631. The expenses of the transmission of orphans to the homes, and of the board and management, shall be paid out of the fund so provided.

Report to general assembly. Same, § 12.

SEC. 1632. The board of trustees shall make a full and minute report of all the disbursements of the homes, and of their condition, financial and otherwise, to each regular session of the general assembly.

Enumeration of orphans. C. 66, § 6, 12 G. A.

SEC. 1633. In the enumeration of persons between the ages of five and twenty-one years, as provided by section seventeen hundred and forty-four of chapter nine of this title, the orphans at the several homes shall in no case be enumerated in the school district in which such homes are located, except in cases where the mother, guardian, or other person having the legal charge or control of such child, other than the officers of the home, shall reside in such district.

Adoption of children: trustees to approve. C. 66, § 7, 12 G. A.

SEC. 1634. Any child in either of the orphans' homes may, with the consent of the parents or guardian of such child, be adopted by any citizen of this state, but no article of adoption shall be of any force or validity until approved by the board of trustees, nor shall any child so adopted be removed from the home until articles of adoption are so approved. The board of trustees shall have power to discharge from the homes all children who are of proper age, or have sufficient means to provide for themselves, or whose mothers have sufficient means and are

Discharge of.

competent to take care of them. Any child adopted from either of the homes shall be returned to the home from which it was taken upon the order of the board of trustees, and the board shall make such order whenever they are satisfied that such child is not properly trained, educated, and provided for by the person by whom it was adopted. Such order shall be entered on the minutes of the proceedings of the board of trustees, and shall discharge and cancel the articles of adoption.

Assessor to enumerate children of deceased soldiers. C. 92, § 11, 13 G. A.

SEC. 1635. The assessor of each ward and township, when he is making assessment for each term of two years, shall take an enumeration of all the children of deceased soldiers who were in the military service of the government of the United States from his ward or township, naming the company, regiment, battery, batallion, or organization to which the deceased soldiers belonged, and make accurate returns to the board of supervisors of his county, designating the name, age, and sex of the children belonging to the family of the deceased, for which the assessor shall receive the same compensation as for other services.

Supervisors to revise. Same, § 14.

SEC. 1636. The board of supervisors shall revise said enumeration list of orphans from time to time, by adding thereto or striking therefrom as they may deem proper.

Auditor to furnish blanks. Same, § 15.

SEC. 1637. The county auditor shall furnish to the assessors of the several townships in his county, such blanks as may be necessary for taking the aforesaid enumeration.

Orphan fund: control of. Same, § 16.

SEC. 1638. The board of supervisors of the several counties shall have control of the county orphan funds, and shall use the same for the maintenance and education of the orphans aforesaid, in such a manner and in such sums as the exigencies of the case may demand, and for no other purpose.

Provided by tax. Same, § 17.

SEC. 1639. The board of supervisors may levy a tax, not to exceed one-half mill on the dollar in any one year, on all the taxable property in their county, provided that there are any such orphans in their county needing such aid, and shall apply said fund in such manner as herein before directed.

Supervisors to see children are cared for. Same, § 19.

SEC. 1640. If the children of the deceased soldiers aforesaid have no natural or other guardian, or are neglected, the board of supervisors may appoint some suitable person in the township, who shall see that said children are cared for according to the spirit and intent of this chapter.

Soldiers' county orphan fund. Same, § 19.

SEC. 1641. The funds raised under the provisions of section sixteen hundred and thirty-nine, shall be called the soildiers' county orphan fund, and shall be levied, collected, and paid out in the same manner as other county funds.

Orphans may attend homes. Same, § 20.

SEC. 1642. The provisions regarding this county tax shall not be so construed as to prevent the orphans, or any number thereof, from their respective counties, to attend any orphans' home in this state.

CHAPTER 5.

OF THE STATE REFORM SCHOOL.

Located. C. 59, § 1, 12 G. A.

SECTION 1643. A reform school shall be permanently located at Eldora, in Hardin county, and maintained for the reformation of such boys and girls under the age of eighteen years who may be committed to it as hereinafter provided.

Trustees: appointment of. C. 131, 14 G. A.

SEC. 1644. There shall be a board of trustees, whose name and style shall be "The board of trustees of the Iowa reform school," and it shall consist of five persons, who shall be appointed by the general assembly, no two of whom shall be taken from the same congressional district, and who shall hold office for the term of six years each and until their successors are appointed and qualified. All vacancies in said board shall be filled by appointment by the governor of the state. No member of the general assembly shall be hereafter chosen a trustee of the reform school, and no appointment shall be made till the number of trustees is reduced to five.

Oath of. C. 59, § 3, 12 G. A.

SEC. 1645. Said trustees shall, before entering upon the discharge of their duties, take and subscribe an oath or affirmation to support the constitution of the United States and of this state, and faithfully discharge the duties required of them by law.

Compensation of. C. 59, § 4, 12 G. A. C. 116, § 1, 14 G. A.

SEC. 1646. The members of said board shall receive no compensation except the same mileage going to and returning from the place of meeting, as members of the general assembly, computed for the actual distance from their residence to the place of meeting; *provided*, that while employed in superintending the erection of buildings for said school, they shall receive the sum of three dollars per day and their actual traveling expenses, the amount due each trustee to be certified by the president and secretary of the board.

Officers chosen by trustees: rules: bond of treasurer. C. 59, § 5, 12 G. A. C. 116, § 2, 14 G. A.

SEC. 1647. Said board of trustees shall, from their board, appoint a president, secretary, and treasurer, and shall take charge of the general interests of the institution; shall have power to enact by-laws and rules for the regulation of all its concerns not inconsistent with the constitution and laws of this state; to see that its affairs are conducted in accordance with the requirements of law, and that strict discipline is maintained therein; to provide employment and instruction for the inmates; to appoint a superintendent, a steward, a teacher or teachers, and such other officers as in their judgment the wants of the institution may require, and prescribe their duties; to exercise a vigilant supervision over the institution, its officers, and inmates; to remove such officers at their pleasure and appoint others in their stead, and determine the salaries to be paid to the officers; and shall also require the treasurer to execute a bond to the state of Iowa in a sufficient amount to be approved by the executive council and filed in the office of the secretary of state.

SEC. 1648. They shall cause the boys and girls under their charge to be instructed in piety and morality, and in such branches of useful knowledge as are adapted to their age and capacity, and in some regular course of labor, either mechanical, manufacturing, or agricultural, as is best suited to their age, strength, disposition, and capacity, and as may seem best adapted to secure the reformation and future benefit of the boys and girls.

Pupils taught: trustees to prescribe. C. 59, § 6, 12 G. A.

SEC. 1649. The trustees, with the consent in writing of their parents or guardians, as the case may be, or in case they have no parents or gardians, may bind out boys and girls committed to the school until they attain their majority, or for any less time, stipulating in the indentures for the needful amount of education, and from time to time, as the rightful guardians of the boys and girls, ascertain whether the duties and obligations of the person to whom the boy or girl is bound are faithfully performed, and if not, cancel the indenture and receive the boy or girl into the school again.

Pupils bound out with consent of parents or guardians. Same, § 7.

SEC. 1650. When there shall be twenty or more boys and girls in the school, one or more of the trustees shall visit the school once in every month and examine the boys and girls in their school room and labor, and inspect the register and accounts of the superintendent. A record shall be kept of these visits in the books of the superintendent. Once in every year, or oftener if the trustees think it necessary, they shall examine the school in all its departments, including the accounts, vouchers, and documents of the superintendent, and prepare a report on the condition of the institution on the first Monday in November next preceding the meeting of the general assembly, which, together with a full report of the superintendent, and a list of the officers and their salaries, with an estimate of the value of the personal property of the state in connection with the school, shall be laid before the general assembly.

School visited: report of trustees and superintendent. Same, § 8.

SEC. 1651. The superintendent, with such subrdionate officers as the trustees may appoint, shall have the charge and custody of the boys and girls; he shall discipline, govern, instruct, employ, and use his best endeavors to reform the inmates in such manner as, while preserving their health, will secure the promotion, as far as possible, of moral, religious, and industrious habits, and regular thorough progress and improvement in their studies, trades, and employment.

Superintendent and officers of: duties defined. Same, § 9.

SEC. 1652. He shall, before entering upon his duties, give a bond to the state, with sureties, the amount and sureties to be satisfactory to the board of trustees, conditioned that he shall faithfully perform all his duties, and account for all money received by him as superintendent, which bond shall be filed in the office of the secretary of state; he shall have charge of all the property of the institution within the precincts thereof; he shall keep in suitable books complete accounts of all his receipts and expenditures, and of all property intrusted to him, showing the income and expenses of the institution, and in such manner as the trustees may require for all money received by him. His books and documents relating to the school shall, at all times, be open to the

Superintendent to give bond: have charge of property: keep accounts. Same, § 12.

inspection of the trustees. He shall keep a register containing the name, age, and circumstances connected with the early history of each boy and girl, and shall add such facts as shall come to his knowledge relating to his or her history while at the institution, and after leaving it.

When convicted of crime: may be sent to school by the court. Same, § 11.

SEC. 1653. When a boy or girl under the age of eighteen years, shall, in any court of record, be found guilty of any crime, excepting murder, the said court may, if in its opinion the accused is a proper subject therefor, instead of entering judgment, cause an order to be entered that said boy or girl be sent to the state reform school pursuant to the provisions of this chapter, and a copy of said order, duly certified by the clerk, under the seal of said court, shall be a sufficient warrant for carrying said boy or girl to the school, and for his or her commitment to the custody of the superintendent thereof.

Proceedings when convicted before a justice of the peace. Same, § 2.

SEC. 1654. When a boy or girl under the age of eighteen shall be convicted before a justice of the peace or other inferior court of any crime, or of being a disorderly person, it shall be lawful for the magistrate before whom he or she may be convicted, to forthwith send such boy or girl, together with all the papers filed in his office on the subject, under the control of some officer to a judge of a court of record, who shall then issue an order to the parent or guardian of said boy or girl, or such person as may have him or her in charge, or with whom he or she has last resided, or one known to be nearly related to him or her, or if he or she be alone and friendless, then to such person as said judge may appoint to act as guardian for the purposes of the case, requiring him or her to appear at a time and place stated in said order, to show cause why said boy or girl should not be committed to the reform school for reformation and instruction.

Order: how served: compensation of officers. Same, § 13.

SEC. 1655. Said order shall be served by the sheriff or other officer, by delivering a copy thereof, personally, to the party to whom it is addressed, or leaving it with some person of full age at the place of residence or business of said party, and immediate return shall be made to the said judge of the time and manner of such service. The fees of the sheriff or other officer under this chapter, shall be the same as now allowed by law for like services.

Hearing: commitment. Same, § 14.

SEC. 1656. At the time and place mentioned in said order, or at the time and place to which it may be adjourned, if the parent or guardian to whom said order may be addressed shall appear, then in his or her presence, or if he or she shall fail to appear, then in the presence of some suitable person whom the said judge shall appoint as guardian for the purposes of the case, it shall and may be lawful for the said judge to proceed to take the voluntary examination of said boy or girl, and to hear the statements of the party appearing for him or her and such testimony in relation to the case as may be produced, and if upon such examination and hearing the said judge shall be satisfied that the boy or girl is a fit subject for the state reform school, he may commit him or her to said school by warrant.

Warrant: contents of. Same, § 15.

SEC. 1657. The judge shall certify in the warrant the place in which the boy or girl resided at the time of his or her arrest, also his or her age, as near as can be ascertained, and command

the said officer to take the said boy or girl and deliver him or her, without delay, to the superintendent of said school, or other person in charge thereof, at the place where the same is established; and such certificate, for the purpose of this chapter, shall be conclusive evidence of his or her residence or age. Accompanying this warrant, the judge shall transmit to the superintendent by the officer executing it, a statement of the nature of the complaint, together with such other particulars concerning the boy or girl as the judge is able to ascertain.

Appeal. Same, § 12.

SEC. 1658. If the judge is of the opinion that the boy or girl is not a fit subject for the school, or, if said boy or girl shall appeal from the decision of the court in which the conviction was had, he shall remand him or her to the custody of the officer who had him or her in charge, to be returned to the magistrate before whom the conviction was had, to be dealt with according to law.

Complaint by parent or guardian: proceedings. Same, § 17.

SEC. 1659. If any parent or guardian shall make complaint to a judge of a court of record, that any boy or girl, the child or ward of such parent or guardian, is habitually vagrant or disorderly, or incorrigible, it shall and may be lawful for said judge to issue a warrant to have the sheriff or constable to cause said boy or girl to be brought before him at such time and place as he may appoint, when and where said judge shall examine the parties, and if in his judgment the boy or girl is a fit subject for the reform school he may issue an order, with the consent of said parent or guardian endorsed thereon, to be executed by a sheriff or constable, committing said boy or girl to the custody of the superintendent of said school for reformation and instruction till he shall attain the age of majority; *provided*, that security for the payment of the expenses of said complaint, commitment, and of carrying said boy or girl to the reform school, and the expenses of board at such school, may, in the discretion of said judge, be required of said parent or guardian.

Majority: discharge. Same, § 18.

SEC. 1660. No boy or girl shall be committed to said reform school for a longer term than until he or she attain the age of majority, but the said trustees by their order may, at any time after one year's service, discharge a boy or girl from said school as a reward of good conduct in the school and upon satisfactory evidence of reformation.

Pupil retained: effect of binding out. Same, § 19.

SEC. 1661. Any boy or girl committed to the state reform school shall be there kept, disciplined, instructed, employed, and governed, under the direction of the trustees, until he or she arrives at the age of majority or is bound out, reformed, or legally discharged. The binding out or discharge of a boy or girl as reformed, or having arrived at the age of majority, shall be a complete release from all penalties incurred by conviction of the offense for which he or she was committed.

Unruly or incorrigible pupil. Same, § 20.

SEC. 1662. If any boy or girl, convicted of a felony, committed to the reform school, shall prove unruly or incorrigible, or if his or her presence shall be manifestly and persistently dangerous to the welfare of the school, the trustees shall have power to order his or her removal to the county from which he or she came and delivery to the jailor of the said county, and proceedings

against him or her shall be resumed as if no warrant or order committing him or her to the reform school had been made.

Punishment for aiding pupil to escape. Same, § 21.

SEC. 1663. Every person who unlawfully aids or assists any boy or girl lawfully committed to the reform school in escaping, or attempting to escape therefrom, or knowingly conceals such boy or girl after his or her escape, shall be punished by fine not exceeding one thousand dollars, and imprisonment in the penitentiary not exceeding five years.

CHAPTER 6.

COLLEGE FOR THE BLIND.

Trustees of: who compose: how chosen.

SECTION 1664. There shall be maintained at Vinton, in the county of Benton, a college for the blind, under the supervision of a board of trustees consisting of six persons who shall be chosen by the general assembly as their present or future terms of office expire, and hold their offices for four years from the date of each appointment.

Same.

SEC. 1665. No member of the general assembly shall hereafter be chosen a trustee of the college for the blind.

Supervisor: power of trustees. R. § 2145.

SEC. 1666. The trustees shall have the general supervision of the institution, adopt rules for the government thereof, provide teachers, servants, and necessaries for the institution, and perform all other acts necessary to render the institution efficient and to carry out the purpose of its establishment.

Quorum. R. § 2146.

SEC. 1667. Three of said trustees shall constitute a quorum for the transaction of business.

Compensation of trustees. C. 36, § 3, 10 G. A.

SEC. 1668. Trustees residing more than ten miles from the institution, shall be allowed five dollars per day for actual services and ten cents per mile to and from their place of meeting, which shall be paid out of the funds of the institution, for attendance at the quarterly and annual meetings of the board.

Trustees to fix compensation of officers. C. 98, § 2, 12 G. A.

SEC. 1669. The board of trustees shall fix the compensation of all the officers and employes of said institution, at such rate as shall by them be deemed just and equitable; *provided*, that in no event shall the total amount of expenses of the institution exceed the total amount of appropriation for the same.

Officers: appointment of. R. § 2154.

SEC. 1670. The assistant officers shall receive their appointment from the board, upon the nomination of the principal, and shall be responsible to the principal for the faithful performance of their duties, and the principal shall be held responsible to the board for the performance of his duties.

Steward: duty of. C. 43, § 4, 11 G. A.

SEC. 1671. The trustees shall appoint some one of the employes, steward, at such compensation as they may deem just, who, under their direction, shall purchase all supplies for the institution.

SEC. 1672. Persons not residents of the state shall be entitled to the benefits of this institution, on paying to the treasurer thereof the sum of forty dollars a quarter in advance, *provided*, that no such person shall be so received to the exclusion of any resident of this state. Non-residents. R. § 2148.

SEC. 1673. The board of trustees shall elect one of their number president and another treasurer of the institution, and the treasurer shall enter into bonds, with security, in the sum of not less than thirty thousand dollars, to be approved by the executive council, conditioned for the faithful performance of his duties, and the honest disbursement of and accountal for all moneys belonging to the institution, which bond shall be filed with the secretary of state. President: treasurer to give bond. R. § 2150.

SEC. 1674. The board of trustees shall not create any indebtedness against the institution, exceeding the amount appropriated by the general assembly for the support thereof. Indebtedness. R. § 2151.

SEC. 1675. To meet the ordinary expenses of the institution, including furniture, books, and maps, the compensation of principal, matron, teachers, and employes, and to provide for contingencies, there is hereby appropriated the sum of eight thousand dollars annually, or so much thereof as may be necessary, to be drawn quarterly, and then only as necessary to meet the wants of the institution. Appropriation for. C. 129, § 1, 13 G. A.

SEC. 1676. For the purpose of meeting current expenses, there is appropriated out of the state treasury, so much as necessary, not to exceed forty dollars per quarter to each pupil in said institution. Same. C. 48, § 5, 11 G. A.

SEC. 1677. The principal of said institution shall report to the governor, on or before the fifteenth day of November preceding each regular session of the general assembly, the number of pupils in attendance, with the name, age, sex, residence, place of nativity, and also the cause of blindness of each pupil. He shall also make a report of the studies pursued and trades taught in said institution, together with a complete statement of the expenditures, and also the number, kind, and value of articles manufactured and sold. Report to governor. Same, § 6.

SEC. 1678. When the pupils of said institution are not otherwise supplied with clothing, they shall be furnished by the principal, who shall make out an account therefor in each case against the parent or guardian, if the pupil be a minor, and against the pupil if he or she have no parent or guardian or has attained the age of majority, which account shall be certified to be correct and signed by the principal, and shall be presumptive evidence of its correctness in the courts, and such principal shall forthwith remit such account to the treasurer of the proper county, who shall proceed to collect the same by suit, if necessary, in the name of such institution, and pay the same into the state treasury, and said principal shall, at the same time, remit a duplicate of such account to the auditor of state, who shall credit the same to account of the college for the blind, and charge it to the proper county. Clothing for pupils: how procured. Same, § 7.

SEC. 1679. The above appropriations, including account of clothing furnished pupils, shall be drawn quarterly on the order of the trustees of the institution made on the auditor of the state, Appropriation: how drawn. Same, § 8.

who shall draw his warrant in the name of such institution on the treasurer, as ordered by the trustees.

Education furnished at expense of state. R. § 2147. C. 81, 13 G. A.

SEC. 1680. All blind persons, residents of this state, of suitable age and capacity, shall be entitled to an education in this institution at the expense of the state. Each county superintendent of common schools shall report on the first day of November of each year to the superintendent of the college for the blind, the name, age, residence, and post office address of every blind person, and every person blind to such an extent as to be unable to acquire an education in the common schools, and who resides in the county in which he is superintendent.

Industrial home for. C. 79, § 1, 13 G. A.

SEC. 1681. There shall be established an industrial home for blind persons who are unable to support themselves, in connection with the Iowa college for the education of the blind, which shall be controlled and directed by the same board of trustees.

Who admitted. Same, § 2.

SEC. 1682. The industrial home shall be open to such blind persons of this state as shall be dependent upon their own labor for support, and who, in the opinion of the trustees, shall in other respects be proper subjects to be admitted into that department of the college.

Superintendent to keep account with each pupil. Same, § 3.

SEC. 1683. An itemized account of all material and expenses connected with the home shall be kept by the superintendent of the college; he shall also keep an account with each person employed in the home, charging them with material furnished and crediting them with articles manufactured at the market price, and any balance remaining after deducting a reasoable amount for board and clothing, if any has been furnished, shall be paid to the person who shall have performed the labor.

Vacancies in board: how filled.

SEC. 1684. Upon the death, resignation, or removal from the state of any member of the board of trustees, the general assembly, if in session at the time, shall fill the vacancy, but if the general assembly is not in session, then shall the governor fill such vacancy by appointment, to continue until the next regular session of the general assembly and until a successor shall be by that body elected. The refusal or neglect of any duly elected or appointed member of said board to act, shall be deemed a resignation.

CHAPTER 7.

OF THE INSTITUTION FOR THE DEAF AND DUMB.

Trustees of: how appointed. R. § § 2157, 2158. C. 188, § 1, 11 G. A.

SECTION 1685. There shall be permanently maintained at Council Bluffs, in the county of Pottawattamie, an institution for the support and education of the deaf and dumb, under the supervision of a board of trustees, consisting of five persons, to be elected by the general assembly, to hold their office four years after the date of their election. No member of the general assembly shall be a trustee of this institution.

SEC. 1686. The trustees shall have the general supervision of the institution, adopt rules for the government thereof, provide teachers, servants, and necessaries for the institution, and perform all other acts necessary to render it efficient, and to carry out the purposes of its establishment. Power and duty of. R. § 2158.

SEC. 1687. Three of said trustees shall constitute a quorum for the transaction of business, and their proceedings at each meeting shall be recorded in a minute book, which shall be signed by those present and form a record of their proceedings. Quorum: record kept. R. § 2159.

SEC. 1688. Persons not residents of the state, of suitable age and capacity, shall be entitled to an education in said institution, on paying to the trustees thereof the sum of forty dollars a quarter in advance. Non-residents. R. § 2160.

SEC. 1689. Every deaf and dumb citizen of the state, of suitable age and capacity, shall be entitled to receive an education in said institution at the expense of the state, and each county superintendent of common schools shall report on the first day of November in each year to the superintendent of the institution the name, age, and postoffice address of every deaf and dumb person between the ages of five and twenty-one years residing in his county, including all such persons as may be too deaf to acquire an education in the common schools. Education to residents furnished by state. R. § 2156. C. 114, 14 G. A.

SEC. 1690. The board of trustees shall select one of their number as president and another as treasurer of the institution, and the treasurer shall enter into bonds, with security, in such sum as the board shall direct, conditioned for the faithful paying over of all money belonging to the institution upon the order of the board, which bond shall be approved by the executive council and filed with the secretary of state. Treasurer to give bond. R. § 2162.

SEC. 1691. The board shall not create any indebtedness against the institution exceeding the amount appropriated by the general assembly for the use thereof. Indebtedness. R. § 2163.

SEC. 1692. For the purpose of meeting current expenses, there is hereby appropriated the sum of forty dollars per quarter for each pupil in said institution. Appropriation. C. 75, 14 G. A.

SEC. 1693. To meet the ordinary expenses of the institution, including furniture, books, school-apparatus, and compensation of officers and teachers, there is hereby appropriated the sum of twelve thousand dollars per annum, or so much thereof as may be necessary, which may be drawn quarterly in such sums as the necessities of the institution may require. Same.

SEC. 1694. The superintendent of said institution shall report to the governor, on or before the fifteenth day of November preceding each regular session of the general assembly, the number of pupils in attendance, with the name, age, sex, residence, place of nativity, and also the cause of the deafness of each pupil. He shall make a report of the studies pursued and trades taught in said institution, together with a complete detailed statement of the expenditures for said institution and the receipts on account of the same, the salaries paid to each officer and teacher, and also the kind, number, and value of all articles manufactured and sold. Superintendent to report to governor: contents of. C. 106, § 5, 12 G. A.

Clothing for pupils furnished: how procured. Same, § 6.

SEC. 1695. When the pupils of said institution are not otherwise supplied with clothing, they shall be furnished by the superintendent, who shall make out an account of the cost thereof in each case, against the parent or guardian if the pupil be a minor, and against the pupil if he or she have no parent or guardian or have attained the age of majority; which account shall be certified to be correct by said superintendent; and, when so certified, such an account shall be presumed correct in all courts. The superintendent shall thereupon remit said accounts by mail to the treasurer of the county from which the pupil so supplied shall have come to said institution; such treasurer shall proceed at once to collect the same by suit in the name of his county if necessary, and pay the same into the state treasury; the superintendent shall, at the same time, remit a duplicate of such account to the auditor of state, who shall credit the same to the account of the institution, and charge it to the proper county; *provided*, if it shall appear by the affidavit of three disinterested citizens of the county not of kin to the pupil, that the said pupil or his or her parents would be unreasonably oppressed by such suit, then such treasurer shall not commence the said suit, but shall credit the same to the state on his books, and report the amount of such account to the board of supervisors of his county, and the said board shall levy sufficient tax to pay same to the state, and to cause the same to be paid into the state treasury.

Appropriations: how drawn. Same, § 7.

SEC. 1696. The above mentioned appropriations, including the accounts for clothing aforesaid, shall be drawn quarterly on the requisition of the board of trustees of the institution, in the usual manner, and then only in such amounts as the wants of the institution may require.

CHAPTER 8.

OF COUNTY HIGH SCHOOLS.

May be established. C. 116, § 1, 18 G. A.

SECTION 1697. Each county having a population of two thousand inhabitants or over, as shown by the last state or federal census, may establish a high school on the conditions and in the manner hereinafter prescribed, for the purpose of affording better educational facilities for pupils more advanced than those attending district schools, and for persons desiring to fit themselves for the vocation of teaching.

Petition for election: notice published. Same, § 2.

SEC. 1698. When one-third of the electors of a county, as shown by the returns of the last preceding election, shall petition the board of supervisors requesting that a county high school be established in their county at the place in said petition named, then, or when said board in its discretion shall deem proper, said board shall give twenty days' notice previous to the next general election, or previous to a special election duly called for that purpose, that they will submit the question to the electors of

said county whether such high school shall be established; at which election said electors shall vote by ballot, for or against establishing such county high school. The notice contemplated in this section shall be given through one or more newspapers published in said county, if any be published therein, and by at least one written or printed notice to be posted in each township.

Notes canvassed: trustees appointed: qualification of. Same, § 3.

SEC. 1699. After said election, the ballots on said question shall be canvassed in the same manner as in the election for county officers; and if a majority of all the votes cast on said question shall be in favor of establishing said school, the board of supervisors shall immediately proceed to appoint six persons, who shall be residents of the county, but not more than two of whom shall be residents of the same township, who shall, with the county superintendent of common schools, constitute a board of trustees for said high school. Each of said trustees appointed as aforesaid shall hold his office until his successor is elected and qualified, and shall be required, within ten days after appointment, to qualify by taking the oath of office, and giving such bond as may be required by the said board of supervisors, for the faithful discharge of his duties.

Trustees classified: election of. Same, § 4.

SEC. 1700. At the next general election after said appointment, there shall be elected in said county six high school trustees, who shall be divided into three classes of two each; each class to hold their office one, two, and three years, respectively, and their respective terms to be decided by lot. And each year thereafter there shall be two such trustees elected to succeed those whose term is about to expire. And said trustees shall qualify and enter upon the duties of their office in the same manner, and at the same time as other county officers.

County superintendent president of board. Same, § 5.

SEC. 1701. The county superintendent shall, by virtue of his office, be president of said board of trustees; and at their first meeting in each year, they shall appoint from their own number a secretary and treasurer, who shall perform the usual duties devolving upon such officers for the term of one year, or until their successors are appointed to take their places.

Trustees to make estimate of funds: tax for levied. Same, § 6.

SEC. 1702. At said meeting, or at some succeeding meeting called for such purpose, said trustees shall make an estimate of the amount of funds needed for building purposes, for payment of teachers' wages, and for contingent expenses, and they shall present to the board of supervisors a certified estimate of the rate of tax required to raise the amount desired for such purposes. But in no case shall the tax for such purposes exceed in one year the amount of five mills on the dollar on the taxable property of the county, and, when the tax is levied for the payment of teachers' wages and contingent expenses only, shall not exceed two mills on the dollar.

Collected and paid over. Same, § 6.

SEC. 1703. The said tax shall be levied and collected in the same manner as other county taxes, and when collected the county treasurer shall pay the same to the treasurer of the county high school, in the same manner that school funds are paid to the district treasurers as required by law.

Treasurer of board to give bond: accounts kept. Same, § 8.

SEC. 1704. The said treasurer of the high school shall give such additional bond as the board of trustees may deem sufficient, and receive all moneys from the county treasurer and from other parties that belong to the funds of said school, and pay the same out only by direction of the board of trustees upon orders duly executed by the president, countersigned by the secretary thereof, stating the purpose for which they were drawn. Both the secretary and treasurer shall keep an accurate account of all moneys received and expended for said school; and at the close of each year, and as much oftener as required by the board, they shall make a full statement of the financial affairs of the school.

Trustees to select site: purchase materials: make contracts. Same, § 9.

SEC. 1705. The said board of trustees shall proceed, as soon as practicable after their appointment as aforesaid, to select the best site, in accordance with the vote of the county, that can be obtained without expense to the same, and the title thereof shall be vested in said county. They shall then proceed to make such purchases of material, and to let such contracts for their necessary school buildings as they may deem proper, but shall not make any purchase or contract in any year to exceed the amount on hand and to be raised by the levy of tax that year.

Trustees to employ teachers: schools encouraged. Same, § 10.

SEC. 1706. When said board of trustees shall have furnished a suitable building for the school, they shall employ some competent teacher to take charge of the same, and furnish such assistant teachers as they deem necessary, and provide for the payment of their salaries. As far as practicable, model schools shall be encouraged, and advanced students and those preparing to become teachers may be employed a portion of their time in teaching the younger pupils, in order that they may become familiar with the practice as well as theory of successful school-teaching, and also avoid, as far as practicable, the expense of employing other assistant teachers.

Tuition free to residents of county: trustees to make rules. Same, § 11.

SEC. 1707. Tuition shall be free to all pupils of such school residing in the county where the same is located. The board of trustees, however, shall make such general rules and regulations as they deem proper in regard to age and grade of attainments essential to entitle pupils to admission in the school. If there should be more applicants than can be accommodated at any time, each district shall be entitled to send its equal proportion of pupils according to the number of pupils it may have, as shown by the last report to the county superintendent of common schools. And the boards of the respective school districts shall designate such pupils as may attend.

Pupils from other counties admitted. Same, § 12.

SEC. 1708. If, at any time, the school can accommodate more pupils than apply for admission from that county, the vacancies may be filled by applicants from other counties, upon the payment of such tuition as the board of trustees may prescribe; but at no time shall such pupils continue in said school to the exclusion of pupils belonging in the county in which such high school is situated.

Tax levied to support paupers in another county. Same, § 13.

SEC. 1709. The principal of any such high school, with the approval of the board of trustees, shall make such rules and regulations as he deems proper in regard to the studies, conduct, and government of the pupils under his charge, and if any such

pupils will not conform to and obey the rules of the school, they may be suspended or expelled therefrom by the board of trustees.

Trustees to report to supervisors: contents. Same, § 15.

SEC. 1710. The said board of trustees shall, annually, make a report to the board of supervisors of their county, which shall specify the number of students, both male and female, who have been in attendance at the county high school during the year, the branches of learning taught, the text-books used, the number of teachers employed, the amount of salary paid to them, the amount expended for library and apparatus, and for buildings and all other expenses; also the amount of funds on hand, debts unpaid, and other information deemed important or expedient to report. Said report shall be printed in at least one newspaper in the county, if any is published therein, and a copy of the report shall be forwarded to the state superintendent of public instruction.

Vacancies in board filled by supervisors. Same, § 13.

SEC. 1711. The board of supervisors shall have power to fill any vacancy that may occur in the board of trustees of that county by appointment, until the next general election, and a majority of any such board of trustees shall be a quorum for the transaction of business.

Compensation of trustees. Same, § 17.

SEC. 1712. The board of supervisors may allow each member of the board of trustees the sum of two dollars per day for the time actually employed in the discharge of his official duties, and when such accounts are presented for payment, they shall be audited and paid out of the county treasury in the same manner as other accounts against the county, and said trustees shall not be entitled to any further remuneration for services or expenses.

CHAPTER 9.

OF THE SYSTEM OF COMMON SCHOOLS.

School districts. C. 172, § 1, 9 G. A.

SECTION 1713. Each civil township now or hereafter organized, and each independent school district organized as such prior to the taking effect of this code, is hereby declared a school district for all the purposes of this chapter, subject to the provisions hereinafter made.

When no officers: how supplied. Same, § 3.

SEC. 1714. When an organized district has been left without officers, the township trustees shall give such notice for a special election of directors, as is required in cases of regular district elections; and the persons elected shall continue in office until their successors are duly elected and qualified.

Division of district: apportionment of assets and liabilities. Same, § 4. C. 138, § 1, 14 G. A.

SEC. 1715. When changes in civil township boundaries are made, or any district shall be divided into two or more entire townships for civil purposes, the existing board of directors shall continue to act for both or all the new districts, or parts of districts, until the next regular district election thereafter, at which time the new district townships shall organize by the election of

directors. The respective boards of directors shall, immediately after such organization, make an equitable division of the then existing assets and liabilities between the old and new districts; and in case of a failure to agree, the matter may be decided by arbitrators, chosen by the parties in interest. A similar division shall be made in case of the formation or changes of boundaries of independent districts.

Body corporate. C. 172, § 5, 9 G. A. C. 33, 11 G. A.

SEC. 1716. Every school district which is now, or may hereafter be organized, is hereby made a body corporate by the name of the "district township," or "independent district," (as the case may be,) of....., in the county of....., and in that name may hold property, become a party to suits and contracts, and do other corporate acts.

Annual meeting. C. 172, § § 6, 7, 9 G. A. C. 143, § § 1, 2, 11 G. A. C. 84, 14 G. A.

SEC. 1717. Each district township shall hold an annual meeting on the second Monday in March, and the electors of the district, when legally assembled at such meeting, shall have the following powers:

Powers.

1. To appoint a chairman and secretary in the absence of the regular officers;

2. To direct the sale or other disposition to be made of any school house or the site thereof, and of such other property, personal and real, as may belong to the district; to direct the manner in which the proceeds arising therefrom shall be applied; to determine what additional branches shall be taught in the schools of the district; or to delegate any of these powers to the board of directors;

3. To vote such tax, not exceeding ten mills on the dollar in any one year, on the taxable property of the district township, as the meeting shall deem sufficient for the purchase of grounds and the construction of the necessary school houses for the use of the district, and for the payment of any debts contracted for the erection of school houses, and for procuring district libraries.

SUB-DISTRICTS.

Meetings of. C. 172, § 8, 9 G. A.

SEC. 1718. The several sub-districts shall, annually, on or before the first Monday in March, hold a meeting for the election of a sub-director, five days notice of which meeting shall be given by the then resident sub-director, or, if there is none, by the district secretary, posting a written notice in three public places therein, and such notice shall state the hour of meeting.

Chairman and secretary appointed. Same, § 9.

SEC. 1719. At the meeting of the sub-district, a chairman and secretary shall be appointed, who shall act as judges of the election, and give a certificate of election to the sub-director elect.

Number of sub-directors: how chosen. Same, § 10.

SEC. 1720. In all district townships comprising but one sub-district, the board of directors shall consist of three sub-directors; and in all district townships comprising but two sub-districts it shall consist of one sub-director chosen from each sub-district, and one from the district township at large, who shall in both cases be elected in the manner provided by law for the election of one sub-director from each sub-district. The judges of the respective sub-district elections shall canvass the votes for sub-director chosen from the district township at large, and shall issue a certificate of election to the person elected.

BOARD OF DIRECTORS.

SEC. 1721. The sub-directors of the several sub-districts shall constitute a board of directors for the district township, and shall enter upon their duties upon the day fixed for the regular meeting of the board in March, at which time they shall organize by electing from their own number a president, who shall simply be entitled to a vote as a member of the board; and from the district township at large, a secretary and a treasurer, unless there are at least five sub-directors in the district township, in which case they may be selected from the board. If selected from the district township at large, they shall have no vote in the proceedings of the board.

Sub directors constitute organization of board. Same, § 18.

SEC. 1722. The board of directors shall hold their regular meetings on the third Monday in March and September of each year; and may hold such special meetings as occasion may require, at the call of the president, or by request of a majority of the board.

Meetings of. Same, § 19.

SEC. 1723. They shall make all contracts, purchases, payments, and sales, necessary to carry out any vote of the district; but before erecting any school-house they shall consult with the county superintendent as to the most approved plan of such buildings. And all school-houses erected or repaired at a cost exceeding three hundred dollars, shall be so erected or repaired by contract, and no such contract for labor or materials shall be let until proposals for the same shall have been invited by advertisement for four weeks in some newspaper published in the county where the work is to be done, if there be one published therein, if not, in the nearest newspaper in an adjoining county; and such contract shall be let to the lowest responsible bidder, and bonds with sufficient sureties for the faithful performance of the contract shall be required.

Make contracts and purchases. Same, § 20.

SEC. 1724. They shall fix the site for each school-house, taking into consideration the geographical position and convenience of the people of each portion of the sub-district, and shall determine what number of schools shall be taught in each sub-district, and for what additional time beyond the period required by law they shall be continued during each year.

Select site for school-houses. Same, § 21.

SEC. 1725. They shall determine where pupils may attend school, and for this purpose may divide their district into such sub-districts as may by them be deemed necessary; *provided*, that no such sub-district shall be created for the accommodation of less than fifteen pupils, but the board of directors shall have power to rent a room and employ a teacher for the accommodation of any five scholars.

Divide districts: determine where pupils shall attend. Same, § 12. C. 143, § 3, 11 G. A.

SEC. 1726. They may establish graded or union schools wherever they may be necessary, and may select a person who shall have the general supervision of the schools in their district, subject to the rules and regulations of the board.

Graded or union schools. C. 172, § 22, 9 G. A.

SEC. 1727. In each sub-district there shall be taught one or more schools for the instruction of youth between the ages of five and twenty-one years, for at least twenty-four weeks, of five school days each, in each year, unless the county superintendent

Schools: time taught: number of. C. 143, § 3, 11 G. A.

shall be satisfied that there is good and sufficient cause for failure so to do. Any person who was in the military service of the United States during his minority shall be admitted into the schools in the sub-district in which he may reside, on the same terms on which youths between the ages of five and twenty-one are admitted.

Change of books. C. 80, § 1, 14 G. A.

SEC. 1728. The board of directors of any district township or independent district, shall not order, or direct, or make any change in the school books, or series of text-books, used in any school under their superintendence, direction, or control, more than once in every period of three years, except by a vote of the electors of the district township or independent district.

Contingent fund: use of. C. 172, § 7, 9 G. A.

SEC. 1729. They may use any unappropriated contingent fund in the treasury to purchase records, dictionaries, maps, charts, and apparatus for the use of the schools of their districts, but shall contract no debts for this purpose.

Temporary officers. C. 172, § 23, 9 G. A.

SEC. 1730. They shall appoint a temporary president and secretary in case of the absence of the regular officers, and shall fill any vacancy that may occur in the office of president or secretary, or in the board of directors.

Secretary to give bond. Same, § 24.

SEC. 1731. They shall require the secretary and treasurer to give bonds to the district in such penalty and with such security as they may deem necessary to secure the district against loss, conditioned for the faithful performance of their official duties. The bond shall be filed with the president, and in case of a breach of the conditions thereof, he shall bring suit thereon in the name of the district township or independent district.

Examine accounts to treasurer. Same, § 25.

SEC. 1732. They shall, from time to time, examine the accounts of the treasurer and make settlement with him; and shall present at each regular meeting of the electors of the district township, a full statement of the receipts and expenditures of the district township, and such other information as may be deemed important.

Audit claims. Same, § 26.

SEC. 1733. They shall audit and allow all just claims against the district, and fix the compensation of the secretary and treasurer, and no order shall be drawn on the treasury until the claim for which it is drawn has been audited and allowed.

Visit schools: make rules: discharge teachers. Same, § 27.

SEC. 1734. They shall visit the schools in their district, and aid the teachers in establishing and enforcing the rules for the government of the schools; and see that they keep a correct list of the pupils, embracing the periods of time during which they have attended school, the branches taught, and such other matters as may be required by the county superintendent. In case a teacher employed in any of the schools of the district township is found to be incompetent, or is guilty of partiality or dereliction in the discharge of his duties, or for any other sufficient cause shown, the board of directors may, after a full and fair investigation of the facts of the case, at a meeting convened for the purpose, at which the teacher shall be permitted to be present and make his defense, discharge him.

Pupils in independent districts dismissed or suspended.

SEC. 1735. The majority of the board in independent districts shall have power, with the concurrence of the president of the board of directors, to dismiss or suspend any pupils from the school in their district for gross immorality or for a persistent vio-

lation of the regulations or rules of the school, and to re-admit them if they deem proper so to do.

SEC. 1736. They shall, at their regular meeting in March of each year, require the secretary to file with the county superintendent, county auditor, and county treasurer, each, a certificate of the election, qualification, and post-office address of the president, treasurer, and secretary of the district township, and to advise them from time to time of any changes made in said offices by appointment. Certificate of election of officers filed. C. 143, § 15, 11 G. A.

SEC. 1737. They shall make such rules and regulations as may be necessary for the direction and restriction of sub-directors in the discharge of their official duties, and not inconsistent with law. Rules for government of sub-directors.

SEC. 1738. A majority of the board of directors shall be a quorum to transact business, but a less number may adjourn from time to time, and no tax shall be levied by the board after the third Monday in May; nor shall the boundaries of sub-districts be changed except by a vote of the majority of the board, nor shall the members of the board, except its secretary and treasurer, receive pay out of any school funds for services rendered under this chapter. Quorum. C. 172, § 34 9 G. A. C. 102, § 2, 10 G. A.

PRESIDENT.

SEC. 1739. The president shall preside at all meetings of the board of directors and of the district township; shall draw all drafts on the county treasury for money apportioned to his district; sign all orders on the treasury, specifying in each order the fund on which it is drawn, and the use for which the money is appropriated, and shall sign all contracts made by the board. President to preside, draw drafts, sign orders. C. 172, § 35, 9 G. A.

SEC. 1740. He 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; and in all cases where suits may be instituted by or against any of the school officers to enforce any of the provisions herein contained, counsel may be employed by the board of directors. Represent district. Same, § 36.

SECRETARY.

SEC. 1741. The secretary shall record all the proceedings of the board and district meetings in separate books kept for that purpose; shall preserve copies of all reports made to the county superintendent; shall file all papers transmitted to him pertaining to the business of the district; shall countersign all drafts and orders drawn by the president, and shall keep a register of all orders drawn on the treasury, showing the number of the order, date, name of the person in whose favor drawn, the fund on which it is drawn, for what purpose, and the amount; and shall, from time to time, furnish the treasurer with a transcript of the same. Record proceedings, countersign drafts and orders. Same, § 37.

SEC. 1742. He shall give ten days' previous notice of the district township meeting, by posting a written notice in five Give notice of meetings Same, § 38.

conspicuous places therein, one of which shall be at or near the last place of meeting, and shall furnish a copy of the same to the teacher of each school in session, to be read in the presence of the pupils thereof, and such notice shall in all cases state the hour of meeting.

Keep accounts. Same, § 39.

SEC. 1743. He shall keep an accurate account of all the expenses incurred by the district, and shall present the same to the board of directors, to be audited and paid as herein provided.

Notify county superintendent. Same, § 40.

SEC. 1744. He shall notify the county superintendent when each school of the district begins, and its length of term.

Make report to: contents of. Same, § 41.

SEC. 1745. Between the fifteenth and twentieth days of September in each year, the secretary of each school district shall file with the county superintendent a report of the affairs of the district, which shall contain the following items:

1. The number of persons, male and female, each, in his district between the ages of five and twenty-one years;
2. The number of schools, and the branches taught;
3. The number of pupils, and the average attendance of the same in each school;
4. The number of teachers employed, and the average compensation paid per week, distinguishing males from females;
5. The length of school, in days, and the average cost of tuition per week for each pupil;
6. The amount of teachers' fund held over, received, paid out, and on hand in his district;
7. The amount of contingent fund held over, received, paid out, and on hand in his district;
8. The amount of school-house fund held over, received, paid out, and on hand in his district;
9. The text-books used, and the number of volumes in the district library, and the value of apparatus belonging to the district;
10. The number of school-houses, and their estimated value;
11. The name, age, and post-office address of each deaf and dumb, and each blind person within his district between the ages of five and twenty-one, including all who are blind or deaf to such an extent as to be unable to obtain an education in the common schools.

Penalty for failure. Same, § 42.

SEC. 1746. Should the secretary fail to file his report as above directed, he shall forfeit the sum of twenty-five dollars, and shall make good all losses resulting from such failure, and suit shall be brought in both cases by the district on his official bond.

TREASURER.

Pay orders. Same, § 43.

SEC. 1747. The treasurer shall hold all moneys belonging to the district, and pay out the same on the order of the president, countersigned by the secretary, and shall keep a correct account of all expenses and receipts in a book provided for that purpose.

Different funds: partial payments on orders. Same, § 44.

SEC. 1748. The money collected by district tax for the erection of school-houses, and for the payment of debts contracted for the same, shall be called the "school-house fund;" that designed for

rent, fuel, repairs, and all other contingent expenses necessary for keeping the schools in operation, the "contingent fund;" and that received for the payment of teachers, the "teachers' fund;" and the district treasurer shall keep with each fund a separate account, and shall pay no order which does not specify the fund on which it is drawn and the specific use to which it is applied. If he have not sufficient funds in his hands to pay in full the warrants drawn on the fund specified, he shall make a partial payment thereon, paying as near as may be an equal proportion of each warrant.

Receive money apportioned district. Same, § 45.

SEC. 1749. He shall receive all moneys apportioned to the district township by the county auditor, and also all money collected by the county treasurer on the district school tax levied for his district.

Register orders. Same, § 46.

SEC. 1750. He shall register all orders on the district treasury reported to him by the secretary, showing the number of the order, date, name of the person in whose favor drawn, the fund on which it is drawn, for what purpose, and the amount.

Make statement to directors. Same, § 47.

SEC. 1751. He shall render a statement of the finances of the district from time to time, as may be required by the board of directors, and his books shall always be open for inspection.

SUB-DIRECTOR.

Oath. Same, § 11.

SEC. 1752. Each sub-director shall, on or before the third Monday in March following his election, appear before some officer qualified to administer oaths, and take an oath to support the constitution of the United States, and that of the state of Iowa, and that he will faithfully discharge the duties of his office; and in case of failure to qualify, his office shall be deemed vacant.

Employ teachers: make repairs: control school house. C. 172, § 48, 9 G. A.

SEC. 1753. The sub-director, under such rules and restrictions as the board of directors may prescribe, shall negotiate and make in his sub-district all necessary contracts for providing fuel for schools, employing teachers, repairing and furnishing school-houses, and for making all other provisions necessary for the convenience and prosperity of the schools within his sub-district, and he shall have the control and management of the school-house unless otherwise ordered by a vote of the district township meeting. All contracts made in conformity with the provisions of this section shall be approved by the president and reported to the board of directors, and said board, in their corporate capacity, shall be responsible for the performance of the same on the part of the district township.

Make list of heads of families and children. Same, § 49.

SEC. 1754. He shall, between the first and tenth days of September of each year, prepare a list of the names of the heads of families in his sub-district, together with the number of children between the ages of five and twenty-one years, distinguishing males from females, and shall record the same in a book kept for that purpose.

Report to secretary. Same, § 50.

SEC. 1755. He shall, between the tenth and fifteenth days of September of each year, report to the secretary of the district township the number of persons in his sub-district between the

ages of five and twenty-one years, distinguishing males from females.

Dismiss pupils with concurrence of directors. Same, § 51.

SEC. 1756. He shall have power, with the concurrence of the president of the board of directors, to dismiss any pupil from the schools in his sub-district for gross immorality, or for persistent violation of the regulations of the school, and to re-admit them, if he deems proper so to do; and shall visit the schools in his sub-district at least twice during each term of said school.

TEACHERS.

Contracts with teachers to be in writing. Same, § 52.

SEC. 1757. All contracts with teachers shall be in writing, specifying the length of time the school is to be taught, in weeks; the compensation per week, or per month of four weeks, and such other matters as may be agreed upon; and shall be signed by the sub-director or secretary and teacher, and be approved by and filed with the president before the teacher enters upon the discharge of his duties.

Must obtain certificate from county superintendent. Same, § 59.

SEC. 1758. No person shall be employed to teach a common school which is to receive its distributive share of the school fund, unless he shall have a certificate of qualification signed by the county superintendent of the county in which the school is situated, or by some other officer duly authorized by law; and any teacher who commences teaching without such certificate, shall forfeit all claim to compensation for the time during which he teaches without such certificate.

Keep register. Same, § 60.

SEC. 1759. The teacher shall keep a correct daily register of the school, which shall exhibit the number or other designation thereof, township and county in which the school is kept; the day of the week, the month and year; the name, age, and attendance of each pupil, and the branches taught. When scholars reside in different districts, a register shall be kept for each district.

File copy with secretary. Same, § 61.

SEC. 1760. The teacher shall, immediately after the close of his school, file in the office of the secretary of the board of directors, a certified copy of the register aforesaid.

GENERAL PROVISIONS.

School month. Same, § 74.

SEC. 1761. A school month shall consist of four weeks of five school days each.

Institute: schools closed during. L. B. E. 1861.

SEC. 1762. During the time of holding a teachers' institute in any county, any school that may be in session in such county shall be closed; and all teachers, and persons desiring a teacher's certificate, shall attend such institute, or present to the county superintendent satisfactory reasons for not so attending, before receiving such certificate.

Electors may direct what languages taught. Same.

SEC. 1763. The electors of any school district at any legally called school meeting, may, by a vote of a majority of the electors present, direct the German or other language to be taught as a branch in one or more of the schools of said district, to the scholars attending the same whose parents or guardians may so desire; and thereupon such board of directors shall provide that the same be done;

provided, that all other branches taught in said school or schools shall be taught in the English language; *provided*, *further*, that the person employed in teaching the said branches shall satisfy the county superintendent of his ability and qualifications, and receive from him a certificate to that effect.

SEC. 1764. The Bible shall notbe excluded from any school or institution in this state, nor shall any pupil be required to read it contrary to the wishes of his parent or guardian. Bible. R. § 2119.

COUNTY SUPERINTENDENT.

SEC. 1765. The county superintendent shall not hold any office in, or be a member of the board of directors of a district township or independent district, or of the board of supervisors during the time of his incumbency. Cannot hold another office.

SEC. 1766. On the last Saturday of each month, the county superintendent shall meet all persons desirous of passing an examination, and for the transaction of any other business within his jurisdiction, in some suitable room provided for that purpose by the board of supervisors at the county seat, at which time he shall examine all such applicants for examination as to their competency and ability to teach orthography, reading, writing, arithmetic, geography, English grammar, physiology, and history of the United States; and, in making such examination, he may, at his option, call to his aid one or more assistants. Meet and examine teachers. C. 172, § 64, 9 G. A. C. 143, § 7, 11 G. A.

SEC. 1767. If the examination is satisfactory, and the superintendent is satisfied that the respective applicants possess a good moral character, and the essential qualifications for governing and instructing children and youth, he shall give them a certificate to that effect, for a term not exceeding one year. Give certificate. C. 172, § 65, 9 G. A.

SEC. 1768. Any school officer or other person shall be permitted to be present at the examination; and the superintendent shall make a record of the name, residence, age, and date of examination of all persons so examined, distinguishing between those to whom he issued certificates, and those rejected. Examination: public record made. Same, § 66.

SEC. 1769. If any person shall make application for an examination at any other time, he shall pay the superintendent a fee of one dollar before the examination is commenced as a compensation therefor; unless he presented himself on the regular day specified, and was unable from no fault of his own to obtain an examination, in which case no fee shall be required of him. Fee for. Same, § 67.

SEC. 1770. If, for any cause, the county superintendent is unable to attend to his official duties, he shall appoint a deputy to perform them in his stead, except visiting schools and trying appeals. May appoint deputy. Same, § 68.

SEC. 1771. The superintendent may revoke the certificate of any teacher in the county which was given by the superintendent thereof, for any reason which would have justified the withholding thereof when the same was given, after an investigation of the facts in the case, of which investigation the teacher shall have personal notice, and he shall be permitted to be present and make his defense. May revoke certificate. Same, § 69. C. 183, § 2, 11 G. A.

Make report to superintendent of public instruction. C. 172, § 70, 9 G. A. C. 143, § 12, 11 G. A.

SEC. 1772. On the first Tuesday of October of each year, he shall make a report to the superintendent of public instruction, containing a full abstract of the reports made to him by the respective district secretaries, and such other matters as he shall be directed to report by said superintendent, and as he himself may deem essential in exhibiting the true condition of the schools under his charge; and he shall, at the same time, file with the county auditor a statement of the number of persons between the ages of five and twenty-one years in each school district in his county.

Penalty for failure. C. 172, § 71, 9 G. A.

SEC. 1773. Should he fail to make either of the reports required in the last section, he shall forfeit to the school fund of his county the sum of fifty dollars, and shall, besides, be liable for all damages caused by such neglect.

Must conform to instructions: visit schools. Same, § 72. C. 102, § 2, 10 G. A.

SEC. 1774. He shall at all times conform to the instructions of the superintendent of public instruction, as to matters within the jurisdiction of the said superintendent. He shall serve as the organ of communication between the superintendent and town ship or district authorities. He shall transmit to the townships districts, or teachers, all blanks, circulars, and other communications which are to them directed, he shall visit each school in his county at least once in each term, and shall spend at least one-half day in each visit.

Report to superintendents of colleges for the blind and deaf and dumb. C 81, § 1, 13 G. A. C. 114, § 1, 14 G. A.

SEC. 1775. He shall report on the first Tuesday of October of each year to the superintendent of the Iowa college for the blind, the name, age, residence, and postoffice address of every person blind to such an extent as to be unable to acquire an educatino in the common schools, and who resides in the county in which he is superintendent, and also to the superintendent of the Iowa institution for the deaf and dumb, the name, age, and postoffice address of every deaf and dumb person between the ages of five and twenty-one who resides within his county, including all such persons as may be deaf to such an extent as to be unable to acquire an education in the common schools.

Compensation. C. 172, § 73, 9 G. A.

SEC. 1776. The county superintendent shall receive from the county treasury the sum of three dollars per day for every day necessarily engaged in the performance of official duties, and also the necessary stationery and postage for the use of his office, and he shall be entitled to such additional compensation as the board of supervisors may allow; *provided*, that he shall first file a sworn statement of the time he has been employed in his official duties with the county auditor.

TAXES.

Board of directors to estimate amount required for contingent and teachers' fund. Same, § 31. C. 103, § 1, 10 G. A. C. 148, § 14, 11 G. A. C. 132, § 1, 14 G. A.

SEC. 1777. The board of directors shall, at their regular meeting in March of each year, or at a special meeting convened for that purpose, between the time designated for such regular meeting and the third Monday in May, estimate the amount required for the contingent fund, and also such sum as may be required for the teachers' fund, in addition to the amount received from the semi-annual apportionment, as shown by the notice from the county auditor, to support the schools of the district for the time

required by law for the current year; and shall cause the secretary to certify the same, together with the amount voted for school-house purposes, within five days thereafter to the board of supervisors, who shall, at the time of levying taxes for county purposes, subject to the provisions of section seventeen hundred and eighty of this chapter, levy the per centum necessary to raise the sum thus certified upon the property of the district township, which shall be collected and paid over as are other district taxes.

Apportion school-house tax. C. 172, § 80, 9 G. A.

SEC. 1778. They shall apportion any tax voted by the district township meeting for school-house fund, among the several sub-districts in such a manner as justice and equity may require, taking as the basis of such apportionment the respective amounts previously levied upon said sub-districts for the use of such fund; provided, that if the electors of one or more sub-districts at their last annual meeting shall have voted to raise a sum for school-house purposes greater than that granted by the electors at the last annual meeting of the district township, they shall estimate the amount of such excess on such sub-district or sub-districts, and cause the secretary to certify the same within five days thereafter to the board of supervisors, who shall, at the time of levying taxes for county purposes, levy the per-centum of such excess on the taxable property of the sub-district asking the same, provided that not more than fifteen mills on the dollar shall be levied on the taxable property of any sub-district for any one year for school-house purposes.

Excess.

Limitation.

Board of supervisors to levy tax. Same, § 53.

SEC. 1779. The board of supervisors of each county, shall, at the time of levying the taxes for county purposes, levy a tax for the support of schools within the county of not less than one mill, nor more than three mills on the dollar, on the assessed value of all the real and personal property within the county, which shall be collected by the county treasurer at the time and in the same manner as state and county taxes are collected, except that it shall be receivable only in cash.

Same: amount of levy limited. Same. § 54. C. 21. § 2, 14 G. A. C. 132. § 1, 14 G. A.

SEC. 1780. They shall also levy at the same time, the district school tax certified to them from time to time by the respective district secretaries; *provided*, that the amount levied for school-house fund shall not exceed ten mills on the dollar on the property of any district, and the amount levied for contingent fund shall not exceed five dollars per pupil, and the amount raised for teachers' fund, including the amount received from the semi-annual apportionment, shall not exceed fifteen dollars per pupil for each pupil residing in the district, as shown by the last report of the county superintendent. And if the amount certified to the board of supervisors exceeds this limit, they shall levy only to the amount limited; *provided*, that they may levy seventy-five dollars for contingent fund, and two hundred and seventy dollars, including the amount received for the semi-annual apportionment, for the teachers' fund for each sub-district.

COUNTY AUDITOR.

SEC. 1781. The county auditor shall, on the first Monday in April and the fourth Monday in September of each year, appor-

County auditor to apportion taxes and interest on school fund. C. 172, § 55, 9 G. A.

tion the county school tax, together with the interest of the permanent school fund to which his county is entitled, and all other money in the hands of the county treasurer belonging in common to the schools of his county and not included in any previous apportionment, among the several sub-districts therein, in proportion to the number of persons between five and twenty-one years of age, as shown by the report of the county superintendent filed with him for the year immediately preceding.

Notify president of each school district of same. Same, § 56.

SEC. 1782. He shall immediately notify the president of each school district of the sum to which his district is entitled by said apportionment, and shall issue his warrant for the same to accompany said notice, which warrant shall be also signed by the president and countersigned by the secretary of the district in whose favor the same is drawn; and shall authorize the district treasurer to draw the amount due said district from the county treasurer; and the secretary shall charge the treasurer of the district with all warrants drawn in his favor, and credit him with all warrants drawn on the funds in his hands, keeping separate accounts with each fund.

Forward certificate of election of county superintendent and report to auditor of state. Same, § 57.

SEC. 1783. He shall forward to the superintendent of public instruction, a certificate of the election or appointment and qualication of the county superintendent; and shall, also, on the second Monday in February and August of each year, make out and transmit to the auditor of state, in accordance with such form as said auditor may prescribe, a report of the interest of the school fund then in the hands of the county treasurer, and not included in any previous apportionment; and also the amount of said interest remaining unpaid.

COUNTY TREASURER.

Pay over taxes to appropriate officer. Same, § 58. C. 108, § 3, 10 G. A.

SEC. 1784. The county treasurer shall, on the first Monday in April of each year, pay over to the treasurer of the district the amount of all school district tax which shall have been collected, and shall render him a statement of the amount uncollected, and shall pay over the amount in his hand quarterly thereafter. He shall also keep the amount of tax levied for school-house purposes, separate in each sub-district, where such levy has been made directly upon the property of the sub-district making the application, and shall pay over the same quarterly to the township treasurer for the benefit of such sub-district. He shall, in all counties wherein independent districts are organized, keep a separate account with said independent districts, in which the receipts shall be daily entered, which books shall at all times be open to the inspection and examination of the district board of directors, and shall pay over to the said independent districts the amount of school taxes in his possession on the order of the board, on the first day of each and every month.

To notify president of school board quarterly. C. 122, 12 G. A.

SEC. 1785. On the first day of each quarter, the county treasurer shall give notice to the president of the school board of each township in his county of the amount collected for each fund; and the president of each board shall draw his warrant, countersigned by the secretary, upon the county treasurer for such

amount, who shall pay the amount of such taxes to the treasurers of the several school boards only on such warrants.

MISCELLANEOUS.

SEC. 1786. All fines and penalties collected from a school district officer by virtue of any of the provisions of this chapter, shall inure to the benefit of that particular district. Those collected from any member of the board of directors, shall belong to the district township, and those collected from county officers, to the county. In the two former cases, suit shall be brought in the name of the district township; in the latter, in the name of the county, and by the district attorney. The amount in each case shall be added to the fund next to be applied by the recipient for the use of common schools.

Fines and penalties. C. 172, § 77, 9 G. A.

SEC. 1787. When a judgment has been obtained against a school district, the board of directors shall pay off and satisfy the same from the proper fund, by an order on the treasurer; and the district meeting, at the time for voting a tax for the payment of other liabilities of the district shall provide for the payment of such order or orders.

Judgments: how paid. Same, § 79.

SEC. 1788. In case a school district has borrowed money of the school fund, the board of supervisors shall levy such tax, not exceeding five mills on the dollar in any one year, on the taxable property of the district as constituted at the time of making such loan, as may be necessary to pay the annual interest on said loan, and the principal when the same falls due, unless the board of supervisors shall see proper to extend the time of said loan.

Money borrowed of school fund: how paid. Same, § 80.

SEC. 1789. No district township or sub-district meeting shall organize earlier than nine o'clock A. M., nor adjourn before twelve o'clock M.; and in all independent districts having a population of three hundred and upward, the polls shall remain open from nine o'clock A. M. to four o'clock P. M.

Hours of meeting and adjourning. Same, § 81.

SEC. 1790. Any school director, or director elect, is authorized to administer to any school director elect the official oath required by law, and said official oath may be taken on or before the third Monday in March following the election of directors.

Oath: administer to each other.

SEC. 1791. When any school officer is superseded by election or otherwise, he shall immediately deliver to his successor in office, all books, papers, and moneys pertaining to his office, taking a receipt therefor; and every such officer who shall refuse to do so, or who shall wilfully mutilate or destroy any such books or papers, or any part thereof, or shall misapply any moneys entrusted to him by virtue of his office, shall be liable to the provisions of the general statutes for the punishment of such offense.

Deliver money, books, etc., to successor: penalty for failure. C. 172, § 82, 9 G. A.

SEC. 1792. Nothing in this chapter shall be so construed as to give the board of directors of a district township jurisdiction over any territory included within the limits of any independent district.

Jurisdiction. Same, § 83.

SEC. 1793. Children residing in one district may attend school in another in the same or adjoining county, on such terms as may be agreed upon by the respective boards of directors, but in

Same. C. 181, § 1, 12 G. A.

case no such agreement is made, they may attend school in such adjoining district with the consent of the board of directors thereof, when they reside nearer to the school in said district and two miles or more from any school in their own district. The board of directors of the township in which the children reside shall be notified in writing, and the district in which they reside shall pay to the district in which they attend school the average tuition of said children per week, and an average proportion of the contingent expenses of the district where they attend school, and in case of refusal so to do, the secretary shall file the account for said tuition and contingent expenses, certified to by the president, with the county auditor of the county in which said children reside, who shall, at the time of making the next semi-annual apportionment thereafter, deduct the amount from the sum apportioned to the district in which said children reside, and pay it over to the district in which they have attended school.

Residence of pupils. C. 172, § 14, 9 G. A.

SEC. 1794. Pupils who are actual residents of a district shall be permitted to attend school in the same, regardless of the time when they acquired such residence, whether before or after the enumeration, or of the residence of their parents or guardians; but pupils who are sojourning temporarily in one district, while their actual residence is in another, and to whom the last preceding section is not applicable, may attend school upon such terms as the board of directors may deem just and equitable.

Pupils: where attend school. Same, § 15.

SEC. 1795. Pupils may attend school in any sub-district of the district township in which they reside with the consent of the sub-director of such sub-district, and of the sub-director of the sub-district in which such pupils reside.

Divide townships. Same, § 29.

SEC. 1796. The board of directors shall, at their regular meeting in September, or at any special meeting called thereafter for that purpose, divide their townships into sub-districts, such as justice, equity, and the interests of the people require; and may make such alterations of the boundaries of sub-districts heretofore formed, as may be deemed necessary; and shall designate such sub-districts, and all subsequent alterations, in a distinct and legible manner, upon a plat of the district provided for that purpose; and shall cause a written description of the same to be recorded in the district records, a copy of which shall be delivered by the secretary to the county treasurer, and also to the county auditor, who shall record the same in his office; *provided*, that the boundaries of sub-districts shall conform to the lines of congressional divisions of land; and that the formation and alteration of sub-districts as contemplated in this section, shall not take effect until the next sub-district election thereafter, at which election a sub-director shall be elected for the new sub-district.

Where streams or other obstacles interfere. C. 142, § 16, 11 G. A.

SEC. 1797. In cases where, by reason of streams or other natural obstacles, any portion of the inhabitants of any school district cannot, in the opinion of the county superintendent, with reasonable facility enjoy the advantages of any school in their township, the said county superintendent, with the consent of the board of directors of such district as may be affected thereby, may attach such part of said township to an adjoining township, and the order therefor shall be transmitted to the secretary of each

district, and be by him recorded in his records, and the proper entry made on his plat of the district.

Restoration of territory. C. 125, § 1, 15 G. A.

SEC. 1798. In all cases where territory has been or may be set into an adjoining county or township for school purposes, such territory may be restored by the concurrence of the respective boards of directors; but on the written application of two-thirds of the electors residing upon the territory within the township in which the school-house is not situated, the said boards shall restore the territory to the district in which it geographically belongs.

Township lines cannot be so changed as to divide district. C. 122, 14 G. A.

SEC. 1799. The boundary lines of a civil township shall not be changed by the board of supervisors of any county, so as to divide any school district by changing the boundary lines thereof, except when a majority of the voters of such district shall petition therefor; *provided, however*, that this shall not prevent the change of the boundary lines of any civil township, when such change is made by adopting the lines of congressional townships.

INDEPENDENT DISTRICTS.

Separate districts formed. C. 172, § 84, 9 G. A. C. 28, § 1, 12 G. A. C. 8, § 1, 13 G. A.

SEC. 1800. Any city or town containing not less than three hundred inhabitants within its limits, may be constituted a separate school district; and territory contiguous to such a city or town may be included with it as a part of said separate district in the manner hereinafter provided.

Vote of people. C. 73, § 1, 14 G. A.

SEC. 1801. At the written request of any ten legal voters residing in such city or town, the board of directors of the district township shall establish the boundaries of the contemplated school district, including such contiguous territory as may best subserve the convenience of the people for school purposes, and shall give at least ten days' previous notice of the time and place of meeting of the electors residing in said district, by posting written notices in at least five conspicuous places therein; at which meeting the said electors shall vote by ballot for or against a separate organization.

Directors elected. C. 172, § 86, 9 G. A. C. 28, § 2, 12 G. A. C. 8, § 1, 13 G. A. C. 76, § 1, 14 G. A.

SEC. 1802. Should a majority of votes be cast in favor of such separate organization, the board of directors of the district township shall give similar notice of a meeting of the electors for the election of six directors. Two of these directors shall hold their office until the first annual meeting after their election, and until their successors are elected and qualified; two until the second; and two until the third annual meeting thereafter; their respective terms of office to be determined by lot. The six directors shall constitute a board of directors for the district, and they shall, at their first regular meeting in each year, elect a president from their own number; and a secretary and treasurer to be chosen outside of the board; *provided*, that in all independent districts having a population of less than five hundred, there shall be three directors elected who shall organize by electing a president and secretary from their own number, also a treasurer who may or may not be a member of the board; and *provided further*, that in all independent districts already organized, the terms of office of such directors as may have been chosen previous to the

taking effect of this section for two or three years shall not be interfered with by its passage.

Meeting for. C. 172, § 87, 9 G. A.

SEC. 1803. Said meeting for the first election of directors shall organize by appointing a president and secretary, who shall act as judges of the election and issue a certificate of election to the person elected.

When organization of completed: disposition of taxes. C. 143, § 11, 11 G. A.

SEC. 1804. The organization of such independent district shall be completed on or before the first day of August of the year in which said organization is attempted, and when such organization is thus completed, all taxes levied by the board of directors of the district township of which the independent district formed a part in that year, shall be void so far as the property within the limits of the independent district is concerned; and the board of directors of such independent district shall levy all necessary taxes for school purposes as provided by law for that year at a meeting called for that purpose, at any time before the third Monday of August of that year, which shall be certified to the board of supervisors on or before the first Monday of September, and said board of supervisors shall levy said tax at the time and in the manner that school taxes are required to be levied in other districts.

When formed of parts of two townships. C. 172, § 88, 9 G. A. C. 28, § 2, 12 G. A.

SEC. 1805. In case such district is formed of parts of two or more civil townships in the same or adjoining counties, the duty of giving the notice shall devolve upon the board of directors of the township in which a majority of the legal voters of the contemplated district reside.

Number of schools in. C. 172, § 89, 9 G. A.

SEC. 1806. Said district may have as many schools, and be divided into such wards or other sub-divisions for school purposes, as the board of directors may deem proper; and shall be governed by the laws enacted for the regulation of district townships, so far as the same may be applicable.

School-house tax voted for by electors. C. 57, 10 G. A.

SEC. 1807. It shall be lawful for the electors of any independent district, at the annual meeting of such district, to vote a tax, not exceeding ten mills on the dollar in any one year, on the taxable property of such district, as the meeting may deem sufficient for the purchase of grounds and the construction of the necessary school-houses for the use of such independent district, and for the payment of any debts contracted for the erection of such school-houses, and for procuring a library and apparatus for the use of the schools of such independent district.

Annual meeting. C. 8, § 5, 13 G. A. C. 76, § 1, 14 G. A.

SEC. 1808. The annual meeting of all independent districts shall be held on the second Monday in March for the transaction of the business of the district, and for the election by ballot of two directors, as the successors of the two whose term expires, who shall continue in office for three years; and the president, secretary, and one of the directors then in office shall act as judges of the election, and shall issue certificates of election to the persons elected for the ensuing term; *provided*, that in all independent districts, having a population of less than five hundred, there shall be elected, annually, one director, who shall continue in office for three years.

SEC. 1809. When an independent district has been formed out of a civil township, or townships, as herein contemplated, the

remainder of such township, or of each of such townships, as the case may be, shall constitute a district township as provided in section seventeen hundred and thirteen of this chapter, and the boundaries between such district township and independent district may be changed, or the independent district abandoned at any time, with the concurrence of their respective boards of directors.

When independent district embraces whole township. C. 125, § 2, 14 G. A.

SEC. 1810. In case an independent district embraces a part or the whole of a civil township which has no separate district township organization, upon the written application of two-thirds of the electors residing upon the territory of such independent district and within such civil township to the board of directors, they shall set off such territory, whether provided with school-houses or not, to be organized as a district township in the manner provided for such organization when a new civil township is formed.

Districts may unite: manner of. C. 8, § 2, 13 G. A.

SEC. 1811. Independent districts located contiguous to each other, may unite and form one and the same independent district, in the manner following: At the written request of any ten legal voters residing in each of said independent districts, their respective boards of directors shall require their secretaries to give at least ten days' notice of the time and place for a meeting of the electors residing in such districts, by posting written notices in at least five public places in each of said districts, at which meetings the said electors shall vote by ballot for or against a consolidated organization of said independent districts; and if a majority of the votes cast at the election in each district, shall be in favor of uniting said districts, then the secretaries shall give similar notice of a meeting of the electors as provided for by the law for the organization of independent districts. The independent district thus consolidated shall be completed, and its directors governed by the same provisions of the law which apply to other independent districts.

School districts lying in two counties may be formed into independent district. C. 137, 14 G. A.

SEC. 1812. Where, under the school laws of the state heretofore in force for the convenience and accommodation of the people, school districts where formed of portions of two counties of territory lying contiguous to each other, at the written request of five legal voters residing in portions of said territory in each county, the board of directors of the district township to which such territory belongs, having a majority of the legal voters, shall fix the boundaries of an independent school district composed of such sections of land, or portions thereof, as may be described in the petition therefor, and shall give at least ten days' notice of the submission of the question of the formation of said independent district, at a special election for said purpose, specifying the boundaries of the district, the time and place of the meeting of the electors for such election, at which meeting the electors in the contemplated district shall vote by ballot for or against the separate organization. Should a majority of the votes be cast in favor of such separate organization, the said board of directors shall proceed by ballot to elect officers in the manner provided by law, and organize such independent district.

SEC. 1813. The boards of directors of the several independent school districts are hereby required to publish, two weeks

Detailed statement of receipts and disbursements published. C. 46, § 1, 14 G. A.

before the annual school election in such district, by publication in one or more newspapers, if any are published in such district, or by posting up in writing in not less than three conspicuous places in such independent district, a detailed and specific statement of the receipts and disbursements of all funds expended for school and building purposes for the year preceding such annual election. And the said boards of directors shall also, at the same time, publish in detail an estimate of the several amounts which, in the judgment of such board, are necessary to maintain the schools in such district for the next succeeding school year; and failure to comply with the provisions of this section shall make each director liable to a penalty of ten dollars.

Districts consolidated and organized as independent districts.

SEC. 1814. Township districts may be consolidated and organized as independent districts, in the following manner: Whenever the board of directors of any existing district township shall deem the same advisable, and also whenever requested to do so by a petition signed by one-third of the voters of the district township, the board shall submit to the voters of said district township, at a regular election, or one called for the purpose, the question of consolidation, at which election the voters of the district township shall vote for or against consolidation. If a majority of votes shall be in favor of such consolidated organization, such district township shall organize on the second Monday of March following as an independent district; *provided*, that in townships which have been divided into independent districts, the duties in this section devolving on the board of directors shall be performed by the trustees of the township to whom the petition shall in such cases be addressed; *and provided further*, that nothing in this section shall be construed to affect independent districts composed wholly or mainly of cities or incorporated towns. Independent districts may in like manner change their boundaries so as to form any number of districts less than the number of districts existing at the time such change is asked for, and such changes shall be specified in the notices for a vote thereon.

Sub-districts may become independent. C. 78, § 1, 14 G. A.

SEC. 1815. The sub-districts of any district township may be constituted separate and independent districts, in the manner hereinafter provided.

Question of separate organization submitted to electors. Same, § 2.

SEC. 1816. At the written request of one-third of the legal voters residing in any district township, the board of directors shall call a meeting of the qualified electors of the district township, at the usual place of holding the annual meeting of such district township, by giving at least ten days notice thereof, by posting three written notices in each sub-district in the township, and by publication in a newspaper, if one be published in the township, at which meeting the said electors shall vote by ballot for or against a separate organization.

Directors to call meetings in each sub-district. Same, § 3.

SEC. 1817. Should a majority of the votes be cast in favor of such separate organization, the board of directors shall call meetings in each sub-district in the township, of the qualified electors thereof, in the manner and for the purpose as provided in section eighteen hundred and two of this chapter; *provided*, that if the number of inhabitants of any such sub-district does not exceed five

hundred, then but three directors shall be chosen, who shall hold their offices one, two, and three years, respectively, the length of their respective terms to be determined by lot, and but one director shall be chosen annually thereafter who shall hold his office three years.

Electors to determine name of district. Same, § 4.

SEC. 1818. At the meetings of the electors of each sub-district, as provided in the last section, they shall also determine by ballot the name to be given to their district, and each district when so organized shall be a body corporate, and the name so chosen shall be its corporate name. The board of directors of any district organized under the provisions of this chapter, may change its name if any other district in the township shall have chosen the same name.

Governed as independent districts. Same, § 5.

SEC. 1819. Districts organized under the provisions of the preceding four sections, shall be governed and treated in every respect as provided by the law creating independent districts.

Assets and liabilities of old district adjusted. Same, § 6.

SEC. 1820. When any district township is divided into independent districts under the provisions of the five preceding sections, then the old board of directors of the district township, shall make such a division of assets and liabilities of such district township as is provided by section seventeen hundred and fifteen of this chapter.

MAY ISSUE BONDS.

Power given to borrow money and issue bonds: limit to. C. 98, § 1, 12 G. A.

SEC. 1821. Independent school districts shall have the power and authority to borrow money for the purpose of erecting and completing school-houses, by issuing negotiable bonds of the independent district, to run any period not exceeding ten years, drawing a rate of interest not to exceed ten per centum per annum, which interest may be paid semi-annually; which said indebtedness shall be binding and obligatory on the independent district for the use of which said loan shall be made; but no district shall permit a greater outstanding indebtedness than an amount equal to five per centum of the last assessed value of the property of the district.

Question to be submitted to electors. Same, § 2.

SEC. 1822. The directors of the independent district may submit to the voters of their district at the annual or a special meeting, the question of issuing bonds as contemplated by the preceding section, giving the same notice of such meeting as is now required by law to be given for the election of officers of such districts, and the amount proposed to be raised by the sale of such bonds; which question shall be voted upon by the electors, and if a majority of all the votes cast on that question be in favor of such loan, then said board shall issue bonds to the amount voted, in denominations of not less than twenty-five dollars, nor exceeding one thousand dollars, due not more than ten years after date, and payable at the pleasure of the district at any time before due; which said bonds shall be given in the name of the independent district issuing them, and shall be signed by the president of the board and delivered to the treasurer, taking his receipt therefor, who shall negotiate said bonds at not less than their par value, and countersign the same when negotiated. The

treasurer shall stand charged upon his official bond with all bonds that may be delivered to him; but any bond or bonds not negotiated may be returned by him to the board.

Tax for voted by directors if electors fail. Same, § 3.

SEC. 1823. If the electors of an independent school district which has issued bonds, shall, at the annual meeting in March for any year, fail to vote sufficient school-house tax to raise a sum equal to the interest on the outstanding bonds which will accrue during the then coming year, and such proportionate portion of the principal as will liquidate and pay off said bonds at maturity, then it shall be lawful for the board of such district to vote a sufficient rate on the taxable property of the district to pay such interest, and such portion of the principal as will pay said bonds in full by the time of their maturity, and shall cause the same to be certified and collected the same as other school taxes.

Orders to bear lawful interest. Same, § 4.

SEC. 1824. All school orders shall draw lawful interest after having been presented to the treasurer of the district and not paid for want of funds, which fact shall be endorsed upon the order by the treasurer.

CHAPTER 10.

OF SCHOOL-HOUSE SITES.

Districts may take real estate for. C. 126, § 1, 13 G. A.

SECTION 1825. It shall be lawful for any district township, or independent district, to take and hold under the provisions contained in this chapter, so much real estate as may be necessary for the location and construction of a school-house and convenient use of the school; *provided*, that the real estate so taken, otherwise than by the consent of the owner or owners, shall not exceed one acre.

Site of. Same.

SEC. 1826. The site so taken must be on some public highway, at least forty rods from any residence, the owner whereof objects to its being placed nearer, and not in any orchard, garden, or public park. But this section shall not apply to any incorporated town.

May condemn. Same. § 3.

County superintendent to appoint appraisers.

Oath of.

To assess damages.

SEC. 1827. If the owner of any such real estate refuse or neglect to grant the site on his premises, or if such owner cannot be found, the county superintendent of the county in which said real estate may be situated, shall, upon application of either party, appoint three disinterested persons of said county, unless a smaller number is agreed upon by the parties, who shall, after taking an oath to faithfully and impartially discharge the duties imposed on them by this chapter, inspect said real estate and assess the damages which said owner will sustain by appropriation of his land for the use of said house and school; said county superintendent giving to the owner of such real estate, the same notice as is required for the commencement of a suit at law in the district court, of the time of such assessment of damage, and make a

report in writing to the county superintendent of said county, giving the amount of damages, description of land, and exact location, who shall file and preserve the same in his office. If said board shall, at any time before they enter upon said land for the purpose of building said house, deposit with the county treasurer for the use of said owner, the sum so assessed as aforesaid, they shall be thereby authorized to build said house, and maintain the right to said premises; *provided*, that either party may have the right to appeal from such assessment of damages to the circuit court of the county where such real estate is situated, within twenty days after receiving notice that such assessment is made, which appeal shall be final; but such appeal shall not delay the prosecution of work upon said house, if said board shall pay, or deposit with the county treasurer, the amount so assessed by such appraisers, and in no case shall said board be liable for costs on appeal, unless the owner of said real estate shall be adjudged a greater amount of damages than was awarded by said appraisers. The board shall in all cases pay costs of the first assessment.

Notice to owner.

Deposit of sum assessed.

Appeal.

Costs.

SEC. 1828. The title acquired by said school districts in and to said real property, shall be for school purposes only, and in case the same should cease to be used for said purpose for the space of two years, then the title shall revert to the owner of the fee, upon the repayment by him of the principal amount paid for said land by said districts, without interest, together with the value of any improvements thereon erected by said districts; *provided*, that during the time said site is used for school purposes, the owners of the fee shall not injure or remove the timber standing and growing thereon.

For school purposes only: when title reverts. Same, § 4.

Timber on.

CHAPTER 11.

OF APPEALS.

SECTION 1829. Any person aggrieved by any decision or order of the district board of directors, in matter of law or of fact, may, within thirty days after the rendition of such decision, or the making of such order, appeal therefrom to the county superintendent of the proper county.

To county superintendent. R. § 2133.

SEC. 1830. The basis of the proceeding shall be an affidavit, filed by the party aggrieved with the county superintendent, within the time for taking the appeal.

Basis of. R. § 2134.

SEC. 1831. The affidavit shall set forth the errors complained of in a plain and concise manner.

Errors stated. R. § 2135.

SEC. 1832. The county superintendent shall, within five days after the filing of such affidavit in his office, notify the secretary of the proper district, in writing, of the taking of such appeal. And the latter shall, within ten days after being thus notified, file in the office of the county superintendent a complete transcript of

Superintendent to notify secretary of district: duty of. R. § 2136.

the record and proceedings relating to the decision complained of, which transcript shall be certified to be correct by the secretary.

Parties notified. R. § 2137.

SEC. 1833. After the filing of the transcript aforesaid in his office, he shall notifiy in writing all persons adversely interested of the time and place where the matter of the appeal will be heard by him.

Hearing: take testimony: administer oaths. R. § 2138.

SEC. 1834. At the time thus fixed for hearing, he shall hear testimony for either party, and for that purpose may administer oaths if necessary, and he shall make such decision as may be just and equitable, which shall be final, unless appealed from as hereinafter provided.

Appeal to superintendent of public instruction: notice of. R. § 2139.

SEC. 1835. An appeal may be taken from the decision of the county superintendent, to the superintendent of public instruction in the same manner as provided in this chapter for taking appeals from the district board to the county superintendent, as nearly as applicable, except that he shall give thirty days' notice of the appeal to the county superintendent, and the like notice shall be given the adverse party. And the decision when made shall be final.

No money judgment rendered: postage. R. § 2140.

SEC. 1836. Nothing in this chapter shall be so construed as to authorize either the county or state superintendent to render a judgment for money, neither shall they be allowed any other compensation than is now allowed by law. All necessary postage must first be paid by the party aggrieved.

CHAPTER 12.

OF THE SCHOOL FUND.

Permanent fund: what constitutes. R. § 1962.

SECTION 1837. The following are hereby declared to be and remain perpetual funds for common school purposes, the interest of which only can be appropriated:

1. The five per cent. upon the net proceeds of the public lands in the state of Iowa;

2. The proceeds of the sales of the five hundred thousand acres of land which were granted to the state of Iowa under the eighth section of the act of congress, passed September fourth, A. D. 1841, entitled, "an act to appropriate the proceeds o' all sales of public lands, and to grant pre-emption rights;"

3. The proceeds of all sales of intestate estates which escheat to the state;

4. The proceeds of the sales of the sixteenth section in each township, or lands selected in lieu thereof.

Temporary: appropriated annually. R. § 1963.

SEC. 1838. The following are declared to be and remain temporary funds for common school purposes, to be received and appropriated annually in the same manner as the annual interest of the perpetual fund:

1. All forfeitures of ten per cent. which are authorized to be made for the benefit of the school fund;

2. The proceeds of all fines collected for violations of the penal laws;

3. The proceeds of all fines collected for the non-performance of military duty;

4. The proceeds of the sales of lost goods and estrays.

Five per cent. fund payable to state treasurer. R. § 1964.

SEC. 1839. The five per centum of the net proceeds of all sales of the public lands is hereby made payable to the state treasurer, and the state auditor shall apportion the same among the several counties, taking into consideration the amount of the permanent school fund already in possession of and steadily loaned in said counties.

Part of permanent fund made payable to county treasurer. R. § 1965.

SEC. 1840. Those portions of the permanent school fund enumerated in the second and fourth sub-divisions of section eighteen hundred and thirty-seven of this chapter, are hereby made payable to the county treasurer of the county in which the lands sold are situated, and the proceeds of sub-division third of said section to the treasurer of the county where said escheated estates are.

Same as to temporary fund. R. § 1966.

SEC. 1841. The temporary funds enumerated in section eighteen hundred and thirty-eight of this chapter, are hereby made payable to the county treasurers of the several counties in which they arise respectively, and shall be accounted for to the board of supervisors, who shall apportion the same among the several school districts of said county as provided by law.

Auditor to audit losses of. C. 134, § 3, 10 G. A.

SEC. 1842. The auditor is required to audit all losses to the school fund as provided in section three of article seven of the constitution; and, for this purpose, he shall prescribe such regulations for the conduct of officers having such funds in charge as he shall deem necessary to ascertain such losses.

To issue bonds when same amounts to one thousand dollars. Same, § 2.

SEC. 1843. Whenever any amount, not less than one thousand dollars, is audited in favor of the permanent school fund for losses of the same, whereby the state becomes indebted to said fund, the state auditor shall issue the bond or bonds of the state in favor of said fund, bearing interest at the rate of eight per cent., payable semi-annually, on the first day of January and July after the issuing of the same, and the amount required to pay the interest on said bonds, as the same becomes due, is hereby appropriated out of any revenue in the state treasury.

To keep account with different funds. R. § 1969.

SEC. 1844. The state auditor shall keep the school fund accounts in books provided for that purpose, separate and distinct from the revenue books, and immediately after making the apportionment required by section sixty-six of chapter three of title two, he shall notify the auditor of each county of the sum to which his county is entitled by said apportionment, and in those cases where the counties have less of such interest than they are entitled to by apportionment, he shall, by such notice, authorize the treasurer of each of such counties to transfer the amount of such deficiency from the state revenue in his hands to such interest fund, and said notice shall be filed by the treasurer and be his proper voucher to the state for the amount of said revenue so transferred. And in those cases where the counties have an excess of such interest over the amount apportioned to each, such notice shall authorize the county treasurer to trans-

Notify county auditor of apportionment.

Deficiency.

Excess.

fer such excess from the interest fund, and such excess so transferred shall be paid into the state treasury as revenue.

SALE OF LANDS.

Supervisors to authorize township trustees to sell sixteenth section. R. § 1970.

SEC. 1845. The board of supervisors may, at such time as they deem best, authorize the trustees of any township where the sixteenth section, or land selected in lieu thereof, has not been sold, to lay out the same in such tracts as in their judgment will be for the best interests of the school fund, conforming, as far as the interests of said fund will permit, to the legal sub-divisions of the United States surveys; and they shall appraise each tract at what they believe to be its true value, and certify to the said board of supervisors the divisions and appraisements made by them; said division and appraisement shall be approved or disapproved by said board at their first meeting after such report, and in case they disapprove the same, they may at once order another division and appraisement, should they deem it best. Where the board of supervisors approve, the county auditor shall make and keep a record of such division, appraisement, and approval.

Appraisement.

Board may disapprove.

Sale of five hundred thousand acre grant. R. § 1971.

SEC. 1846. Whenever the board of supervisors shall offer for sale the sixteenth section, or lands selected in lieu thereof, or any portion of the same, or any part of the five hundred thousand acre grant, the county auditor shall give at least forty days' notice by written or printed notices posted in five public places in the county, two of which shall be in the township in which the land to be sold is situated; and also to publish a notice of said sale for four weeks preceding the same, in a newspaper should one be published in the county; if there is none published in said county, then in some newspaper authorized by the board of supervisors; and he shall describe the land to be sold, and state the time and place of sale; then at such time and place, or at such other time and place as the sale may be adjourned to, he shall offer to the highest bidder, subject to the provisions of this chapter, and shall sell either for cash, or one-third cash, and the balance on a credit not exceeding ten years, with interest on the same at the rate of ten per cent. per annum; said interest to be paid at the office of the county treasurer of said county, on the first day of January in each year; but in no case shall the land so offered be sold for less than its appraised value; nor shall any member of the board of supervisors, or county auditor, township trustee, or any person who was engaged in the division and appraisement of said land, be, directly or indirectly, interested in the purchase thereof; and any sale made where such parties, or any of them, are so interested shall be void and of no effect.

Notice of given.

Sale adjourned.

Ten years credit.

Minimum price of. C. 29, § 1, 13 G. A.

SEC. 1847. No school lands shall be sold for less than the minimum price of six dollars per acre, except as hereinafter provided, and in no case for less than the amount at which it has been appraised.

Pre-requsites of sale Same, § 2.

SEC. 1848. No school lands of any kind shall be sold until there shall be at least twenty-five legal voters resident in the congressional township in which said school land is situated, and in a fractional township of less than thirty-six sections the num-

ber of voters residing therein, must have at least the same ratio to twenty-five as the number of sections, or parts of sections, in said township has to thirty-six, which fact in all cases must be shown to the satisfaction of the board of supervisors.

When offered and there is no sale. Same, § 3.

SEC. 1849. Where the board of supervisors of any county shall have once, at least, offered for sale any school lands in compliance with the requirements of section eighteen hundred and forty-five, and eighteen hundred and forty-six of this chapter, and are unable to sell the same for the minimum price of six dollars per acre, and, if in the opinion of said board, it is for the best interests of the school fund that the same be sold for a less price, then said board may instruct the auditor of said county to transmit by mail or otherwise to the register of the state land office, a certified copy of the proceedings of said board of supervisors in relation to the order of sale of said land, and subsequent proceedings in relation thereto, including the action of the township trustees, and the price per acre at which said land shall have been appraised, which transcript the register of the state land office shall submit to the executive council; and if a majority of said council, including the register, shall approve of the sale of said land for less than the minimum price of six dollars per acre, then the register shall certify such approval to the auditor of the county from whence said transcript came, which certificate shall be transcribed in the minute book of the board of supervisors of said county, and, thereupon, said land may again be offered and sold to the highest bidder, as provided in section eighteen hundred and forty-six of this chapter without being again appraised; but in no case under the provisions of this section, shall any school land be sold for less than one dollar and twenty five cents per acre.

Copy of proceedings sent to register of land office.

Submitted to executive council.

Again offered.

Sale of lands bid in on execution. C. 78, § 2, 12 G. A. C. 29, § 5, 13 G. A.

SEC. 1850. When any lands have been bid in by the state in behalf of the school fund, on execution founded on a judgment in favor of said fund, such land shall be sold in the same manner as other school lands. Whenever any such lands shall have been conveyed to the counties in which the same are situated for the use of the school fund, instead of to the state as required by law, such conveyance shall be considered valid and binding, and on the proper certificates being made as hereinbefore provided, patents shall be issued to the purchasers of said lands in like manner as in cases where the conveyances were made to the state for the use of the school fund.

Patent to issue when payment made. R. § 1972. C. 148, § 12, 9 G. A.

SEC. 1851. When any purchaser shall pay the full amount of his purchase money at the time of purchase, or, whenever full payment shall be made for lands previously purchased belonging to the school fund, the auditor shall forthwith issue a certificate of that fact, which shall be transmitted to the state land office and entitle the purchaser to a patent which shall be issued by the governor.

Contracts to be reduced to writing and recorded. R. § 1973.

SEC. 1852. In case the lands are purchased upon a partial credit as hreinbefore provided, the contract shall at once be reduced to writing, signed by the parties, and recorded in the office of the recorder, after which it shall be filed in the office of the county auditor, and during the continuance of such contract,

it shall be lawful for such purchaser, his heirs, or assignees, 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.

Supervisors may refuse to sell on credit or may exact security. R. § 1974.

SEC. 1853. When, in the judgment of the board of supervisors, any school lands are of such a character that a sale upon partial credit would be unsafe or incompatible with the interest of the school fund, and especially in the case of timbered lands, the board of supervisors may, in their discretion, exact the whole of the purchase money in advance; or, if they sell such land upon a partial credit as hereinbefore prescribed, they shall require good collateral security for the payment of the purchase money upon which credit is given.

When failure is made to pay principal or interest. R. § 1975.

SEC. 1854. Whenever any purchaser of any school lands, sold under the provisions of this chapter upon a partial credit, or any person to whom a portion of the school fund has been loaned, fails to pay the interest upon the amount due the school fund from him on the first day of January, and such payment is not made within six months thereafter, then the entire amount, both of principal and interest, owing to the school fund from such person, shall be deemed to have become due, and the county auditor shall report the name of the delinquent, together with the sum total due from such delinquent, to the district attorney of his judicial district, who shall immediately commence suit for the collection of the amount thus reported. The provisions of this section, in so far as they provide for the principal owing for the purchase of school lands, or for money borrowed from the school fund becoming due and being collected at an earlier day than that stipulated in the contract upon failure to pay the interest, are hereby declared to be a part of every contract made under and by virtue of this chapter, whether expressed in such contract or not.

Whole becomes due.

ditor.

What deemed part of contract.

Same as to university funds. R. § 1979.

SEC. 1855. The provisions of the last section shall be of force as far as applicable, to all cases where land is purchased or money borrowed from the university fund, and, in case of delinquency as provided for in said section, the treasurer of the state university shall make the report therein required to the district attorney of the district where the party so purchasing or borrowing resides, or where the real estate given as security for said purchase or loan is situated.

Lands taxable from date of contract. R. § 1976.

SEC. 1856. All school lands, the sale of which is provided for under this chapter, shall be subject to taxation from and after the execution and delivery of the contract to the purchaser.

Waste: punished R. § 977.

SEC. 1857. All contracts relative to the sale of school lands provided for in this chapter, shall be subject to such laws as now are, or may hereafter be in force relative to the prevention or punishment of waste.

Township trustees: duty as to waste. R. § 1978.

SEC. 1858. The township trustees in each township, shall see that no waste be committed upon any schools lands lying in their township, and in case any such waste be attempted, they shall apply by petition to the district or circuit court, or to any judge thereof, for an injunction to stay waste, and the same, if granted, shall be without bond. The court may make such order in the premises as shall be equitable and calculated to secure the school

Injunction.

lands from waste or destruction, and may adjudge damages against the party for injuries done in such cases; the costs shall abide the event of the suit, and the damages shall be paid to the county treasurer and constitute a part of the permanent school fund.

Damages and costs.

SEC. 1859. When, in the opinion of the board of supervisors, it may be necessary to have a portion of the school lands within their county surveyed, they may employ the county surveyor for the purpose, who shall be paid out of the county treasury upon proof made of the request and performance of the service.

Supervisors may have survey made. R. § 1980.

FUNDS AND SECURITIES.

SEC. 1860. The several boards of supervisors shall hold and manage the securities given to the school fund in their respective counties, and also all judgments and lands therein belonging to said fund for the use of said fund; and to that end such counties shall have power to sue in their own name, for the use of said fund, either by the district attorney, or such other attorney as such board shall select, and to do all other acts in relation to the same necessary for the protection of said fund, and such counties shall be severally liable for all losses upon loans of such fund made in such county. But any county may discharge itself from any liability in any case wherein its liability is not made absolute by sections eighteen hundred and eighty-one, and eighteen hundred and eighty-two of this chapter, by showing that the alleged loss was not incurred by reason of any default of its officers or by taking insufficient or imperfect securities. The state auditor shall examine and adjust any claim by a county for exemption from liability under the foregoing proviso, upon proof in writing submitted to him in behalf of the county, within three months after he shall notify the county auditor of his readiness to receive it. In the absence of such proof, or, if the same is insufficient, the state auditor shall charge the amount of such loss against the county as a final adjustment. If found sufficient, he shall present the facts thereof in his report to the general assembly next ensuing.

To manage school fund. C. 148, § 1, 9 G. A. C. 68, 14 G. A.

Counties liable for losses.

How discharged.

Final adjustment.

SEC. 1861. The permanent school fund shall be loaned out as hereinafter provided, as the same may come into the hands of the county treasurer, but no loan to any one person or company shall exceed the sum of five hundred dollars, nor shall any loan of the school fund be made to the county auditor, treasurer, or to any member of the board of supervisors. Said loans shall not be made for a shorter time than one year, nor for more than five years.

Fund loaned: conditions and terms. R. § 1981.

SEC. 1862. The payment of the money thus borrowed, together with the interest thereon at the rate of ten per cent. per annum, shall be secured by promissory notes executed by the party borrowing, together with two good sureties, and by mortgage on unencumbered real estate, which, exclusive of any buildings, is appraised by the appraisers hereinafter provided for at double the value of the amount of money loaned; which real estate must be situated in the county where such loan is made.

How secured: interest. R. § 1982. C. 4, 13 G. A.

Real estate offered as security appraised. R. § 1985.

SEC. 1863. The value of real estate offered as security for money loaned as herein provided, shall be fixed by three appraisers under oath, who shall be selected by the county auditor, and, in making the valuation provided for, the appraisers shall not take into consideration any buildings that may be on the land; said appraisers shall be allowed for their services the sum of fifty cents each, to be paid by the party borrowing, and the party borrowing shall pay for recording the mortgage given to secure such loan.

Costs.

LOANS.

Loan of permanent fund by county auditor. R. § 1984.

SEC. 1864. When any person desires to borrow from the permanent school fund, he shall apply to the county auditor, and if, in the opinion of said auditor, it would be to the interest of the school fund to grant such application, he shall order the necessary papers to be made out to secure the amount thus to be borrowed, as required by sections eighteen hundred and sixty-two and eighteen hundred and sixty-three of this chapter. When the same are made out, they shall be presented to said auditor, who shall, if he approves the same, endorse thereon, "accepted," and sign his name below the same, and he shall examine the title to any real estate offered as security, and make and preserve an abstract of such title, which shall be certified by him and submitted to the board of supervisors at the first meeting thereafter; he may charge a fee not to exceed two dollars for his services in making such abstract of title, to be paid by the party borrowing. He shall then give to the party borrowing a copy of the promissory note, certifying over his hand and official seal, that it is a correct copy of the same, which, together with a mortgage securing it, has been filed in his office, and upon the parties presenting said certificate to the treasurer, he shall pay the amount specified in said copy of note out of the permanent school fund in his possession, and retain the said certified copy as his voucher. The said auditor shall file the original note in his office, and also the mortgage after having it recorded.

Title examined.

Fee.

Auditor to certify.

County treasurer to pay.

Assessed value to govern amount of loan. C. 148, § 14, 9 G. A.

SEC. 1865. In all cases where the county auditor is required to take mortgages upon real estate as security for money borrowed, and upon the return of the appraisers thereof, the said auditor shall examine the assessment of the said land for the year previous, and should the said appraisal be higher than the said assessment, shall take the security upon one-half of the assessed valuation thereof.

Auditor make report to supervisors of loans made R. § 1985.

SEC. 1866. At each meeting of the board of supervisors, the auditor shall make a full statement of all money received for and loaned out of the school fund under his control, and shall also submit for their examination all notes, mortgages, and abstracts of title connected with the school fund which have come into his possession since their last meeting. Said board, at the first meeting after such report and papers are submitted to them, shall either approve or disapprove of each loan made by said auditor. Should they disapprove of any loan or security thus reported, they may require the party borrowing to give additional security

Disapproval.

Additional security.

within thirty days; and in case of failure so to do, the entire amount, both of principal and interest, owing to the school fund, shall be deemed to have become due, and the district attorney shall be directed immediately to collect the same; and in such case, should it be found impossible to collect the entire amount due, and the security prove insufficient, then the county auditor and his bondsmen shall be liable for the deficiency. The provision herein contained with regard to principal and interest becoming due on the failure to give additional security when required for money borrowed from the school fund, is hereby declared to be a part of every contract made under and by virtue of this chapter, whether expressed in the contract or not.

Whole amount due.

Auditor responsible.

Part of contract.

SEC. 1867. When any person desires to pay either principal or interest due the school fund, he shall obtain a certificate from the county auditor specifying the amount due from such person to the school fund, stating whether it is principal or interest, or both, and setting forth distinctly the amount of each. Upon the presentation of which certificate to the county treasurer, the treasurer shall receive the amount so specified from the person presenting the certificate, and shall endorse on said certificate the date and his name, and upon the return to the auditor of such certificate so endorsed, the party returning it shall have a receipt from him for the amount so paid.

How paid: auditor to certify amount due. R. § 1866.

Money paid to treasurer.

SEC. 1868. Whenever any portion of the school fund has been loaned upon real estate security, upon which exists a prior encumbrance other than for taxes, the board of supervisors shall have authority, in their discretion, if they deem it necessary to remove said prior encumbrance in order that said fund may ultimately realize the money upon said loan, to appropriate so much money out of the school fund, if any there be within said county, as shall be necessary to remove said encumbrance; *provided*, said encumbrance shall not exceed one-half the actual cash value of said real estate.

Supervisors may pay prior encumbrances. C. 148, § 2, 9 G. A.

GENERAL PROVISIONS.

SEC. 1869. The board of supervisors may, by resolution, assign without recourse any school fund claim to any person having a subsequent lien on the premises affected by such claim, upon the full payment of the amount due the said fund, but not otherwise.

Supervisors may assign claims due fund. C. 118, § 4, 10 G. A.

SEC. 1870. Such board may, when deemed necessary, employ some competent person to examine the securities aforesaid, make abstracts of titles to the lands mortgaged, and make out complete statements thereof for such boards, and under the direction of said boards, or committee thereof, to procure the renewal of such notes and mortgages, when demanded by persons entitled thereto, upon such terms as to time and security in all respects as in making new loans. And such agent may, with the consent of said board or committee, take from any person responsible for any loan, any additional security by way of bond or mortgage, or both, in cases where the property mortgaged is inadequate security for

May employ agents to examine securities and make abstracts of titles. C. 148, § 3, 9 G. A.

Additional security.

the sum loaned, and the applicant shall pay up all interest and procure the written consent of the securities on the note; but in all cases of the continuance of loans, as well as in cases of new loans, abstracts of title shall be presented and filed with the mortgage, which shall show that the title to the mortgaged premises is in the mortgagor, free and clear of any encumbrance or debt.

Upon payment of interest principal reloaned. Same, § 4.

SEC. 1871. Any person responsible to the school fund for any part of the principal thereof, who shall promptly pay all interests and costs, if any, thereon, whether the same may be rendered into a judgment or not, shall be permitted to borrow such principal upon complying in all respects with the requirements of law relating to new loans.

Auditor to publish notice when money is due. Same, § 5.

SEC. 1872. Every county auditor in whose county there are outstanding contracts on the sale of school lands, which are due, shall immediately publish a notice requiring all persons holding any such lands, to at once pay up the amount due thereon, or otherwise make satisfactory arrangements for an extension of time. He shall also give a like notice to all mortgagors to said fund on whose notes either principal or interest is due. Such notices shall be printed for four weeks in a newspaper published in the county, if there be one; if there be none, then in such newspaper published in this state as will be most likely, in the opinion of said auditor, to give notice to all concerned; and a copy of such notice shall be posted for the same time at the outer door of the building in which the last district court in said county was held.

Suit brought to enforce collections. Same, § 6.

SEC. 1873. In case the person holding lands so contracted or mortgaged shall neglect to pay the sums due thereon, or make an arrangement for an extension of time within three months from the first publication of such notice, the board of supervisors may cause suit to be brought and prosecuted with the utmost diligence to secure said fund, and in any action in favor of a county for the use of the school fund, an injunction may issue without bond, and in any such action, where service is made by publication, default and judgment may be entered and enforced without the bond required of individuals. In all such suits the court shall give the plaintiff, as a part of the costs, such an amount as will be a sufficient compensation for the plaintiff's attorney in the case.

Injunction.

Attorneys' fee taxed as part of the costs.

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of

SEC. 1874. In case of sales of lands on execution founded on any such mortgage or contract, the attorney for said board, or other person authorized by said board, shall bid on behalf of the state or county, as the case may be, for the use of said fund, such sum as the interests of said fund may require, and if struck off to the state, the same shall be held and disposed of in all respects the same as other lands belonging to said fund, except as hereinafter provided.

Contracts and notes made payable to county. Same, § 8.

SEC. 1875. All contracts, notes, and mortgages given to said fund shall be made payable to the county controlling them, but no such contracts, notes, or mortgages shall be invalid because they are made payable to any other payee, but the same shall be deemed and taken to belong to said county for the use of said fund, and suits may be maintained thereon in the name of the said

county, with the same effect as if they were drawn payable to the said county.

Treasurer to keep accounts, distinguishing between principal and interest. R. § 1990.

SEC. 1876. Each county treasurer shall, immediately upon receiving or paying out any moneys belonging to the school fund, enter a correct account thereof on proper books kept by him for the purpose in all cases where money is received, distinguishing between principal and interest, and shall keep an account showing all money due the school fund, whether principal or interest, and designating the amount of each and from whom due, and his books shall at all times present a clear and intelligible statement of the school fund in his hands. Said books shall at all times be open to the inspection and examination of any householder or tax-payer in the county.

Auditor to keep accounts with fund and treasurer. R. § 1991.

SEC. 1877. Each county auditor shall keep in his office, in books provided for that purpose, an account to be known as the school fund account, in which he shall enter all notes, mortgages, bonds, and assets of every kind and description which may come into his hands, and he shall open accounts with the county treasurer in which he shall charge him with all money in his hands at the time such account is opened, and also with all money which may thereafter be paid to him, as shown by the certificates duly endorsed as hereinbefore provided for, distinguishing between principal and interest, which shall be kept in distinct accounts; and shall, on the third Monday in May, the first Monday of October, and the third Monday of December, in each and every year, make a complete settlement of the school fund account with the county treasurer, from the time of the last settlement, and at each regular meeting of the board of supervisors, he shall submit a full report of his last settlement with the county treasurer, and also of all notes, mortgages, bonds, and assets of every kind and description which have come into his hands since the last meeting of the board.

To make their yearly settlements.

To make report.

Penalty for failure of duty by auditor or treasurer. R. § 1992.

SEC. 1878. Any county treasurer, or auditor, failing or neglecting to perform any of the duties which are required of him by the provisions of this chapter, shall be liable to a fine of not less than one hundred dollars nor more than five hundred dollars, to be recovered in an action brought in the district court by the board of supervisors, the judgment to be entered against the party and his bondsmen and the proceeds to go to the school fund.

Time to pay given. R. § 1993.

SEC. 1879. Whenever it shall be evident to the board of supervisors, that the interest of the school fund will be endangered by immediate prosecution of any mortgage, or the sale of mortgaged premises, they may give such reasonable time as they may deem for the best interests of the school fund.

Lapse of time no bar to suit. C. 148, § 13, 9 G. A.

SEC. 1880. Lapse of time shall in no case bar any action brought, or to be brought, on any contract for any part of the school fund, nor shall such lapse of time prevent the introduction of evidence in any such action, any provision of this code to the contrary notwithstanding.

COUNTIES RESPONSIBLE.

Supervisors to control school fund: mortgages foreclosed at expense of county: losses made good by. C. 34, § 3, 14 G. A.

SEC. 1881. On and after the first day of January, A. D. 1874, the board of supervisors of the several counties shall have sole control and management of all loans on mortgages then held or thereafter made, and shall, when necessary, have them foreclosed at the expense of the county; and any losses sustained or gains realized upon foreclosures and re-sales of mortgaged property, shall be made good by or enure to the benefit of the county as the case may be; *provided, however*, that upon a foreclosure of contracts, when the land is bid in by the county, the auditor of state, as soon as notified by the county auditor that the foreclosure has been effected and the lands bid in, shall give the county credit for the original amount of the notes remaining unpaid; and on being notified by the county auditor that a re-sale has been effected, he shall charge the county with the full amount of re-sale; but when the land is purchased by a third party on the foreclosure for a less amount than due on the contract notes, the loss shall be sustained by the county. County auditors shall report annually on the first day of January, the amounts of all sales and re-sales of the sixteenth section, five hundred thousand acres grant, and escheated estates made the year previous; and the auditor of state shall charge up the same to said counties, and also charge interest on the same from the date of said sales or re-sales, at the rate of eight per cent. per annum.

Auditor of state to charge counties interest at eight per cent. Same, 4.

SEC. 1882. On and after the first day of January, A. D. 1874, the auditor of state shall charge up to each county having permanent school fund under its control, interest on the whole amount in said county, at the rate of eight per cent. per annum, semi-annually, on the first day of January and July of each year, which amount so charged shall become due and payable on the first day of January and July of the year following, and be embraced in the semi-annual apportionment of interest collected for the year eighteen hundred and seventy-five and each year thereafter, and shall be deemed the whole amount due from each county on account of interest accrued subsequent to the first day of January, eighteen hundred and seventy-four. Any surplus of interest collected over the eight per cent. charged to the counties, shall be paid into the county treasury for the benefit of the county. If any county should fail to collect the full amount of interest due the state, the deficiency shall be advanced from the county treasury, and if any county becomes delinquent in the payment of the full amount of interest due the state, the auditor of state shall charge to and collect from such county a penalty of one per cent. per month on the amount delinquent until paid.

Surplus interest paid county treasurer. Delinquency: enalty.

When funds cannot be loaned: transfer of made. Same, § 5.

SEC. 1883. Whenever there are funds belonging to the permanent school fund in any county amounting to one thousand dollars that cannot be loaned according to law, the county auditor may certify the fact to the auditor of state, who shall order a transfer of said funds to some other county, or counties, where, in his opinion, it can be loaned readily. Upon such transfer being made, the auditor of state shall give the county making the

transfer credit for the amount transferred, and shall charge the county or counties to which the transfer is made with the amount transferred, and shall afterwards charge interest on the actual amount in possession of each county.

SEC. 1884. The county auditors shall continue to report to the auditor of state, semi-annually as now required by law, the amount of interest collected and which accrued previous to the first day of January, A. D. 1874, until the amount of interest due up to that date has been collected. The amount collected from time to time shall be added to the semi-annual apportionment of interest heretofore provided for. The county auditor shall also embrace in said reports, in the year eighteen hundred and seventy-five and thereafter, the amount of interest collected and which accrued subsequent to the first day of January, eighteen hundred and seventy-four, in a separate item.

County auditors to report to auditor of state semi-annually. Same, § 6.

CHAPTER 13.

OF THE STATE LIBRARY.

SECTION 1885. The governor, judges of the supreme court, secretary of state, and superintendent of public instruction, shall, by virtue of their office, constitute a board of trustees of the state library, of which the governor shall be president.

Trustees of. C. 92, § 1, 14 G. A.

SEC. 1886. The said trustees shall have full power to make and carry into effect such rules and regulations for the superintendence and care of the books, maps, charts, papers, and furniture contained in the state library, and for the arrangement and safe keeping of the same as they may deem proper.

Powers of. Same, § 2.

SEC. 1887. The said trustees shall provide in their rules and regulations, that any member of the general assembly, any member or attorney of the supreme court, during the sessions of the same, the judges and attorneys of the courts of the United States, and the heads of departments of state, shall be permitted, under proper restrictions, penalties, and forfeitures, to take from the library any books, excepting such as the trustees shall determine ought not to be removed therefrom; but none of such persons shall be allowed to take such books or property from the library without executing a receipt therefor, nor to retain the same more than ten days at a time.

Who entitled to books: term limited. Same, § 3.

SEC. 1888. No books or other property shall be removed from the seat of government, and no person shall be entitled to take from the library more than two books at the same time; *provided*, that during the terms of the supreme court of the state, or the federal courts, the judges and attorneys of said courts may be permitted to take and use any number of books needed on the trial of causes, but such books shall not be taken from the seat of government, and shall be returned according to law.

Prohibition: judges and attorneys. Same, § 4.

Kept open. Same, § 5.

SEC. 1889. The state library shall be kept open every day during the sessions of the general assembly and the supreme court, and during such other days as the trustees shall direct, and during such hours as shall be determined by the trustees.

Librarian to have custody of: bond of. Same, § 6.

SEC. 1890. The state library shall be in the custody of the state librarian, who shall be appointed by the governor, and who shall hold the office for the term of two years, commencing on the first day of May, and until his successor shall be appointed and qualified. Before entering upon the duties of his office, he shall give a bond with good and sufficient surety, in the penal sum of five hundred dollars, in such form as the governor shall approve, conditioned for the performance of all the duties required of him by law, and for the observance of all the rules prescribed by the trustees of the library.

Duties of. Same, § 7.

SEC. 1891. The librarian shall give his personal attendance upon the library during the hours it shall be directed to be kept open, and shall perform such duties as shall be imposed on him by law or shall be prescribed by the rules and regulations of the trustees.

Prepare catalogue. Same, § 9.

SEC. 1892. The librarian shall prepare a complete alphabetical catalogue of the library, number the books therein, and report the same to the governor, who shall cause the same to be published for the use of the library.

Books labelled and marked. Same, § 10.

SEC. 1893. The librarian shall cause each book in the library to be labelled with a printed label to be pasted on the inside of the cover, with the words, "Iowa State Library," with the number of the volume in the catalogue of said library inscribed on said label, also to write the same words at the bottom of the thirtieth page of each volume. All books that may hereafter be added to the library shall be labelled in the same manner, and entered on the catalogue, immediately on their receipt, and before they can be taken therefrom.

Report to governor. Same, § 11.

SEC. 1894. The librarian shall make report to the governor five days before the adjournment of any session of the general assembly, of the number of books that have been taken out of the library by the members, giving the names of all members that have any books at the date of such report, with the name and number of such book.

Fines and penalties. Same, § 12.

SEC. 1895. All fines, penalties, and forfeitures, imposed by the rules and regulations of the library for any violation of such rules and regulations, may be recovered in any proper action or proceeding in the name of the state, before any court of competent jurisdiction; and all such fines, penalties, forfeitures, and recoveries shall be applied to the use of the library, under the direction of the trustees.

Penalty for injuring or destroying books. Same, § 13.

SEC. 1896. Any person injuring, defacing, destroying, or losing a book, shall pay to the librarian twice the value of the book, and, if it be one of a set, he shall be liable to pay the full amount of the value of the set, and the librarian shall prosecute such person on such liability; *provided*, that if such person shall within a reasonable time replace the book so injured or lost, he shall not be liable under this section.

SEC. 1897. The librarian shall report to the governor, whenever required, a list of books and other property missing from the library, an account of fines and forfeitures imposed and collected, and the amount uncollected, a list of the accessions to the library since the last report, and all other information required by the governor. He shall also make a full and specific report to the general assembly on the first day of its regular sessions. Report to governor and general assembly. Same, § 14.

SEC. 1898. The librarian is hereby authorized to deliver to each college, incorporated academy, public library, and literary institution of this state, having a number of books not less than three hundred volumes, one copy of the compiled or revised statutes, one copy of the session laws of each general assembly, one copy of the journals of the senate and house of representatives of each session, one copy of all documents printed by order of the general assembly of this state; *provided*, that twenty-five copies of each of said documents and books be retained in the state library. Distribution of books and documents. Same, § 15.

SEC. 1899. There is hereby appropriated, out of any money in the state treasury not otherwise appropriated, the sum of one thousand dollars, annually, to be expended by the board of trustees in the purchase of books for the library. Appropriation for. Same, § 16.

CHAPTER 14.

OF THE STATE HISTORICAL SOCIETY.

SECTION 1900. There is hereby annually appropriated, until the legislature shall, by law, otherwise direct, to the state historical society at Iowa City, in connection with and under the auspices of the state university, the sum of five hundred dollars, to be expended by that society in collecting, embodying, arranging, and preserving in authentic form, a library of books, pamphlets, maps, charts, manuscripts, papers, paintings, statuary, and other materials illustrative of the state of the history of Iowa, to rescue from oblivion the memory of its early pioneers, to obtain and preserve varieties of their exploits, perils, and hardy adventures; to secure facts and statements relative to the history, genius, and progress or decay of our Indian tribes; to exhibit faithfully the antiquities, past and present resources of Iowa; also to aid in the publication of such of the collections of the society as the society shall from time to time deem of value and interest; to aid in binding its books, pamphlets, manuscripts, and papers, and in paying other necessary and incidental expenses of the society. Appropriation for: for what purposes expended. R. § 1959.

SEC. 1901. The board of curators of said society at Iowa City shall consist of eighteen persons, of whom nine shall be appointed by the governor of the state, and nine elected by the members of the society. The term of office of said curators shall be two years, except as provided in the next section, and they Board of curators: how appointed: annual meeting of. C. 109, § § 1, 2, 14 G. A.

shall receive no compensation for their services. The curators appointed by the governor, shall be appointed on or before the last Wednesday in June in each even-numbered year, and their term of office shall commence on that day. And at the annual meeting of said historical society, held next before the last Wednesday in June in each odd-numbered year, there shall be elected by ballot from the members of the society nine curators for the term next ensuing.

Members admitted. Same, § 3.

SEC. 1902. The members of said society may be admitted at any time under the rules now in force, or such other rules as may hereafter be adopted by the board of curators.

Annual meeting: when and where held. Same, § 4.

SEC. 1903. The annual meeting of the society shall be held at Iowa City, on the Monday preceding the last Wednesday in June of each year.

Officers: term and duties. Same, § 5.

SEC. 1904. The board of curators shall choose, annually, or oftener if need be, a corresponding secretary, recording secretary, a treasurer, and a librarian, who shall be selected from the members of the historical society outside of their own number, and shall hold office for one year, unless sooner removed by a vote of the board. Said officers shall be officers of the society as well as of the board of cu.ators, and their respective duties shall be determined by said board. No officer of the society or of the board shall receive any compensation from the state appropriation to the society.

President. Same, § 6.

SEC. 1905. The board of curators shall also choose from their own number a president, who shall be the executive head of the board, and shall hold his office for one year, and until his successor is elected.

Residence of curators: quorum: powers: report of. Same, § 7.

SEC. 1906. The curators, a majority of whom shall reside in the vicinity of the state university, and five of whom shall constitute a quorum, shall be the executive department of the society, and shall have full power to manage its affairs. They shall keep a full and correct account of all their doings, and of the receipt and expenditure of all funds collected or granted for the purpose of the society, and shall report the same annually to the governor, on or before the fifteenth day of December, as required by law of other state institutions.

Books delivered to. Same, § 8.

SEC. 1907. There shall be delivered to said society, twenty bound copies of the reports of the supreme court, and of all other books and documents published by the state, or at its order, for the purpose of effecting exchanges with similar societies in other states and countries, and for the preservation in its library, and the other purposes of the society.

PART SECOND.

PRIVATE LAW.

TITLE XIII.

OF RIGHTS OF PROPERTY.

CHAPTER 1.

OF RIGHTS OF ALIENS.

SECTION 1908. Aliens, whether they reside in the United States or any foreign country, may acquire, hold, and enjoy property, and may convey, devise, mortgage, or otherwise encumber the same, in like manner and with the same effect, as citizens of the state.

May acquire, hold, and dispose of property. C. 93, § 1, 12 G. A.

SEC. 1909. The title to any land heretofore conveyed or transferred by devise or descent, shall not be questioned or in any manner affected by reason of the alienage of any person through whom such title may have been derived.

Retroactive. Same, § 3.

CHAPTER 2.

OF TITLE IN THE STATE OR COUNTY.

SECTION 1910. Whenever, to secure the state or county therein from loss, it shall become necessary to take real estate on account of a debt, either by bidding off the same at a sale on

When vested in state or county valid. C. 32, § 2, 9 G. A.

execution or otherwise, the conveyance thereof to the state, or to any county, shall vest in such grantee asc omplete a title as if such grantee were an actual person.

May purchase when sold on execution. Same, § 1.

SEC. 1911. The proper person to bid off such real estate shall be:

1. The attorney general, or the proper district attorney, in case the judgment is in the name of the state, and the proceeds thereof are payable into the state treasury;

2. In case the proceeds of the judgment are, by law, payable into the county treasury for the use of the county revenue, or the school or other fund of the county, the district attorney of the district, or the president of the board of supervisors of the county, or any attorney employed or authorized by the board of supervisors to prosecute such claim.

To be appraised: amount of bid. C. 110, § 1, 11 G. A.

SEC. 1912. In all cases where property is sold as above provided, it shall first be appraised in the manner provided by law for the appraisement of property levied on under execution, and the said officers shall bid upon and purchase said property for the lowest sum possible. If no other person shall bid therefor, they shall bid at least two-thirds of the appraised value thereof, or the full amount of the judgment and costs, if the same is less than two-thirds of such appraised value.

Costs and expenses paid by state or county. Same, § 3.

SEC. 1913. In cases where the state becomes the purchaser of real estate, under execution issued upon judgments rendered in favor of the state, all costs and expenses attending the same shall be audited and allowed by the executive council, and paid out of any money in the state treasury not otherwise appropriated, whenever such costs and expenses cannot be collected out of the defendent in such judgments, and if the property is purchased by a county, the costs and expenses in like cases shall be paid by such county.

Lands may be leased. C. 32, § 6, 9 G. A.

SEC. 1914. Whenever the state or any county holds any such lands undisposed of, it may, by its proper agent, lease and control the use of the same, as shall, in the opinion of the executive council, if belonging to the state, and the board of supervisors, if belonging to the county, be for the best interest of such owner; and the proceeds of such use shall belong to the fund to which the debt on which the land was taken belongs.

Buildings insured. C. 110, § 2, 10 G. A.

SEC. 1915. The officers invested with the control and management thereof, shall have full power, and shall keep any valuable buildings thereon insured against fire, for the benefit of the state or county, in some responsible insurance company or companies; and the expense of such insurance shall be paid out of the rents of such property or the proceeds thereof when sold.

When title vested in state: executive council to control. Same, § 3.

SEC. 1916. In any case where the title to any real estate is vested in the state as above provided, the executive council shall have the care, custody, and management thereof, and may sell the same for such sum and upon such terms as to them seems best, and may take such adequate security for any deferred payments as they see proper; and the proceeds of such sale shall be paid to the proper officer and credited to the fund to which the debt on which such real estate was taken belonged. A patent shall be issued to the purchaser of such real estate.

SEC. 1917. In cases where the title to any real estate is vested in any county as above provided, it shall be competent for the board of supervisors to sell and dispose thereof, as in their judgment shall be for the best interest of their county; if the same is sold on time for any part of the purchase money, the board shall require adequate security for the payment thereof besides the responsibility of the purchaser; and the proceeds of sales of all such lands shall belong to the fund to which the debt on which the land was taken belonged. When in county: supervisors to control. Same, § 4.

SEC. 1918. In case of any such sale and conveyance by such board of supervisors, the resolution making the sale shall be entered on the minutes of the board, and the yeas and nays on the passage thereof shall be also there entered with the date; such resolution shall express the consideration paid for such land, and such a description thereof as shall be necessary to make a deed therefor; and a transcript of such proceedings relating to said sales, the resolution and yeas and nays on its passage made and certified under the hand of the county auditor and the seal of the said board, shall be a sufficient deed of conveyance by the said county, and shall be entitled to be recorded or received in evidence without further proof. How conveyed by supervisors Same, § 8.

SEC. 1919. The state, or county, on selling such lands, may, at the option of the officer making such sale, execute a contract of sale, or an absolute conveyance thereof, and may take notes, mortgages, contracts, or other securities, payable to the grantor, which shall be as valid as if made to an actual person. Contract of sale and securities taken valid. Same, § 7.

CHAPTER 3.

OF PERPETUITIES AND LAND IN MORTMAIN.

SECTION 1920. 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. Disposition of property: when void. R. § 2199.

SEC. 1921. Church organizations occupying property granted to them by the territory or state of Iowa, may lease the same for business purposes, and occupy other property with their church edifice; *provided*, that all of the income derived from such leased property shall be devoted to maintaining the religious exercises and ordinances of the church to which the grant was originally made, and to no other purpose; and such church and its affairs shall remain in the control of a board of trustees regularly chosen in accordance with its charter; but property so leased, shall, in all cases, be subject to taxation the same as the property of individuals. Church organizations may lease: may be leased. C. 133, 13 G. A.

CHAPTER 4.

OF THE TRANSFER OF PERSONAL PROPERTY.

Conditional sales: when invalid. C. 68, 14 G. A.

SECTION 1922. No sale, contract, or lease, wherein the transfer of title or ownership of personal property is made to depend upon any condition, shall be valid against any creditor or purchaser of the vendee, or lessee in actual possession obtained in pursuance thereof, without notice, unless the same be in writing, executed by the vendor or lessor, acknowledged and recorded the same as chattel mortgages.

Mortgages of must be recorded. R. § 2281.

SEC. 1923. 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 the county where the holder of the property resides.

Recorder to keep entry book or index. R. § 2282.

SEC. 1924. The recorder 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, in the manner hereinafter provided in case of deeds for real property:

1. The mortgagors or vendors;
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.

To make note of day and hour of filing, etc. R. § 2283.

SEC. 1925. 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; and from the time of said entry, the sale or mortgage shall be deemed complete as to third persons, and have the same effect as though it had been accompanied by the actual delivery of the property sold or mortgaged.

Must record. R. § 2284.

SEC. 1926. 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.

Possession of mortgaged property. R. § 2217.

SEC. 1927. In the absence of stipulations to the contrary in the mortgage, the mortgagee of personal property is entitled to the possession thereof.

CHAPTER 5.

OF REAL PROPERTY.

Who seized. R. § 2207.

SECTION 1928. All persons owning lands not held by an adverse possession, shall be deemed to be seized and possessed of the same.

SEC. 1929. The term "heirs," or other technical words of inheritance, are not necessary to create and convey an estate in fee simple. Estate in fee simple. R. § 2208.

SEC. 1930. 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. Conveyance passes interest of grantor. R. § 2209.

SEC. 1931. 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. After acquired interest R. § 2210.

SEC. 1932. Adverse possession of real property does not prevent any person from selling his interest in the same. Adverse possession. R. § 2211.

SEC 1933. Estates may be created to commence at a future day. Future estates. R. § 2212.

SEC. 1934. 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. Declarations of trust.

SEC. 1935. A married woman may convey or encumber any real estate or interest therein belonging to her, and may control the same, or contract with reference thereto, to the same extent and in the same manner as other persons. Married women may convey as other persons. R. § 2215.

SEC. 1936. Every conveyance made by a husband and wife shall be deemed sufficient to pass any and all right of either in the property conveyed, unless the contrary appears on the face of the conveyance. When made by husband or wife: conveys title of both. R. § 2255.

SEC. 1937. In cases where either the husband or wife joins in a conveyance of real property owned by the other, the husband or wife so joining shall not be bound by the covenants of such conveyance, unless it is expressly so stated on the face thereof. Covenants: when binding.

SEC. 1938. In the absence of stipulations to the contrary, the mortgagor of real property retains the legal title and right of possession thereto. Mortgagor retains possession. R. § 2217.

SEC. 1939. Conveyances to two or more in their own right, create a tenancy in common unless a contrary intent is expressed. Tenancy in common. R. § 2214.

SEC. 1940. No vendor's lien for unpaid purchase money shall be recognized or enforced in any court of law or equity after a conveyance by the vendee, unless such lien is reserved by conveyance, mortgage, or other instrument duly acknowledged and recorded, or unless such conveyance by the vendee, is made after suit brought by the vendor, his executor, or assigns to enforce such lien. But nothing herein shall be construed to deprive a vender of any remedy now existing against conveyances procured through the fraud or collusion of the vendees therein, or persons purchasing of such vendees with notice of such fraud. Vendors lien.

CHAPTER 6.

THE CONVEYANCE OF REAL PROPERTY.

Instrument affecting recorded. R. § 2220.

SECTION 1941. 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 the county in which the land lies as hereinafter provided.

Same. R. § 2221.

SEC. 1942. It shall not be deemed lawfully recorded, unless it has been previously acknowledged or proved in the manner herein prescribed.

Recorder to keep index of records. R. § 2222.

SEC. 1943. The recorder must keep an entry book or index, the pages of which are so divided as to show in parallel columns:

1. The grantors;
2. The grantees;
3. The time when the instrument was filed;
4. The date of the instrument;
5. The nature of the instrument;
6. The book and page where the record thereof may be found;
7. The description of the land conveyed.

To make entries on instrument and in index. R. § 2223.

SEC. 1944. The recorder must endorse upon every instrument properly filed in his office for record, the time when it was so filed, and shall forthwith make the entries provided for in the 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 persons of the rights of the grantee conferred by such instrument.

Arranged alphabetically. R. § 2224.

SEC. 1945. The entries in such entry book, shall show the names of the respective grantors and grantees arranged in alphabetical order.

Must be recorded. R. § 2225.

SEC. 1946. 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.

Deeds of town lots recorded in separate books. R. § 2241.

SEC. 1947. The recorder shall record all deeds, mortgages, and other instruments affecting town lots in cities or villages, the plats whereof are recorded in separate books from those in which other conveyances of real estate are recorded.

TRANSFER AND INDEX BOOKS.

County auditor to keep. C. 61, §1, 11 G. A.

SEC. 1948. The county auditor shall keep in his office, books for the transfer of real estate, which shall consist of a transfer book, index book, and book of plats.

Form of. Same, § 2.

SEC. 1949. Said transfer book shall be ruled and headed substantially after the following form; and entries thereupon shall be in numerical order beginning with section one.

SECTION NO...., TOWNSHIP....., RANGE.....

Grantee.	Grantor.	Date of instrument.	Description.	Page of Plats.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

THE INDEX BOOK THUS.

NAMES OF GRANTEES.	PAGES OF TRANSFER BOOK.
.....	.....
.....	.....
.....	.....

SEC. 1950. The auditor shall so keep the book of plats as to show the number of lot and block, or township and range, divided into sections and sub-divisions as occasion may require, and shall designate thereon each piece of land or town lot, and mark in pencil the name of the owner thereon in a legible manner. Said plats shall be lettered or numbered so that they may be conveniently referred to by the memoranda of the transfer book, and shall be drawn on a scale of not less than four inches to the mile.

Book of plats: how ruled and kept. Same, § 3. C. 160, § 3. 12 G A.

SEC. 1951. Whenever a deed of unconditional conveyance of real estate is presented, the auditor shall enter in the index book, in alphabetical order, the name of the grantee, and opposite thereto the number of the page of the transfer book on which such transfer is made; and upon the transfer book he shall enter in the proper columns, the name of the grantee, the name of the grantor, date of instrument, the character of the instrument, the description of the property, and the number or letter of the plat on which the same is marked.

Entries by auditor in index and transfer book. C. 61, § 4, 11 G. A.

SEC. 1952. After the auditor has made the entries contemplated in the preceding section, he shall endorse upon the deed the following words: "Entered for taxation this.....day of .....A. D.....," with the proper date inserted and sign his name thereto.

Endorse deed. Same, § 6.

SEC. 1953. The recorder shall not file for record any deed of real property, until the proper entries have been made upon the transfer books in the auditor's office and endorsed upon the deed.

Cannot be filed for record until endorsed. C. 160, § 2. 12 G. A.

SEC. 1954. The auditor shall correct the transfer books from time to time, as he shall find them incorrect.

Auditor correct C. 61, § 8, 11 G. A.

ACKNOWLEDGMENT OF DEEDS.

Manner of in the state. R. § 2226.

SEC. 1955. Any deed, conveyance, or other instrument in writing, by which real estate in this state shall be conveyed or encumbered, if acknowledged within this state, must be so before some court having a seal, or some judge or clerk thereof, or some justice of the peace or notary public.

When out of, but in the U. S. R. § 2243.

SEC. 1956. When made or acknowledged out of this state but within the United States, it shall be acknowledged before some court of record or officer holding the seal thereof, or before some commissioner appointed by the governor of this state to take the acknowledgment of deeds, or before some notary public or justice of the peace; and, when made by a justice of the peace, a certificate under the official seal of the proper authority of the official character of said justice, and of his authority to take such acknowledgments and of the genuineness of his signature, shall accompany said certificate of acknowledgment.

When out of the U. S. C. 32, 14 G. A.

SEC. 1957. When made or acknowledged without the United States, it may be acknowledged before any embassador, minister, secretary of legation, consul, charge d'affaires, consular agent, or any other officer of the United States in a foreign country who is authorized to issue certificates under the seal of the United States. Said instruments may also be acknowledged or proven before any officer of a foreign country who is authorized by the laws thereof to certify to the acknowledgments of written documents; but the certificate of acknowledgment by a foreign officer must be authenticated by one of the above named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer, shall be deemed sufficient evidence of the qualification of said officer to take acknowledgments and to certify thereto, and of the genuineness of his signature or seal if he have any. All instruments in writing already executed in accordance with the provisions of this section, are hereby declared effectual and valid in law, and to be evidence in any court of this state.

Certificate of acknowledgment. R. § 2227.

SEC. 1958. The court or officer taking the acknowledgment, must endorse upon the deed or other instrument, 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 acknowledgment 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.

Proof of execution and delivery: how done. R. § § 2228, 2229.

SEC. 1959. Proof of the due execution and delivery of the deed or other instrument made before the court, or officer authorized to take acknowledgments, by one competent person other than the vendee or other person to whom the instrument is executed in the following cases:

1. If the grantor die before making the acknowledgment;

2. Or, if his attendance cannot be procured;

3. Or, if having appeared, he refuses to acknowledge the instrument.

SEC. 1960. The certificate endorsed by them upon the deeds thus proved must state:

Certificate: what must state. R. § 2230.

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 or other instrument;

3. The names of the witnesses by whom proof was made, and that it was proved by them that the instrument was executed and delivered by the person whose name is thereunto subscribed as a party.

SEC. 1961. The certificate of proof or acknowledgment as aforesaid, may be given under under seal or otherwise, according to the mode by which the courts or officers granting the same, usually authenticate their solemn and formal acts.

Same. R. § 2231.

SEC. 1962. The execution of any deed, mortgage, or other instrument in writing, executed by any attorney in fact, may be acknowledged by the attorney executing the same.

Acknowledgment by attorney in fact. R. § 2251.

SEC. 1963. The court or person taking the acknowledgment, must endorse upon such instrument a certificate setting forth the following particulars:

Certificate of. R. § 2252.

1. The title of the court or person before whom the acknowledgment was taken;

2. That the person making the acknowledgment 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 subscribed to the instrument as attorney for the grantor or grantors therein named, or that such identity was proved to him by at least one credible witness to him personally known and therein named;

3. That such person acknowledged said instrument to be the act and deed of the grantor or grantors therein named by him as his or their attorney thereunto appointed, voluntarily done and executed.

SEC. 1964. Any officer, who knowingly mistates a material fact in either of the certificates above contemplated, shall be liable for all damages caused thereby, and 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 endorsed.

Penalty for making false certificate. R. § 2252.

SEC. 1965. Any court or officer having power to take the proof above contemplated, may issue the necessary subpœnas, and compel the attendance of witnesses residing within the county by attachment if necessary.

Subpœnas. R. § 2223.

CONVEYANCES LEGALIZED.

SEC. 1966. All deeds and conveyances of lands lying and being within this state heretofore executed, and which said deeds

When acknowledged in accordance with the laws of other states. C. 110, § 1, 14 G. A.

have been acknowledged or proved according to and in compliance with the laws and usages of the state, territory, or country in which said deeds or conveyances were acknowledged and proved, are hereby declared effectual and valid in law to all intent and purposes as though the same acknowledgments had been taken or proof of execution made within this state and in pursuance to the acts and laws thereof; and such deeds so acknowledged or proved as aforesaid, may be admitted to be recorded in the respective counties in which such lands may be, anything in the acts and laws of this state to the contrary thereof notwithstanding; and all deeds and conveyances of lands situated within this state, which have been acknowledged or proved in any other state, territory, or country, according to and in compliance with the laws and usages of such state, territory, or country, and which deeds or conveyances have been recorded within this state, be and the same are hereby confirmed and declared effectual and valid in law to all intents and purposes as though the said deeds or conveyances, so acknowledged or proved and recorded, had, prior to being recorded, been acknowledged or proved within this state.

When recorded prior to 30th April, 1872. Same, § 2.

SEC. 1967. That the acknowledgments of all deeds, mortgages, or other instruments in writing, taken and certified previous to the thirtieth day of April, A. D., 1872, and which have been duly recorded in the proper counties in this state, be and the same are hereby declared to be legal and valid in all courts of law and equity in this state or elsewhere, anything in the laws of the territory or state of Iowa in regard to acknowledgments to the contrary notwithstanding.

When no seal affixed to certificate. C. 160, § 3, 13 G. A.

SEC. 1968. All deeds, mortgages, or other instruments in writing, for the conveyance of lands which have heretofore been made and executed, and the officer taking the acknowledgment has not affixed his seal to the acknowledgment, such acknowledgment shall, nevertheless, be good and valid in law and equity, anything in any law heretofore passed to the contrary notwithstanding.

Revocation of power of attorney: how done.

SEC. 1969. All instruments containing a power to convey, or in any manner to effect real estate, shall be held to be instruments affecting real estate; and no such instrument, when certified and recorded as above prescribed, can be revoked as to third parties by any act of the parties by whom it was executed, until the instrument containing such revocation is acknowledged and filed for record in the same office in which the instrument containing such power is recorded.

Forms of conveyances. R. § 2340.

SEC. 1970. The following or other equivalent forms, varied to suit circumstances, are sufficient for the purposes therein contemplated:

FOR A QUIT CLAIM DEED.

For the consideration of .....dollars I hereby quit claim to A. B. all my interest in the following tracts of land (describing it).

FOR A DEED IN FEE-SIMPLE WITHOUT WARRANTY.

For the consideratton of .....dollars I hereby convey to A. B. the following tract of land (describing it).

FOR A DEED IN FEE WITH WARRANTY.

The same as the last preceding form, adding the words "and I warrant the title against all persons whomsoever," (or other words of warranty as the party may desire.)

FOR A MORTGAGE.

The same as deed of conveyance, adding the following: "To be void upon conditions that I pay," etc.

RECORDS TRANSCRIBED.

Supervisors may have same done. C. 60, 14 G. A.

SEC. 1971. The board of supervisors of any county, whenever they shall deem it necessary and expedient, may have transcribed, indexed, and arranged, any deed, probate, mortgage, court, or county record or government survey belonging to said county, and have made a complete index thereof as contemplated by section nineteen hundred and forty-three of this chapter; and may have correctly transcribed or copied any index of deeds, mortgages, or other records, and may have the said transcripts or copies compared and certified by the county auditor, attested by the seal of the county; but the provisions of this section shall not apply to any county which has been specially authorized to have such transcribing done.

By new counties. R. § 2259.

SEC. 1972. Whenever any new county shall have been formed from other original and organized counties, or shall have been attached to another county for judicial or other purposes, and shall afterwards be fully organized and detached, and when any records of the kind mentioned in the preceding section are in the original county or counties which properly belong to such new county, the board of supervisors of such new or attached county shall have authority to have transcribed, indexed, and arranged, such records, or any of them, for the use of such new county.

Compensation for. R. § 2260.

SEC. 1973. The board of supervisors may employ any suitable person to perform the labor contemplated in the two preceding sections; the amount of compensation therefor to be previously fixed by them, not exceeding six cents for each one hundred words of the records proper, and twelve and one-half cents for each one hundred words of indexing; such compensation to be paid out of the treasury of the county for which the records are transcribed and to be audited as other claims.

County auditor to prepare and certify. R. § 2261.

SEC. 1974. When any such records as are contemplated in section nineteen hundred and seventy-two are so transcribed, the auditor of the county to which the original records belong, shall compare the copy so transcribed with the original; and, upon the same being found to be correctly transcribed, shall make a written certificate in each volume or book of such transcribed records, under the

county seal, certifying that such transcribed records have been compared with the original by him, and are true and correct copies of the original records.

Force and effect of. R. § 2262.

SEC. 1975. Such transcribed records so certified, shall have the same force and effect in all respects as the original records, and be admissible as evidence in all cases, and of equal validity with the original records.

CHAPTER 7.

OF OCCUPYING CLAIMANTS.

Proceedings. R. § 2264.

SECTION 1976. Where an occupant of land has color of title thereto, and in good faith has made any valuable improvements thereon, and is afterwards in a 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.

Petition. R. § 2265.

SEC. 1977. 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.

Issues. R. § 2265.

SEC. 1978. All issues joined thereon must be tried as in ordinary actions, and if the value of the land or the improvements is in controversy, such value must be ascertained on the trial.

Plaintiff may elect. R. § 2268.

SEC. 1979. The plaintiff in the main action may thereupon pay the appraised value of the improvements, and take the property.

Same. Code, § 1237.

SEC. 1980. 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 value of the land aside from the improvements.

Tenants in common. Code, § 1238.

SEC. 1981. 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 appraisement above contemplated.

Color of title. R. § 2268.

SEC. 1982. 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 of the sale. And the rights of such purchaser shall pass to his assignees or representatives.

Same. R. § 2269.

SEC. 1983. 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 with the knowledge and consent, express or implied, of the real owner,

made any valuable improvements thereon, or 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 two years thereafter have elapsed without a re-payment or proffer of re-payment of the same by the owner of the land, and 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; but nothing in this chapter shall be construed to give tenants color of title against their landlords.

Same C. 88, 13 G. A.

SEC. 1984. When any person shall have settled upon any lands within this state, and shall have occupied the same for three years under or by virtue of any law of said state, or any contract with its proper officers for the purchase of said land, or under any law of, or by virtue of any purchase from the United States, and shall have made valuable improvements thereon, and shall have been, or shall hereafter be, found not to be the true owner thereof, or not to have acquired a right to purchase the same from the state or the United States, such person shall be deemed an occupying claimant within the meaning of this chapter.

Waste by claimant. R. § 2270.

SEC. 1985. 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.

Execution. R. § 2272.

SEC. 1986. 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.

Removal of improvements. C. 85, 14 G. A.

SEC. 1987. Any person having improvements on any land heretofore granted to the state in aid of any work of internal improvement, including what is known as the Des Moines river lands, whose title to such land is questioned by another, shall be entitled to remove such improvements owned by him, without injury otherwise to the land, at any time before he is evicted therefrom, or he may claim and have the benefit of this chapter by proceeding as herein directed.

CHAPTER 8.

THE HOMESTEAD.

Exempt. R. § 2277.

SECTION 1988. Where there is no special declaration of the statute to the contrary, the homestead of every family, whether owned by the husband or wife, is exempt from judicial sale.

Head of family defined. R. § 2278.

SEC. 1989. A widow or widower, though without children, shall be deemed a family while continuing to occupy the house used as such at the time of the death of the husband or wife.

Conveyance of. R. § 2279.

SEC. 1990. A conveyance or encumbrance by the owner is of no validity unless the husband and wife, if the owner is married, concur in and sign the same joint instrument.

Liable for taxes. R. § 2280.

SEC. 1991. The homestead is liable for taxes accruing thereon, and, if platted as hereinafter directed, is liable only for such taxes and subject to mechanic's liens for work, labor, or material, done or furnished exclusively for the improvement of the same, and the whole or a sufficient portion thereof may be sold to pay the same.

For debts contracted previous to purchase. R. § 2281.

SEC. 1992. The homestead may be sold on execution for debts contracted prior to the purchase thereof, but it shall not in such case be sold except to supply the deficiency remaining after exhausting the other property of the debtor liable to execution.

When contract stipulates it may be sold. R. § 2281.

SEC. 1993. The homestead may be sold for debts 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 case be sold except to supply the deficiency remaining after exhausting the other property pledged for the payment of the debt in the same written contract.

Extent of. R. § 2283.

SEC. 1994. 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.

Same. R. § 2283.

SEC. 1995. 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.

Same. R. § 2284.

SEC. 1996. 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.

Same. R. § 2285.

SEC. 1997. It must not embrace more than one dwelling house, or 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.

Who may select, and have platted and recorded. R. § 2286.

SEC. 1998. The owner, or the husband or wife, may select the homestead and cause it to be marked out, platted, and recorded, as provided in the next section. A failure in this respect 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 expense thence arising to the amount embraced in his execution.

Same. R. § 2287.

SEC. 1999. 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 in a book to be called the "homestead book," which shall be provided with a proper index.

May be changed. R. § 2288.

SEC. 2000. The owner may, from time to time, change the limits of the homestead by changing the metes and bounds, as well

as the record of the plat and description, or may change it entirely, but such changes shall not prejudice conveyances or liens made or created previously thereto, and no such change of the entire homestead, made without the concurrence of the husband or wife, shall affect his or her right or those of the children.

New homestead exempt. R. § 2289.

SEC. 2001. 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.

Disagreement how settled. R. § 2290.

SEC. 2002. When 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 court from which the execution or other process may have issued.

Same. R. § 2291.

SEC. 2003. If either party fail to strike off jurors in the manner directed in the last section, the sheriff may strike off such jurors.

Same. R. § 2292.

SEC. 2004. 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.

Same. R. § 2293.

SEC. 2005. 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.

Change of circumstances. R. § 2295.

SEC. 2006. 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.

Survivor to occupy. R. § 2295.

SEC. 2007. 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.

Disposal of: what deemed descent. R. § 2296.

SEC. 2008. The setting off of the distributive share of the husband or wife in the real estate of the deceased, shall be such a disposal of the homestead as is contemplated in the preceding section. But the survivor may elect to retain the homestead for life in lieu of such share in the real estate of the deceased; but if there be no such survivor, the homestead descends to the issue of either husband or wife according to the rules of descent, unless otherwise directed by will, and is to be held by such issue exempt from any antecedent debts of their parents or their own.

When sold. R. § 2297.

SEC. 2009. 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.

Devise of. R. § 2298.

SEC. 2010. 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 9.

OF LANDLORD AND TENANT.

Apportionment of rent. R. § 2299.

SEC. 2011. 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.

Holding over. R. § 2300.

SEC. 2012. 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 the rental value of the premises during the time he holds over.

Attornment; when void. R. § 2301.

SEC. 2013. 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.

Tenant at will. R. § 2216.

SEC. 2014. Any person in the possession of real property with the assent of the owner, is presumed to be a tenant at will until the contrary is shown.

Notice to quit. R. § 2218. C. 68, 13 G. A.

SEC. 2015. Thirty days' notice in writing is necessary to be given by either party, before he can terminate a tenancy at will; but when, in any case, a rent is reserved payable at intervals of less than thirty days, the length of notice need not be greater than such interval between the days of payment. In case of tenants occupying and cultivating farms, the notice must fix the termination of the tenancy to take place on the first day of March; except in cases of field tenants or croppers, whose leases shall be held to expire when the crop is harvested; *provided*, that in case of a crop of corn it shall not be later than the first day of December, unless otherwise agreed upon. But where an express agreement is made, whether the same has been reduced to writing or not, the tenancy shall cease at the time agreed upon, without notice.

How served.

SEC. 2016. When such tenant cannot be found in the county, the notice above required may be given to any sub-tenant or other person in possession of the premises, or if the premises be vacant, by affixing the notice to the principal door of the building, or in some conspicuous position on the land if there be no building.

SEC. 2017. 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 that six months after the expiration of the term. Lien of landlord. R. § 2302.

SEC. 2018. The lien may be effected by the commencement of an action within the period above prescribed for the rent alone, in which action the landlord will be entitled to a writ of attachment, upon filing with the proper clerk, or the justice, an affidavit that the action is commenced to recover rent accrued within one year previous thereto upon premises described in the affidavit. How effected: attachment. R. § 2303.

CHAPTER 10.

OF WALLS IN COMMON.

SECTION 2019. In cities, towns, and other places surveyed into building lots, the plats whereof are recorded, he who is about to build contiguous to the land of his neighbor, may, if there be no wall on the line between them, build a brick or stone wall at least as high as the first story, if the whole thickness of such wall above the cellar wall does not exceed eighteen inches, exclusive of the plastering, and rest the one-half of the same on his neighbor's land; but the latter shall not be compelled to contribute to the expense of said wall. When built on the land of another. R. § 1914.

SEC. 2020. If his neighbor be willing, and does contribute one-half of the expense of building such wall, then it is a wall in common between them; and if he even refuses to contribute to the building of such wall, he shall yet retain the right of making it a wall in common, by paying to the person who built it one-half of the appraised value of said wall at the time of using it. Contribution by owners. R. § 1915.

SEC. 2021. No wall shall be built by any person partly on the land of another with any openings therein, and every wall being a separation between buildings, shall, as high as the upper part of the first story, be presumed to be a wall in common, if there be no titles, proof, or mark to the contrary; and if any wall is erected, which, under the provisions of this chapter, becomes, or may become at the option of another, a wall in common, such person shall not be compelled to contribute to the expense of any openings therein, but the same shall be closed at the expense of the owner of such wall. Openings in: presumption. R. § 1916.

SEC. 2022. The repairs and rebuilding of walls in common are to be made at the expense of all who have a right to the same, and in proportion to the interest of each therein; nevertheless, every co-proprietor of a wall in common may be exonerated from contributing to the repairs or building, by giving up his right in common if no building belonging to him be actually supported by the wall thus held in common. Repairs: expense apportioned. R. § 1917.

Beams, joists and flues. R. § 1918.

SEC. 2023. Every co-proprietor may build against a wall held in common, and cause beams or joists to be placed therein, and any person building such a wall, shall, on being requested by his co-proprietor, make the necessary flues, and leave the necessary bearings for the joists or beams, at such hight and distance apart, as shall be specified by his co-proprietor.

Hight of wall. R. § 1919.

SEC. 2024. Every co-proprietor is at liberty to increase the hight of the wall in common; but he alone is to be at the expense of raising it, and of repairing and keeping in repair that part of the wall above the part so held in common.

Rebuilding expenses. R. § 1920.

SEC. 2025. If the wall so held in common cannot support the wall to be raised upon it, he who wishes to have it made higher, is bound to rebuild it anew entirely and at his own expense, and the additional thickness of the wall must be placed entirely on his own land.

Same. R. § 1921.

SEC. 2026. The person who did not contribute to the hightening of the wall held in common, may cause the raised part to become common by paying one-half of the appraised value of such raising, and half of the value of the grounds occupied by the additional thickness of the wall, if any ground was so occupied.

Same. R. § 1922.

SEC. 2027. Every proprietor joining a wall, has, in like manner, the right of making it a wall in common, in whole or in part, by repaying to the owner of the wall one-half of its value, or the one-half of the part which he wishes to hold in common, and one-half of the value of the ground on which it is built, if the person who has built the wall has laid the foundation entirely upon his own ground.

Cavities: fixtures. R. § 1923.

SEC. 2028. Neither of the two neighbors can make any cavity within the body of the wall held by them in common; nor can either affix to it any work without the consent of the other, or without having, on his refusal, caused the necessary precautions to be used so that the new work be not an injury to the rights of the other, to be ascertained by persons skilled in building.

Disputes: delay bonds. R. § 1924.

SEC. 2029. No dispute between neighbors, as to the amount to be paid by one or the other, by reason of any of the matters treated of in this chapter, shall delay the execution of the provisions of the same, if the party on whom the claim is made shall enter into bonds, with security, to the satisfaction of the clerk of the district court of the proper county, conditioned that he shall pay to the claimant whatever may be found to be his due on the settlement of the matter between them, either in a court of justice or elsewhere; and the said clerk of the district court is hereby required to endorse his approval on said bond when the same is approved by him, and retain the same in his custody until demanded by the opposite party.

Agreements. R. § 1925.

SEC. 2030. This chapter shall not prevent adjoining proprietors from entering into special agreement about walls on the lines between them; but no evidence of such agreement shall be competent unless it be in writing, signed by the parties thereto, or their lawfully authorized agents, and whenever such proprietor is a minor, the guardian of his estate shall have full authority to act in all matters relating to walls in common.

CHAPTER 11.

OF EASEMENTS IN REAL ESTATE.

SECTION 2031. In all suits hereafter brought, in which title to any easement in real estate shall be claimed by virtue of adverse possession of the same for the period of ten years or by prescription, the use of the same shall not be admitted as evidence that the party claimed the easement as his right, but the fact of adverse possession shall be proved by evidence distinct from and independent of the use, and that the party against whom the claim is made had express notice thereof; and these provisions shall apply to public as well as private claims. Adverse possession: when sufficient: how proved.

SEC. 2032. Whoever has erected, or may erect, any house or other building near the land of another person with windows overlooking such land, shall not, by mere continuance of such windows, acquire any easement of light or air, so as to prevent the erection of any building thereon. Light and air.

SEC. 2033. No right of foot way, except claimed in connection with a right to pass with carriages, shall be acquired by prescription or adverse use for any length of time. Foot way.

SEC. 2034. When any person is in the use of a way or other easement, or privilege in the land of another, the owner of the land in such case may give notice in writing to the person claiming or using the way, easement, or privilege, of his intention to dispute any right arising from such claim or use, and such notice served and recorded as hereinafter provided shall be deemed an interruption of such use, and prevent the acquiring of any right thereto by the continuance of such use for any length of time thereafter. Such notice, signed by the owner of the land, his guardian, or agent, may be served like a notice in a civil action, on the party, his agent, or guardian if within this state, otherwise on the tenant or occupant, if there be any; such notice, with the return thereon, shall be recorded within three months thereafter in the recorder's office of the county in which the land is situated, and a copy of such record, certified by the recorder to be a true copy of the record of said notice, and the officer's return thereon, shall be evidence of the notice and the service of the same. Use may be terminated by notice: record of.

SEC. 2035. When notice is given to prevent the acquisition of a right to a way or other easement as aforesaid, such notice shall be considered so far a disturbance of such right or claim, as to enable the party claiming to bring an action for disturbing the same in order to try such right, and if the plaintiff in such suit prevails he shall recover full costs. Effect of.

SEC. 2036. The provisions of this chapter shall not apply to easements already acquired. No application.

TITLE XIV.

OF TRADE AND COMMERCE.

CHAPTER 1.

OF WEIGHTS, MEASURES, AND INSPECTION.

Standard of. C. 82, § 1, 9 G. A.

SECTION 2037. The standard weights and measures now in charge of the secretary of state, being the same that were furnished to this state by the government of the United States, shall be the standard of weights and measures throughout the state.

Yard. Same, § 2.

SEC. 2038. The unit or standard measure of length and surface from which all other measures of extension, whether they be lineal, superficial, or solid, shall be derived and ascertained, shall be the standard yard now in possession of the secretary of state and furnished by the government of the United States.

Division of. Same, § 3.

SEC. 2039. The yard shall be divided into three equal parts called feet, and each foot into twelve equal parts called inches. For the measure of cloths and other commodities commonly sold by the yard, it may be divided in halves, quarters, eighths, and sixteenths.

Rod, pole, or perch. Same, § 4.

SEC. 2040. The rod, pole, or perch, shall contain five and a half such yards, and the mile, one thousand seven hundred and sixty such yards; the chain for measuring land shall be twenty-two yards long, and shall be divided into one hundred equal parts called links.

Land measure. Same, § 5.

SEC. 2041. The acre for land measure shall be measured horizontally, and contain ten square chains, and shall be equivalent in area to a rectangle sixteen rods in length and ten in breadth; six hundred and forty such acres being contained in a square mile.

Avoirdupois and troy. Same, § 6.

SEC. 2042. The units or standards of weight from which all other weights shall be derived and ascertained, shall be the standard avoirdupois and troy weights as furnished this state by the United States.

How divided. Same, § 7.

SEC. 2043. The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, shall be divided into sixteen equal parts called ounces; the hundred weight shall consist of one hundred avoirdupois pounds, and twenty hundred weight shall constitute a ton. The troy ounce shall be equal to the twelfth part of a troy pound.

Liquids: measure of. Same, § 9.

SEC. 2044. The unit or standard measure of capacity for liquids from which all other measures of liquids shall be derived

and ascertained, shall be the standard gallon, and its parts, as furnished this state by the government of the United States.

Barrel: hogshead. Same, § 9.

SEC. 2045. The barrel shall be equal to thirty-one and a half gallons, and two barrels shall constitute a hogshead.

Substances other than liquids. Same, § 10.

SEC. 2046. The unit or standard measure of capacity for substances not being liquids, from which all other measures of such substances shall be derived and ascertained, shall be the standard half-bushel furnished this state by the United States.

Peck: divisions of. Same, § 11.

SEC. 2047. The peck, half-peck, quarter-peck, quart, and pint measures for measuring commodities which are not liquids, shall be derived from the half bushel by successively dividing that measure by two.

Contracts: construction. Same, § 12.

SEC. 2048. All contracts hereafter made within this state for work to be done, or for anything to be sold by weight or measure, shall be taken and construed according to the standards of weight and measure hereby adopted as the standard of this state.

Bushel: what constitutes. R. §§ 1778, 1781, 1782, 1783, 1784. C. 56, 14 G. A.

SEC. 2049. 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;
Of corn in the cob, seventy pounds;
Of rye, fifty-six pounds;
Of oats, thirty-three 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;
Of stone coal, eighty pounds;
Of sweet potatoes, forty-six pounds;
Of lime, eighty pounds;
Of sand, one hundred and thirty pounds;
Of Hungarian grass seed, forty-five pounds;
Of millet seed, forty-five pounds;
Of Osage orange seed, thirty-two pounds;
Of sorghum saccharatum seed, thirty pounds;
Of broom corn seed, thirty pounds;
Of apples, peaches, or quinces, forty-eight pounds;
Of cherries, grapes, currants, or gooseberries, forty pounds;
Of strawberries, raspberries, or blackberries, thirty-two pounds.

Perch: mason work. R. § 1777.

SEC. 2050. The perch of mason work or stone, is hereby declared to consist of twenty-five feet cubic measure.

Hops: boxes for. C. 195, § 4, 12 G. A.

SEC. 2051. The standard size for all boxes used in packing hops, shall be thirty-six inches long, eighteen inches wide, and twenty-three and one-fourth inches deep, inside measure.

SUPERINTENDENT OF WEIGHTS AND MEASURES.

Superintendent. C. 82, § 13, 9 G. A.

SEC. 2052. A superintendent of weights and measures for this state, who shall be a scientific man, of sufficient learning and mechanical tact to perform the duties of his office, shall be appointed by the governor from the board of professors of the Iowa state university, and shall hold his office during the pleasure of the governor, and shall give a bond in the penal sum of five thousand dollars for the faithful discharge of his duties.

Duty of. Same, § 14.

SEC. 2053. The superintendent shall take charge of the standards adopted hereby, and see that they are deposited in the building built for this purpose now belonging to the state, from which they shall in no case be removed, and take all necessary precautions for their safe-keeping. He shall provide the several counties with such standards, balances, and other means of adjustment, as may be ordered by them, and as often as once in ten years and compare the same with those in his possession. He shall, moreover, have a general supervision of the weights and measures of the state.

Procure copies of standards. Same, § 16.

SEC. 2054. He shall procure and keep for the state a complete set of copies of the original standard of weights and measures adopted hereby, which shall be used for adjusting the county standards, and in no case shall the original standards be used for any other purpose than the adjustment of this set of copies. He shall also procure and keep such apparatus and fixtures as are necessary in the comparison and adjustment of county and town standards.

Impressions on weights furnished by him. Same, § 22.

SEC. 2055. The state superintendent of weights and measures, shall cause to be impressed upon all standards of weights and measures furnished by him, the word "Iowa," and such other devices as he shall direct for the particular county, city, or incorporated town, and the county sealers shall see that, in addition to the above device, there is impressed on the town and city standards such other device as the board of supervisors shall direct for the several cities and incorporated towns.

Resignations: duty of successors. Same, § 24.

SEC. 2056. Whenever the state superintendent of weights and measures shall resign, be removed from office, or remove from Iowa City, or whenever any city, county, or incorporated town sealer shall resign, be removed from office, or remove from the city, county, or town in which he shall have been appointed or elected, the person so resigning, removed, or removing, shall deliver to his successor in office all the standard beams, weights, and measures in his possession.

SEALER.

Weights and measures procured: county sealer appointed. Same, § 17.

SEC. 2057. The board of supervisors of any county may, at any regular meeting, provide for obtaining from the state superintendent of weights and measures, such standards of weights

and measures as they may deem necessary for their county, and in case they order such standards, they shall appoint a county sealer of weights and measures, who shall hold his office during the pleasure of the board.

Duty of sealer. Same, § 18.

SEC. 2058. The county sealer shall take charge of the county standards and standard balances, and provide for their safe keeping; shall provide cities and incorporated towns with such standard weights and measures, and standard balances, as may be wanting, and shall compare the cities and incorporated towns standards with those in his possession as often as once every five years.

Cities and towns: sealer appointed for. Same, § 19.

SEC. 2059. A sealer of weights and measures may be appointed in every city and incorporated town by the town council thereof, and shall hold his office during their pleasure, and said council may obtain from the sealers of weights and measures of their respective counties, such standards of weights and measures as they may deem necessary for their respective cities or incorporated towns; and in case the board of supervisors of any county in which any city or town may be situated shall not have obtained such standards, then said council may obtain the same from the state superintendent of weights and measures.

Duty of. Same, § 20.

SEC. 2060. Each sealer in cities and incorporated towns shall take charge and provide for the safe keeping of the town or city standards, and see that the weights, measures, and all apparatus used for determining the quantity of commodities used throughout the town or city, which shall be brought to him for that purpose, agree with those standards in his possession.

Expenses. Same, § 21.

SEC. 2061. All expenses directly incurrred in furnishing the several counties, cities, and incorporated towns with standards, or in comparing those that may be in their possession, shall be borne by the respective counties, cities, and incorporated towns for which such expenses shall have been incurred.

Death of sealer. Same, § 25.

SEC. 2062. In case of the death of any such sealer of weights and measures, his representatives shall, in like manner, deliver to his successor in office such beams, weights, and measures.

Penalty for refusal to deliver weights to successor. Same, § 26.

SEC. 2063. In case of refusal or neglect to deliver such standards entire and complete, the successor in office may maintain an action against the person or persons so refusing or neglecting, and recover for the use of such county, city, or incorporated town, double the value of such standards as shall not have been delivered. And in every such action in which judgment shall be rendered for the plaintiff, he shall recover double costs.

Penalty for using weights or measures that do not conform to standard. Same, § 27.

SEC. 2064. If any person or persons shall hereafter use any weights, measures, beams, or other apparatus, for determining quantity of commodities, which shall not be conformable to the standards of this state, in any counties whose standards have been obtained by the board of supervisors, or in any city or incorporated town after such standards have been obtained therein, whereby any person shall be injured or defrauded, he shall be subject to a fine not exceeding five dollars for each offense, to be sued for and collected by the city, county, or town sealer. He shall also be subject to an action at law, in which the defrauded person shall recover treble damages and costs, and

every person keeping any store, grocery, or other place, for the sale or purchase of such commodities as are usually sold by weight or measure, shall, once in each year, procure the weights and measures used by him to be compared with the standard herein provided; and he shall be subject to a fine of five dollars for every neglect to comply with this provision, to be recovered by any one who shall prosecute therefor.

WEIGHMASTERS OF PUBLIC SCALES.

Oath: definition of public scales. C. 56, § 1, 10 G. A.

SEC. 2065. All persons keeping public scales, before entering upon their duties as weighmasters, shall be sworn before some person having authority to administer an oath, to keep their scales correctly balanced; to make true weights; and to render a correct account to the person or persons having weighing done. Every scale shall be deemed a public one for the use of which a charge is made.

Make correct weights: keep register: give certificate. Same, § 2.

SEC. 2066. All weighmasters are required to make true weights and to keep a correct register of all weighing done by them, giving the amount of each weight, date of weighing, and the name of the person or persons for whom such weighing was done, and to give, upon demand, to any person or persons having weighing done, a certificate, showing the weight, date of weighing, and for whom weighed.

For weighing stock or grain: standard procured. C. 129, § 1, 14 G. A.

SEC. 2067. Weighmasters, or keepers of public scales kept for the purpose of weighing stock or grain, shall provide and keep a standard of weight not less than fifty pounds avoirdupois for the purpose of testing such scales, and they shall at least once a month, or oftener if requested, make a satisfactory test of the correctness of such scales.

Penalty. C. 56, § 3, 10 G. A. C. 129, § 2, 14 G. A.

SEC. 2068. Any weighmaster, or keeper of public scales, violating any of the provisions of the two preceding sections, upon complaint made before any justice of the peace having jurisdiction of the offense, may, upon conviction thereof, be fined in any sum not more than twenty dollars and not less than five dollars for each offense, and shall be liable to the person or persons injured, for the full amount of damages by them sustained.

OF THE INSPECTION OF SHINGLES AND LUMBER.

Inspector appointed. R. § 1906.

SEC. 2069. The board of supervisors of each county, as often as may be necessary, shall appoint one inspector of lumber and shingles, who shall have the power to appoint one or more deputies to act under him. For the conduct of the deputies, the principal shall be liable.

Oath: bond of. R. § 1907.

SEC. 2070. Before any inspector, or deputy inspector, shall enter upon the duties of his office, he shall take an oath or affirmation that he will faithfully and impartially execute the duties required of him by law, and each inspector shall, moreover, enter into a bond with sufficient security to be approved by the county auditor, in such sum as the board of supervisors may require, made payable to the state of Iowa, which bond shall be deposited

with the treasurer of the county, conditioned for the faithful and impartial performance of his duties, as required by law.

Suit on bond. R. § 1908.

SEC. 2071. Any person who may think himself aggrieved by the incapacity, neglect, or misconduct of such inspector or his deputy, may institute a suit on a copy of the bond certified by the treasurer, in his own name. And in case the person suing shall obtain judgment, he may have execution as in other cases; but the suit shall be commenced within one year after the cause of action accrues.

Duties of inspector. R. § 1909.

SEC. 2072. The inspectors or their deputies, within their respective counties, shall inspect all lumber, boards, and shingles, on application made to them for that purpose; and when inspected, stamp on the lumber, boards, and shingles, with branding irons made for that purpose, the name of the state and county where inspected, and the kind and quality of the articles inspected, which branding iron shall be made and lettered as directed by the board of supervisors. And every inspector shall make, in a book for that purpose, fair and distinct entries of articles inspected by him or his deputies, with the names of the persons for whom said articles were inspected.

Penalty for counterfeiting. R. § 1911.

SEC. 2073. If any person shall counterfeit the aforesaid brands or marks, or either of them, upon conviction thereof, he shall be deemed guilty of forgery, and shall be punished accordingly.

Size of shingles: how branded: division of lumber. R. § 1912.

SEC. 2074. A lawful shingle shall be sixteen inches in length, four inches wide, and half an inch thick at the butt end; and all lumber shall be divided into four qualities, and shall be designated clear, first common, second common, and refusal. Shingles shall be clear of sap, and designated as first and second quality. The shingles to be branded on each bundle with the quality and the name of the inspector.

CHAPTER 2.

MONEY OF ACCOUNT AND INTEREST.

How expressed. R. § 1785.

SECTION 2075. The money of account of this state is the dollar, cent, mill, and all public accounts and the proceedings of all counts in relation to money, shall be kept and expressed in money of the above denomination.

Same. R. § 1786.

SEC. 2076. The above provisions shall not in any manner affect any demand expressed in money of another denomination, but such demand, in any suit or proceeding affecting the same, shall be reduced to the above denomination.

Interest: rate of. R. § § 1787, 1788.

SEC. 2077. The rule of interest shall be six cents on the hundred by the year, on:

1. Money due by express contract;
2. Money after the same becomes due;
3. Money lent;

4. Money received to the use of another, and retained beyond a reasonable time without the owner's consent, express or implied;

5. Money due on the settlement of matured accounts from the day the balance is ascertained;

6. Money due upon open accounts after six months from the date of the last item;

7. Money due, or to become due, where there is a contract to pay interest, and no rate is stipulated. In all of the cases above contemplated parties may agree in writing for the payment of interest not exceeding ten cents on the hundred by the year.

On judgments and decrees. R. § 1789.

SEC. 2078. Interest shall be allowed on all moneys due on judgments and decrees of any competent court or tribunal, at the rate of six cents on the hundred by the year, unless a different rate is fixed by the contract on which the judgment or decree is rendered; in which case the judgment or decree shall draw interest at the rate expressed in the contract, not exceeding ten cents on the hundred by the year, which rate must be expressed in the judgment or decree.

Prohibition. R. § 1790.

SEC. 2079. No person shall, directly or indirectly, receive in money, goods, or things in action, or in any other manner, any greater sum of value for the loan of money, or upon contract founded upon any bargain, sale, or loan of real or personal property than is in this chapter prescribed.

Usury: penalty for taking. R. § 1791.

SEC. 2080. If it shall be ascertained in any suit brought on any contract, that a rate of interest has been contracted for greater than is authorized by this chapter, either directly or indirectly, in money or property, the same shall work a forfeiture of ten cents on the hundred by the year upon the amount of such contract, to the school fund of the county in which the suit is brought, and the plaintiff shall have judgment for the principa sum without either interest or cost. The court in which said suit is prosecuted, shall render judgment for the amount of interest forfeited as aforesaid against the defendant, in favor of the state of Iowa for the use of the school fund of said county, whether the said suit is contested or not; and in no case where unlawful interest is contracted for, shall the plaintiff have judgment for more than the principal sum, whether the unlawful interest be incorporated with the principal or not.

Assignee may recover of usurer. R. § 1792.

SEC. 2081. Nothing in this chapter shall be so construed as to prevent the proper assignee, in good faith and without notice, of any usurious contract, recovering against the usurer the full amount of the consideration paid by him for such contract, less the amount of the principal money, but the same may be recovered of the usurer in the proper action before any court having competent jurisdiction.

CHAPTER 3.

OF NOTES AND BILLS.

SECTION 2082. 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 endorsement or delivery in the same manner as inland bills of exchange, according to the custom of merchants. Negotiable. R. § 1794.

SEC. 2083. 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 endorsed or delivered, may maintain his action in his own name against the maker or the endorser, or both of them. Action R. § 1795.

SEC. 2084. 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 endorsement thereon or by other writing, and the assignee shall have a right of action in his own name, subject to any defense or counter claim which the maker or debtor had against any assignor thereof before notice of his assignment. Assignment of non-negotiable instruments. R. § 1796.

SEC. 2085. 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. Are negotiable. R. § 1797.

SEC. 2086. 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 counter claim against the assignee, which he may have against any assignor thereof before suit is commenced thereon. Assignment prohibited. R. § 1798.

SEC. 2087. 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 counter claims as the instruments mentioned in the preceding section. Open account assignable. R. § 1799.

SEC. 2088. The assignor of any of the above instruments, not negotiable, shall be liable to the action of his assignee without notice. Assignor of: how charged. R. § 1803.

GUARANTEE.

SEC. 2089. The blank endorsement of an instrument for the payment of money, property, or labor, by a person not a payee, endorsee, or assignee thereof, shall be deemed a guarantee of the performance of the contract. Definition of. R. § 1800.

SEC. 2090. To charge such guarantor, notice of non-payment by the principal must be given within a reasonable time; but the Guarantor: how charged. R. § 1801.

guarantor is chargeable without notice, if the holder show affirmatively that the guarantor has received no detriment from the want of notice.

Same. R. § 1802.

SEC. 2091. A guarantor, as contemplated in the two preceding sections, is also liable to the action of an endorsee, assignee, or payee, if due diligence in the institution and prosecution of a suit against the maker or his representative has been used.

GRACE—PROTEST.

Grace. R. § 1813.

SEC. 2092. Grace shall be allowed upon negotiable bills or notes payable within this state, according to the principles of the law merchant; and notice of non-acceptance or non-payment, or both, of said instruments shall be required according to the rules and principles of the commercial law.

Demand. R. § 1804.

SEC. 2093. A demand at any time during the days of grace, will be sufficient for the purpose of charging the endorser.

Holidays: protests made on preceding day. C. 116, 9 G. A.

SEC. 2094. The first day of the week, called Sunday; the first day of January; the fourth day of July; the twenty-fifth day of December; and any day appointed or recommended by the governor of this state, or by the president of the United States, as a day of fasting or of thanksgiving, shall be regarded as holidays for all purposes relating to the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks, and promissory notes; and any bank or mercantile paper falling due on any of the days above named, shall be considered as falling due on the preceding day.

Notice of protest: how served. R. § 213.

SEC. 2095. In case of a demand of payment of any promissory note, bill of exchange, or other commercial paper, by a notary public, and a refusal by the maker, drawer, or acceptor, as the case may be, the notary making said demand may inform the endorser or any party to be charged, if in the same town or township, by notice deposited in the nearest post-office to the parties to be charged on the day of demand, and no other notice shall be necessary to charge said party.

Damages for non-acceptance or non-payment. R. § 1812.

SEC. 2096. The rate of damages to be allowed and paid upon the non-acceptance or non-payment of bills of exchange, drawn or endorsed 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 United States, or in California, Oregon, Nevada, or any of the Territories, five 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 any other place in the United States other than in this state, three per cent. with interest.

CONTRACT—PAYABLE IN PROPERTY.

Payable in property: demand. R. § 1806.

SEC. 2097. 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. 2098. 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. Tender of. R. § 1807.

SEC. 2099. 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 has 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. Exception. R. § 1808.

SEC. 2100. 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 resides in the state, and no farther from the maker than did the payee at the making thereof. When contract has been assigned. R. § 1809.

SEC. 2101. 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 thereto as in other cases. Effect of tender. R. § 1810.

SEC. 2102. But if the property tendered be perishable, or require feeding or other care, and no person be found to receive it when tendered, the person making the tender shall 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. Perishable property taken care of. R. § 1811.

SEC. 2103. When the holder of an instrument for the payment of money is absent from the state when it becomes due, and when the endorsee or assignee of such an instrument has not notified the maker of such endorsement or assignment, the maker may tender payment at the last residence or place of business of the payee before the instrument became due, and if there be no person authorized to receive payment and give the proper credit therefor, the maker may deposit the amount due with the clerk of the district court in the county where the payee resided at the time it became due, paying the clerk one per cent. on the amount deposited, and the maker shall be liable for no interest from that time. Holder absent from state: money paid clerk district court. R. § 1806.

CHAPTER 4.

OF TENDER.

SECTION. 2104. 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 When not accepted. R. § 1815.

other party, and the subject of tender be not delivered to him within a reasonable time, the tender shall be of no effect.

Offer in writing: effect of. R. § 1816.

SEC. 2105. 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.

Receipt. R. § 1817.

SEC. 2106. 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.

Objection. R. § 1818.

SEC. 2107. 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.

CHAPTER 5.

OF SURETIES.

May require creditor to sue. R. § 1819.

SECTION 2108. 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.

Refusal of. R. § 1820.

SEC. 2109. 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.

Surety may sue. R. § 1821.

SEC. 2110. 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.

No application to official bonds. R. § 1822.

SEC. 2111. The provisions of this chapter extend to the executor of a deceased surety and holder of the contract, but they do not extend to the official bonds of public officers, executors, or guardians.

CHAPTER 6.

OF PRIVATE SEALS.

SECTION 2112. The use of private seals in written contracts, except the seals of corporations, is abolished; and the addition of a private seal to an instrument in writing, shall not affect its character in any respect. Abolished. R. § 1823.

SEC. 2113. All contracts in writing, signed by the party to be bound, or his authorized agent or attorney, shall import a consideration. Consideration implied. R. § 1824.

SEC. 2114. The want or failure, in whole or in part, of the consideration of a written contract, may be shown as a defense total or partial, as the case may be, except to negotiable paper transferred in good faith and for a valuable consideration before maturity. Failure of. R. § 1825.

CHAPTER 7.

OF ASSIGNMENTS FOR CREDITORS.

SECTION 2115. No general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors shall be valid, unless it be made for the benefit of all his creditors in proportion to the amount of their respective claims. General only valid. R. § 1826.

SEC. 2116. In the case of an assignment of property for the benefit of all the creditors of the assignor, the assent of the creditors shall be presumed. Assent of creditors presumed. R. § 1827.

SEC. 2117. The debtor shall annex to such assignment an inventory, under oath, of his estate, real and personal, according to the best of his knowledge, and also a list of his creditors and the amount of their respective demands; but such inventory shall not be conclusive as to the amount of the debtor's estate; and such assignment shall vest in the assignee the title to any other property belonging to the debtor at the time of making the assignment. Every assignment shall be duly acknowledged in the same manner as conveyances of real estate, and recorded in the county where the person making the same resides, or where the business in respect of which the same is made has been carried on. Inventory to be annexed by debtor. R. § 1828.

SEC. 2118. The assignee shall also forthwith file with the clerk of the district or circuit court of the county where such assignment shall be recorded, a true and full inventory and valuation of said estate, under oath, so far as the same has come to his knowledge, and shall, then and there, enter into bonds to said clerk, for the use of the creditors, in double the amount of the inventory and valuation, with one or more sufficient sureties, to be approved by said clerk, for the faithful performance of said trust, and the assignee may thereupon proceed to perform any Assignee to file inventory and appraisement. R. § 1830.

duty necessary to carry into effect the intention of said assignment.

To give notice. N. § 1829.

SEC. 2119. The assignee shall forthwith give notice of such assignment by publication in some newspaper in the county, if any, and if none, then in the nearest county thereto, which publication shall be continued at least six weeks; and shall also forthwith send a notice by mail to each creditor of whom he shall be informed, directed to their usual place of residence, and notifying the creditors to present their claims, under oath, to him within three months thereafter.

To report and file list of creditors. R. § 1831.

SEC. 2120. At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court, a true and full list, under oath, of all such creditors of the assignor as shall have claimed to be such, with a statement of their claims, and also an affidavit of publication of notice, and a list of the creditors, with their places of residence, to whom notice has been sent by mail, and the date of mailing, duly verified.

Objections to claims filed: proceedings. R. § 1832.

SEC. 2121. Any person interested may appear within three months after filing such report, and file with said clerk any exceptions to the claim or demand of any creditor; and the clerk shall forthwith cause notice thereof to be given to the creditor, which shall be served as in case of an original notice, returnable at the next term; and the said court shall at such term, proceed to hear the proofs and allegations of the parties in the premises, and shall render such judgment thereon as shall be just, and may allow a trial by jury thereon.

Dividends ordered. R. § 1833.

SEC. 2122. If no exception be made to the claim of any creditor, or if the same have been adjudicated, the court shall order the assignee to make, from time to time, fair and equal dividends among the creditors of the assets in his hands, in proportion to their claims, and as soon as may be, to render a final account of said trust to said court, who may allow such commissions to said assignee in the final settlement as may be considered just and right.

Assignee subject to order of court. C. § § 1834, 1842.

SEC. 2123. The assignee shall at all times be subject to the order and supervision of the court or judge, and the said court or judge may, by citation and attachment, compel the assignee, from time to time, to file reports of his proceedings, and of the situation and condition of the trust, and to proceed in the faithful execution of the duties required by this chapter.

Not void: citation to debtor. R. § 1835.

SEC. 2124. No assignment shall be declared fraudulent or void, for want of any list or inventory as provided in this chapter. The court or judge may, upon application of the assignee or any creditor, compel the appearance in person of the debtor before such court or judge forthwith, or at the next term, to answer under oath such matters as may then and there be inquired of him, and such debtor may then and there be fully examined under oath as to the amount and situation of his estate, and the names of the creditors and amounts due to each, with their places of residence; and may compel the delivery to the assignee of any property or estate embraced in the assignment.

SEC. 2125. The assignee shall, from time to time, file with the clerk of the court, an inventory and valuation of any additional property which may come into his hands under said assignment after the filing of the first inventory, and the clerk may thereupon require him to give additional security. Additional inventory. R. § 1886.

SEC. 2126. Any creditor may claim debts to become due as well as debts due, but on debts not due a reasonable abatement shall be made when the same are not drawing interest, and all creditors who shall not exhibit their claim within the term of three months from the publication of notice as aforesaid, shall not participate in the dividends until after the payment in full of all claims presented within said term and allowed by the court. Claims not due. R. § 1887.

SEC. 2127. Any assignee as aforesaid, shall have as full power and authority to dispose of all estate, real and personal, assigned, as the debtor had at the time of the assignment, and to sue for and recover in the name of such assignee everything belonging or appertaining to said estate, and generally do whatsoever the debtor might have done in the premises; but no sale of real estate belonging to said trust shall be made without notice, published as in case of sales of real estate on execution, unless the court shall order and direct otherwise. Sale of property. R. § 1888.

SEC. 2128. In case any assignee shall die before the closing of his trust, or in case any assignee shall fail or neglect for the period of twenty days after the making of any assignment, to file an inventory and valuation, and give bonds as required by this chapter, the district or circuit court, or any judge thereof, of the county where such assignment may be recorded, on the application of any person interested, shall appoint some person to execute the trust embraced in such assignment; and such person, on giving bond with sureties as required above of the assignee, shall possess all the powers conferred upon such assignee, and shall be subject to all the duties hereby imposed, as fully as though named in the assignment; and in case any security shall be discovered to be insufficient, or, on complaint before the court or judge, it should be made appear that any assignee is guilty of wasting or misapplying the trust estate, said court or judge may direct and require additional security, and may remove such assignee and may appoint others instead; and such person so appointed, on giving bond, shall have full power to execute such duties and to demand and sue for all estate in the hands of the person removed, and to demand and recover the amount and value of all moneys and property or estate so wasted and misapplied which he may neglect or refuse to make satisfaction for, from such person and his sureties. Death or failure of assignee: court may appoint another. R. § 1889. Additional security.

CHAPTER 8.

OF MECHANICS' LIENS.

SECTION 2129. No person is entitled to a mechanics' lien who takes collateral security on the same contract. Collateral security R. § 1815.

Who has a right to a lien. R. § 1846.

SEC. 2130. Every mechanic, or other person who shall do any labor upon, or furnish any materials, machinery, or fixtures, for any building, erection, or other improvement upon land, including those engaged in the construction or repair of any work of internal improvement, by virtue of any contract with the owner, his agent, trustee, contractor, or sub-contractor, upon complying with the provisions of this chapter, shall have for his labor done, or materials, machinery, or fixtures furnished, a lien upon such building, erection, or improvement, and upon the land belonging to such owner on which the same is situated, to secure the payment of such labor done, or materials, machinery, or fixtures furnished.

Sub-contractor to give notice to owner before work done. R. § 1847.

SEC. 2131. Every sub-contractor wishing to avail himself of the benefits of this chapter, shall give notice to the owner, his agent, or trustee, before or at the time he furnishes any of the things aforesaid or performs any labor, of his intention to furnish or perform the same, and the probable value thereof; and if afterwards the things are furnished or labor done, the sub-contractor shall settle with the contractor therefor, and the settlement in writing, signed by the contractor and certified by him to be just, shall be given to the owner, his agent, or trustee; within thirty days from the time the things shall have been furnished or the labor performed, the sub-contractor shall file with the clerk of the district court of the county in which the building, erection, or other improvement is situated, a copy of such settlement, which shall be a lien on the building, erection, or other improvement for which the things were furnished or the labor performed; and shall, at the time, file a correct description of the property to be charged with the lien, the correctness of all which shall be verified by affidavit.

Railway owner or contractor deemed to have notice. C. 12, 14 G. A.

SEC. 2132. Every railway owner, company, or contractor, and sub-contractor upon any railway, shall be deemed to have the notice provided for by the preceding section for a period of sixty days from the last day of the month in which such labor was done, or material furnished, during which period any person who has performed such labor or furnished such material, may file a lien with the clerk of the district court as provided in the preceding section, which lien shall be binding upon the erection, excavation, embankment, bridge, road-bed, or right of way, and upon all land upon which the same may be situated, to the full value of such labor or material, in the county in which the lien is filed. In case the lien is sought to be enforced against the owner, the liability shall not be greater than his liability would have been to the contractor at the time the labor was performed or material furnished; but the liability of the owner, in case actual notice shall be given after the sixty days, shall be the same as provided in this chapter.

Sub-contractor to make and file statement and give notice. C. 130, § 1, 130 A.

SEC. 2133. Every sub-contractor may, at any time within six months after his labor is done or materials furnished, make a statement thereof in writing, supported by affidavit that the same is just and true, and file the same with the clerk of the district court of the proper county, and give notice thereof, with a copy of such statement, to the owner, his agent, or trustee, and to the contractor; and from and after the service of such notice his lien

therefor shall have the same force and effect and be prosecuted in like manner as a lien by the contractor, but shall be enforced against the property only to the extent of the balance due to the contractor at the time of the service of such notice upon the owner, his agent, or trustee.

Contractor refusing to sign statement. R. § 1848.

SEC. 2134. In case the contractor shall refuse to make and sign such settlement, then the sub-contractor may make a just and true statement of labor done, or things furnished, giving all credits which he shall present to the owner, his agent, or trustee, and shall also within said thirty days file a copy of the same, verified by affidavit, with the clerk of the district court of the county in which the building, erection, or other improvement is situated, together with a correct description of the property to be charged with the lien.

Extent of owner's liability to sub-contractor. R. § 1849.

SEC. 2135. The certificate of settlement, or statement of the sub-contractor, shall be a justification to the owner in withholding from the contractor the amount appearing thereby to be due the sub-contractor until the same has been paid, and the owner shall become the surety of the contractor to the sub-contractor for the amount due to the extent before provided.

Notices: how served. R. § 1850.

SEC. 2136. The notices mentioned in this chapter may be served by any sheriff or constable, and the return thereon shall be received in evidence without further proof.

Account filed with clerk within ninety days. R. § 1851. C. 111, 9 G. A.

SEC. 2137. Every person, except as has been provided for sub-contractors, who wishes to avail himself of the provisions of this chapter, may file with the clerk of the district court of the county in which the building, erection, or other improvement to be charged with the lien is situated, and within ninety days after all the things aforesaid shall have been furnished or the labor done, a just and true account of the demand due him after allowing all credits, and containing a correct description of the property to be charged with said lien, and verified by affidavit; but a failure to file the same within the time aforesaid shall not defeat the lien, except against purchasers or encumbrancers in good faith without notice, whose rights accrued after the ninety days and before any claim for the lien was filed.

Duty of clerk. R. § 1852.

SEC. 2138. The clerk of the district court shall endorse upon every account the date of its filing, and make an abstract thereof in a book by him to be kept for that purpose and properly indexed, containing the date of its filing, the name of the person filing the lien, the amount of said lien, the name of the person against whose property the lien is filed, and a description of the property to be charged with the same.

Priority. R. § 1853.

SEC. 2139. The liens for labor done, or things furnished, shall have priority in the order of the filing of the accounts thereof as aforesaid, and shall be preferred to all other liens and encumbrances which may be attached to or upon such building, erection, or other improvement, and to the land on which the same is situated, or either of them, made subsequent to the commencement of said building, erection, or other improvement.

Extent and effect of lien. R. § 1854.

SEC. 2140. The entire land upon which any such building, erection, or other improvement is situated, including that portion of the same not covered therewith, shall be subject to all liens

created bythis chapter, to the extent of all the right, title, and interest owned therein by the owner thereof, for whose immediate use or benefit such labor was done or things furnished, and when the interest owned in said land by such owner of such building, erection, or other improvement, is only a lease-hold interest, the forfeiture of such lease for the non-payment of rent, or for non-compliance with any of the other stipulations therein, shall not forfeit or impair such liens so far as concerns such buildings, erections, and improvements, but the same may be sold to satisfy said lien, and be moved within thirty days after the sale thereof by the purchaser.

Preference over other liens. R. § 1855.

SEC. 2141. The lien for the things aforesaid, or work, shall attach to the buildings, erections, or improvements for which they were furnished or done, in preference to any prior lien, or encumbrance, or mortgage upon the land upon which the same is erected or put, and any person enforcing such lien, may have such building, erection, or other improvement sold under execution, and the purchaser may remove the same within a reasonable time thereafter.

How enforced. R. § 1856.

SEC. 2142. Any person having a lien by virtue of this chapter, may bring suit to enforce the same in the district or circuit court of the county wherein the property is situated.

Suit commenced on demand of owner. C. 140, § 2, 13 G. A.

SEC. 2143. Upon the written demand of theo wner, his agents, or contractor, served on the person claiming the lien requiring him to commence suit to enforce such lien; such suit shall be commenced in thirty days thereafter or the lein shall be forfeited.

"Owner" defined. R. § 1866.

SEC. 2144. Every person for whose immediate use or benefit any building, erection, or improvement is made, having the capacity to contract, including guardians of minors or other persons, shall be included in the word "owner" thereof.

Satisfaction acknowledged: penalty for failure. R. § § 1867, 1868, 1869.

SEC. 2145. Whenever a lien has been claimed by filing the same in the clerk's office and is afterward paid, the creditor shall acknowledge satisfaction thereof on the proper book in such office, or otherwise in writing, and if he neglects to do so for ten days after demand, he shall forfeit and pay twenty-five dollars to the owner or contractor, and be liable to any person injured to the extent of the injury.

Definition of sub-contractors. R. § 1871.

SEC. 2146. All persons furnishing things or doing work provided for by this act, shall be considered sub-contractors, except such as have therefor contracts directly with the owner, proprietor, his agent, or trustee.

CHAPTER 9.

OF LIMITED PARTNERSHIP.

Authorized. R. § 1874. C. 128, 9 G. A.

SECTION 2147. Limited partnerships for the transaction of any lawful business within the state, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein described.

SEC. 2148. Such partnerships may consist of one or more persons who shall be called general partners, and who shall be responsible as general partners; and of one or more persons who shall contribute in actual cash a specific sum as capital who shall be called special partners, and shall not be liable for the debts of the partnership beyond the funds so contributed. General and special partners. R. § 1875.

SEC. 2149. The general partners only shall be authorized to transact business and sign for the partnership, and bind the same. Power of general partners. R. § 1877.

SEC. 2150. The persons desirous of forming such partnership, shall make and severally sign a certificate, which shall contain: Certificate signed: what it must contain. R. § 1877.

1. The name or firm under which such partnership is to be conducted;

2. The general nature of the business intended to be transacted;

3. The names of all general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence;

4. The amount of capital which each special partner shall have contributed to the common stock;

5. The period at which the partnership is to commence, and the period at which it will terminate.

SEC. 2151. The certificate shall be acknowledged by the several persons signing the same, before some one authorized to administer oaths and take acknowledgment of deeds. Certificate acknowledged. R. § 1878.

SEC. 2152. The certificate so acknowledged shall be filed in the office of the clerk of the district court of the county in which the principal place of business of the partnership is situated, and shall be recorded by him in a book to be kept for that purpose. If the partnership shall have places of business situated in different counties, a transcript of the certificate, and of the acknowledgment thereof duly certified by the clerk in whose office it shall be filed, shall be filed and recorded in like manner in the office of the clerk of the district court of every such county. To be filed and recorded. R. § 1879.

SEC. 2153. At the time of filing the original certificate, an affidavit of one or more of the general partners shall be attached thereto, stating that the sums specified in the certificate to have been contributed by each of the special partners, had been actually and in good faith paid in cash. Affidavit attached. R. § 1880.

SEC. 2154. If any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners. Effect of false statement. R. § 1881.

SEC. 2155. When the certificate and affidavit is filed, there shall be published forthwith, for six weeks, in two newspapers published in the senatorial district in which the business is carried on, to be designated by the clerk of the district court of the county where the certificate and affidavit is filed; and if such publication is not made the partnership shall be deemed general. Publication of terms of partnership. R. § 1882.

SEC. 2156. Affidavits of the publication of such notice by the printers of the newspapers in which the same shall be published, may be filed with the clerk of the district court directing the same, and shall be evidence of the facts therein contained. Affidavits of filed. R. § 1883.

SEC. 2157. Every renewal of such partnership beyond the time originally fixed, shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice Renewals acknowledged and recorded. R. § 1884.

be given in the manner herein required for its original formation, and every such partnership which shall be otherwise renewed or continued, shall be deemed a general partnership.

Alterations: effect of. R. § 1885.

SEC. 2158. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares, or in any other matter specified in the certificate, shall be deemed a dissolution of the partnership, and every such partnership which shall in any manner be carried on after any such alteration has been made, shall be deemed a general partnership according to the provisions of the last section.

Firm name. R. § 1886.

SEC. 2159. The business of the partnership shall be conducted under a firm, in which the names of the general partners only shall be inserted, without the addition of the word "company" or any other general term, and if the name of any special partner shall be used in such firm, with his privity, he shall be deemed a general partner.

Suits against. R. § 1887.

SEC. 2160. Suits in relation to the business of the partnership, may be brought and conducted by and against the general partners in the same manner as if there were no special partners.

Capital contributed by special partner not withdrawn. R. § 1888.

SEC. 2161. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital, and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits.

Capital of restored. R. § 1889.

SEC. 2162. If it shall appear that, by the payment of interests or profits to any special partner, the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital, with interest.

Special partner may examine and advise as to business. R. § 1890.

SEC. 2163. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney, or otherwise. If he shall interfere, contrary to these provisions, he shall be deemed a general partner.

Accounting. R. § 1891.

SEC. 2164. The general partners shall be liable to account to each other, and to the special partners.

Penalty for fraud. R. § 1892.

SEC. 2165. Every partner who shall be guilty of any fraud in the affairs of the partnership, shall be liable, civilly, to the party injured to the extent of his damage, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

Cannot assign or prefer creditors. R. § 1893.

SEC. 2166. Every sale, assignment, or transfer of any of the property or effects of such partnership, made by such partnership when insolvent or in contemplation of insolvency, or after, or in contemplation of the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolv-

ent partner, over other creditors of such partnership, and every judgment confessed, lien created, or security given by such partnership, under the like circumstances, and with the like intent, shall be void, as against the creditors of such partnership.

Same. R. § 1894.

SEC. 2167. Every such sale, assignment, or transfer of any of the property or effects of a general or special partner, made by such general or special partner, when insolvent or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over creditors of the partnership, and every judgment confessed, lien created, or security given by any such partner under the like circumstances and with the like intent shall be void, as against the creditors of the partnership.

Liability of special partners. R. § 1891.

SEC. 2168. Every special partner who shall violate any provisions of the two last preceding sections, or who shall concur in or assent to any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

Claims of special partners postponed. R. § 1892.

SEC. 2169. In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as a creditor, until the claims of all the other creditors of the partnership shall be satisfied.

Dissolution: terms of. R. § 1893.

SEC. 2170. No dissolution of such partnership by the acts of the parties, shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the office of the clerk of the district court in which the original certificate was recorded, and published once in each week for four weeks, in a newspaper printed in each of the counties where the partnership may have places of business.

CHAPTER 10.

OF WAREHOUSEMEN AND CARRIERS.

Who receipts: effect of. C. 120, 10 G. A.

SECTION 2171. All warehouse receipts, certificates, or other evidences of the deposit of property, issued by any warehouseman, wharfinger, or other person engaged in storing property for others, shall be, in the hands of the holder thereof, presumptive evidence of title to said property both in law and equity.

Not issued unless property is in store. C. 84, § 1, 9 G. A.

SEC. 2172. No warehouseman, wharfinger, or other person shall issue any receipt or other voucher for any personal property to any person unless such property is in store and under his control at the time of issuing the receipt or other voucher.

Subject to order of holder. Same, § 2.

SEC. 2173. Such property shall remain in store until otherwise ordered by the holder of the receipt or voucher, subject only to the condition thereof, and the contract between the parties as to the time of its remaining in store.

First cancelled before second receipt can issue. Same, § 3.

SEC. 2174. No such person shall issue any second receipt or voucher for any such property while any former receipt or voucher for the same property, or any part thereof, is outstanding and uncancelled.

Property cannot be sold or encumbered. Same, § 4.

SEC. 2175. No such person shall sell or encumber, ship, transfer, or in any manner remove beyond his immediate control, any personal property for which a receipt or voucher has been given as aforesaid without the written consent of the person holding the same, except to enforce his lien thereon for storage and warehouse charges, as provided for in this chapter.

Penalty. Same, § 5.

SEC. 2176. Every person aggrieved by the violation of any of the four sections next preceding, may have and maintain an action at law against the person violating any of the provisions of said sections, before any court of competent jurisdiction, and shall not only recover actual damages, but shall be entitled to exemplary damages which he may have sustained by reason of any such violation, whether such person shall have been convicted under a criminal charge for the same act or not.

UNCLAIMED PROPERTY—SALE.

Lien for charges. C. 178, § 1, 13 G. A.

SEC. 2177. Personal property transported by, or stored or left with any warehouseman, forwarding and commission merchant, or other depository, express company, or carriers, shall be subject to a lien for the just and lawful charges on the same, and for the transportation, advances, and storage thereof.

Proceedings when goods have remained unclaimed for six months. Same, § 2.

SEC. 2178. If any such property shall for six months remain in the possession, unclaimed, of any of the persons named in the preceding section, with the just and legal charges unpaid thereon, the person having the same in charge or possession shall first give notice to the owner or consignee, if his whereabouts is known, and if not known, shall go before the nearest justice of the peace and make affidavit, stating the time and place where such property was received, the marks or brands by which the same is designated, if any, and, if not, then such other description as may best answer the purpose of indicating what the property is, and shall also state the probable value of the same, and to whom consigned; also the charges paid thereon, accompanied by the original receipt for such charges and by the bill of lading, also the other charges, if any, due and unpaid, and whether the whereabouts of the owner or consignee of such goods is known to the affiant, and if so, whether notice was first given to him as hereinbefore provided; which affidavit shall be filed by the said justice of the peace in his office, for the inspection of any one interested in the same, and he shall also enter in his estray book a statement of the contents of the affidavit, and time and place where and by whom the same was made.

Sale: advertisement of: notice: proceedings. Same, § 3.

SEC. 2179. If such property still remain unclaimed, and the charges are not paid thereon, then the person in possession of the same, either by himself or his agent, where the probable value does not exceed one hundred dollars, shall advertise the same for sale for the period of fourteen days, by posting five notices in five of the most public places in the city or locality where said prop-

erty is held, giving such description as will indicate what is to be sold; but when the goods exceed the probable value of one hundred dollars, then the length of notice shall be four weeks, and, in addition to the five notices posted, there shall be a publication of the notice of sale for the same length of time in some newspaper of general circulation in the locality where the property is held, if there be one, and if not, then in the next nearest newspaper published in that neighborhood, at the end of which period, if the property is still unclaimed, or charges unpaid, the agent or party in charge shall sell the same at public auction, between the hours of ten o'clock A. M. and four o'clock P. M., for the highest price the same will bring in cash, which sale may be continued from day to day by public announcement to that effect at the time of adjournment until all the property is sold, and from the proceeds of such sale, the said party who held the same shall take and appropriate a sufficient sum to pay all charges thereon, and all costs and expenses of sale; the cost of advertising to be no more than in the case of a constable or sheriff's sale, and the same to be conducted in a similar manner.

Perishable property defined: and when and how sold. Same, § 4.

SEC. 2180. Fruit, fresh fish, oysters, game, and other perishable property, shall be retained twenty-four hours, and if not claimed within that time and charges paid, after the proper affidavit is made as required by section twenty-one hundred and seventy-eight of this chapter, may be sold either at public or private sale, in the discretion of the party holding the property, for the highest price that the same will bring, and the proceeds of the sale disposed of as above provided. But in both cases, if the owner or consignee of said unclaimed property shall reside in the same city, town, or locality in which the same shall be, and shall be known to the agent or party having the same in charge, then personal notice shall be given to said owner or consignee, in writing, that said goods are held subject to his order, on payment of charges, and that unless he pays said charges, and removes the property, the same will be sold as provided by law.

DISPOSITION OF PROCEEDS.

Surplus overcharges to be deposited in county treasury. Same, § 5.

SEC. 2181. After the charges due and unpaid on the property, and the expenses and costs of sale have been taken out of the proceeds, the excess in the hands of the agent or person who was in charge thereof, shall be by him forthwith deposited with the county treasurer of the county where the goods were sold, subject to the order of the owner, said ownership being properly authenticated under oath, and such person shall take from such treasurer a receipt for such money, and deposit the same with the county auditor. He shall also file with the county treasurer a schedule of the property, with the name of the consignee or owner, if known, of each piece of property sold, the sum realized from the sale of each separate package, describing the same, together with a copy of the advertisement as hereinbefore provided, and a full statement of the receipts of the sale, and the

amount disbursed to pay charges, costs, and expenses of sale, all of which shall be under the oath of the party or his agent, which schedule, statement, oath, and advertisement shall all be filed and preserved in the treasurer's office, for the inspection of any one interested in the same.

Duty of treasurer. Same, § 6.

SEC. 2182. Should the owner of the property sold not make a demand upon the county treasurer for any money that may be in the treasury to his credit, according to the provisions of this chapter, the sum so unclaimed shall be accounted for by the county treasurer, and placed to the credit of the county in the next subsequent settlement made by the treasurer with the county; and should the money, or any part thereof, remain unclaimed during the period of one year, it shall then be paid into the school fund, to be distributed as other funds may be by law, which may be raised by tax on other property of the county. But nothing herein contained shall be a bar to any legal claimant from prosecuting and proving his claim for such money at any time within ten years, and, the claim being within that period prosecuted and proved, it shall be paid out of the county treasury in which it was originally placed without interest.

COMMON CARRIERS—LIABILITY.

For damages caused to baggage. C. 165, 13 G. A.

SEC. 2183. The proprietors of all omnibuses, transfer companies, or other common carriers, doing business within the limits of this state, and their agents, shall be liable for damages occasioned to baggage or other property belonging to travellers, through careless or negligent handling while in possession of said companies or carriers. And in addition to the damages recoverable therefor, the parties recovering the same shall also be entitled to an allowance of not less than five dollars for every day's detention caused thereby or by a suit brought to recover the same.

Cannot limit liability. C. 113, 11 G. A.

SEC. 2184. No contract, receipt, rule, or regulation shall exempt any corporation or person engaged in transporting persons for hire from the liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation been made and entered into.

TITLE XV.

OF THE DOMESTIC RELATIONS.

CHAPTER 1.

OF MARRIAGE.

SECTION 2185. Marriage is a civil contract, requiring the consent of parties capable of entering into other contracts except as herein otherwise declared. A contract. R. § 2515.

SEC. 2186. 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. Between what ages valid. R. § 2516.

SEC. 2187. Previous to any marriage within this state, a license for that purpose must be obtained from the clerk of the circuit court of the county wherein the marriage is to be solemnized, agreeable to the provisions of this chapter. License. R. § 2517.

SEC. 2188. 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. Same. R. § 2518.

SEC. 2189. Unless such clerk 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. Proof of age required. R. § 2519.

SEC. 2190. He must cause due entry of the application for the issuing of the license to be made in a book to be procured and kept for that purpose, 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 fact was made to him by one or more witnesses, stating their names, which book shall constitute a part of the records of his office. Clerk to make entry of record. R. § 2520.

SEC. 2191. If either party is a minor, the consent of the parent or guardian must be filed in the clerk's office after being acknowledged by the said parent or guardian, or proved to be genuine, and a memorandum of such facts must also be entered in said book. Consent of parent or guardian required. R. § 2521.

SEC. 2192. If the clerk of the circuit 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 Penalty. R. § 2522.

license being procured, the parties so married, and all persons aiding in such marriage, are likewise guilty of a misdemeanor.

Who may solemnize. R. § 2524.

SEC. 2193. Marriages must be solemnized either:

1. By a justice of the peace or mayor of the city wherein the marriage takes place;

2. By some judge of the supreme, district, or circuit court of this state;

3. By some officiating minister of the gospel, ordained or licensed according to the usages of his denomination.

Certificate of. R. § 2525.

SEC. 2194. After the marriage has been solemnized, the officiating minister or magistrate shall, on request, give each of the parties a certificate thereof.

Penalty. R. § 2526

SEC. 2195. 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.

Return: penalty for not making. R. § 2527.

SEC. 2196. The person solemnizing marriage shall forfeit a like amount, unless within ninety days after the ceremony he make return thereof to the clerk of the circuit court.

Register of marriages. R. § 2528.

SEC. 2197. The clerk of the circuit 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.

When not applicable. C. 191, 12 G. A.

SEC. 2198. The provisions of this chapter, so far as they relate to procuring licenses and to the solemnizing of marriages, are not applicable to members of any particular denomination having, as such, any peculiar mode of entering the marriage relation.

Husband responsible for return. R. § 2530.

SEC. 2199. 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 clerk, and is liable to the above named penalty if the return is not made.

Illegitimates. R. § 2531.

SEC. 2200. Illegitimate children become legitimate by the subsequent marriage of their parents.

When void.

SEC. 2201. Marriages between persons whose marriage is prohibited by law, or who have a husband or wife living, are void; but if the parties live and cohabit together after the death of the former husband or wife, such marriage shall be deemed valid.

CHAPTER 2.

OF HUSBAND AND WIFE.

Married women may own and dispose of property.

SECTION 2202. A married woman may own in her own right, real and personal property acquired by descent, gift, or purchase, and manage, sell, convey, and devise the same by will, to the same extent and in the same manner that the husband can property belonging to him.

SEC. 2203. When property is owned by either the husband or wife, the other has no interest therein which can be the subject of contract between them, or such interest as will make the same liable for the contracts or liabilities of either the husband or wife who is not the owner of the property, except as provided in this chapter.

Property of either not subject of contract between them.

SEC. 2204. Should either the husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and extent as if they were unmarried.

Rights and liabilities as to property same as other persons.

SEC. 2205. For all civil injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be responsible therefor, except in cases where he would be jointly responsible with her if the marriage did not exist.

Husband not liable for civil injuries.

SEC. 2206. A conveyance, transfer, or lien, executed by either husband or wife to or in favor of the other, shall be valid to the same extent as between other persons.

Conveyances to each other valid.

SEC. 2207. In case the husband or wife abandons the other and leaves the state, and is absent therefrom for one year without providing for the maintenance and support of his or her family, or is confined in jail or the penitentiary for the period of one year or upward, the district or circuit court of the county where the husband or wife so abandoned or not confined resides, may, on application by petition setting forth fully the facts, authorize him or her to manage, control, sell, and encumber the property of the husband or wife for the support and maintenance of the family, and for the purpose of paying debts. Notice of such proceedings shall be given as in ordinary actions, and anything done under or by virtue of the order or decree of the court, shall be valid to the same extent as the same was done by the party owning the property.

Abandonment of either: property may be sold to pay debts.

SEC. 2208. All contracts, sales, or encumbrances made by either the husband or wife by virtue of the power contemplated in the preceding section, shall be binding on both, and, during such absence or confinement, the person acting under such power may sue and be sued thereon, and for all acts done the property of both shall be liable and execution may be levied or attachment issued accordingly. No suit or proceeding shall abate or be in anywise affected by the return or release of the person confined, but he or she may be permitted to prosecute or defend jointly with the other.

Contracts and sales binding on both.

SEC. 2209. The husband or wife affected by the proceedings contemplated in the two preceding sections, may have the order or decree of the court set aside or annulled by filing a petition therefor, and serving a notice on the person in whose favor the same was granted as in ordinary actions. But the setting aside of such decree or order shall in nowise affect any act done thereunder.

Decree set aside.

SEC. 2210. A husband or wife may constitute the other his or her attorney in fact, to control and dispose of his or her property for their mutual benefit, and may revoke the same to the same extent and manner as other persons.

Either may make the other attorney in fact.

Wages of wife: actions by.

SEC. 2211. A wife may receive the wages of her personal labor and maintain an action therefor in her own name, and hold the same in her own right; and she may prosecute and defend all actions at law or in equity for the preservation and protection of her rights and property, as if unmarried.

Property of one not liable for debts of the other. C. 126, § 1, 13 G. A.

SEC. 2212. Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise declared, they are not liable for the separate debts of each other; nor are the wages, earnings, or property of either, nor is the rent or income of such property liable for the separate debts of the other.

Contracts of wife. Same, § 2.

SEC. 2213. Contracts may be made by a wife and liabilities incurred, and the same enforced by or against her to the same extent and in the same manner as if she were unmarried.

Property of both liable. R. § 2507.

SEC. 2214. The expenses of the family and the education of the children, 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 separately.

Rights of both as to the homestead. R. § 2514.

SEC. 2215. Neither husband nor wife can remove the other, nor their children, from their homestead without his or her consent, and if he abandons her she is entitled to the custody of their minor children, unless the district or circuit court, upon application for that purpose, shall, for good cause otherwise, direct.

INSANITY OF EITHER.

Interest of in property may be conveyed. R. § 1500.

SEC. 2216. Where either the husband or wife is insane, and incapable of executing a deed, and relinquishing or conveying his or her right to the real property of the other, the sane person may petition the district or circuit court of the county where such petitioner resides, or of the county where said real estate is situated, setting forth the facts and praying for an order authorizing the applicant or some other person to execute a deed of conveyance and thereby relinquish the interest of either in the real property of the other.

Proceedings. R. § 1501.

SEC. 2217. The petition shall be verified by the oath of the petitioner and shall be filed in the office of the clerk of the district or circuit court of the proper county. The court shall appoint some discreet person or attorney guardian for the person alleged to be insane, who shall ascertain as to the propriety, good faith, and necessity of the prayer of the petitioner, and who shall have power to resist said application, and subpœna witnesses, or to take depositions to disprove the petition and prove the impropriety of granting said petition, which guardian or attorney shall be allowed by the court a reasonable compensation to be paid as the other costs.

Same. R. § 1502.

SEC. 2218. Upon the hearing of said petition, if the court is satisfied that the same is made in good faith, and that the petitioner is the proper person to exercise the power and make the conveyances, and that such power is necessary and proper, said court shall enter up a decree, thereby fully authorizing the execution of all such conveyances for and in the name of such husband or wife, by such person as the court may appoint.

SEC. 2219. All deeds executed as provided in the three preceding sections, shall be valid in law and shall convey the interest of such insane person in the real estate so conveyed; provided said power shall cease and become void as soon as he or she shall become sane and of sound mind, and apply to the court to revoke said power, and the same shall be revoked; but such revocation shall in nowise affect conveyances previously made. Same. R. § 1503.

CHAPTER 3.

OF DIVORCE, ANNULLING MARRIAGES, AND ALIMONY.

SECTION 2220. The district or circuit court in the county where either party resides, has jurisdiction of the subject matter of this chapter. Jurisdiction. C. 127, 13 G. A.

SEC. 2221. Except where the defendant is a resident of this state served by personal service, the petition for divorce, in addition to the facts on account of which the plaintiff claims the relief sought, must state that the plaintiff has been for the last year a resident of the state, specifying the town and county in which he has so resided, and the entire length of his residence therein, after deducting all absences from the state; that he is now and expects to remain a resident thereof; that such residence has been in good faith and not for the purpose of obtaining a divorce only; and it must in all cases state that the application is made in good faith, and for the purpose set forth in the petition. Petition: statement in.

SEC. 2222. All the statements above required, and all other allegations of the petitioner must be verified by the oath of the plaintiff, and proved to the satisfaction of the court by competent evidence. Unless the court is satisfied that the allegations of residence are fully proved, the hearing shall proceed no further, and the action shall be dismissed by the court on its own motion. No divorce shall be granted on the testimony of the plaintiff alone, and all such actions shall be heard in open court on the testimony of witnesses, or depositions taken as in other equitable actions triable upon oral testimony, or by a commission appointed by the court. To be verified: proof: dismissal of action.

SEC. 2223. Divorces from the bonds of matrimony may be decreed against the husband for the following causes: Causes of. R. § 2434.

1. When he has committed adultery subsequent to the marriage;
2. When he wilfully deserts his wife and absents himself without a reasonable cause for the space of two years;
3. When he is convicted of felony after his marriage;
4. When, after marriage, he becomes addicted to habitual drunkenness;
5. When he is guilty of such inhuman treatment as to endanger the life of his wife.

Same. R. § 2235.

SEC. 2224. The husband may obtain a divorce from his wife for like cause, and also when the wife at the time of the marriage was pregnant by another than her husband, unless such husband have an illegitimate child or children then living, which was unknown to the wife at the time of their marriage.

Cross petition.

SEC. 2225. The defendant may obtain a divorce for like causes as above stated, by filing a cross petition.

Maintenance during litigation.

SEC. 2226. The court may order either party to pay the clerk a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute or defend the action.

Attachment may issue.

SEC. 2227. The petition may be presented to the court or judge for the allowance of an order of attachment; and said court or judge may, by endorsement thereon, direct such attachment and the amount for which the same may issue and the amount of the bond, if any, that shall be given, and the clerk shall issue the same accordingly; and any property taken by virtue thereof shall be held to satisfy the judgment or decree of the court, but may be discharged or released as in other cases.

Situation of parties considered.

SEC. 2228. In making such orders, the court or judge shall take into consideration the age, condition, sex, and pecuniary condition of the parties, and such other matters as are deemed pertinent, which may be shown by affidavits in addition to the pleadings or otherwise, as the court or judge may direct.

Children: maintenance: changes made. R. § 2237.

SEC. 2229. When a divorce is decreed, the court may make such order in relation to the children, property, parties, and the maintenance of the parties as shall be right and proper. Subsequent changes may be made by the court in these respects when circumstances render them expedient.

Forfeiture. Code, 1851, § 1486.

SEC. 2230. When a divorce is decreed, the guilty party forfeits all rights acquired by the marriage.

ANNULLING ILLEGAL MARRIAGES.

Causes specified.

SEC. 2231. Marriages may be annulled for the following causes:

1. Where marriage between the parties is prohibited by law;
2. Where either party was impotent at the time of marriage;
3. Where either party had a husband or wife living at the time of the marriage, provided they have not lived and cohabited together, as provided in section two thousand two hundred and one, of chapter one of this title;
4. Where either party was insane or idiotic at the time of the marriage.

Petition.

SEC. 2232. A petition shall be filed in such cases as in actions for divorce, and all the provisions of this chapter shall apply to such cases except as otherwise provided.

Validity doubted.

SEC. 2233. When the validity of a marriage is doubted, either party may file a petition, and the court shall decree it annulled or affirmed according to the proof.

Children.

SEC. 2234. When a marriage is annulled on account of the consanguinity or affinity of the parties, or because of impotency, the issue shall be illegitimate; but when on account of non-age

or insanity, or idiocy, the issue is the legitimate issue of the party capable of contracting marriage.

SEC. 2235. When a marriage is annulled on account of a prior marriage, and the parties contracted the second marriage in good faith, believing the prior husband or wife to be dead, that fact shall be stated in the decree of nullity; and the issue of the second marriage begotten before the decree of the court, is the legitimate issue of the parent capable of contracting. When, and of which parent, children become legitimate.

SEC. 2236. In case either party entered into the contract of marriage in good faith, supposing the other to be capable of contracting, and the marriage is declared a nulity, such fact shall be entered in the decree, and the court may decree such innocent party compensation as in cases of divorce. Compensation as in case of divorce.

CHAPTER 4.

OF MINORS.

SECTION 2237. 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. Majority. R. § 2539.

SEC. 2238. 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. Contracts and disaffirmance. R. § 2540.

SEC. 2239. 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. Misrepresentations of. R. § 2541.

SEC. 2240. 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. Payments to. R. § 2542.

CHAPTER 5.

OF THE GUARDIANSHIP OF MINORS, DRUNKARDS, SPENDTHRIFTS, AND LUNATICS.

SECTION 2241. The parents are the natural guardians of their minor children, and are equally entitled to the care and custody of them. Natural guardian. R. § 2543.

Death of either parent. R. § 2544.

SEC. 2242. Either parent dying before the other, the survivor becomes the guardian. If there be no parent or guardian qualified and competent to discharge the duty, the circuit court shall appoint a guardian.

Of property. R. § § 2545, 2546.

SEC. 2243. If the minor has property not derived from either parent, a guardian must be appointed to manage such property, which may be either parent if suitable and competent.

Minor may choose. R. § 2547.

SEC. 2244. If the minor be over the age of fourteen years and of sound intellect, he may select his own guardian, subject to the approval of the circuit court of the county where his parents, or either of them, reside; or if such minor is living separate and apart from his parents, the circuit court of the county where he resides has jurisdiction.

Power of court and guardian. O. 27, § 1, 9 G. A.

SEC. 2245. The guardian and court making the appointment, have power and authority over any property of the minor situate or being in any other county, to the same extent and in the manner as if the same was situate in the county where the appointment was made. But when any order is made by such court affecting the title of lands lying in another county, a certified copy of the same, and of all the papers on which it is founded, shall be transmitted to the clerk of the circuit court in the county where such lands are situated, and such clerk shall enter such order on the proper docket and index the same, and make a complete record thereof in the same manner as if the cause in which the order is made had been commenced in court.

Bond and oath. R. § 2548.

SEC. 2246. 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.

Supplemental security. R. § 2562.

SEC. 2247. The court may also direct guardians to give new or supplemental security, or may remove them for good cause shown, which cause must be entered on the records.

Inventory and appraisement. R. § 2549.

SEC. 2248. 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 clerk of the circuit court.

Powers. R. § 2550.

SEC. 2249. Guardians of the persons of minors, have the same power and control over them that parents would have if living.

Duties. R. § 2551.

SEC. 2250. 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.

Failure to comply with order of court: penalty. R. § 2561.

SEC. 2251. A failure to comply with any order of the court in relation to 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. 2252. 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, and failure to comply with such order for three months thereafter, shall subject such guardian to a penalty of one hundred dollars to be recovered in an action on his bond for the benefit of such minor's estate. New guardian. R. § 2563.

SEC. 2253. A guardian may be appointed for non-resident minors who have property in this state, on proper application made to the circuit court of the county in which such property or any part thereof may be, who shall qualify in the same manner and shall have the same powers, and be subject to the same rules as guardians of resident minors. Non-resident minors. C. 125, 11 G. A.

SEC. 2254. All guardians of minors are required to appear at least once each year before the circuit court, and render an account of all moneys or other property in their possession, together with all the interest which may have accrued on moneys loaned belonging to the minor or minors. Must render account. R. § 2568.

SEC. 2255. In case the said guardian shall fail to appear before said court within the time above specified, he shall forfeit and pay into the county treasury the sum of fifty dollars, as in other actions of misdemeanor. Penalty for failure. R. § 2569.

SEC. 2256. 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. Compensation. R. § 2567.

PROPERTY OF—SOLD.

SEC. 2257. When not in violation of the terms of a will by which a minor holds his real property, it may, under the direction of the circuit 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. Real estate: sale or mortgage of. R. § 2552.

SEC. 2258. 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 time fixed for such application. Petition. R. § 2553.

SEC. 2259. 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. Postponement and publication. R. § 2554.

SEC. 2260. It may also direct a reference for the purpose of ascertaining the propriety of ordering the sale or mortgage as applied for. Reference. R. § 2555.

SEC. 2261. 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 prop- Bond to be given before sale. R. § 2556.

erty 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.

Costs. R. § 2557.

SEC. 2262. When the application for the sale of property is resisted, the court may, in its discretion, award costs to the prevailing party; and, when satisfied that there was no reasonable ground for making the application, may direct the costs to be paid by the guardian from his own funds.

Deeds how made: court must approve. R. § 2558.

SEC. 2263. 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.

Directions as to sale. R. § 2559.

SEC. 2264. 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.

Validity of after five years. R. § 2560.

SEC. 2265. No person can question the validity of such sale after the lapse of five years from the time it was made.

FOREIGN GUARDIANS.

Foreign guardians. C. 125, 11 G. A.

SEC. 2266. The foreign guardian of any non-resident minor, may be appointed the guardian in this state of such minor by the circuit 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, unless a guardian has previously been appointed under the preceding section.

Apportionment: how made. R. § 2565.

SEC. 2267. Such appointment may be made upon his filing with the clerk of the circuit court of the county wherein there is any such property, an authenticated copy of the order for his appointment. He shall thereupon qualify like other guardians, except as in the next succeeding section.

Same. R. § 2566.

SEC. 2268. Upon the filing of an authenticated copy of the bond and the inventory rendered by the guardian in a foreign state, if the court is satisfied with the sufficiency and the amount of the security, it may dispense with the filing of an additional bond.

Power of as to personal property. C. 83, § 2, 12 G. A.

SEC. 2269. Foreign guardians of non-resident minors may be authorized by the circuit court of the county wherein such minor has personal property, to receive the same on complying with the provisions of the following sections.

Bond. Same, § 2.

SEC. 2270. Such foreign guardian shall file in the office of the clerk of the circuit court in the county where the property is situated, a certified copy of his official bond, duly authenticated by the court granting the letters of guardianship, and shall also execute a receipt for the property received by him.

Order of court. Same, § 3.

SEC. 2271. Upon the filing of the bond as provided by the last section, and the court being satisfied with the amount of said bond, said court shall order the personal property of the minor to be delivered to the guardian; and the court shall spread the bonds and receipt on its records, and direct the clerk to notify, by mail, the court granting the letters of guardianship, of the

amount of property allowed to the guardian, and the date of the delivery of the same.

OF DRUNKARDS, SPENDTHRIFTS, AND LUNATICS.

SEC. 2272. When a petition is presented to the circuit court, verified by affidavit, that any inhabitant of the county is: Guardians of: when appointed. R. § 1449.

1. An idiot, lunatic, or person of unsound mind;
2. An habitual drunkard incapable of managing his affairs;
3. A spendthrift who is squandering his property; and the allegations of the petition have been satisfactorily proved upon the trial provided for in the following section, such court may appoint a guardian of the property of any such person, who shall be the guardian of the minor children of his ward unless the court otherwise orders.

SEC. 2273. Such petition shall set forth as particularly as may be, the facts upon which the application is based, and shall be answered as in other ordinary actions, all the rules of which shall govern so far as applicable and not otherwise provided in this chapter. The applicant shall be plaintiff and the other party defendant, and either party may have a trial by jury. The petition may be presented to the judge, who may appoint a temporary guardian. Petition for: trial by jury.

SEC. 2274. The provisions of this chapter, and all other laws relating to guardians for minors, and regulating or prescribing the powers, duties, or liabilities of each and of the court, so far as the same are applicable, shall be held to apply to guardians and their wards appointed under section two thousand two hundred and seventy-two of this chapter. Provisions made applicable. R. § 1451.

SEC. 2275. Such guardian may sue in his own name, describing himself as guardian of the ward for whom he sues; and when his guardianship shall cease by his death, removal, or otherwise, or by the decease of his ward, any suit, action, or proceeding then pending shall not abate; but his successor, or the person for whom he was guardian, or the executor or administrator of such person, as the case may require, shall be made party to the suit or other proceedings, in like manner as is or may be provided by law for making an executor or administrator party to a proceeding of a like kind when the plaintiff dies during its pendency. Power, authority, and duty of guardian. R. § 1452.

SEC. 2276. Whenever the sale of the real estate of such ward is necessary for his support, or the support of his family, or the payment of his debts, or will be for the interest of the estate or his children, the guardian may sell the same under like proceedings as required by law to authorize the sale of real estate by the guardian of a minor. Real estate of may be sold. R. § 1453.

SEC. 2277. The guardian of any person contemplated in section two thousand two hundred and seventy-two of this chapter, whether appointed by a court in this state or elsewhere, may complete the real contracts of his ward, or any authorized contracts of a guardian who has died or been removed, in like manner and by like proceeding as the real contract of a decedent Guardian to complete contracts. R. § 1454.

may under an order of court, be specially performed by his executor or administrator.

When estate is insolvent. R. § 1455.

SEC. 2278. If the estate of such person is insolvent, or will probably be insolvent, the same shall be settled by the guardian in like manner, and like proceedings may be had as is or may be required by law for the settlement of the insolvent estate of a deceased person.

Custody of: prior right to. C. 179, § 12, 12 G. A.

SEC. 2279. The priority of claim to the custody of any insane person, habitual drunkard, or spendthrift aforesaid, shall be:

1. The legally appointed guardian;
2. The husband or wife;
3. The parents;
4. The children.

CHAPTER 6.

MASTER AND APPRENTICE.

Minors. R. § 2573.

SECTION 2280. Any minor child may be bound to service until the attainment of the age of legal majority as hereinafter described.

Indenture: when minor to sign. R. § 2574.

SEC. 2281. Such binding must be by written indenture, specifying the age of the minor and the terms of 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.

Consent of relatives required. R. § 2575.

SEC. 2282. A written consent must be appended to or endorsed 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 assent, then,
3. By the guardian; and if there be no guardian, then by the clerk of the circuit court.

Paupers. R. § 2576.

SEC. 2283. The clerk of the circuit court may bind minors who are paupers till they have attained the age of majority, without obtaining their assent.

Indenture. R. § 2577.

SEC. 2284. The written indenture must, in that case, be signed by the master and said clerk.

Same. R. § 2578.

SEC. 2285. 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 clerk of the circuit court, and the third with the person by whose assent he is bound.

Powers: rights: liabilities. R. § 2579.

SEC. 2286. The powers, liabilities, and duties of the master, and the rights of the apprentice, are the same as those of parent and child respectively, except as to inheritances and except as is otherwise provided by law.

Duty of parent, guardian or officer. R. § 2580.

SEC. 2287. The parent, guardian, or officer, by whose act or consent 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. 2288. Upon complaint by the minor or by any other person made to the judge of the district or circuit 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 to such complaint. Complaint against master. R. § 2581.

SEC. 2289. The complaint, with the proper notice endorsed thereon, must be served and returned in the same manner as in the commencement of an action, and the time for appearance shall be regulated by the same rules. Service of. R. § 2582.

SEC. 2290. The answer of the master must also be under oath, and, if any other issue be joined thereon, it must be tried as in other cases in court. Answer: issue: trial. R. § 2583.

SEC. 2291. If the court or jury before whom the cause 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. Judgment: discharge. R. § 2584.

SEC. 2292. From any judgment in such cases, either the minor or the master may appeal in the same manner as provided for in ordinary cases. Appeal. R. § 2585.

SEC. 2293. 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. Suit for damages. R. § 2586.

SEC. 2294. 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. Complaint against apprentice. R. § 2587.

SEC. 2295. A reasonable space of time, not exceeding three days, shall be allowed to the minor to consult his parent, guardian, or other friends, previous to making his answer to the complaint. Answer: when made. R. § 2588.

SEC. 2296. The answer must be made, and the issues thereon tried in the manner hereinafter provided. Issue: trial. R. § 2589.

SEC. 2297. If he shows sufficient cause for refusing to serve, he may be discharged from service in the manner hereinbefore provided. Discharge of. R. § 2590.

SEC. 2298. Instead of proceeding as aforesaid, the master may, for any refusal to serve or for any gross misbehavior on the part of the apprentice, file a complaint for the purpose of releasing himself from the force and effect of the indenture aforesaid. Master released from indenture. R. § 2591.

SEC. 2299. Proceedings thereupon shall be had similar to those provided in case of a complaint by or in behalf of the apprentice, and judgment rendered in like manner with the same right of appeal. Proceedings. R. § 2592.

Dissolution of by death or removal. R. § 2593.

SEC. 2300. 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.

Natural guardian when removed. R. § 2594.

SEC. 2301. Upon complaint being made to the circuit 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.

Proceedings. R. § 2595.

SEC. 2302. 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.

Same. R. § 2596.

SEC. 2303. The complainant in such cases must be sworn to his complaint and file it in the office of the clerk, and a copy thereof, with a notice thereon endorsed, stating the time when the matter will be brought before the circuit 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.

Trial. R. § 2597.

SEC. 2304. Issues joined shall be tried in the same manner as in ordinary civil actions.

Preference over other cases. R. § 2598.

SEC. 2305. Preference shall be given to such cases over the ordinary business of the court, but trials actually commenced need not be suspended for that purpose.

Schooling and treatment of minors. R. § 2598.

SEC. 2306. The master shall send said minor child, after the same be six years old, to school at least four months in each year, if there be a school in the district, and at all times the master shall clothe the minor in a comfortable and becoming manner.

CHAPTER 7.

OF THE ADOPTION OF CHILDREN.

Who may adopt. R. § 2606.

SECTION 2307. Any person competent to make a will is authorized in manner hereinafter set forth, to adopt as his own the minor child of another, conferring thereby upon such child all the rights, privileges, and responsibilities which would pertain to the child if born to the person adopting in lawful wedlock.

SEC. 2308. In order thereto, the consent of both parents, if living and not divorced or separated, and if divorced or separated, or, if unmarried, the consent of the parent lawfully having the care and providing for the wants of the child, or if either parent is dead, then the consent of the survivor, or if both parents be dead, or the child shall have been and remain abandoned by them, then the consent of the mayor of the city where the child is living, or, if not in a city, then of the clerk of the circuit court of the county where the child is living, shall be given to such adoption by an instrument in writing signed by the parties or party consenting, and stating the names of the parents, if known, the name of the child, if known, the name of the person adopting such child, and the residence of all if known, and declaring the name by which such child is thereafter to be called and known, and stating also that such child is given to the person adopting, for the purpose of adoption as his own child.

Consent of parents, mayor of city, or clerk of circuit court required R. § 2601.

SEC. 2309. Such instrument in writing shall be also signed by the person adopting, and shall be acknowledged by all the parties thereto in the same manner as deeds affecting real estate are required to be acknowledged; and shall be recorded in the recorder's office in the county where the person adopting resides, and shall be indexed with the name of the parents by adoption as grantor, and the child as grantee, in its original name if stated in the instrument.

Instrument of adoption: acknowledged and recorded. R. § 2602.

SEC. 2310. Upon the execution, acknowledgment, and filing for record of such instrument, the rights, duties, and relations between the parent and child by adoption, shall, thereafter, in all respects, including the right of inheritance, be the same that exist by law between parent and child by lawful birth.

Rights and relations of child. R. § 2603.

SEC. 2311. In case of maltreatment committed or allowed by the adopted parent, or palpable neglect of duty on his part toward such child, the custody thereof may be taken from him and entrusted to another at his expense, if so ordered by the circuit court of the county where the parent resides, and the same proceedings may be had therefor, so far as applicable, as are authorized by law in such a case in the relation of master and apprentice; or the court may, on showing of the facts, require from the adopted parent, bond with security, in a sum to be fixed by him, the county being the obligee, and for the benefit of the child, conditioned for the proper treatment and performance of duty toward the child on the part of the parent; but no action of the court in the premises shall affect or diminish the acquired right of inheritance on the part of the child, to the extent of such right in a natural child of lawful birth.

Maltreatment of child: consequences of. R. § 2604.

TITLE XVI.

OF THE ESTATES OF DECEDENTS.

CHAPTER 1.

OF PROBATE JURISDICTION.

Circuit court has exclusive. C. 86, § 3, 12 G. A. C. 153, § 4, 13 G. A.

SECTION 2312. The circuit court of each county shall have original and exclusive jurisdiction of the probate of wills, and the appointment of such executors, administrators, or trustees, as may be required to carry the same into effect; of the settlement of the estate of deceased persons, and of the persons and estates of minors, insane persons, and others requiring guardianship, including applications for the sale of real property belonging to any such estates, except as prescribed in chapters one and three, of title fifteen.

Always open: exception.

SEC. 2313. The court shall be always open for the transaction of probate business; but the hearing of any matter requiring notice shall be had only in term time, or at such time and place as the judge may appoint.

Same: notice.

SEC. 2314. When the judge fixes a time and place of hearing, as contemplated in the preceding section, he shall determine what notice shall be given thereof, and no such hearing shall be had until proof is made of the giving of such notice.

Clerk: power in vacation.

SEC. 2315. The clerk, in vacation, shall have power to appoint executors, administrators, and appraisers; to issue citations and other notices, and to discharge such other duties in relation to estates of decedents as are in this title specially devolved on him.

Orders of clerk set aside.

SEC. 2316. Any act of the clerk, as contemplated in the preceding section, shall be binding on all parties interested therein until the next term of the court after they are entered of record, when they shall be read in open court and approved, set aside, or modified, but until so set aside or modified, it shall have the same force and effect as if done by the court.

Causes transferred to district court. C. 153, § 3, 13 G. A.

SEC. 2317. Where the judge is a party, or connected by blood or affinity with any person so interested nearer than the fourth degree, or is personally interested in any probate matter, he shall order the same transferred to the district court, which shall have jurisdiction therein the same as the circuit court would otherwise have, and its proceedings shall be entered on the records of the circuit court.

Jurisdiction of court. R. § 2306.

SEC. 2318. When a case is originally within the jurisdiction of the courts of two or more counties, that court which first takes cognizance thereof by the commencement of proceedings, shall retain the same throughout.

SEC. 2319. The court of the county in which a will is probated, or in which administration is granted, shall have jurisdiction co-extensive with the state in the settlement of the estate of the decedent and the sale and distribution of his real estate. Same. R. § 2472.

SEC. 2320. Any process or authority emanating from the court in probate matters, may, for good cause, be revoked and a new one issued. Process revoked. R. § 2307.

SEC. 2321. All bonds relating to probate matters shall be filed in the office of the clerk of the circuit court, and shall not be deemed sufficient until examined by the clerk and his approval endorsed thereon. Bonds filed: approval of. C. 158. § 2, 13 G. A.

CHAPTER 2.

OF WILLS AND LETTERS OF ADMINISTRATION.

SECTION 2322. 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. Who may make. R. § 2309.

SEC. 2323. Property to be subsequently acquired, may be devised when the intention is clear and explicit. Subsequent property. R. § 2310.

SEC. 2324. Personal property to the value of three hundred dollars may be bequeathed by a verbal will, it witnessed by two competent witnesses. Verbal wills. R. § 2311.

SEC. 2325. A soldier in actual service, or a mariner at sea, may dispose of all his personal estate by a will so made and witnessed. Soldier or mariner. R. § 2312.

SEC. 2326. All other wills, to be valid, must be in writing, witnessed by two competent witnesses and signed by the testator, or by some person in his presence and by his express direction. In writing. R. § 2313.

SEC. 2327. No subscribing witness to any will can derive any benefit therefrom, unless there be two disinterested and competent witnesses to the same. Witness. R. § 2314.

SEC. 2328. 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. Same. R. § 2315.

SEC. 2329. 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. Revocation. R. § 2320.

SEC. 2330. When done by cancellation, the revocation must be witnessed in the same manner as the making of a new will. Cancellation: how done. R. § 2321.

SEC. 2331. Wills, duly sealed up and endorsed, may be deposited with the clerk of the court, who shall file and preserve the same until the death of the testator, unless he sooner demand them. Deposit of. R. § 2322.

SEC. 2332. If no executors are named in the will, one or more may be appointed to carry it into effect. Executors. C. 158, § 7, 13 G. A.

If no executors. R. § 2331.

SEC. 2333. If no executors are named therein, or if the executors named fail to qualify and act, it shall be retained until an executor is appointed and qualified in the manner herein prescribed.

POSTHUMOUS CHILDREN—DEVISEE.

Posthumous children. R. § 2316.

SEC. 2334. Posthumous children unprovided for by the father's will, shall inherit the same interest as though no will had been made.

Allowance to. R. § 2317.

SEC. 2335. 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.

"Devisee:" meaning of. R. § 2318.

SEC. 2336. 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."

Devise: children of inherit. R. § 2319.

SEC. 2337. 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.

CUSTODIAN—PROBATE.

To file will. C. 71, 14 G. A.

SEC. 2338. Any person having the custody of a will, shall, as soon as he is informed of the death of the testator, file the same with the clerk, who shall open and read the same.

Penalty for refusal. R. § 2324.

SEC. 2339. If any person having the custody of a will fail to produce the same as required by the preceding section after receiving a reasonable notice so to do, the court may commit him to jail until he produce the same; and he shall be liable for all damages occasioned by his failure to produce such will.

Probate. C. 158, § 4, 13 G. A.

SEC. 2340. After the will is produced and read, a day shall be fixed by the court or clerk for proving the same, which day shall be during a term of court, and may be postponed from time to time in the discretion of the court.

Notice of hearing Same, § 5.

SEC. 2341. The clerk shall give notice of the time thus fixed by publishing a notice, signed by himself and addressed to all whom it may concern, in a daily or weekly newspaper printed in the county where the will is filed, for three consecutive weeks, the last publication of which shall be at least ten days before the time fixed for such hearing; but the court in its discretion may prescribe a different kind of notice.

Certificate: evidence. R. § 2329.

SEC. 2342. Wills, when proved and allowed, shall have a certificate thereof endorsed on 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 the transcript of such record duly authenticated, may be read in evidence in all courts without further proof.

Recorded. R. § 2327.

SEC. 2343. After being approved and allowed, the will, together with the certificate hereinafter required, shall be recorded in a book kept for that purpose.

SEC. 2344. 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 appointed. Executor to have copy. R. § 2330.

EXECUTORS—TRUSTEES.

SEC. 2345. A married woman may act as executor independent of her husband. Married women. R. § 2336.

SEC. 2346. If a minor under eighteen years of age is appointed an executor, there is a temporary vacancy as to him until he reaches that age. Minors. R. § 2337.

SEC. 2347. If a person appointed executor refuses to accept the trust, or neglects to appear within ten days after his appointment and give bond as hereinafter prescribed, or if an executor removes his residence from the state, a vacancy will be deemed to have occurred. Vacancies. C. 158, § 8, 13 G. A.

SEC. 2348. In case of a vacancy, letters of administration, with the will annexed, may be granted to some other person; or if there be another executor competent to act, he may be allowed to proceed by himself in administering the estate. How filled: Same, § 9.

SEC. 2349. 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. Substitution. R. § 2340.

SEC. 2350. Trustees appointed by will, or by the court, must qualify and give bonds the same as executors, and shall be subject to control or removal by the court in the same manner. Trustees to give bond. C. 153, § 5, 13 G. A.

FOREIGN WILLS.

SEC. 2351. Wills probated in any other state or country, shall be admitted to probate in this state without the notices required by law in the case of domestic wills, on the production of a copy of such will and of the original record of probate thereof, authenticated by the attestation of the clerk of the court in which such probation was made; or, if there be no clerk, by the attestation of the judge thereof, and by the seal of office of such officers, if they have a seal. Probated in other states: effect of. R. § 2328.

SEC. 2352. All provisions of law relating to the carrying into effect of domestic wills after probate, shall, so far as applicable, apply to foreign wills admitted to probate in this state as contemplated in the preceding section. Same. C. 139, §§ 1, 2, 11 G. A.

SEC. 2353. Wills, foreign or domestic, shall not be carried into effect until admitted to probate as hereinbefore provided, and such probate shall be conclusive as to the due execution thereof, until set aside by an original or appellate proceeding. Foreign or domestic must be probated. C. 158, § 6, 13 G. A.

ADMINISTRATION.

SEC. 2354. In other cases where an executor is not appointed by will, administration shall be granted: Who entitled: order of. R. § 2343.

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.

Classes united. R. § 2344.

SEC. 2355. Individuals belonging to the same or different classes, may be united as administrators whenever such course is deemed expedient.

Time allowed each class. R. § 2345.

SEC. 2356. 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.

Special administrators. R. § 2352.

SEC. 2357. When from any cause general administration cannot be immediately granted, one or more special administrators may be appointed to collect and preserve the property of the deceased.

Appeal. R. § 2353.

SEC. 2358. No appeal from the appointment of such special executors, shall prevent their proceeding in the discharge of their duties.

Inventory. R. § 2354.

SEC. 2359. They 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 or administrators, and shall preserve such property from injury.

Duties. R. § 2355.

SEC. 2360. 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.

Special: when powers cease. R. § 2356.

SEC. 2361. Upon the granting of full administration, the powers of the special administrators shall cease, and all the business shall be transferred to the general executor or administrator.

Bond of. C. 158, § 10, 13 G. A.

SEC. 2362. Every executor or administrator, except as herein otherwise declared, before entering on the discharge of his duty, must give bond in such penalty as may be required, to be approved by the clerk, conditioned for the faithful discharge of the duties imposed on him by law, according to the best of his ability.

Oath of. C. 158, § 11, 13 G. A.

SEC. 2363. 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 clerk.

New bonds. R. § 2350.

SEC. 2364. 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.

Letters. C. 158, § 12, 13 G. A.

SEC. 2365. After the filing of the bond aforesaid, the clerk shall issue letters testamentary or of administration, as the case may be, under the seal of the court, giving the executor or administrator the power authorized by law.

To give notice of appointments. R § 2309. C. 158, § 18, 13 G. A.

SEC. 2366. The executors or administrators first appointed and qualified for the settlement of an estate, shall, within ten days after the receipt of their letters, publish such notice of their appointment as the court or the clerk may direct; which direction shall be endorsed on the letters when issued.

Limitation. R. § 2357.

SEC. 2367. 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.

Administration: when granted in other states. R. § 2343.

SEC. 2368. If administration of the estate of a deceased nonresident 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 to administer upon the property of the deceased in this state, unless another has been previously appointed.

SEC. 2369. The original letters, or other authority, conferring his power upon such executor, or an attested copy thereof, must be filed with the clerk of the proper court before such appointment can be made. Same. R. § 2342.

CHAPTER 3.

OF THE SETTLEMENT OF THE ESTATE.

SECTION 2370. Within fifteen days after his appointment, the executor shall make and file with the clerk an inventory of all the personal effects of the deceased of every description which have come to his knowledge, and a list of all book accounts which appear by the books or papers of the deceased to be unsettled. Such inventory shall be so made out as to show separately and distinctly, each by itself, the property inventoried as general assets of the deceased; the property inventoried and which is regarded as exempt under the next two sections; and the book accounts. Inventory. C. 158, § 14, 13 G. A.

SEC. 2371. When the deceased leaves a widow, all personal property which in his hands as the head of a family would be exempt from execution, after being inventoried and appraised, shall be set apart to her as her property in her own right, and be exempt in her hands as in the hands of the decedent. When not assets. R. § 2361.

SEC. 2372. 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. Life insurance. R. § 2362.

SEC. 2373. All property inventoried by the executor shall be appraised by three appraisers, who shall be appointed immediately on the filing of the inventory. Appraisement. R. § 2363.

SEC. 2374. The clerk shall issue to them a notification of their appointment, accompanied by a copy of the inventory as returned by the executor, and in making their appraisment they shall affix a value to each item of property, separately, as it appears in such inventory. Clerk to notify appointees.

SEC. 2375. The court shall, if necessary, set off to the widow, and children under fifteen years of age, of the decedent, or to either, sufficient of his property, of such kind as it shall deem appropriate, to support them for twelve months from the time of his death. Allowance to widow and children. R. § 2370. C. 22, § § 1, 2, 3, 9 G. A.

SEC. 2376. A supplemental inventory must be made in like manner, whenever the existence of additional property is discovered. Supplemental inventory. R. § 2365.

Allowance reversed. C. 22, § 4, 9 G. A.

SEC. 2377. The court may, on the petition of the widow, or other person interested, review the allowance so made to the widow or children, and increase or diminish the same, and make such order in the premises as it shall deem right and proper.

Property in another county. R. § 2364.

SEC. 2378. If any portion of the decedent's personal property be in another county, the same appraisers may serve, or others may be appointed.

Discovery of assets: proceedings. R. § 2366.

SEC. 2379. The court or judge may require 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, to appear and submit to an examination under oath touching such matters; and if on such examination it appear that he has the wrongful possession of any such property, the court or judge may order the delivery of the same to the executor of the estate.

Same. R. § 2367.

SEC. 2380. If, on being duly served with the order of the court or judge requiring him to do so, any person fail to appear in accordance with such order; or if, having appeared, he refuse to answer any question which the court or judge deem proper to be put to him in the course of such examination; or if he fail to comply with the order of the court or judge requiring him to deliver the property to the executor, he may be committed to the jail of the county until a compliance be yielded.

Same.

SEC. 2381. Whenever it is probable that the known and acknowledged property of the deceased will not be sufficient for the payment of his debts, any person to whom the legal title of any real estate was conveyed by the decedent or any person through whom the legal title to any real estate conveyed by the decedent has subsequently passed, or any person claiming an interest in any such real estate, may be required to appear and submit to an examination as contemplated in the preceding sections, subject to the penalties therein prescribed; and the court or judge shall have full power to order the proper declaration of trust to secure the estate, to be made by any person who may appear on such examination to hold the legal title to any real estate which in the event of the insufficiency of the personal property would be assets for the payment of debts, and to enforce compliance with such order as is provided in the next preceding section.

May compound. R. § 2361.

SEC. 2382. 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.

Mortgage assets. R. § 2369.

SEC. 2383. 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.

Creditors: will sustained. R. § 2371.

SEC. 2384. When a person by his will makes such a disposition of his effects as to prejudice the rights of creditors, the will may be sustained by giving 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 devised.

Funds collected: paid out. R. § 2372.

SEC. 2385. 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.

SALE OF PROPERTY.

SEC. 2386. The court, on the application of the executor, shall, from time to time, direct the sale of such portion 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 charges upon the estate. Personal. R. § 2373.

SEC. 2387. If the personal effects are found inadequate to satisfy such debts and charges, a sufficient portion of the real estate may be ordered to be sold for that purpose. Real estate; when. R. § 2374.

SEC. 2388. 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. Application. R. § 2375.

SEC. 2389. Before any order to that effect can be made, all persons interested in such real estate shall be served with notice, in the same manner as is prescribed for the commencement of civil action, unless a different notice is prescribed by the judge. Notice C. 158, § 15, 13 G. A.

SEC. 2390. If convenient, the real estate must be divided into parcels, and each appraised in the manner above provided for personal property, and the appraisement filed in like manner. Sold in parcels: appraisement R. § 2377.

SEC. 2391. 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 parts as can be sold advantageously. Whole may be. R. § 2378.

SEC. 2392. Property may be permitted to be sold at private sale, whenever the court is satisfied that the interest of the estate will be thereby promoted. Private sale. R. § 2379.

SEC. 2393. 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. Public. R. § 2380.

SEC. 2394 No property can be sold at private sale for less than the appraisement price, without the express approbation of the judge. Must sell for appraisement R. § 2381.

SEC. 2395. Property may be ordered to be sold on a partial credit of not more than twelve months. Credit. R. § 2382.

SEC. 2396. Any person interested in the estate, may prevent a sale of the whole or any part thereof, 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 court for that purpose. Sale: how prevented. R. § 2383.

SEC. 2397. If the conditions of such bond are broken, the property will still be liable for the debts, unless it has passed into the hands of an innocent purchaser, and the executors may take possession thereof and sell the same under the direction of the court, or they may prosecute the bond, or both at once, if the court so direct. Same. R. § 2384.

SEC. 2398. If the conditions of the bond are complied with, the property passes by devise, disrribution, or descent, in the same manner as though there had been no debts against the estate. Same. R. § 2385.

Conveyances: approval of. R. § 2386.

SEC. 2399. Where real estate is sold, conveyances thereof, executed by the executor, pass to the purchaser all the interest of the deceased therein; but such conveyances shall not be valid until approved by the court.

Record of: presumption. C. 158, § 17, 13 G. A.

SEC. 2400. Such approval shall be entered of record. A certificate thereof must be endorsed on the deed, with the signature of the clerk and the seal of the court affixed thereto; and the deed so endorsed shall be presumptive evidence of the validity of the sale, and of the regularity of all the proceedings connected therewith.

Limitation. R. § 2388.

SEC. 2401. 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.

POSSESSION OF REAL PROPERTY.

When taken by executor C. 109, § 3, 11 G. A.

SEC. 2402. If there be no heir or devise present and competent to take possession of the real estate left by such decedent, the executor may take possession of such real estate and demand and receive the rents and profits thereof, and do all other acts relating thereto which may be for the benefit of the persons entitled to such real estate.

Proceeds: how applied. Same, § 5.

SEC. 2403. Such executor or administrator, under the order and direction of the court, may apply the profits of such real estate to the payment of taxes and of debts and claims against the estate of the deceased, in case the personal assets are insufficient.

Accounts: compensation. Same, § 4.

SEC. 2404. Such executor or administrator shall account to such heirs or devisees for the rents, profits, or use of such real estate, deducting therefrom the payments made under the preceding section, together with a reasonable compensation for his own services, to be fixed by the court.

When there are minors who have no guardian. Same, § 6.

SEC. 2405. When there are minor heirs for whom no guardian has been appointed, the executor or administrator shall pay out of any assets in his hands, all taxes assessed against the estate not otherwise provided for, and he shall be credited therefor as for the payment of other claims against the estate.

Testator may prescribe manner of settling estate R. § 2358.

SEC. 2406. When the interests of creditors will not thereby be prejudiced, a testator may prescribe the entire manner in which his estate shall be administered on; may exempt the executor from the necessity of giving bond, and may prescribe the manner in which his affairs shall be conducted until his estate is finally settled, or until his minor children become of age.

Court may direct any business continued. R. § 2359

SEC. 2407. The court, in its discretion, may also authorize an executor or administrator to continue the prosecution of any business in which the deceased was engaged at the time of his death, in order to wind up his affairs with greater advantage; but such authority shall not exempt him from returning a full inventory and appraisement as in other cases.

CLAIMS—PAYMENTS.

SEC. 2408. Claims against the estate shall be clearly stated, sworn to, and filed, and ten days' notice of the hearing thereof, accompanied by a copy of the claim, shall be served on one of the executors in the manner required for commencing ordinary proceedings, unless the same have been approved by the administrator, in which case they may be allowed by the clerk without said notice. Claims stated: proved: allowance of. R. § 2391.

SEC. 2409. All claims filed against the estate shall be entitled in the name of the claimant against the executor, naming him as executor of the estate, naming it; and in all further proceedings on the claim, this title shall be preserved. Form in which claim should be made out.

SEC. 2410. All claims filed and not expressly admitted in writing, signed by the executor with the approbation of the court, shall be considered as denied without any pleading on behalf of the estate. Denial.

SEC. 2411. If a claim filed against the estate is not so admitted by the executor, the court may hear and allow the same, or may submit it to a jury; and, on such hearing, unless otherwise provided, all provisions of law applicable to an ordinary proceeding shall apply. Court may allow trial by jury.

SEC. 2412. In matters of accounts of executors, the court shall have authority to appoint one or more referees, who shall have all the powers and perform all the duties of referees appointed by the court in a civil action. Referees: Examination of accounts. C. 158, § 21, 18 G. A.

SEC. 2413. Demands, though not yet due, may be presented, proved, and allowed as other claims. Not due. R. § 2396.

SEC. 2414. Contingent liabilities must also be presented and proved, or the executor shall be under no obligation to make any provision for satisfying them when they may afterwards accrue. Contingent liabilities. R. § 2397.

SEC. 2415. Claims against an estate, and counter claims thereto, may, in the discretion of the court, be proved up before one or more referees, to be agreed upon by the parties or approved by the court, and their decision being entered upon the record becomes a decision of the court. Proved before referees. R § 2398.

SEC. 2416. Suits pending against the decedent at the time of his death, may be prosecuted to judgment, his executor being substituted as defendant, and such judgment shall be placed in the catalogue of established claims, but shall not be a lien. Suits pending. R. § 2400

SEC. 2417. 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. Executor interested. R § 2401.

SEC. 2418. 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 deceased. Expenses of funeral. R. § 2401.

SEC. 2419. They shall, in the next place, pay an allowance which may be made by the court for the maintenance of the widow and minor children. Allowance to widow. R. § 2408. C. 22, § 5, 9 G. A.

SEC. 2420. Other demands against the estate are payable in the following order: Other demands.

Order of payment. R. § 2404.

1. Debts entitled to preference under the laws of the United States;

2. Public rates and taxes;

3. Claims filed within six months after the first publication of the notice given by the executors of their appointment;

4. All other debts;

5. Legacies.

Limitation. R. § 2405.

SEC. 2421. All claims of the fourth of the above classes not filed and proved within twelve months 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.

Third class: when to pay. R. § 2406.

SEC. 2422. 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.

When to pay: fourth class. R. § 2407.

SEC. 2423. 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.

Same. R. § 2408.

SEC. 2424. No payment can be made to a claimant in any one class until those of a previous class are satisfied.

Claims not due R. § 2409.

SEC. 2425. Demands not yet due shall be paid off if the holder 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.

Order of payment R. § 2410.

SEC. 2426. Within their respective classes, debts shall be paid off in the order in which they are filed, subject to the provisions of the next section.

Dividend R. § 2411.

SEC. 2427. If there are not likely to be means sufficient 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 executors shall pay the several amounts accordingly.

Encumbrances. R. § 2412.

SEC. 2428. The executors may, with the approbation of the court, use funds belonging to the estate to pay off encumbrances upon lands owned by the deceased, or to purchase lands claimed or contracted for by him prior to his death.

SPECIFIC LEGACIES — PAYMENT.

When paid R. § 2413.

SEC. 2429. Specific legacies of property may, by the court, 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.

Same. R. § 2414.

SEC. 2430. Legacies payable in money, may be paid on like terms whenever the executors possess the means which can be thus used without prejudice to the interest of any claim already filed.

Same. R. § 2415.

SEC. 2431. After the expiration of the twelve months allowed for the filing claims as above provided, such legacies may be paid off without 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. 2432. 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 are given in the will, where the estate is sufficient to pay all. Order when testator has given no direction. R § 2416.

SEC. 2433. When not incompatible with the manifest intention of the testator, the court may direct all payments of money to legatees to be made ratably. When paid ratably. R. § 2417.

SEC. 2434. 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. Same. R. § 2418.

SEC. 2435. If the executors fail to make payment of any kind in accordance with the order of the court, any person aggrieved by their failure, may, on ten days notice to the executors and their sureties, apply to the court for judgment against them on the bond of the executors. The court shall hear the application in a summary manner, and may render judgment against them on the bond for the amount of money directed to be paid and costs, and issue execution against them therefor. If any of the obligors are not served, the same proceedings in relation to them may be had with like effect as in an action by ordinary proceedings under similar circumstances. Executor failing to pay: judgment on bond. R. § § 2419, 2420, 2421.

CHAPTER 4.

OF THE DESCENT AND DISTRIBUTION OF INTESTATE PROPERTY.

SECTION 2436. The personal property of the deceased, not neces-sary 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. Distribution of personal property. R. § 2422.

SEC. 2437. The distributive shares shall be paid over as fast as the executor can properly do so. Payment. R. § 2423.

SEC. 2438. The property itself shall be distributed in kind whenever that can be done satisfactorily and equitably. In other cases the court may direct the property to be sold, and the proceeds to be distributed. In kind. R. § 2424.

SEC. 2439. 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 and appraisement, upon the execution of security like that required of legatees in like cases. Partial distribution: when made. R. § 2425.

SEC. 2440. One-third in value of all the legal or equitable estates in real property, possessed by the husband at any time during the marriage, which have not been sold on execution or any other judicial sale, and to which the wife has made no relinquishment of her right, shall be set apart as her property in fee-simple, if she survive him. The same share of the real estate of Share of husband or wife. C. 151, § § 1, 3, 9 G. A.

a deceased wife shall be set apart to the surviving husband. All provisions made in this chapter in regard to the widow of a deceased husband, shall be applicable to the surviving husband of a deceased wife. The estates of dower and curtesy are hereby abolished.

Homestead. R. § 2426.

SEC. 2441. The distributive share of the widow shall be so set off as to include the ordinary dwelling house given by law to the 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.

Widow of alien. C. 193, § 2, 12 G. A.

SEC. 2442. The widow of a non-resident alien shall be entitled to the same rights in the property of her husband as a resident, except as against a purchaser from the decedent.

How set off. R. § 2427.

SEC. 2443. The share thus allotted to her may be set off by the mutual consent of all parties interested, when such consent can be obtained, or it may be set off by referees appointed by the court.

Application: when made. R. § 2428.

SEC. 2444. The application for such a measurement 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 share, and ask the appointment of referees.

Notice. R. § 2429.

SEC. 2445. The court shall fix the time for making the appointment, and direct such notice thereof to be given to all parties interested therein as it deems proper.

Duty of referees. R. § 2430.

SEC. 2446. 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 proceeding to the court as early as practicable.

Report: discharge of. R. § 2431.

SEC. 2447. 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 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.

Confirmation: new reference. R. § 2432.

SEC. 2448. 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.

Same. R. § 2433.

SEC. 2449. Such confirmation, after the lapse of thirty days, unless appealed from according to law, shall be binding and conclusive as to the admeasurement, and the widow may bring suit to obtain possession of the land thus set apart for her.

Right contested. R. § 2434.

SEC. 2450. Nothing in the last section shall prevent any person interested from controverting the right of the widow to the share thus admeasured.

Sale ordered: division of proceeds. C. 151, § 2, 9 G. A.

SEC. 2451. If the referees report that the property, or any part thereof, connot be readily divided as above directed, the court may order the whole to be sold and one-third of the proceeds to be paid over to the widow; but such sale shall not 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 upon the like terms. With any money thus paid to her the widow may procure a homestead, which shall be exempt from liability for all debts from which the former homestead would have been exempt in her hands. And such sale shall not be ordered so long as those in interest shall express a contrary desire, and shall agree upon some mode of sharing and dividing the rents, profits, or use of such property, or shall consent that the court divide it by rents, profits, or use.

Share cannot be affected by will. R. § 2435.

SEC. 2452. The widow's share can not be affected by any will of her husband, unless she consents thereto within six months after notice to her of the provisions of the will by the other parties interested in the estate, which consent shall be entered on the proper records of the circuit court.

DESCENT.

To decedents' children. R. § 2436.

SEC. 2453. Subject to the rights and changes hereinbefore contemplated, 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.

Grandchildren. R. § 2437.

SEC. 2454. 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 parents.

Wife and parents. R. § 2495.

SEC. 2455. If the intestate leave no issue, the one-half of his estate shall go to his parents and the other half to his wife; if he leaves no wife, the portion which would have gone to her shall go to his parents.

Surviving parent. R. § 2496.

SEC. 2456. If one of his parents be dead, the portion which would have gone to such deceased parent shall go to the surviving parent, including the portion which would have belonged to the intestate's wife, had she been living.

Heirs of parents. R. § 2497.

SEC. 2457. If both parents be dead, the portion which would have fallen to their share by the above rules, shall be disposed of in the same manner as if they had outlived the intestate and died in the possession and ownership of the portion thus falling to their share, and so on through ascending ancestors and their issue.

Wife and her heirs. R. § 2439.

SEC. 2458. If heirs are not thus found, the portion uninherited 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.

Advancement. R. §§ 2445, 2446.

SEC. 2459. 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. But, if such advancement exceeds the amount to which he would be entitled, he cannot be required to refund any portion thereof.

ESCHEAT.

When no heirs. R. § 2440.

SEC. 2460. If there be property remaining uninherited, it shall escheat to the state.

Duty of clerk in case of. R. § 2468.

SEC. 2461. When the judge or clerk has reason to believe that any property within the county should, by law, escheat to the state, he must forthwith inform the auditor of state thereof, and must also appoint some suitable person administrator to take charge of the property, unless an executor or administrator has already been appointed for that purpose in some county in the state.

Notice. R. § 2469.

SEC. 2462. The administrator must 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 clerk or judge appointing him, will be best calculated to notify those interested or supposed to be interested in the property.

Sale: proceeds paid to school fund. R. § 2470.

SEC. 2463. If, within six months from the giving of such notice, no claimant thereof appears, such property may be sold and the money appropriated by the administrator for the benefit of the school fund, under the direction of the auditor of state; and such sale shall be conducted and the proceeds thereof treated like those of other school lands.

Payment to person entitled. R. § 2471.

SEC. 2464. 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.

ILLEGITIMATE CHILDREN.

Inherit from mother. R. § 2441.

SEC. 2465. Illegitimate children inherit from the mother, and the mother from the children.

From father. R. § 2442.

SEC. 2466. They shall inherit from the father whenever the paternity is proven during the life of the father, or they have been recognized by him as his children, but such recognition must have been general and notorious or else in writing.

Same. R. § 2443.

SEC. 2467. Under such circumstances, if the recognition of relationship has been mutual, the father may inherit from his illegitimate children.

Rule in such cases. R. § 2444.

SEC. 2468. 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.

CHAPTER 5.

OF ACCOUNTING AND MISCELLANEOUS PROVISIONS.

Term of. R. § 2448.

SECTION 2469. On the expiration of six and within seven months from the first publication of notice of his appointment, and sooner if required by the court, the executor shall render his

account to the court, showing the then condition of the estate, its debts and effects, and the amount of money received, and, if any received, what disposition has been made of it by him. And, from time to time as may be convenient, and as may be required by the court, he shall render further accounts until the estate is finally settled. And such final settlement shall be made within three years, unless otherwise ordered by the court. Such accounts shall embrace all matters directed by the court and pertinent to the subject.

Examination of executor. R. § 2449.

SEC. 2470. 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.

Appraised price. R. § 2450.

SEC. 2471. 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.

Presumption. R. § 2451.

SEC. 2472. The appraisement is only presumptive evidence of the value of an article, and shall be so regarded, either for or against the executor.

Profit and loss. R. § 2452.

SEC. 2473. He shall derive no profit from the sale of property for a higher price than the appraisement, nor is he chargeable with any loss occurring without any fault of his own.

Mistakes corrected. R. § 2457.

SEC. 2474. Mistakes in settlement 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 court.

Settlement contested. R. § 2458.

SEC. 2475. Any person interested in the estate may attend upon the settlement of accounts by 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.

Discharge. R. § 2459.

SEC. 2476. Upon final settlement by the executor, an order shall be entered discharging him from farther duties and responsibilities.

Judgment: execution against executor. R. § 2458.

SEC. 2477. If judgment be 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.

Receipts by one executor. R. § 2467.

SEC. 2478. 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.

Notice affecting executor: how served. R. § 2474.

SEC. 2479. Whenever the court shall make an order affecting an executor, and such order cannot be personally served upon him, service of such order may be made by publication of a notice, stating the substance thereof, in some weekly newspaper published in the county where such order was made, for four weeks in succession.

Publication of. R. § 2475.

SEC. 2480. When there is no newspaper published in such county, then said notice may be published in the newspaper published nearest to the county seat of the county in which said order is made, which publication may be proved as required in like cases in the court.

Effect of. R. § 2476.

SEC. 2481. Service made as above shall be as effectual as if personally served, and suits and proceedings may be prosecuted or commenced, had and maintained, in all respects as if such notice or notices, order or orders, had been personally served.

Failure to account: penalty. R. § 2463.

SEC. 2482. Any executor failing to account, upon being required to do so by the court, or as he is required to do by law, shall, for every such failure, forfeit one hundred dollars, to be recovered in a civil action on his bond for the benefit of the estate, by any one interested therein.

Executor of executor. R. § 2463.

SEC. 2483. An executor has no authority to act in a matter wherein his principal was merely executor or trustee.

Executors in their own wrong. R. § 2464.

SEC. 2484. 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.

Action against heirs or devisees. R. § 2465.

SEC. 2485. 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.

Tender. R. § 2466.

SEC. 2486. In such cases, any one may tender the amount due from him to the plaintiff, which shall have the same effect, as far as he is concerned, as though he was the sole defendant.

Specific performance. R. § 2460.

SEC. 2487. When a person under such obligation to convey real estate as might have been enforced against him if living, dies before making such conveyance, the court may enforce a specific performance of such contract by the executor, and require him to execute the conveyance accordingly.

Who made parties. R. § 2461.

SEC. 2488. 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 the court may deem expedient. Heirs and devisees may, on their own motion, at any time be made defendants.

Considered as one person. R. § 2464.

SEC. 2489. 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.

RECORDS OF CLERK.

In probate matters. C. 71, § 1, 9 G. A.

SEC. 2490. The clerk shall keep a record, additional to the other records required by law, showing, as follows:

1. The name of every deceased person whose estate is administered, and who dies seized of any real estate situate within the county, and the date of his death;

2. The names of all the heirs at law, and widow of such deceased person, and the ages and places of residence of such heirs so far as the same can be ascertained;

3. A note of every sale of real estate made under the order of the court, with a reference to the volume and page of the court record, where a complete record thereof may be found.

Executor to furnish list of heirs. Same, § 3.

SEC. 2491. In order to ascertain the facts required to be stated in such record, the clerk may require each executor or administrator to furnish him with a list of the names, ages, and place of residence of the heirs, which list shall be sworn to by the executor; but if such executor shall certify under oath that there are no heirs, or that, after using due diligence, he has been unable to ascertain their names, ages, or residence, the clerk shall make an entry in the record accordingly. If deemed necessary, the clerk may examine the county records to ascertain whether any deceased person died seized of any real estate, and he shall be allowed such fee therefor as may be fixed by the court.

Complete record. Same, § 2.

SEC. 2492. In every case where a sale of real estate is made under the order of the court, either by an executor, administrator, or guardian, the clerk shall enter a complete record thereof in the court record, including complete records of all papers filed and all orders made, and of the deed and the approval thereof.

Bond record. C. 130, 11 G. A.

SEC. 2493. He shall also keep a book known as "records of bonds," in which he shall record all bonds given by executors, administrators, and guardians.

COMPENSATION OF EXECUTORS.

Amount of. R. § 2454.

SEC. 2494. Executors shall be allowed the following commission 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 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.

Same. R. § 2455.

SEC. 2495. Such farther allowances as are just and reasonable may be made by the court for actual, necessary, and extraordinary expenses or services.

REMOVAL OF EXECUTOR.

For what causes. C. 139, § 7, 11 G. A.

SEC. 2496. After letters testamentary, or of administration with the will annexed, or of administration, shall have been granted to any person, he may be removed whenever the interests of the estate require it, for any of the following causes:

1. When by reason of age, continued sickness, imbecility of mind, change of residence, or any other cause, he becomes incapable of discharging his trust in such manner as the interest and proper management of the estate may require;

2 When any such executor or administrator shall fail or refuse to return inventories or accounts of sales of the estate, or to make reports of the condition of the estate, or fail or refuse to comply with any order of the court; or fail to seasonably apply to the court for authority to sell personal or real estate for the payment of debts or claims against the estate, when it shall be necessary for him so to do; or fail or refuse to discharge any of the duties prescribed for him by law, or shall be guilty of any waste or maladministration of the estate;

3. Where it shall be shown to the court by his sureties that such executor or administrator has become, or is likely to become insolvent, in consequence of which such sureties have or will suffer loss.

Petition for. Same, § 8.

SEC. 2497. Petition for the removal of executors or administrators, or for the purpose of requiring additional sureties, shall be filed in the court from which letters were issued by any person interested in the estate.

Verification. Same, § 9.

SEC. 2498. Such petition must be verified by oath, and shall specify the grounds of complaint.

Citation. Same, § 10.

SEC. 2499. Upon the filing of such petition, a citation shall issue to the person complained of, requiring him to appear and answer the complaint.

How served. Same, § 11.

SEC. 2500. If the executor or administrator is not a resident of the county where such complaint is made, notice thereof shall be served upon him in such manner as the court or clerk may direct.

Property delivered to person entitled to. Same, § 13.

SEC. 2501. Upon the removal of any executor or administrator, he shall be required by order of the court to deliver to the person who may be entitled thereto, all the property in his hands or under his control belonging to the estate.

Penalty for failure. Same, § 14.

SEC. 2502. If any executor fail or refuse to comply with any proper order of the court, he may be committed to the jail of the county until compliance is yielded.

Removal of: acts void. Same, § 16.

SEC. 2503. Whenever the letters of any executor or administrator are revoked or superseded, all his authority shall cease, and all his acts thereafter as such shall be absolutely void.

THE CODE:

CONTAINING ALL THE STATUTES

OF THE

STATE OF IOWA,

OF A

GENERAL NATURE,

PASSED AT THE ADJOURNED SESSION

OF THE

FOURTEENTH GENERAL ASSEMBLY.

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ANALYSIS.

PART THIRD.

CODE OF CIVIL PRACTICE.

TITLE XVII.

OF PROCEDURES IN COURTS OF ORIGINAL JURISDICTION.

			Sections.
CHAPTER	1.	Preliminary Provisions	2504-2528
CHAPTER	2.	Of Limitation of Actions	2529-2542
CHAPTER	3.	Of Parties to an Action	2543-2575
CHAPTER	4.	Of Place of Bringing Suit	2576-2589
CHAPTER	5.	Of Change in Place of Trial	2590-2598
CHAPTER	6.	Of Manner of Commencing Actions	2599-2629
CHAPTER	7.	Of Joinder of Actions	2630-2634
CHAPTER	8.	Of Pleading	2635-2736
CHAPTER	9.	Of Trial and Judgment	2737-2893
CHAPTER	10.	Of Judgment by Confession	2894-2899
CHAPTER	11.	Of Offer to Compromise	2900-2902
CHAPTER	12.	Of Receivers	2903-2905
CHAPTER	13.	Of Summary Proceedings	2906-2910
CHAPTER	14.	Of Motions and Orders	2911-2926
CHAPTER	15.	Of Security for Costs	2927-2932
CHAPTER	16.	Of Costs	2933-2948

TITLE XVIII.

OF ATTACHMENTS, EXECUTIONS, AND SUPPLEMENTARY PROCEEDINGS.

CHAPTER	1.	Of Attachments and Garnishment	2949-3024
CHAPTER	2.	Of Executions	3025-3114
CHAPTER	3.	Of Proceedings Auxiliary to Execution	3115-3153

TITLE XIX.

OF PROCEEDINGS TO REVISE, VACATE, OR MODIFY JUDGMENTS OF PROCEEDINGS OR BOARDS OR INDIVIDUALS ACTING JUDICIALLY.

CHAPTER	1.	Of Proceedings to Revise, Vacate or Modify Judgments in Courts in which Rendered	3154-3162
CHAPTER	2.	Of Appellate Proceedings in the Supreme Court	3163-3215
CHAPTER	3.	Of Certiorari	3216-3224

TITLE XX.

OF PROCEDURE IN PARTICULAR CASES.

		Sections.
CHAPTER 1.	Of Actions to Recover Specific Personal Property,	3225-3244
CHAPTER 2.	Of Actions for the Recovery of Real Property....	3245-3276
CHAPTER 3.	Of Partition	3277-3306
CHAPTER 4.	Of Foreclosure of Mortgages.....	3307-3330
CHAPTER 5.	Of Actions for Nuisance, Waste and Trespass.....	3331-3344
CHAPTER 6.	Of Actions to Test Official and Corporate Rights..	3345-3367
CHAPTER 7.	Of Actions on Official Securities, and Fines and Forfeitures	3368-3372
CHAPTER 8.	Of Actions of Mandamus.....	3373-3385
CHAPTER 9.	Of Injunctions.....	3386-3407
CHAPTER 10.	Of Submitting Controversies without Action or in Action.....	3408-3415
CHAPTER 11.	Of Arbitration.....	3416-3431
CHAPTER 12.	Of Actions Against Boats or Rafts.....	3432-3448
CHAPTER 13.	Of Habeas Corpus.....	3449-3490
CHAPTER 14.	Of Contempts.....	3491-3501
CHAPTER 15.	Of Changing Names.....	3502-3506

TITLE XXI.

CHAPTER 1.	Of Justices of the Peace and their Courts.....	3507-3635

TITLE XXII.

CHAPTER 1.	Of General Principles of Evidence.....	3636-3754

TITLE XXIII.

OF COMPENSATION OF OFFICERS.

CHAPTER 1.	Of State and District Officers.....	3755-3780
CHAPTER 2.	Of County and Township Officers.....	3781-3810
CHAPTER 3.	Of Witnesses, jurors, and Special Cases.....	3811-3844

PART FOURTH.

CODE OF CRIMINAL PRACTICE.

TITLE XXIV.

OF CRIMES AND PUNISHMENTS.

CHAPTER 1.	Offenses Against the Sovereignty of the State....	3845-3847
CHAPTER 2.	Offenses Against the Lives and Persons of Individuals.....	3848-3879
CHAPTER 3.	Offenses Against Property.....	3880-3901

		Sections.
CHAPTER 4.	Larceny and Recovering Stolen Goods	3902-3916
CHAPTER 5.	Forgery and Counterfeiting	3917-3935
CHAPTER 6.	Offenses Against Public Justice	3936-3976
CHAPTER 7.	Malicious Mischief and Trespass on Property	3977-3992
CHAPTER 8.	Offenses Against the Right of Suffrage	3993-4007
CHAPTER 9.	Offenses Against Chastity, Morality and Decency	4008-4034
CHAPTER 10.	Offenses Against Public Health	4035-4042
CHAPTER 11.	Offenses Against Public Policy	4043-4064
CHAPTER 12.	Offenses Against the Public Peace	4065-4072
CHAPTER 13.	Cheating by False Pretensés, Gross Frauds and Conspiracy	4073-4088
CHAPTER 14.	Nuisances and Abatement thereof	4089-4096
CHAPTER 15.	Of Libel	4097-4102

TITLE XXV.

OF CRIMINAL PROCEDURE.

CHAPTER 1.	Of Public Offenses	4103-4107
CHAPTER 2.	Of the term Magistrate and his Powers, Peace Officers and Officers of Justice, and Complaints	4108-4111
CHAPTER 3.	Of the Prevention of Public Offenses by the Resistance of the Party About to be Injured and Others,	4112-4114
CHAPTER 4.	Of Security to Keep the Peace	4115-4129
CHAPTER 5.	Of Vagrants	4130-4144
CHAPTER 6.	Of Resistance to Process and Suppression of Riots,	4145-4154
CHAPTER 7.	Of Local Jurisdiction of Public Offenses	4155-4164
CHAPTER 8.	Of Time of Commencing Criminal Actions	4165-4170
CHAPTER 9.	Of Fugitives from Justice	4171-4184
CHAPTER 10.	Of Warrant of Arrest on Preliminary Information,	4185-4196
CHAPTER 11.	Of Arrest, and by whom and how made	4197-4225
CHAPTER 12.	Of Preliminary Examinations	4226-4254
CHAPTER 13.	Of Selecting, Drawing, Summoning, and Empaneling of the Grand Jury	4255-4271
CHAPTER 14.	Of the Powers and Duties of the Grand Jury	4272-4290
CHAPTER 15.	Of the Finding and Presentment of Indictment	4291-4294
CHAPTER 16.	Of Indictment, its Form and Requisites	4295-4317
CHAPTER 17.	Of Process upon an Indictment	4318-4326
CHAPTER 18.	Of the Arraignment of the Defendant	4327-4336
CHAPTER 19.	Of Setting Aside the Indictment	4337-4344
CHAPTER 20.	Of Pleading by the Defendant	4345-4346
CHAPTER 21.	Of the Mode of Trial	4347-4351
CHAPTER 22.	Of Demurrer	4352-4358
CHAPTER 23.	Of Pleas to the Indictment	4359-4367
CHAPTER 24.	Of Change of Venue	4368-4388
CHAPTER 25.	Of the Formation of Trial Jury	4389-4397
CHAPTER 26.	Of Challenging the Jury	4398-4418
CHAPTER 27.	Of the Trial of an Issue of Fact in an Indictment.	4419-4451
CHAPTER 28.	Of the Conduct of the Jury after Cause is Submitted	4452-4459
CHAPTER 29.	Of the Verdict	4460-4478
CHAPTER 30.	Of Bills of Exceptions	4479-4486

Sections.

CHAPTER 31. Of New Trial..... 4487-4490
CHAPTER 32. Of Arrest of Judgment..... 4491-4494
CHAPTER 33. Of Judgment..... 4495-4511
CHAPTER 34. Of Execution..... 4512-4519
CHAPTER 35. Of Appeals..... 4520-4545
CHAPTER 36. Of Impeachment..... 4546-4555
CHAPTER 37. Of Evidence..... 4556-4572
CHAPTER 38. Of Bail Before Indictment..... 4573-4581
CHAPTER 39. Of Bail upon Indictment, and before Conviction.. 4582-4586
CHAPTER 40. Of Bail upon Appeal..... 4587-4588
CHAPTER 41. Of Deposit of Money Instead of Bail..... 4589-4592
CHAPTER 42. Of Surrender of the Defendant..... 4593-4595
CHAPTER 43. Of Forfeiture of Bail..... 4596-4600
CHAPTER 44. Of Re-commitment of Defendant after Giving Bail, 4601-4605
CHAPTER 45. Of Undertakings of Bail when Liens..... 4606-4608
CHAPTER 46. Of Judgments when Liens and Stay of Execution on..... 4609-4610
CHAPTER 47. Of Liberation of Poor Convicts..... 4611-4612
CHAPTER 48. Of Dismissal of Criminal Actions before and after Indictment for Want of Prosecution or Otherwise, 4613-4619
CHAPTER 49. Of the Insanity of Defendant before Trial or after Conviction..... 4620-4628
CHAPTER 50. Of Search warrants and Proceedings therein..... 4629-4653
CHAPTER 51. Of the Disposal of Property Stolen or Embezzled. 4654-4659
CHAPTER 52. Of Proceedings and Trials before Justices of the Peace..... 4660-4706
CHAPTER 53. Of Proceedings before Police and City Courts.... 4707——
CHAPTER 54. Of Compromising Certain Offenses by Leave of... 4708-4711
CHAPTER 55. Of Pardons and Remissions of Fines..... 4712-4714
CHAPTER 56. Of Illegitimate Children..... 4715-4722

TITLE XXVI.

OF THE IMPRISONMENT AND GOVERNMENT OF PRISONS AND THE PENITENTIARY, ITS GOVERNMENT AND DISCIPLINE.

CHAPTER 1. Of Imprisonment for Public Offenses, and the Discipline of Prisons..... 4723-4743
CHAPTER 2. Of the Penitentiary of the State and Government and Discipline thereof..... 4744-4806

EXPLANATION OF ABBREVIATIONS IN MARGINAL NOTES.

R. means Revision.
§ means Section.
C. means Chapter.
G. A. means General Assembly.
L. B. E. means Laws of Board Education.

PART THIRD.

CODE OF CIVIL PRACTICE.

TITLE XVII.

OF PROCEDURE IN COURTS OF ORIGINAL JURISDICTION.

CHAPTER 1.

PRELIMINARY PROVISIONS.

SECTION 2504. Remedies in civil cases in the courts of this state are divided into actions and special proceedings. Remedies classed. R. § 2605.

SEC. 2505. A civil action is a proceeding in a court of justice in which one party, known as the plaintiff, demands against another party known as the defendant, the enforcement or protection of a private right, or the prevention or redress of a private wrong. It may also be brought for a recovery of penalty or forfeiture. Civil action defined R. § § 2606, 2609.

SEC. 2506. Every other remedy in a civil case is a special proceeding. Special proceedings. R. § 2607.

SEC. 2507. All forms of action are abolished in this state; but the proceedings in a civil action may be of two kinds, ordinary or equitable. Form of actions. R. § § 2608, 2610.

SEC. 2508. The plaintiff may prosecute his action by equitable proceedings in all cases where courts of equity, before the adoption of this code, had jurisdiction; and must so proceed in all cases where jurisdiction was exclusive. Equitable proceedings. R. § 2611.

SEC. 2509. The action on a note, together with a mortgage or deed of trust, for the foreclosure of the same, shall be by equitable proceedings. An action on the bond or note alone, without regard Foreclosure of mortgage: action on note. R. § 4179.

therein to the mortgage or deed of trust, shall be by ordinary proceedings.

Mechanics' lien. R. § 4137.

SEC. 2510. The action for mechanics' lien shall be prosecuted by equitable proceedings, and therewith shall no other cause of action be joined.

Divorce. R. § 4184.

SEC. 2511. An action for a divorce shall be prosecuted by equitable proceedings, and no cause of action, save for alimony, shall be joined therewith.

Sureties: occupying claimants. R. § 4185.

SEC. 2512. Actions by sureties, and by occupying claimants, and on a lost note or bond, may be by ordinary proceedings.

Ordinary proceedings. R. § 2612.

SEC. 2513. In all other cases, except in this code otherwise provided, the plaintiff must prosecute his action by ordinary proceedings.

Error: effect of. R. § 2613.

SEC. 2514. An error of the plaintiff as to the kind of proceedings adopted, shall not cause the abatement or dismissal of the action, but merely a change into the proper proceedings, and a transfer of the action to the proper docket.

How corrected by plaintiff. R. § 2614.

SEC. 2515. Such error may be corrected by the plaintiff without motion at any time before the defendant has answered, or afterwards, on motion in court.

By defendant. R. §§ 2615, 2616.

SEC. 2516. The defendant may have the correction made by motion at or before the filing of his answer where it appears by the provisions of this code the wrong proceedings have been adopted.

Ordinary changed into equitable. R. § 2617.

SEC. 2517. Where the action has been properly commenced by ordinary proceedings, either party shall have the right, by motion, to have any issue heretofore exclusively cognizable in equity tried in the manner hereinafter prescribed in cases of equitable proceedings; and if all the issues were such as were heretofore cognizable in equity, though none were exclusively so, the defendant shall be entitled to have them all tried as in cases of equitable proceedings.

Court may order change.

SEC. 2518. If there be more than one party plaintiff or defendant who fail to unite on the kind of proceeding to be adopted, the court, on its own motion, may direct such proceedings to be changed to the same extent as if the parties had united in asking that the same be done.

Errors waived. R. § 2619.

SEC. 2519. An error as to the kind of proceedings adopted in the action is waived by a failure to move for its correction at the time and in the manner prescribed in this chapter; and all errors in the decisions of the court are waived unless excepted to at the time, except final judgments and interlocutory or final decrees entered of record.

Uniformity of procedure. R. §§ 2640, 4173.

SEC. 2520. The provisions of this code concerning the prosecution of a civil action, apply to both kinds of proceeding, whether ordinary or equitable, unless the contrary appears, and shall be followed in special proceedings not otherwise regulated so far as applicable.

Actions on judgments: when brought.

SEC. 2521. No action shall be brought upon any judgment, against a defendant therein, rendered in any court of record of this state within fifteen years after the rendition thereof without leave of the court for good cause shown and on notice to the adverse party, nor on a judgment of a justice of the peace of this state

within eight years after the same is rendered, except in cases where the docket of the justice, or record of such judgment is, or shall be, lost or destroyed.

SEC. 2522. Judgment obtained in an action by ordinary proceedings, shall not be annulled or modified by any order in an action by equitable proceedings, except for a defense which has arisen or been discovered since the judgment was rendered. But such judgment does not prevent the recovery of any claim, though such claim might have been used by way of counter claim in the action on which the judgment was recovered.

Judgments cannot be annulled by equitable proceedings. R. § 2621.

SEC. 2523. No action to obtain a discovery shall be brought, except that where any person or corporation is liable, either jointly or severally with others by the same contract, an action may be brought against any parties who are liable, to obtain discovery of the names and residences of the others who are liable. In such action, the plaintiff shall state in his petition, in effect, that he has used due diligence, without success, to obtain the information asked to be discovered, and that he does not believe the parties to the contract who are known to him have property sufficient to satisfy his claim. The petition shall be verified, and the cost of such action shall be paid by the plaintiff, unless the discovery be resisted.

For discovery when brought. R. § 4127.

SEC. 2524. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action has arisen therefrom.

Successive actions. R. § 4128.

SEC. 2525. All causes of actions shall survive, and may be brought, notwithstanding the death of the person entitled or liable to the same.

Actions survive. R. § 4110. C. 174, § 4, 9 G. A.

SEC. 2526. The right of civil remedy is not merged in a public offense, but may, in all causes, be forced independently of, and in addition to, the punishment of the latter. When a wrongful act produces death, the damages shall be disposed of as personal property belonging to the estate of the deceased, except that if the deceased leaves a husband, wife, child, or parent, it shall not be liable for the payment of debts.

Homicides civilly liab'e. R § 4111.

SEC. 2527. The actions contemplated in the two preceding sections may be brought, or the court, on motion, may allow the action to be continued by or against the legal representatives or successors in interest of the deceased. Such action shall be deemed a continuing one, and to have accrued to such representive or successor at the same time it did to the deceased if he had survived. If such is continued against the legal representative of the defendant, a notice shall be served on him as provided for service of original notices.

Proceedings: limitation of action. R. § 4111.

SEC. 2528. The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to this code. Its provisions, and all proceedings under it, shall be liberally construed with a view to promote its objects and assist the parties in obtaining justice.

Construction: will of common law not applicable. R 2622.

CHAPTER 2.

OF LIMITATION OF ACTIONS.

Period of. R. § 2740. C. 140, § 2, 13 G. A.

SECTION 2529. The following actions may be brought within the times herein limited respectively after their causes accrue and not afterwards, except when otherwise specially declared:

Two years.

1. Actions founded on injuries to the person or reputation, whether based on contract or tort, or for a statute penalty, within two years;

2. Actions to enforce a mechanics' lien, within two years from the time of filing the statement in the clerk's office;

Three years.

3. 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;

Five years.

4. 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;

Ten years.

5. 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;

Twenty years.

6. Those founded on a judgment of a court of record, whether of this or of any other of the United States, or of the federal courts of the United States, within twenty years;

Fraud, mistake; trespass: C. 167, § 10, 13 G. A.

SEC. 2530. In actions for relief on the ground of fraud or mistake, and in actions for trespass to property, the cause of action shall not be deemed to have accrued until the fraud, mistake, or trespass complained of shall have been discovered by the party aggrieved.

Open account. R. § 2743.

SEC. 2531. When 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.

Commencement of action. R. § 2 44.

SEC. 2532. 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.

Non residence. R. § 2745.

SEC. 2533. 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 described.

Exception. C. 167, § 10, 13 G. A.

SEC. 2534. 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; but this section shall not apply to causes of action arising within this state.

Minors and insane persons. R. § 2747.

SEC. 2535. The times limited for actions herein, except those brought for penalties and forfeitures, shall, in favor of minors as defined by this code, and persons insane, be extended so that they

shall have one year from and after the termination of such disability within which to commence said actions.

Death: exception. R. § 2748.

SEC. 2536. 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.

Failure of action. R. § 2749.

SEC. 2537. 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.

Bank bills. R. § 2750.

SEC. 2538. 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.

Admission in writing. R. § 2751.

SEC. 2539. Causes of action founded on contract, are revived by an admission that the debt is unpaid as well as by a new promise to pay the same. But such admission or new promise must be in writing, signed by the party to be charged thereby.

Counter claim: when barred. R. § 2752.

SEC. 2540. A counter claim may be plead as a defense to any cause of action, notwithstanding the same is barred by the provisions of this chapter, if such counter claim so pleaded was the property of the party pleading it at the time it became barred, and the same was not barred at the time the claim sued on originated; but no judgment thereon except for costs can be rendered in favor of the party so pleading the same.

Injunction or statutory prohibition.

SEC. 2541. When the commencement of an action shall be stayed by injunction or statutory prohibition, the time of the continuance of such injunction or prohibition shall not be part of the time limited for the commencement of the action.

School fund. C. 148, § 13, 9 G. A.

SEC. 2542. The provisions of this chapter shall not be applicable to any action brought on any contract for any part of the school fund.

CHAPTER 3.

OF PARTIES TO AN ACTION.

Party in interest. R. § 2757.

SECTION 2543. Every action must be prosecuted in the name of the real party in interest, except as provided in the next section.

Exception. R. § 2758.

SEC. 2544. An executor or administrator, a guardian, a trustee of an express trust, a party with whom, or in whose name, a contract is made for the benefit of another, or party expressly authorized by statute, may sue in his own name without joining with him the party for whose benefit the suit is prosecuted.

Plaintiffs joined. R. § 2759.

SEC. 2545. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except where it is otherwise provided in this code.

Assignment: right of defendant saved. R. § 2760.

SEC. 2546. In case of the assignment of a thing in action, the action by the assignee shall be without prejudice to any counter claim, defense, or cause of action whether matured or not, if matured when plead, existing in favor of the defendant and against the assignor before notice of the assignment; but this section shall not apply to negotiable instruments transferred in good faith and upon valuable consideration before due.

Defendants. R. § 2761.

SEC. 2547. Any person may be made a defendant who has, or claims, an interest in the controversy adverse to the plaintiff; or who is a necessary party to a complete determination or settlement of the question involved in the action, except as otherwise expressly provided by law.

United interest: joinder of parties. R. § 2762.

SEC. 2548. Persons having an united interest must be joined on the same side either as plaintiffs or defendants, except as otherwise expressly provided by law. 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.

Common interest: one suing for all. R. § 2763.

SEC. 2549. When the question is one of a common or general interest to many persons, or when the parties are very numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

Joint and several obligations: how sued. R. § 2764.

SEC. 2550. Where two or more persons are bound by contract, or by judgment, decree, or statute, whether jointly only, or jointly and severally, or severally only, and including the parties to negotiable paper, common orders, and checks, and sureties on the same, or separate instruments, or by any liability growing out of the same, the action thereon may, at the plaintiff's option, be brought against any or all of them. When any of those so bound are dead, the action may be brought against any or all of the survivors, with any or all of the representatives of the decedents, or against any or all such representatives. An action or judgment against any one or more of several persons jointly bound, shall not be a bar to proceedings against the others.

Other parties brought in. R. § 2765.

SEC. 2551. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights. But when a determination of the controversy between the parties before the court cannot be made without the presence of other parties, the court must order them to be brought in.

Bond payable to state, county, or municipal corporation. R. § 2787.

SEC. 2552. When a bond or other instrument given to the state or county, or other municipal corporation, or to any officer or person, is intended for the security 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 an injury in consequence of a breach thereof.

Partnership. R. § 2785.

SEC. 2553. Suits may be brought by or against a partnership as such, or against all or either of the individual members thereof, and a judgment against the firm, as such, may be enforced against the partnership property or that of such members as have appeared or been served with notice. But a new action may be brought against the other members on the original cause of action.

SEC. 2554. Foreign corporations may bring suit in the courts of this state in their corporate name. Foreign corporations. R. § 2789.

SEC. 2555. An unmarried female may prosecute as plaintiff an action for her own seduction, and recover such damages as may be found in her favor. Unmarried woman. R. § 2790.

SEC. 2556. A father, or in case of his death or imprisonment or desertion of his family, the mother may prosecute as plaintiff an action for the expenses and actual loss of service resulting from the injury or death of a minor child. When parents of may sue. R. § 2792.

SEC. 2557. 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. Name unknown. R. § 2788.

SEC. 2558. When 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. Written instrument: how sent or brought. R. § 2783.

SEC. 2559. No judgment can be rendered against a prisoner in the penitentiary until after a defense made for him by his attorney, or if there is none, by a person appointed by the court to defend him. Prisoner in penitentiary. R. § 2784.

SEC. 2560. The state shall commence and prosecute suits according to the laws of the land as in cases between individuals, except that no security shall in such cases be required. State: actions by. R. § 2793.

SEC. 2561. No action shall abate by the transfer of any interest therein during its pendency. Transfer: abatement. R. § 2794.

MARRIED WOMEN.

SEC. 2562. A married woman may in all cases sue and be sued without joining her husband with her, to the same extent as if she were unmarried, and an attachment or judgment in such action shall be enforced by or against her as if she were a single woman. May sue without joining husband. R. § 2772. C. 167, § 11, 13 G. A.

SEC. 2563. If husband and wife are sued together, the wife may defend for her own right; and if either neglect to defend, the other may defend for such one also. Defense by. R. § 2774.

SEC. 2564. When a husband has deserted his family, the wife may prosecute or defend in his name any action which he might have prosecuted or defended, and shall have the same powers and rights therein as he might have had; and under like circumstances the same right shall apply to the husband upon the desertion of the wife. When husband or wife deserts family. C. 167, § 13, 13 G. A.

MINORS.

SEC. 2565. The action of a minor must be brought by his guardian or next friend; but the court has power to dismiss it if it is not for the benefit of the minor, or to substitute the guardian of the minor or other person as next friend. Action: how brought. R. § 2777.

SEC. 2566. The defense of a minor must be by his regular guardian, or by a guardian appointed to defend him where no regular guardian appears, or where the court directs a defense, by a guar- Defense by. R. § 2778.

dian appointed for that purpose. No judgment can be rendered against a minor until after a defense by a guardian.

Guardian: appointment of. R. § 2779.

SEC. 2567. The appointment cannot be made until after service of the notice in the action as directed in this code, and may then be made by the court or judge thereof, or during vacation, by the clerk; but the court shall have the power to remove such guardian when the interests of the minor requires such change. If made by the judge or clerk, it shall be done by endorsing the name of the person appointed, and the time thereof, on the petition in the action.

When over fourteen years of age. R. § 2780.

SEC. 2568. The appointment may be made on the application of the minor if he is of the age of fourteen years, and applies at or before the time he is required to appear and defend. If he does not so apply, or is under that age, the appointment may be made on the application of any friend of the minor or on that of the plaintiff in the action.

INSANE.

Plaintiff: action by. R. § 2781.

SEC. 2569. The action of a person judicially found to be of unsound mind, must be brought by his guardian, and, if he have none, the court or judge thereof, or the clerk, in vacation, may appoint one for the purposes of the action.

Defense: guardian of. R. § 2782.

SEC. 2570. The defense of an action against a person judicially found to be of unsound mind, or a person confined in any state lunatic asylum, who, by the certificate of the physician in charge, appears to be of unsound mind, must be by his guardian or a guardian appointed by the court to defend for him. Such appointment may be made upon the application of any friend of the defendant, or on that of the plaintiff, but not until service has been made as directed in this code, and no judgment can be rendered against him until defense has been made as herein provided.

Pending suit. R. § 2783.

SEC. 2571. Where a party is judicially found to be of unsound mind, or is confined in any state lunatic asylum, and, by the certificate of the physician in charge, appears to be of unsound mind during the pendency of an action, the fact being stated on the record, if he is plaintiff his guardian may be joined with him in the action as such; if he is defendant, the plaintiff may, on ten days' notice thereof to his guardian, have an order making the guardian a defendant also.

FOR RECOVERY OF PERSONAL PROPERTY.

Interpleader: substitution of parties: deposit of property. R. § 2787.

SEC. 2572. Upon affidavit of a defendant before answer, in any action upon contract for the recovery of personal property, that some third party without collusion with him has, or makes a claim to the subject of the action, or on proof thereof as the court may direct, the court may make an order for the safe keeping, or for the payment or deposit in court or delivery of the subject of the action to such person as it may direct, and an order requiring such third person to appear in a reasonable time and maintain or relinquish his claims against the defendant, and in the meantime stay the proceedings. If such third party, being served with

a copy of the order, fails to appear, the court may declare him barred of all claim in respect to the subject of the action against the defendant therein. If such third person appears, he shall be allowed to make himself defendant in the action in lieu of the original defendant, who shall be discharged from all liability to either of the other parties, in respect to the subject of the action upon his compliance with the order of the court for payment, deposit, or delivery thereof.

Application of rule to sheriffs and officers. R. § 2768

SEC. 2573. The provisions of the last section shall be applicable to an action brought against a sheriff or other officer, for the recovery of personal property taken by him under an attachment or execution, or for the value of such property so taken and sold by him. And the defendant in any such action shall be entitled to the benefit of these provisions against the party in whose favor the attachment or execution issued, upon exhibiting to the court the process under which he acted, with his affidavit that the property, for the recovery of which, or its proceeds, the action was brought, was taken under such process.

Same. R. § 2769.

SEC. 2574. In an action against a sheriff or other officer, for the recovery of property taken under an attachment or execution, the court may, upon application of the defendant and of the party in whose favor the process issued, permit the latter to be substituted as defendant, sureties for the costs being given.

In case of landlord's attachment. R. § 2770.

SEC. 2575. An action to recover the possession of specific personal property taken under a landlord's attachment, when it is brought by the tenant or his assignee or under-tenant, may be against the party who sued out the attachment; and the property claimed by such action may, under the writ therefor, be taken from the officer who seized it when he has no other claim to hold it than that derived from the writ. The endorsement of a levy on the property made upon the process by the officer holding it, shall be a sufficient taking of the property to sustain action against the party who sued out the writ.

CHAPTER 4.

OF PLACE OF BRINGING SUIT.

In relation to real property. R. § 2795.

SECTION 2576. Actions for the following causes must be brought in the county in which the subject of the action, or some part thereof, is situated:

1. For the recovery of real property, or of an estate therein, or for the determination of such right or interest;
2. For the partition of real property;
3. For injuries to real property.

Same.

SEC. 2577. Actions for injuries to real property may be brought either in the county where the property is, or where the defendant resides.

Mortgage: mechanics' lien.

SEC. 2578. An action for the foreclosure of a mortgage of real property, or for the sale of real property under an encumbrance or charge, or to enforce a mechanics' lien on real property, may

be brought in the county in which the property to be affected or some part thereof is situated.

Fines, forfeitures: against officers and on official bonds.

SEC. 2579. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:

1. An action for the recovery of a fine, penalty, or forfeiture imposed by a statute, except that when the offense for which the claim is made was committed on a water course or highway which is the boundary of two counties, the action may be brought in either of them;

2. An action against a public officer or person specially appointed to execute his duties, for an act done by him in virtue or under color of his office, or against one who by his command, or in his aid, shall do anything touching the duties of such officer or for neglect of official duty;

3. An action on the official bond of a public officer.

Attachment of property. R. § 2797.

SEC. 2580. An action, when aided by attachment, may be brought in any county of the state wherever any part of the property sought to be attached may be found, when the defendant whose property is thus pursued is a non-resident of this state. If such defendant is a resident of this state, such action must be brought in the county of his residence, or that in which the contract was to be performed, except that if an action be duly brought against such defendant in any other county by virtue of any provisions of this chapter, then such action may, if legal cause for an attachment exist, be aided by an attachment.

Place of contract. R. § 2798.

SEC. 2581. When, by its terms, a written contract is to be performed in any particular place, action for breach thereof may be brought in the county wherein such place is situated.

Common carriers. C. 95, § 1, 14 G. A.

SEC. 2582. Actions may be brought against railway corporations, the owners of mail stages, or other line of coaches or cars, including express companies, car companies, telegraph and canal companies, and the lessees, companies, or persons operating the same, in any county through which the line or road thereof passes, or is operated.

Construction of railways, telegraphs or canals. Same, § 2.

SEC. 2583. An action may be brought against any corporation, company, or person, engaged in the construction of a railway, telegraph line, or canal, on any contract relating thereto, or to any part thereof, or for damages in any manner growing out of the work thereon, in any county where such contract was made, or performed in whole or in part, or where the work was done out of which arose the damage claimed.

Insurance companies. Same, § 3.

SEC. 2584. Insurance companies may be sued in any county, in which is kept their principal place of business, in which was made the contract of insurance, or in which the loss insured against occurred.

Office: agency: suits growing out of. R. § 2801.

SEC. 2585. 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.

Place of residence. R. § 2800. C. 64, 14 G. A.

SEC. 2586. Except where otherwise provided herein, personal actions must be brought in a county wherein some of the defendants actually reside. But if none of them have any residence

within this state, they may be sued in any county wherein either of them may be found. But in all actions upon negotiable paper, except when made payable at a particular place in which any maker of such paper, being a resdent of the state, is made defendant, the place of trial shall be limited to a county wherein some one of the makers of such paper resides.

Same.

SEC. 2587. Where an action embraced in the preceding section is against several defendants, some of whom are residents and others non-residents of the county, and the action is dismissed as to the residents, or judgment is rendered in their favor, or their is a failure to obtain judgment against such residents, such non-residents may, upon motion, have said cause dismissed with reasonable compensation for trouble and expense in attending at the wrong county, unless they, having appeared to the action, fail to object before judgment is rendered against them.

Change of residence after suit brought.

SEC. 2588. If, after the commencement of an action in the county of the defendant's residence, he remove therefrom, the service of notice upon him in another county shall have the same effect as if it had been made in the county from which he removed.

Effect, if brought in wrong county. R. § 2302.

SEC. 2589. If a suit be brought in a wrong county, it may there be prosecuted to a termination, unless the defendant, before answer, demand a change of place of trial to the proper county. In which case the court shall order the same at the costs of the plaintiff, and may award the defendant a reasonable compensation for his trouble and expense in attending at the wrong county. And if the sum so awarded, and costs, are not paid to the clerk by a time to be fixed by the court, or if the papers in such case are not filed by the plaintiff in the court to which the change is ordered ten days before the first day of the next term thereof, or if ten days do not intervene between the making of said order and the first day of the next term of said court, ten days preceding the first day of the next succeeding term thereof, in either event the action shall be deemed to be discontinued.

CHAPTER 5.

OF CHANGE IN PLACE OF TRIAL.

When granted. R. § 2303. C. 167, § 13, 13 G. A.

SECTION 2590. A change of the place of trial, in any civil action, may be had in any of the following cases:

1. Where the county in which the action is pending is a party thereto, if the motion is made by the party adversely interested, and the issue be triable by jury;

2. Where the judge is a party, or is directly interested in the action, or is connected by blood or affinity with any person so interested nearer than the fourth degree;

3. Where either party files an affidavit verified by himself and three disinterested persons, not related to the party making the motion nearer than the fourth degree, nor standing in the relation

of servant, agent, or employe of such party, stating that the inhabitants of the county, or the judge, is so prejudiced against him, or that the adverse party or his attorney has such an undue influence over the inhabitants of the county, that he cannot obtain a fair trial;

4. By the written agreement of the parties, and their attorneys;

5. If the issue is one triable by jury, and it is made apparent to the court or judge that a jury cannot be obtained in the county where the action is pending, then, upon the application of either party, a change of place of trial shall be granted to the nearest county in which a jury can be obtained.

To whom and when made. R. § 2804.

SEC. 2591. The application for a change of place of trial may be made either to the court or to the judge in vacation, and, if made in term time, shall not be awarded until issue be made up unless objection be to the court; nor shall such application be allowed after a continuance, except for a cause not known to the affiant before such continance; and after one change, no party is entitled to another for any cause in existence when the first change was obtained.

To what county or court. R. § 2805. C. 167, § 14, 13 G. A.

SEC. 2592. The place of trial shall be changed to some other county in the same district or circuit, unless the objections are to the judge, or the objections made appear from the affidavits to exist as to all the other counties in the district, and shall be to the most convenient county to which no objection is made. Whenever the change shall be granted on account of the prejudice or disability of the judge, the action shall be transferred to the district or circuit court of the same county, unless objections exist as to both the judges, in which case it shall be transferred to the most convenient county in some other district or circuit.

How made during vacation. R. § 2806.

SEC. 2593. If an application for the change is made in vacation, five days notice of the same, with a copy of the affidavit, shall be served on the adverse party or his attorney; and if the judge grant the change, he shall forthwith transmit his order to the clerk, together with all the papers used before him.

When deemed perfected: consequences of failure. R. §§ 2807, 2810. C. 86, § 7, 12 G. A.

SEC. 2594. If the order for the change is granted in vacation, the same must be perfected by noon of the second day after the order is received by the clerk, and, if granted during term time, the same must be perfected by the morning of the second day thereafter or before the cause is reached for trial, if sooner reached, or such change, whether granted in term or vacation, will be deemed waived and the cause tried as though no such order had been granted. When the change has been perfected or agreed to by the parties, the clerk must forthwith transmit to the clerk of the proper court, strongly enveloped and sealed, a transcript of the record and proceedings, with all the original papers, having first made out and filed in his office authenticated copies of such original papers; but, if less than all of several plaintiffs or defendants take such change, the original papers shall not be so transmitted, but a copy thereof. And as to those who take no change, the cause shall proceed as if none had been taken, except that if the place of trial is changed to a court in

the same county, no transcript or copies shall be made out, but the original papers shall be transmitted.

SEC. 2595. Upon filing such transcript and papers in the office of the clerk of the court to which the same were certified, the cause shall be docketed without fee and proceeded in as though it had originated therein. Docketed. R. § 2808.

SEC. 2596. Unless the change be granted under sub-division two, four, or five, of section two thousand five hundred and ninety of this chapter, all costs caused thereby or that are rendered useless by reason thereof, shall be paid by the applicant, and the court, or judge, at the time of making the order, shall designate in general terms such costs, and no change shall be deemed perfected until such costs are paid. Costs of change. R. § 2809.

SEC. 2597. Where the place of trial in any civil action is changed to any county other than that in which the same was properly commenced, where the trial thereof takes place at a regular term, and occupies more than one calendar day, the judge trying said case shall certify the number of days so occupied, and the county in which the case was originally commenced shall be liable to the county where the same is tried for the sum of two dollars per day for each juryman engaged in the trial thereof. Jury to be paid by county from which change is take . C. 0, § 1, 14 G. A.

SEC. 2598. Where a special term of any court is held for the trial of any action contemplated in the preceding section, the court trying the same shall make out and certify the amount of county expenses incurred in the trial of each case, and the same shall be a legal and valid claim against the county in which the same was properly commenced. In case special term is held. Same, § 2.

CHAPTER 6.

OF THE MANNER OF COMMENCING ACTIONS.

SECTION 2599. Actions in a court of record shall be commenced by serving the defendant with a notice signed by the plaintiff or his attorney, informing the defendant of the name of the plaintiff, and that on or before a date therein named, a petition will be filed in the office of the clerk of the court wherein suit is brought, naming it, and stating in general terms the cause or causes of action, and if the action is for money, the amount thereof, and that unless he appears thereto and defends before noon of the second day of the term at which defendant is required to appear, naming it, or at such other time as may be by rule of such court prescribed, default will be entered against him and judgment rendered thereon. In all cases where the time for the commencement of the term has been changed after the notice has been served, the defendant shall be held to appear at the time to which such term has been so changed. Notice. R. §§ 2811, 2812.

Discontinuance. R. § 2813.

SEC. 2600. If the petition is not filed by the date thus fixed, and ten days before the term, the action will be deemed discontinued.

SERVICE OF NOTICE.

Who may serve. R. § 2813.

SEC. 2601. The notice may be served by any person not a party to the action.

Defendant to appear: when. R. § 2815.

SEC. 2602. The defendant shall be held to appear at the next term after service, provided:

1. He be served within the county where suit is brought, in such time as to leave at least ten days between the day of service and the first day of the next term;

2. He be served without the county, but within the judicial district, so as to leave at least fifteen such days;

3. He be served elsewhere, so as to leave twenty such days for every one thousand miles, or fraction thereof, extending between the places of trial and service, which distance shall be judicially noticed by the court. If not so served, he shall be held to appear at the second term after service.

Notice: how served. R. § 2816.

SEC. 2603. The notice shall be served as follows:

1. By reading the notice to the defendant, or offering to read it in case he neglects or refuses to hear it read, and, in either case, by delivering him personally a copy of the notice, or if he refuses to receive it, offering to deliver it;

2. If not found within the county of his residence, by leaving a copy of the notice at his usual place of residence with some member of the family over fourteen years of age;

3. By taking an acknowledgment of the service endorsed on the notice, dated and signed by the defendant.

Return when personally served. R. § 2817.

SEC. 2604. If served personally, the return must state the time and manner and place of making the service, and that a copy was delivered to defendant, or offered to be delivered. If made by leaving a copy with the family, it must state at whose house the same was left, and that it was the usual place of residence of the defendant, and the township, town, or city in which the house was situated, the name of the person with whom the same was left, or a sufficient reason for omitting to do so, and that such person was over fourteen years of age and was a member of the family.

Sheriff to note when received. R. § 2819.

SEC. 2605. If the notice is placed in the hands of a sheriff, he must note thereon the date when received, and proceed to serve the same without delay in his county, and must file the same with his return thereon in the office of the clerk, or return the same by mail or otherwise to the party from whom he received it.

Penalty for defective return: amendment of. R. § 2820.

SEC. 2606. If a notice be not duly filed or returned to the person from whom it was received by the sheriff, or if the return thereon is defective, the officer making the same may be fined by the court, not exceeding ten dollars, and shall also be liable to the action of any person aggrieved thereby. But the court may permit an amendment according to the truth of the case.

How served on Sunday. R. § 2821.

SEC. 2607. Notice shall not be served on Sunday, unless the plaintiff, his agent, or attorney, make oath thereon that personal

service will not be possible unless then made; and a notice endorsed with such affidavit shall be served by the sheriff, or may be served by another, as on a secular day.

Notice of no personal claim. R. § 2822.

SEC. 2608. The plaintiff may set forth in the notice the general object of the action, a brief description of the property affected by it, and that no personal claim is made against any defendant, naming him, and if such defendant unreasonably defends he must pay costs.

Return: how proven. R. § 2823.

SEC. 2609. If service be made within the state, the truth of the return is proven by the signature of the sheriff, or his deputy, and the court shall take judicial notice thereof. If made without the state, or by one not such officer within the state, the return may be proven by the affidavit of him making the same.

Service on county: how made. R. § 2824. C. 93, 9 G. A.

SEC. 2610. If a county is defendant, service may be made on the chairman of the board of supervisors or county auditor. But no action shall be brought against any county on any unliquidated demand, until the same has been presented to such board and payment demanded.

ON CORPORATIONS.

How served on railway corporations. C. 95, 14 G. A.

SEC. 2611. If the action is against any corporation, or person owning or operating any railway, telegraph line, canal, stages, coaches, or cars, or any express company, service may be made upon any general agent of such corporation, or person, wherever found, or upon any station, ticket, or other agent of such corporation, or person transacting the business thereof in the county where the suit is brought; if there is no such agent in said county, then service may be had upon an agent thereof transacting said business in any other county.

On municipal. C. 167, § 15, 13 G. A.

SEC. 2612. When the action is against a municipal corporation, service may be made on the mayor or clerk, and if against any other corporation, or any trustee or officer thereof, or on any agent employed in general management of its business, or on any of the last known or acting officers of said corporation, and if no person can be found on whom service can be made as provided in this and the preceding section, service may be made by publication as provided in other cases.

Agents: service on. R. § 2827.

SEC. 2613. When a corporation, company, or individual, has, for the transaction of any business, an office or agency in any county other than that in which the principal resides, service may be made on any agent or clerk employed in such office or agency, in all actions growing out of or connected with the business of that office or agency.

MINORS—INSANE—PRISONERS.

Minors: how served. § 2828.

SEC. 2614. When the defendant is a minor under the age of fourteen years, the service must be made on him, and also on his father, or mother, or guardian, and if there be none of these within the state, then on the person within this state having the care and control of such minor, or with whom he shall reside, or

in whose service he shall be employed. When the minor is over fourteen years of age, service on him shall be sufficient.

Insane. R. § 2829.

SEC. 2615. When a defendant has been judicially declared to be of unsound mind, or who is confined in any state lunatic asylum, service may be made upon him and upon his guardian, and if he have no guardian, then upon his wife or the person having the care of him, or with whom he lives, or the keeper of the asylum in which he may be confined.

When confined in state lunatic asylum. C. 109, § 50, 13 G. A.

SEC. 2616. When it becomes necessary to serve personally with a notice or process of any kind, a person who is confined in any state lunatic asylum, the superintendent thereof shall acknowledge service of the same for such person, whenever, in the opinion of such superintendent, personal service would injuriously affect such person, which fact shall be stated in the acknowledgment of service. A service thus made shall be deemed a personal one on the defendant.

Prisoner in penitentiary. R. § 2830.

SEC. 2617. When the defendant is a prisoner in the penitentiary, a copy of the petition must be delivered to the prisoner at the time the notice is served, and a copy of the notice must be delivered to the husband or wife of the defendant, if any such there be within this state.

SERVICE BY PUBLICATION.

In what actions and when made. R. § § 2231, 2232.

SEC. 2618. Service may be made by publication, when an affidavit is filed that personal service cannot be made on the defendant within this state, in either of the following cases:

1. In actions brought for the recovery of real property, or an estate or interest therein;

2. In an action for the partition of real property;

3. In an action for the sale of real property under a mortgage, lien, or other encumbrance or charge;

4. In actions to compel the specific performance of a contract of sale of real estate, or in actions to establish or set aside a will, where, in such cases, any or all of the defendants reside out of this state and the real property is within this state;

5. In actions brought against a non-resident of this state or a foreign corporation, having in this state property or debts owing to such defendant sought to be taken by any of the provisional remedies, or to be appropriated in any way;

6. In actions which relate to, or the subject of which is real or personal property in this state, when any defendant has, or claims, a lien or interest, actual or contingent therein, or the relief demanded consists wholly, or partly, in excluding him from any interest therein, and such defendant is a non-resident of this state, or a foreign corporation;

7. In all actions where the defendant being a resident of the state has departed thereform, or from the county of his residence with intent to delay or defraud his creditors, or to avoid the service of a notice, or keeps himself concealed therein with like intent;

8. Where the action is for a divorce, if the defendant is a non-resident of the state of Iowa, or his residence is unknown.

SEC. 2619. The publication must be made by publishing the notice required in section two thousand five hundred and ninety-nine of this chapter, four consecutive weeks in some newspaper printed in the county where the petition is filed, and if there be none printed in such county, then in such paper printed at the next nearest county of this state, which paper shall in either case be determined by the plaintiff or his attorney. How made. C. 142, 13 G. A.

SEC. 2620. When the foregoing provisions have been complied with, the defendant so notified shall be required to appear as if personally served within the county in which the petition is filed, on the day of the last publication. Proof thereof being made by the affidavit of the publisher, or his foreman, and filed before default is taken. Defendant held to appear: proof of publication. C. 174, § 2, 9 G. A.

SEC. 2621. Actual personal service of the notice, either within or without the state, supersedes the necessity of publication. Actual service. R. § 2835.

UNKNOWN DEFENDANTS.

SEC. 2622. In actions where it shall be necessary to make an unknown person defendant, the petition shall be sworn to, and shall state what interest such person has or claims to have, how the same was derived or is claimed to have been derived, as exactly as possible, that the name and residence of such person is unknown to plaintiff, and that he had sought diligently to learn the same, and thereon proceedings may be had against such person without naming, him as follows: Petition verified: statements of. R. § 2836.

SEC. 2623. The court shall approve a notice collected from the averments of the petition, which notice shall contain the name of the plaintiff, a description of the property, and all the allegations of the petition concerning the interest of the unknown person, and the mode of devolution thereof, the relief demanded, also the name of the court and the term at which appearance must be made. Said notice must be entitled in the full name of the plaintiff against the unknown claimants of property, and shall be signed by the plaintiff's attorney. Court to approve notice. R. § 2837.

SEC. 2624. The court, on its approval of said notice, shall endorse the same thereon, and order that the said notice be published in some newspaper of this state, designating such paper as shall be most likely to give notice to such unknown person. Make order of publication. R. § 2838.

SEC. 2625. Such notice shall be filed in the cause, and its contents, without more, shall be published in the paper designated, at least, weekly, for six successive weeks, and at the end of said time service shall be deemed complete, and such unknown person in court at the next term thereafter. How, and for what time published. R. § 2839.

APPEARANCE.

SEC. 2626. The mode of appearance may be: Mode of defined. R. § 2840.

1. By delivering to the plaintiff or the clerk of the court, a memorandum in writing to the effect that the defendant appears, signed either by the defendant in person, or his attorney, dated the day of its delivery, and to be filed in the case;

2. By announcing to the court an appearance, which shall be entered of record;

3. By an appearance, even though specially made, by himself or his attorney, for any purpose connected with the cause; or for any purpose connected with the service or insufficiency of the notice. And an appearance, special or other, to object to the substance or service of the notice, shall render any further notice unnecessary; but may entitle the defendant to a continuance, if it shall appear to the court that he has not had the full timely notice required of the substantial cause of action stated in the petition.

WHEN ALL DEFENDANTS ARE NOT SERVED.

Mode of procedure R. § 2841.

SEC. 2627. When the action is against two or more defendants, and one or more shall have been served, but not all of them, the plaintiff may proceed as follows:

1. If the action be against defendants jointly, or jointly and severally, or severally liable only, he may, without prejudice to his rights in that or any other action against those not served, proceed against those served in the same manner as if they were the only defendants; if he recover against those jointly liable only, he may take judgment against all thus liable, which may be enforced against the joint property and separate property of those served, but not against the separate property of those not served, until they have had opportunity to show cause why judgment should not be enforced against their separate property; or,

2. The plaintiff may continue till the next term, and proceed to bring in the other defendants; but at such second term the suit shall proceed against all who have been served in due time, and no further delay shall be allowed to bring in the others, unless all that appear shall consent to such delay.

REAL ESTATE.

Pending of action: notice to third parties. R. § 2842.

SEC. 2628. When a petition has been filed affecting real estate, the action is pending so as to charge third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff's title, if the real property affected be situated in the county where the petition is filed.

When property is situated in another county. C. 167, § 16, 18 G. A.

SEC. 2629. When any part of real property, the subject of an action, is situated in any other county than the one in which the action is brought, the plaintiff must, in order to affect third persons with constructive notice of the pendency of the action, file with the clerk of the district court of such county, a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the property in that county affected thereby, and from the time of such filing only shall the pendency of the action be constructive notice to subsequent vendees or encumbrancers thereof, who shall be bound by all the proceedings taken after the filing of such notice, to the same extent as if a party to the action, and the clerk of such

county must, immediately on receipt of such notice, index and record the same in the encumbrance book. And within two months after the determination of such action, there shall be filed with such clerk a certified copy of the final order, judgment, or decree, who shall enter and index the same in the manner as though rendered in that county, or such notice of pendency shall cease to be constructive notice.

CHAPTER 7.

OF JOINDER OF ACTIONS.

SECTION 2630. Causes of action of whatever kind, where each may be prosecuted by the same kind of proceedings, provided that they be by the same party, and against the same party in the same rights, and if suit on all may be brought and tried in that county, may be joined in the same petition; but the court, to prevent confusion therein, may direct all or any portion of the issues joined therein to be tried separately, and may determine the order thereof.

Ordinary and equitable cannot be. R. § 2844.

SEC. 2631. The plaintiff may strike from his petition any cause of action or any part thereof, at any time before the final submission of the case to the jury or to the court, when the trial is by the court.

Plaintiff may strike out cause. R. § 2845.

SEC. 2632. The court, at any time before the defense, shall, on motion of the defendant, strike out of the petition any cause or causes of action improperly joined with others.

So may court. R. § 2847.

SEC. 2633. All objections to the misjoinder of causes of actions shall be deemed to be waived, unless made as provided in the last section.

Misjoinder waived. R. § 2847.

SEC. 2634. When a motion is sustained on the ground of misjoinder of causes of action, the court, on motion of the plaintiff, shall allow him, with or without costs in its discretion, to file several petitions, each including such of said causes of action as might have been joined, and action shall be docketed for each of said petitions, and the same shall be proceeded in without further service, and the court shall determine, by order, the time of pleading therein.

What done when dismissed for misjoinder. R. § 2848.

CHAPTER 8.

OF PLEADING.

SECTION 2635. The defendant shall, in an action commenced in a court of record, demur, answer, or do both as to the original petition before noon of the second day of the term.

Demur or answer: when. R. § 2849.

Same.
R. §§ 2850, 2851, 2858.

SEC. 2636. Each party shall demur, answer, or reply to all subsequent pleading, including amendments thereto and substitutes therefor, before noon of the day succeeding that on which the pleading is filed. But all pleadings must be filed by the time the cause is reached for trial.

Time of pleading.
R. § 2857.

SEC. 2637. The day on which the judge actually opens court shall be, for the purpose of timing the pleading, considered the first day of the term.

Extension of.
R. § 2859.

SEC. 2638. The court may extend the time of filing any pleading beyond that herein fixed, but shall do so with due regard to making up issues at the earliest day possible.

Motions assailing pleading.
R. §§ 2864, 2865, 2866.

SEC. 2639. All motions assailing a pleading shall be in writing, and filed before an answer or reply has been filed to the pleading assailed, except as provided in section two thousand six hundred and fifty of this chapter, and shall specify the causes on which they are founded, and none other shall be argued or considered. But one motion and one demurrer assailing such pleading shall be filed, unless such pleading be amended after the filing of a motion or demurrer thereto.

Demurrer or motion suspends other pleadings.
R. § 2867.

SEC. 2640. A demurrer or motion assailing any pleading or count thereof, suspends the necessity of filing any other pleading to such pleading or count until the same has been determined, and the next pleading shall be filed by the morning of the day succeeding such determination.

Demurrers and motions when required.
R. § 2869.

SEC. 2641. All motions and demurrers shall be argued and submitted when filed, unless the adverse party is absent or desires time, in which case it shall be extended until the morning of the succeeding day unless the cause is sooner reached for trial.

Not withdrawn.
R. § 2870.

SEC. 2642. A motion or demurrer once filed, shall not be withdrawn without the consent of the adverse party entered thereon, or of the court.

Appearance docket.
C. 75, § 1, 9 G. A.

SEC. 2643. The filing of a pleading or motion in the clerk's office during a term, and a memorandum of such filing made in the appearance docket within the time allowed, shall be equivalent to filing the same in open court.

Forms of action abolished.
R. § 2872.

SEC. 2644. All technical forms of action and pleading, all common counts, general issues, and all fictions are abolished, and hereafter the forms of pleading in civil actions, and the rules by which their sufficiency is to be determined, are those prescribed in this code.

Pleadings defined.
R. §§ 2873, 2874.

SEC. 2645. Pleadings are the written statements by the parties of their respective claims and defenses, and are:

1. The petition of the plaintiff;
2. The demurrer or answer of the defendant;
3. The demurrer or reply of the plaintiff;
4. The demurrer of the defendant.

PETITION.

Joinder in.
R. § 2900.

SEC. 2646. The petition must contain:

1. The name of the court and county in which the action is brought;

2. The names of the parties to the action, plaintiffs and defendants, followed by the word "petition" if the proceedings are ordinary, and by the words "petition in equity," if the proceedings are equitable;

3. A statement of the facts constituting the plaintiff's cause of action;

4. A demand of the relief to which the plaintiff considers himself entitled, and if such demand be for money, the amount thereof must be stated;

5. Where the petition contains more than one cause of action, each must be stated wholly in a count or division by itself, and must be sufficient in itself; but one prayer for judgment may include a sum based on all counts looking to a money remedy;

6. In a petition by equitable proceedings, each division shall also be separated into paragraphs, numbered as such for more convenient reference, and each paragraph shall contain, as near as may be convenient, a complete and distinct statement.

Amended before answer. R. § 2975.

SEC. 2647. The plaintiff may amend his petition without leave at any time before the answer is filed, without prejudice to the proceedings already had; but a notice of such amendment shall be served on the defendant or his attorney, and the defendant shall have the same time to answer or demur thereto as he had to the original petition.

DEMURRER.

Causes of. R. § § 2876, 2918, 2920, 2961, 2963, 2964.

SEC. 2648. The defendant may demur to the petition only where it appears on its face, either:

1. That the court has no jurisdiction of the person of the defendant or the subject of the action; or,

2. That the plaintiff has not legal capacity to sue; or,

3. That there is another action pending between the same parties for the same cause; or,

4. That there is a defect of parties, plaintiffs or defendants; or,

5. That the facts stated in the petition do not entitle the plaintiff to the relief demanded;

6. That the petition, on the face thereof, shows that the claim is barred by the statute of limitations; or fails to show it to be in writing where it should be so evidenced; or, if founded on an account, or writing as evidence of indebtedness, and neither of such writings, account, or copy thereof is incorporated into or attached to such pleading, or a sufficient reason stated for not doing so.

Specify causes and number same. R. § 2877.

SEC. 2649. A demurrer must specify and number the grounds of objection to the pleading, or it will be disregarded; and it shall not be sufficient to state the objection in the terms of the preceding section, except that a demurrer to an equitable petition for the fifth reason of said section may be stated in the terms thereof.

Waiver of: answer: arrest of judgment. R. § 2878.

SEC. 2650. When any of the matters enumerated as grounds of demurrer do not appear on the face of the petition, the objec-

tion may be taken by answer. If no such objection is taken, it shall be deemed waived. If the facts stated by the petition do not entitle the plaintiff to any relief whatever, advantage may be taken of it by motion in arrest of judgment, before judgment is entered.

Demur to part: answer. R. § 2879.

SEC. 2651. The defendant may demur to one or more of the several causes of action alleged in the petition, and answer as to the residue.

Joinder in. R. § 2900.

SEC. 2652. The opposite party shall be deemed to join in a demurrer, whenever he shall not amend the pleading to which it is addressed.

Answer after. R. § 2976.

SEC. 2653. Upon a demurrer being overruled, the party demurring may answer or reply.

Failure to amend: effect of. R. § 3086.

SEC. 2654. Upon a 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.

ANSWER.

Statements of. R. § 2880.

SEC. 2655. The answer shall contain:

1. The name of the court, of the county, and of the plaintiffs and defendants, but when there are several plaintiffs and defendants, it shall only be necessary to give the first name of each class, with the words, and others;

2. A general denial of each allegation of the petition, or else of any knowledge or information thereof sufficient to form a belief;

3. A specific denial of each allegation of the petition controverted by the defendant, or any knowledge or information thereof sufficient to form a belief;

4. A statement of any new matter constituting a defense;

5. A statement of any new matter constituting a counterclaim;

6. The defendant may set forth in his answer as many causes of defense, counter claim, whether legal or equitable, as he may have.

Of guardian. R. § 2893.

SEC. 2656. The guardian of a minor, or person of unsound mind, or attorney for a person in prison, must deny in the answer all the material allegations of the petition prejudicial to such defendant.

Divisions of. R. § 2882.

SEC. 2657. Each affirmative defense shall be stated in a distinct division of the answer, and must be sufficient in itself, and must intelligibly refer to that part of the petition to which it is intended to apply.

No prayer. R. § 2888.

SEC. 2658. In the defense part of an answer or reply, it shall not be necessary to make any prayer of judgment.

COUNTER CLAIM.

How stated. R. § § 2884, 2886, 2889, 2891.

SEC. 2659. Each counter claim must be stated in a distinct count or division, and must be:

1. When the action is founded on contract, a cause of action

also arising on contract, or ascertained by the decision of a court; or,

2. A cause of action in favor of the defendants, or some of them, against the plaintiffs, or some of them, arising out of the contracts or transactions set forth in the petition or connected with the subject of the action; or,

3. Any new matter constituting a cause of action in favor of the defendant, or all of the defendants if more than one, against the plaintiff, or all of the plaintiffs if more than one, and which the defendant or defendants might have brought when suit was commenced or which was then held, either matured or not, if matured when so plead.

Equitable matter. R. § 2885.

SEC. 2660. An equitable division must also be separated into paragraphs, and numbered as required in regard to an equitable cause of action in the petition.

Co-maker or surety. R. § 2887.

SEC. 2661. A co-maker, or surety, when sued alone, may, with the consent of his co-maker or principal, avail himself by way of counter claim, of a debt or liquidated demand due from the plaintiff at the commencement of the suit to such co-maker or principal, but the plaintiff may meet such counter claim in the same way as if made by the co-maker or principal himself.

New party. R. §§ 2888, 2890.

SEC. 2662. When a new party is necessary to a final decision upon a counter claim, the court may either permit such party to be made, or direct that it be stricken out of the answer and made the subject of a separate action.

Cross petition when filed. R. § 2892.

SEC. 2663. When a defendant has a cause of action affecting the subject matter of the action against a co-defendant, or a person not a party to the action, he may, in the same action, file a cross petition against the co-defendant or other person. The defendants thereto may be notified as in other cases, and defense thereto shall be made in the time and manner prescribed in regard to the original petition, and with the same right of obtaining provisional remedies applicable to the case. The prosecution of the cross petition shall not delay the trial of the original action, when a judgment can be rendered therein that will not prejudice the rights of the parties to the cross petition.

Demurrer to answer. R. § 2894.

SEC. 2664. When the facts stated in the answer, or any count or division thereof, are not sufficient to constitute a defense or counter claim, the adverse party may demur, and shall be held to the same certainty in the statement of the grounds therefor as obtains in a demurrer to the petition.

REPLY.

When necessary. R. § 2895.

SEC. 2665. There shall be no reply except:

1. Where a counter claim is alleged; or,

2. Where some matter is alleged in the answer to which the plaintiff claims to have a defense, by the reason of the existence of some fact which avoids the matter alleged in the answer.

Statements of. R. § 2896.

SEC. 2666. When a reply must be filed, it shall consist of:

1. A general or specific denial of each allegation or counter claim controverted, or any knowledge or information thereof sufficient to form a belief; or,

2. Any new matter not inconsistent with the position, constituting a defense to the matter alleged in the answer; or the matter in the answer may be confessed, and any new matter alleged, not inconsistent with the petition, which avoids the same.

Any number of defenses stated. R. §§ 2897, 2898.

SEC. 2667. Any number of defenses, negative or affirmative, are pleadable to a counter claim, and each affirmative matter of defense in the reply shall be sufficient in itself, and must intelligibly refer to the part of the answer to which it is intended to apply. A division of equitable matter must also be separated into paragraphs and numbered as required in case of such matter in the answer.

Demurrer to. R. § 2899.

SEC. 2668. When the facts stated in the reply do not amount to a sufficient defense, the defendant may demur, subject to the same requirements of certainty in statements of grounds thereof as obtain in demurrer to the petition.

VERIFICATION.

When verified subsequent pleadings must be. R. § 2904.

SEC. 2669. Every pleading must be subscribed by the party or his attorney, and when any pleading in a case shall be verified by affidavit, all subsequent pleadings, except demurrers, shall be verified also; and in all cases of verification of a pleading, the affidavit shall be to the effect that the affiant believes the statements thereof to be true.

Corporation. R. § 2905.

SEC. 2670. Where a corporation is a party, the affidavit may be made by any officer thereof.

United interest. R. § 2906.

SEC. 2671. When there are several parties united in interest, the affidavit may be made by any one of them.

By agent or attorney. C. 167, § 18, 13 G. A.

SEC. 2672. If the pleading be founded on a written instrument for the payment of money only, and such instrument be in possession of the agent or attorney, the affidavit may be made by such agent or attorney, so far as relates to the statement of the cause of action thereon; but when relief is asked other than a money judgment or decree of foreclosure, the affidavit must contain averments showing competency as herein provided.

By any person knowing the facts. R. §§ 2908, 2909.

SEC. 2673. If the statements of a pleading are known to any person other than the party, such person may make the affidavit, which shall contain averments showing affiant competent to make the same.

Counter claim may be.

SEC. 2674. Where the petition is not verified, and the answer contains a counter claim, the same may be verified apart from the defense part of the answer, and the foregoing provisions are applicable to the counter claim as if the same were a separate pleading.

Guardian, executor, prisoner. R. §§ 2910, 2912.

SEC. 2675. Verification shall not be required to any pleading of a guardian, executor, or prisoner in the penitentiary, nor to any pleading controverting the answer of a garnishee, nor to one grounded on an injury to the person or the character.

When cannot be required. R. § 2911.

SEC. 2676. When it can be seen from the pleading to be answered, that an admission of the truth of its allegations might subject the party to a criminal prosecution, no verification shall be required.

SEC. 2577. If a pleading be not verified, it may be struck out on motion; but such defect will be deemed waived if the other party respond thereto, or proceed to trial without such motion. Effect if not verified. R. § 2916.

SEC. 2678. The verification of the pleading does not apply to the amount claimed, except in actions founded on contract, express or implied, for the payment of money only. When not amount claimed. R. § 2914.

SEC. 2679. The verification shall not make other or greater proof necessary on the side of the adverse party. Proof. R. § 2915.

SEC. 2680. Courts may permit the amendments authorized by this chapter to be made without being verified, unless a new and distinct cause of action or counter claim is thereby introduced. Amendments not verified. R. § 2981.

SLANDER—LIBEL.

SEC. 2681. In an action for slander or libel, it shall not be necessary to state any extrinsic facts for the purpose of showing the application to the plaintiff of any defamatory matter out of which the cause of action arose, or that the matter was used in a defamatory sense; but it shall be sufficient to state the defamatory sense in which such matter was used, and that the same was spoken or published concerning the plaintiff. Statements of petition. R. § 2928.

SEC. 2682. In any action brought to recover damages for an injury to person, character, or property, the defendant may set forth in a distinct division of his answer, any facts of which evidence is legally admissable to mitigate or otherwise reduce the damages, whether a complete defense or justification be pleaded or not, and he may give in evidence the mitigating circumstances whether he provoke the defense or justification or not, and no mitigating circumstances shall be proved unless plead, except such as are shown by, or grow out of, the testimony introduced by the adverse party; and in actions for slander or libel, an unproved allegation of the truth of the matter charged, shall not be deemed proof of malice, unless the jury on the whole case find that such defense was made with malicious intent. Of answer in, and for other torts. R. § 2929.

INTERVENTION.

SEC. 2683. Any person who has an interest in the matter in litigation, in the success of either of the parties to the action, or against both, may become a party to an action between other persons, either by joining the plaintiff in claiming what is sought by the petition, or by uniting with the defendant in resisting the claim of the plaintiff, or by demanding any thing adversely to both the plaintiff and defendant, either before or after issue has been joined in the cause and before the trial commences. Any person who has an interest may. R. § 2930.

SEC. 2684. The court shall determine upon the intervention at the same time that the action is decided, and the intervenor has no right to delay; and if the claim of the intervenor is not sustained, he shall pay all costs of the intervention. Cannot delay main action. R. § 2931.

SEC. 2685. The intervention shall be by petition, which must set forth the facts on which the intervention rests, and all the pleadings therein shall be governed by the same principles and How effected. R. § 2932.

rules as obtain in other pleadings provided for in this chapter. But if such petition is filed during term, the court shall direct the time in which an answer shall be filed thereto.

AMENDMENTS.

Variance. R. § 2972.

SEC. 2686. No variance between the allegations in a pleading and the proof is to be deemed material, unless it has actually mislead the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it is alleged that a party has been so misled, that fact must be shown by proof to the satisfaction of the court, and such proof must also show in what respect he has been so misled, and thereupon the court may order the pleading to be amended upon such terms as may be just.

Same. R. § 2973.

SEC. 2687. When the variance is not material as provided in the last section, the court may direct the fact to be found according to the evidence, and may order an immediate amendment without costs.

When material. R. § 2974.

SEC. 2688. When, however, the allegation of the claim or defense to which the proof is directed is unproved in its general meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

Amendments made at any time. R. § 2977.

SEC. 2689. The court may, on motion of either party at any time, in furtherance of justice, and on such terms as may be proper, permit such party to amend any pleadings or proceedings by adding or striking out the name of a party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or, when the amendment does not change substantially the claim or defense, by conforming the pleading or proceedings to the facts proved.

Errors disregarded. R. § 2978.

SEC. 2690. The court must, in every stage of an action, disregard any error or defect in the proceeding which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

Does not entitle party to continuance. R. § 2979.

SEC. 2691. When either party shall amend any pleading or proceeding, the case shall not be continued in consequence thereof, unless the court shall be satisfied by affidavit or otherwise, that the adverse party could not be ready for trial in consequence of such amendment. But if the court is thus satisfied, a continuance may be granted to some day in the same term, or the next term of said court.

Amendments: how made. R. § 2983.

SEC. 2692. All matters of supplement or amendment, whether of addition or subtraction, shall not be made by erasure or interlineation of the original, or by addition thereto, but upon a separate paper which shall be filed and constitute, with the original, but one pleading. But if it be stated in such paper that it is a substitute for the former pleading intended to be amended, in that case, it shall be deemed such substitute, but the pleading superseded by the substitute shall not be withdrawn from the files.

INTERROGATORIES.

May be annexed to pleading. R. § 2985.

SEC. 2693. Either party may annex to his petition, answer, or reply, written interrogatories to any one or more of the adverse parties concerning any of the material matters in issue in the

action, the answer to which, on oath, may be read by either party as a deposition between the party interrogating and the party answering.

SEC. 2694. The party answering shall not be confined to responding merely to the interrogatories, but may state any new matter concerning the same cause of action, which shall likewise be read as a deposition. What response must state. R. § 2986.

SEC. 2695. The interrogatories shall be answered at the same time the pleading to which they are annexed is answered or replied to, unless they are excepted to by the adverse party; in which event the court shall determine as to the propriety of the interrogatories propounded, and which of them shall be answered, and within what time such answer shall be made. Time of responding. R. § 2987.

SEC. 2696. The trial of an action by ordinary proceedings, shall not be postponed on account of the failure to answer interrogatories, if the party interrogated is present in the court at the trial, so that he may be orally examined; nor in case of absence, unless an affidavit be filed showing the facts the party believes will be proved by the answers thereto, and that the party has not filed the interrogatories for the purpose of delay; whereupon, if the party will consent that the facts stated in the affidavit shall be considered as admitted by those interrogated, the trial shall not be postponed for that cause. To cause no delay when. R. § 2988.

SEC. 2697. The party, in answering such interrogatories, shall distinguish clearly between what is stated from his personal knowledge, and what is stated from information or belief merely. An unqualified statement of a fact shall be considered as made of his personal knowledge. Particularity required. R. § 2989.

SEC. 2698. The answer to the interrogatories shall be verified by the affidavit of the party answering, to the effect that the statements in them made of his own personal knowledge are true, and those made from the information of others he believes to be true. How verified. R. § 2990.

SEC. 2699. Where a party filing interrogatories shall also file an affidavit that he verily believes the subject of the interrogatories, or any of them, is in the personal knowledge of the opposite party, and that his answer thereto, if truly made from such knowledge, will sustain the claim of defense, or any part thereof, and the opposite party shall fail to answer therein within the time allowed therefor, or by the court extended, the claim or defense, or the part thereof, according to such affidavit, shall be deemed to be sustained, and judgment given accordingly. Upon failure to answer when taken as true. R. § 2991.

SEC. 2700. The court may compel answers to interrogatories by process of contempt, and may, on the failure of the party to answer them, after reasonable time allowed therefor, dismiss the petition, or quash the answer of the party so failing. Answer compelled. R. § 2992.

GENERAL PRINCIPLES OF PLEADING.

SEC. 2701. In all cases in which a denial is made by answer or reply, concerning a time, sum, quantity, or place alleged, the party denying shall declare whether such denial is applicable to every time, sum, quantity, or place, and if not, what time, sum, quantity, or place he admits. Time: sum: quantity: place: denial of. R. § 2991.

Time when material: how stated. R. § 2955.

SEC. 2702. When time is material, the day, month, and year, or when there is a continued act, its duration must be alleged. When time is not material, it need not be stated, and if stated, need not be proved.

Place: allegation. R. § 2957.

SEC. 2703. It shall be necessary to allege a place, only when it forms a part of the substance of the issue.

Evidence: denial of allegation. R. § 2944.

SEC. 2704. Under a denial of an allegation, no evidence shall be introduced which does not tend to negative some fact the party making the controverted allegation is bound to prove.

Counts: divisions numbered. R. § 2902.

SEC. 2705. The counts of the petition must be consecutively numbered as such, and so must the divisions of the answer as such, and of the reply as such.

Correction of bad pleading. R. § 2903.

SEC. 2706. If any pleading do not conform to the foregoing requirements as to form, divisions, or numbering, or the distinct or separate statements of its cause of action or defense, the court may, on its own motion, or that of the adverse party, order the same to be corrected on such terms as it may impose.

Sham defenses stricken out. R. § 2861.

SEC. 2707. Sham and irrelevant answers and defenses may be stricken out on motion, upon such terms as the court may, in its discretion, impose.

Statute: how plead. R. § 2926.

SEC. 2708. In pleading a statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Rules of court. R. § 2927.

SEC. 2709. Every court of this state shall take judicial notice of the rules of any other court thereof, if published as directed by law.

Inconsistent defenses plead. R. § 2937.

SEC. 2710. Inconsistent defenses may be stated in the same answer or reply, and when a verification is required, it must be to the effect that the party believes one or the other to be true, but cannot determine which.

Exceptions to general law stated. R. § 2940.

SEC. 2711. Whenever a party claims a right derogatory from the general law, or when his claim is founded upon an exception of any kind, he shall set forth such claim or such exception particularly in his pleading.

Allegations not controverted admitted. R. § 2917.

SEC. 2712. Every material allegation in a pleading not controverted by a subsequent pleading, shall, for the purposes of the action, be deemed true. But the allegations of the answer, not relating to a counter claim, and of the reply, are to be deemed controverted. But an allegation of value, or amount of damage, shall not be deemed true by a failure to controvert it. A party desiring to admit any allegations, which by this section would be deemed controverted, may, at any time, file a written admission thereof.

Pleading made more specific: how. R. § 2918.

SEC. 2713. If a pleading is founded on an account, a bill of particulars thereof must be incorporated into or attached to such pleading, verified as the pleading, and deemed a portion thereof, subject to be made more specific on motion, and shall define and limit the proof, but may be amended as other pleadings. The items of such bill of particulars shall be consecutively numbered.

Judgment: how plead. R. § 2921.

SEC. 2714. In pleading a judgment, or the determination of a court, or officer of special jurisdiction, it shall not be necessary to

state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made.

Conditions precedent. R. § 2822.

SEC. 2715. In pleading the performance of conditions precedent in a contract, it is not necessary to state the facts constituting such performance, but the party may state, generally, that he duly performed all the conditions on his part.

When action is brought in a representative capacity. R. § 2923.

SEC. 2716. A plaintiff suing as a corporation, partnership, executor, guardian, or in any other way implying corporate, partnership, representative, or other than individual capacity, need not state the facts constituting such capacity or relation, but may aver generally, or as a legal conclusion, such capacity or relation; and where a defendant is held in such capacity or relation, a plaintiff may aver such capacity or relation in the same general way.

Facts must be stated. R. § 2925.

SEC. 2717. If either of the allegations contemplated in the three preceding sections is controverted, it shall not be sufficient to do so in terms contradictory of the allegation, but the facts relied on shall be specifically stated.

Matters that must be specially pleaded. R. § 2942.

SEC. 2718. Any defense showing that a contract, written or oral, or any instrument sued on, is void or voidable; or that the instrument was delivered to a person as an escrow, or showing matter of justification, excuse, discharge, or release, and any defense which admits the facts of the adverse pleading, but by some other matter seeks to avoid their legal effect, must be specially pleaded.

Irrelevant matter stricken out. R. § 2946.

SEC. 2719. The court may, on motion of any person aggrieved thereby, cause irrelevant or redundant matter to be stricken from any pleadings, at the cost of any party whose pleading contains them.

When pleading made more specific. R. § 2948.

SEC. 2720. When the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court may, on motion, require it to be made more definite and certain. No pleading which recites or refers to a contract shall be deemed sufficiently specific unless it states whether it is in writing or not. Such motion shall point out wherein the pleading is not sufficiently specific or it shall be disregarded, and if the reason for such demand exists outside of the pleadings, the motion must state the same and be supported by affidavit.

Title of cause not changed. R. § 2949.

SEC. 2721. The title of a cause shall not be changed in any of its stages of transit from one court to another.

Judicial notice. R. § 2950.

SEC. 2722. Matters of which judicial notice is taken need not be stated in a pleading.

Conveyance how plead. R. § 2952.

SEC. 2723. When a party claims by conveyance, he may state it according to its legal effect or name.

Estate: how plead. R. § 2954.

SEC. 2724. It shall not be necessary to allege the commencement of either a particular or a superior estate, unless it be essential to the merits of the case.

Same as to goods. R. § 2956.

SEC. 2725. In actions for injuries to goods and chattels, their kind or species shall be alleged.

Same as to real property. R. § 2958.

SEC. 2726. In actions for injuries to real property, the petition shall describe the property, and when the injury is to an incorporeal hereditament, shall describe the property in respect of which

the right is claimed, as well as the right itself, either by the numbers by which the property is designated in the national survey, or by its abuttals, or by its courses and distances, or by any name which it has acquired by reputation certain enough to identify it.

Malice. R. § 2959.

SEC. 2727. When the party intends to prove malice to effect damages, he must aver the same.

Bond: breaches of. R. § 2960.

SEC. 2728. In an action on a bond with conditions, the party suing thereon shall notice the conditions and allege the facts constituting the breaches relied on.

Extent of proof required. R. § 2966.

SEC. 2729. A party shall not be compelled to prove more than is necessary to entitle him to the relief asked for, or any lower degree included therein, nor more than sufficient to sustain his defense.

When written instrument referred to in pleading deemed genuine. C. 28, 9 G. A. C. 167, § 19, 13 G. A.

SEC. 2730. When a written instrument is referred to in a pleading, and the same, or a copy thereof, is incorporated in or attached to such pleading, the signature thereto, and to any endorsement thereon, shall be deemed genuine and admitted, unless the person whose signature the same purports to be, shall, in a pleading or writing filed within the time allowed for pleading, deny the genuineness of such signature under oath. If such instrument be not negotiable, and purport to be executed by a person not a party to the proceeding, the signature thereto shall not be deemed genuine or admitted, if a party to the proceeding, in the manner and within the time before mentioned, state under oath that he has no knowledge or information sufficient to enable him to form a belief as to the genuineness of such signature. The person whose signature purports to be signed to such instrument, shall, on demand, be entitled to an inspection thereof.

Supplemental pleading defined. R. § 2968.

SEC. 2731. Either party may be allowed, on motion, to make a supplemental petition, answer, or reply, alleging facts material to the case, which have happened or have come to his knowledge since the filing of the former pleading; nor shall such new pleading be considered a waiver of former pleadings.

Matter in abatement: how plead. R. § 2969.

SEC. 2732. Matter in abatement may be stated in the answer or reply, either together with or without causes of defense in bar, and no one of such causes shall be deemed to overrule the other; nor shall a party after trial, on matter of abatement, be allowed in the same action to answer or reply matter in bar.

Subsequent defenses: how plead. R. § 2970.

SEC. 2733. Any defense arising after the commencement of any action, shall be stated according to the fact, without any formal commencement or conclusion, and any answer which does not state whether the defense therein set up arose before or after action, shall be deemed to be of matter arising before action.

Consolidations of actions. R. § 2980.

SEC. 2734. Whenever two or more actions are pending in the same court which might have been joined, the defendant may, on motion and notice to the adverse party, require him to show cause why the same shall not be consolidated, and if no sufficient cause be shown the same shall be consolidated.

Lost pleading. R. § 2982.

SEC. 2735. If an original pleading be lost or withheld by any one, the court may order a copy thereof to be substituted.

Records cannot be altered. R. § 2984.

SEC. 2736. No record shall be amended or impaired by the clerk or other officer of the court, or by any person with the order of such court, or of some court of competent authority.

CHAPTER 9.

OF TRIAL AND JUDGMENT.

SECTION 2737. Issues arise in the pleadings, where a fact or conclusion of law is maintained by one party and controverted by the other. They are of two kinds:

Issues: law and fact. R. § 2993.

1. Of law;
2. Of fact.

SEC. 2738. An issue of fact arises:

Of fact. R. § § 2994, 2995.

1. Upon a material allegation of fact in the petition denied by the answer;
2. Upon a material allegation of new matter presented in the answer and denied by the reply;
3. Upon allegations of new matter in the reply, which shall be considered as controverted by the opposite party without further pleading. Any other issue is one of law.

ISSUES—HOW TRIED.

SEC. 2739. Issues of law must be first tried. A trial is a judicial examination of the issues in an action whether they be issues of law, or of fact.

Trial defined. R. § § 2996, 2997.

SEC. 2740. Issues of fact, in an action in an ordinary proceeding, must be tried by jury, unless the same is waived. All other issues shall be tried by the court, unless a reference thereof is made.

Issues: how tried. R. § 2998.

SEC. 2741. All issues of fact, whether ordinary or equitable, shall be tried upon oral evidence taken in open court, except that depositions may be used as now provided in an action by ordinary proceedings; and, upon appeal, no evidence shall go to the supreme court, except such as may be necessary to explain any exception taken; and such court shall try only the legal errors duly presented.

On oral evidence: appeal. R. § 2999.

SEC. 2742. But in equitable actions, other than actions to foreclose mortgages or instruments in writing whereby liens or charges on property are created, not including trusts, to enforce mechanics' liens, or for divorce or nullity of marriages, if any party shall, at any time during the appearance term, move the court for a trial upon the written evidence, the court shall either order all the evidence to be taken in the form of depositions, or shall cause all the evidence offered on the trial to be taken down in writing, to be certified by the judge and made a part of the record according to the requirements of the motion. In either of such cases, all the evidence so taken shall go on appeal to the supreme court which shall try the case anew.

Equitable issues on written evidence: exceptions. R. § 2999.

SEC. 2743. In all trials of fact by the court, other than those contemplated in the preceding section, the court shall, if either party request it, give its decision in writing, stating, separately, the facts found and the legal conclusion founded thereon; and the whole decision shall be a part of the record, and the finding shall have the effect of a special verdict.

Court to find facts.

Tried at first term. C. 167, § 20, 18 G. A.

SEC. 2744. Except where otherwise provided, causes shall be tried at the first term after legal and timely service has been made.

Exception as to equitable issues. Same, § 17.

SEC. 2745. The appearance term shall not be the trial term for equitable actions, except those brought for divorce, to foreclose mortgages and other instruments of writing whereby a lien or charge on property is created, or to enforce mechanics' liens.

Separate trials: when granted. R. §§ 3024, 3025.

SEC. 2746. The court may, in its discretion, allow separate trials between the plaintiff and any defendant, or of any cause of action united with others, or of any issue in an action; and such separate trials may be had at the same or different terms of the court as circumstances may require.

Calendar and arrangement of causes. R. § 3005.

SEC. 2747. The clerk shall keep a calendar distinguishing, first, criminal causes, and next, civil causes, and arranging each in the order of their commencement, and shall, under the direction of the court or judge, apportion the same to as many days as is believed necessary, and, at the request of any party to a cause, or his attorney, shall issue subpœnas accordingly. The clerk shall furnish the court and the bar with a sufficient number of printed copies of the calendar.

CONTINUANCES.

When time is asked to apply for. R. § 3008.

SEC. 2748. When time is asked for making application for 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; for which cost, judgment may at once be entered by the clerk unless the contrary be agreed between the parties.

Not granted when party in fault. R. § 3000.

SEC. 2749. A continuance shall not be granted for any cause growing out of the fault or negligence of the party applying therefor; subject to this rule, it may be allowed for any cause which satisfies the court that substantial justice will thereby be more nearly obtained.

For want of evidence: affidavit: statements of. R. §§ 3010, 3011.

SEC. 2750. Motions for continuance on account of the absence of evidence, must be founded on the affidavit of the party, his agent, or attorney, and must state:

1. The name and residence of such witness, or, if that be not known, a sufficient reason why not known, and also, in either case, facts showing reasonable grounds of belief that his attendance or testimony will be procured at the next term;

2. Efforts, constituting due diligence, which have been used to obtain such witness, or his testimony;

3. What particular facts, as distinguished from legal conclusions, the affiant believes the witness will prove, and that the affiant believes them to be true, and that he knows of no other witness by whom such facts can be fully proved.

Overruled or party may admit facts. R. §§ 312, 3013.

SEC. 2751. If the application is insufficient, it shall be overruled; if held sufficient, the cause shall be continued, unless the adverse party will admit that the witness, if present, would testify to the facts therein stated, in which event the cause shall not be continued, but the party may read as evidence of such witness the facts held by the court to be properly stated.

SEC. 2752. The motion must be filed on the second day of the term, if it is then certain that it will have to be made before the trial, and as soon thereafter as it becomes certain that it will so need to be made, and shall not be allowed to be made when the cause is called for trial, except for cause which could not, by reasonable diligence, have been before that time discovered, and if made after the second day of the term, the affidavit must state facts constituting an excuse for the delay in making it. If time is taken when the case is called to make such motion, the motion shall be made and determined as soon as the court opens after the next ordinary adjournment. Motion for: when filed R. § 3014.

SEC. 2753. The application shall be amended but once, unless by permission, to supply a clerical error. Amendment. R. § 3015.

SEC. 2754. To such motion, both as original and as amended, the adverse party may, at once, or within such reasonable time as the court shall allow, file written objections stating wherein he claims that the same is insufficient, and on such motion and objections no argument shall be heard unless the court desire it. Written objections to. R. § 3016.

SEC. 2755. Such motion and objections shall be a part of the record, and error in refusing a continuance or in compelling an election, may be reviewed. Part of record. R. § 3017.

SEC. 2756. No copy need be served of a motion for continuance or of objections thereto, but a notice of such motion shall be entered on the notice book. Notice book. R. § 3018.

SEC. 2757. Every continuance granted upon the application of either party, shall be at the costs of such party, unless otherwise ordered by the court. Costs. R. § 3019.

SEC. 2758. The court shall grant continuance whenever the parties agree thereto, and provide as to costs as may be stipulated. Parties may agree. R. § 3020.

SEC. 2759. A case continued remains for all purposes except a trial on the facts. Case remains on docket. R. § 3022.

SEC. 2760. Where the defenses are distinct, any one of several defendants may continue as to himself. One of several parties. R. § 3023

SELECTION OF JURY.

SEC. 2761. When a jury trial is demanded, the clerk shall select twelve jurors by lot from the regular panel. How done. R. § 3026.

SEC. 2762. A challenge is an objection made to the trial jurors, and is of two kinds: Challenge. R. § 3027.

1. To the panel;
2. To an individual juror.

SEC. 2763. Where there are several parties plaintiffs or defendants, and no separate trial is allowed, they are not allowed to sever their challenges, but must join in them. Parties cannot sever in. R. § 3028.

SEC. 2764. 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. To the panel. R. § 3029.

SEC. 2765. 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. When made. R. § 3030.

How tried. R. § 3081.

SEC. 2766. 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.

Allowance of: discharge of jury. R. § 3082.

SEC. 2767. If the facts of the challenge be allowed by the court, the jury must be discharged and its members disqualified from sitting as jurors so far as the trial in question is concerned; if it be disallowed, the court shall direct the jury to be empanelled.

To jurors. R. § 3084.

SEC. 2768. A challenge to an individual juror is either peremptory or for cause.

When made. R. § 3084.

SEC. 2769. 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 at any time before the jury is completed.

Peremptory. R. § 3085.

SEC. 2770. A peremptory challenge is an objection to a juror for which no reasons need be given, but upon which the court shall exclude him.

Number of: how made. C. 174, § 3, 9 G. A.

SEC. 2771. Each party shall have the right to challenge peremptorily, five jurors and no more; and the parties shall challenge alternately, commencing with the plaintiff, and the challenges for cause being first exhausted or waived, the parties shall then, in turn, in the same order, exercise the right of peremptory challenge.

Cause: of: passed: filed after each challenge. R. § § 3087, 3088, 3089, 3040, 2271.

SEC. 2772. After each challenge, the vacancy shall be filled before further challenges are made, and any new juror thus introduced may be challenged. A challenge for cause is an objection to a juror, and may be for any of the following causes:

1. A conviction for felony;

2. A want of any of the qualifications prescribed by statute to render a person a competent juror;

3. Inability to understand the English language, unsoundness of mind, or such defects in the faculties of mind or organs of the body as render him incapable of performing the duties of a juror;

4. Consanguinity or affinity within the ninth degree to the adverse party;

5. Standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, or being a member of the family, or in the employment of the adverse party;

6. Being a party adverse to the challenging party in a civil action, or having complained against, or been accused by him in a criminal prosecution;

7. Having already sat upon the trial of the same issues;

8. Having served as a grand or trial juror in a criminal case based on the same transaction;

9. When it appears the juror has formed or expressed an unqualified opinion on the merits of the controversy, or shows such a state of mind as will preclude him from rendering a just verdict;

10. Being interested in a like question with the issue to be tried.

Challenge: how tried. R. § 3042.

SEC. 2773. 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; and other evidence may also be heard.

SEC. 2774. In all challenges, the court shall determine the law and the fact, and must either allow or disallow the challenge. Same. R. § 3043.

SEC. 2775. When the requisite number of jurors cannot otherwise be obtained, the sheriff shall select talesmen to supply the deficiency from the body of the county. Talesmen. R. § 3044.

SEC. 2776. 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. Persons who keep the seventh day of the week as Sunday protected. R. § 4112.

SEC. 2777. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted. Exemption not cause of challenge. R. § 3041.

SEC. 2778. The parties may at any time, either before the jury is sworn, or after, agree to take the verdict of the majority, which agreement being stated to the court and stated on the record to have been made, shall bind the parties, and, in such case, a verdict signed by any seven or more and duly rendered, when read and not disapproved by said majority, shall, in every particular, be as binding as if made by a full jury; or, when both parties require it, a struck jury may be ordered, whereupon eighteen jurors shall be called into the box, and the plaintiff first, and then the defendant, shall strike out one juror in turn until each has struck six, and the remaining six shall try the cause. Majority verdict: struck jury. R. § 3045.

ORDER OF TRIAL.

SEC. 2779. When the jury has been sworn, the court shall proceed in the following order: Procedure after jury is sworn. R. § 3046.

1. The party on whom rests the burden of proof, may briefly state his claim and the evidence by which he expects to sustain it;

2. The other party may then briefly state his defense, and the evidence by which he expects to sustain it;

3. The party on whom rests the burden of proof in the whole action, must first produce his evidence; the adverse party must then produce his evidence;

4. The parties then will be confined to rebutting evidence, unless the court, for good reasons, in furtherence of justice, permit them to offer evidence in their original case;

5. But one counsel on each side shall examine the same witness, and upon interlocutory questions, the party moving the court or objecting to testimony shall be heard first; the respondent may then reply by one counsel, and the mover rejoin, confining his remarks to the points first stated, and a pertinent answer to respondent's argument. Debate on the questions shall then be closed, unless the court request further argument.

SEC. 2780. The parties may then either submit or argue the case to the jury. In the argument, the party having the burden of the issue, shall have the opening and closing, but shall disclose in the opening all the points relied on in the cause; and if in the close he should refer to any new material, point, or fact, not relied upon in the opening, the adverse party shall have the right of reply thereto, which reply shall close the argument in the case. Argument: order of. R. § 3047.

Waiver of opening. R. § 3048.

SEC. 2781. If the party holding the affirmative waive the opening, he shall be limited in the close simply to a reply to his adversary's argument, otherwise the other party shall have the concluding argument.

Number of attorneys allowed: court to arrange order. R § 3049.

SEC. 2782. Every plaintiff or defendant shall be entitled to appear by one attorney, and if there be but one plaintiff or defendant, he may appear by two, and where there are several defendants having the same or separate defenses and appearing by the same or different attorneys, the court shall, before argument, arrange their order.

Argument restricted. R. § 3050.

SEC. 2783. The court may restrict the time of any attorney in any argument to itself, but shall not do so in any case before a jury.

INSTRUCTIONS.

To be in writing. R. § 3051.

SEC. 2784. When the argument is concluded, either party may request instructions to the jury on points of law, which shall be given or refused by the court. All instructions asked, and the charge of the court, shall be in writing.

Modification of: how done. R. § 3053.

SEC. 2785. If the court refuse a written instruction as demanded, but give the same with a modification, which the court may do, such modification shall not be by interlineation or erasure, but shall be well defined, and shall follow some such characterizing words as "changed thus," which words shall themselves indicate that the same was refused as demanded.

Only those given to be read: how given or refused. R. § 3054.

SEC. 2786. The court must read over all the instructions which it intends to give, and none other, to the jury, and must announce them as given, and shall announce as refused, without reading to the jury, all those which are refused, and must write the words "given" or "refused," as the case may be, on the margin of each instruction.

No reason stated. R. § 3055.

SEC. 2787. If the giving or refusal be excepted to, the same may be without any stated reason therefor, and all instructions demanded must be filed, and shall become a part of the record.

Charge of the court R. § § 3057, 3058, 3060.

SEC. 2788. After argument the court may, also, of its own motion, charge the jury. Such charge shall be written in consecutively numbered paragraphs; and no oral explanation thereof shall be allowed. The provisions of this section shall also apply to the instructions asked by the parties.

Exceptions to: how and when taken. R. § 3059.

SEC. 2789. Either party may take and file exceptions to the charge or instructions given, or to the refusal to give any instructions offered, within three days after the verdict, and may include the same in a motion for a new trial, but in either case the exceptions shall specify the part of the charge or instruction objected to and the ground of the objection.

RULES REGARDING JURIES.

View by jury.

SEC. 2790. Whenever, in the opinion of the court, it is proper for the jury to have a view of the real property which is the subject of controversy, or of the place in which any material fact occurred, it may order them to be conducted in a body, under the

charge of an officer, to the place which shall be shown to them by some person appointed by the court for that purpose; while the jury are thus absent, no person other than the person so appointed shall speak to them on any subject connected with the trial.

Kept together in charge of officer. R. § 3062.

SEC. 2791. When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they shall be kept together, under charge of an officer, until they agree upon a verdict, or are discharged by the court. The officer having them under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court, and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

Court to advise jury when separating. R. § 3063.

SEC. 2792. If the jury are permitted to separate during the trial, they must be advised by the court that it is the duty of each one of them not to converse with any other of them, or with any person, nor to suffer himself to be addressed by any person on any subject of the trial, and that during the trial it is the duty of each one of them to avoid, as far as possible, forming any opinion thereon until the cause is finally submitted to them.

Juror sick: when discharged. R. § 3064.

SEC. 2793. If, after the empanelling 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 case the trial shall proceed with the remaining jurors, provided the number has not been reduced below ten, or the court may, in its discretion, order the jury to be discharged.

Discharge: when. R. § 3065.

SEC. 2794. The jury may be discharged by the court on account of any accident or calamity requiring their discharge, or by the consent of both parties, or, when on an amendment a continuance is ordered, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

Cause re-tried: when. R. § 3066.

SEC. 2795. In all cases where the jury are discharged during the trial, or after the cause is submitted to them, it may be tried again immediately, or at a future time, as the court may then direct.

Adjournment after trial began. R. § 3067.

SEC. 2796. The court may also, at any time after having entered upon the trial of any cause, where it may deem it right for the purposes of justice, order an adjournment for such time within the term, and subject to such terms and conditions as to costs and otherwise, as it may think just.

What jury may take with them. R. § 3068.

SEC. 2797. Upon retiring for deliberation, the jury may take with them all books of accounts, and all papers which have been received as evidence in the cause, except depositions, which shall not be so taken, unless all the testimony is in writing, and none of the same has been ordered to be struck out.

Court always open until verdict. R. § 3069.

SEC. 2798. When the jury is absent, the court may adjourn from time to time in respect to other business, but it 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.

Further testimony to correct mistake. R. § 3070.

SEC. 2799. At any time before the cause is finally submitted to the court or jury, either party may be permitted by the court to give further testimony to correct an evident oversight or mistake, but terms may be imposed upon the party obtaining the privilege.

Information given after retirement of. R. § 3071.

SEC. 2800. After the jury has retired for deliberation, if they desire to be informed as to any point of law arising in the case, they may request the officer to conduct them into court, which he shall do, when the information required shall be given in the presence of, or after notice to, the parties or their counsel.

How given. R. § 3072.

SEC. 2801. Such information shall be in writing, and shall be held approved unless it be excepted to in the same way as the charge, and no discussion thereon shall be allowed to either party.

Food and lodging. R. § 3076.

SEC. 2802. If, while the jury are kept together, either during progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable food and lodging, they must be provided by the sheriff, at the expense of the county.

VERDICT.

How signed and rendered. R. § 3073.

SEC. 2803. The verdict must be written and signed by a foreman chosen by the jury itself, and when agreed, the jury must be conducted into court, their names called, and the verdict rendered by him and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again, but if no disagreement is expressed and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case.

Polled: how done. R. § 3074.

SEC. 2804. When the verdict is announced, either party may require the jury to be polled, which shall be done by the court, or clerk, asking each juror if it is his verdict. If any one answer in the negative, the jury must be sent out for further deliberation.

Sealed verdict: effect of. R. § 3075.

SEC. 2805. When, by consent of the parties and the court, the jury have been permitted to seal their verdict and separate before it is rendered, such sealing is equivalent to a rendition and a recording thereof in open court, nor shall such jury be polled or permitted to disagree thereto, unless such a course has been agreed upon between the parties in open court and entered on the record.

May be general or special. R. § 3077.

SEC. 2806. The verdict of a jury is either general or special. A general verdict is one in which they pronounce generally for the plaintiff or for the defendant upon all, or upon any of the issues.

Special defined. R. § 3078.

SEC. 2807. A special verdict is one in which the jury finds facts only; it must present the ultimate facts as established by the evidence to prove them, so that nothing remains to the court but to draw from them its conclusions of law.

Interrogatories: how and when submitted. R. § 3079.

SEC. 2808. In all actions, the jury, in their discretion, may render a general or special verdict; and in any case in which they render a general verdict, they may be required by the court, and must be so required on the request of any party to the action, to

find specially upon any particular questions of fact to be stated to them in writing, which questions of fact shall be submitted to the attorneys of the adverse party before the argument to the jury is commenced.

SEC. 2809. When the special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court may give judgment accordingly. Special controls general. R. § 3080.

SEC. 2810. When, by the verdict, either party is entitled to recover money of the adverse party, the jury in their verdict must assess the amount of such recovery. Money: amount of assessed. R. § 3081.

SEC. 2811. Where there are several plaintiffs or defendants, whether the pleadings are joint or several, the verdicts shall be moulded according to the facts and to suit the exigencies of the case. Joint or several verdicts. R. § 3083.

SEC. 2812. The verdict shall be sufficient in form if it expresses the intention of the jury. Form of. R. § 3084.

SEC. 2813. The verdict shall in all cases be filed with the clerk and entered upon the record, after having been put into form by the court, if necessary. Entered of record. R. § 3085.

SEC. 2814. Trial by jury may be waived by the several parties to an issue of fact in the following cases: Waiver of trial by. R. § 3087.

1. By suffering default or by failing to appear at the trial;
2. By written consent, in person or by attorney, filed with the clerk;
3. By oral consent in open court, entered in the minutes.

REFERENCE.

SEC. 2815. All or any of the issues in an action, whether of fact or of law, or both, may be referred upon the consent of the parties, either written or oral, in court entered upon the record. Consent of parties required. R. § 3089.

SEC. 2816. When the parties do not consent, the court may, upon the motion of either, or upon its own motion, direct a reference in either of the following cases: When done without consent. R. § 3090.

1. When the trial of an issue of fact shall require the examination of mutual accounts, or when, the account being on one side only, it shall be made to appear to the court that it is necessary that the party on the other side should be examined as a witness to prove the account, in which case the referee may be directed to hear and report upon the whole issue, or upon any specific question of fact involved therein; or,
2. When the taking of an account shall be necessary for the information of the court before judgment, or for carrying a judgment or order into effect; or,
3. When a question of fact shall arise in any action by equitable proceedings, in which case the court in the order of reference shall prescribe the manner in which the testimony shall be taken on the trial.

SEC. 2817. Where not otherwise declared in the order of reference, all the referees must meet to hear proofs, arguments, and to deliberate, but a decision by the majority shall be regarded as their decision. Majority may decide. R. § 3091.

Vacancies. R. § 3092.

SEC. 2818. When appointed by the court, the judge thereof may fill vacancies in vacation.

Stand in place of court. R. § 3093.

SEC. 2819. The referee shall stand in the place of the court, and shall have the same power, so far as necessary, to discharge his duty.

Trial by: power of. R. § 3094.

SEC. 2820. The trial by referee shall be conducted in the same manner as a trial by the court. He shall have the same power to summon, and enforce by attachment, the attendance of witnesses, to punish them as for a contempt for non-attendance or refusal to be sworn or to testify, and to administer all necessary oaths in the trial of the case, to take testimony by commission, allow amendments to pleadings, grant continuances, preserve order, and punish all violations thereof.

Report: judgment. R. § 3095.

SEC. 2821. The report of the referee on the whole issue, must state the facts found and the conclusions of law, separately, and shall stand as the finding of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court; the report may be excepted to and reviewed in like manner.

Finding of facts. R. § 3096.

SEC. 2822. When the reference is to report the facts, the report shall have the effect of a special verdict.

To sign bill of exceptions. R. § 3097.

SEC. 2823. The referee shall sign any true bill of exceptions taken to any ruling by him made in the case whereto any party demands a bill of exceptions; and the party shall have the same rights to obtain such bill as exist in the court, and such bill shall be returned with the report.

Parties may agree on. R. § 3098.

SEC. 2824. In all cases of reference, the parties, except when a minor may be a party, may agree upon a suitable person or persons, not exceeding three, and the reference shall be ordered accordingly; and if the parties do not agree, the court shall appoint one or more referees, not exceeding three, who shall be persons free from exception, or the court may allow each party to select one, and itself to select a third.

Appointed in vacation: how. R. § 3099.

SEC. 2825. A judge of the court, when a case is pending, may, in vacation, upon the written consent of the parties, make an order of reference. In such case the order of reference shall be written in the written agreement to refer, and shall be filed with the clerk of the court with the other papers in the case.

Must be sworn. R. § 3100.

SEC. 2826. The referee must make affidavit well and faithfully to hear and examine the case, and make a just and true report therein according to the best of his understanding. The affidavit shall be returned with the report.

Issues must be made up: court to make order as to procedure. § 3102.

SEC. 2827. The order shall not be made until the case is at issue as to the parties whose rights are to be examined on the reference. The order may direct when the referee shall proceed to a hearing, and when he shall make his report; but in the absence of such direction, he shall do so on the morning of the tenth day after the day on which was made the order of reference, and shall file his report as soon as done; of the time thus fixed or determined the parties shall take notice, and non-attendance of either party within an hour of such time shall be attended with like consequences as if the case were in court, which consequences shall be reported as any other fact or finding of the referee.

SEC. 2828. The referee must be called on by the court to accept or refuse the appointment, and his acceptance shall be entered of record; and he shall be under the control of the court, who may, on the motion of either party, make proper orders with a view to his proceeding with all due dispatch, and the court or judge may, on his motion, on good cause shown, enlarge the time for making his report. Must accept: record made of. R. § 3103.

SEC. 2829. Any one of such referees may issue and sign subpœnas and other process, and administer oaths necessary for the discharge of their duties and the full exercise of all their powers. Issue process: administer oath. R. § 3104.

SEC. 2830. The form of procedure which in the court itself regulates service, pleading, proof, trial, and the preparation, progression, and method of each of these, shall obtain before the referee; and in every incident of the proceeding before him, the rights and responsibilities of parties, and of their attorneys, and of the referee, shall be the same as if the referee was the court engaged in the same matter. Mode of procedure in court obtains. R. § 3105.

EXCEPTIONS.

SEC. 2831. An exception is an objection taken to a decision of the court, or party acting as the court, on matter of law. The party objecting to the decision, must object at the time the decision is made and at once present his bill of exceptions; unless the court or adverse party object he may have time to do so, not extending beyond the term. But in an equitable action, tried on written testimony, no exception shall be required. What and when taken. R. § 3106.

SEC. 2832. No stated form of exception is required. If the exception is to the admission or exclusion of evidence, oral or written, the ground of the objection must be also stated, and no other shall be regarded. No stated form of. R. § 3107.

SEC. 2833. When the decision objected to is entered on the record, and the grounds of the exception appear in the entry, or when any error appears of record, the exception may be taken by the party causing to be noted at the end of the decision, or in connection therewith, that he excepts. Noted at end of decision. R. § 3108.

SEC. 2834. An exception, when presented for signature, need not include therein, spread out at length, any writing filed in court, but may incorporate the same by any unmistakable reference thereto; and the clerk, in making a transcript of the bill of exceptions, shall write therein at length all of such writing included therein by reference. Bill of; what to contain. R. § 3109.

SEC. 2835. When the decision is not entered on the record, or when the grounds of objection do not sufficiently appear in the record, the party excepting must reduce his exception to writing and present it to the judge for his signature. If he deems it true he shall sign it. If the judge refuses to sign it, the party may procure the signature of two bystanders, attesting that the exception is true and that the judge has refused to sign the same, and the bill of exceptions shall then be filed with the clerk and shall become a part of the record. But the truth of such exception may be controverted and maintained by affidavits, not exceeding five on each side, which shall become part of the record. All affi- Judge to sign: on refusal other persons may. R. § 3110.

davits impugning the exception must be filed within three days from the time of filing the bill of exceptions, and all affidavits sustaining the same within two days thereafter.

Must be on material point. R. § 3111.

SEC. 2836. No exception shall be regarded in the supreme court unless the ruling has been on a material point and the effect thereof prejudicial to the rights of the party excepting.

NEW TRIALS.

For what causes granted. R. § 3112.

SEC. 2837. A new trial is a re-examination in the same court of an issue of fact, or some part or portions thereof after verdict by a jury, report of a referee, or a decision by the court. The former report, verdict, or decision, or some part or portion thereof, shall be vacated and a new trial granted on the application of the party aggrieved for the following causes affecting materially the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury, referee, or prevailing party; or any order of court or referee, or abuse of discretion, by which the party was prevented from having a fair trial;

2. Misconduct of the jury or prevailing party;

3. Accident or surprise, which ordinary prudence could not have guarded against;

4. Excessive damages, appearing to have been given under the influence of passion or of prejudice;

5. Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract or for the injury or detention of property;

6. That the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law;

7. Newly discovered evidence material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial;

8. Error of law occurring at the trial, excepted to by the party making the application.

When to be made. R. §§ 3114, 3115.

SEC. 2838. The application must be made at the term and within three days after the verdict, report, or decision is rendered, except for the cause of newly discovered evidence; must be by motion upon written grounds, and if for the causes enumerated in sub-divisions two, three, and seven of the preceding section, may be sustained and controverted by affidavits.

Not granted on account of smallness of damages. R. § 3113.

SEC. 2839. A new trial shall not be granted on account of the smallness of damages in an action for an injury to the person or reputation, where the damages equal the actual pecuniary injury sustained.

Costs of. R. § 3117.

SEC 2840. The costs of all new trials shall either abide the event of the suit or be paid by the party to whom such new trial is granted, according to the order of the court to be made at the time of granting such new trial.

Court may grant on conditions. R. § 3118.

SEC. 2841. The court may determine not to grant a new trial, unless certain terms or conditions named by the court shall be agreed to by the opposite party; in the event of his agreement to which, the terms or conditions named shall be entered on the

record, and no new trial shall be granted if the party refuse to agree to the terms or conditions upon which a new trial shall be awarded.

If for omitted statement that alone may be tried. R. § 3119.

SEC. 2842. Upon any motion for a new trial in arrest of judgment, or for judgment, notwithstanding the verdict, by reason of the non-averment of some material fact, the party whose pleading is thus alleged defective may, if the court deem it necessary, file a statement of the omitted fact which, if true, would remedy the alleged defects, and such statements shall be filed before the hearing of the motion and shall suspend the same. If the facts thus stated would not, if proved, defeat the object of the motion, it shall be granted. If such new averments would, if proved, defeat the object of the motion and be not admitted, they must be denied or confessed, and avoided by the opposite party within such time as the court shall direct unless the same are denied by legal operation, and in such case the law of pleading and of procedure applicable to actions and pleadings of that kind shall obtain, except that the party stating the new fact shall be held the plaintiff therein, and the statement and response shall not need to be verified.

Same. R. § 3120.

SEC. 2843. If the facts thus stated be admitted or found to be true, the party stating the same shall be entitled to such judgment as he would have been entitled to if such facts had been stated in the original pleading and admitted as proved on the trial, together with the costs of and occasioned by the new pleading and the proceedings therein; but if the fact be found untrue, the opposite party shall be entitled to his costs of and occasioned by the new pleading and the proceedings therein, in addition to any other costs to which he may be entitled.

DISMISSAL OF ACTION.

When done without prejudice. R. § 3127.

SEC. 2844. An action may be dismissed, and such dismissal shall be without prejudice to a future action:

1. By the plaintiff, before the final submission of the case to the jury, or to the court when the trial is by the court;

2. By the court, when the plaintiff fails to appear when the case is called for trial;

3. By the court, for want of necessary parties, when not made according to the requirement of the court;

4. By the court, on the application of some of the defendants when there are others whom the plaintiff fails to prosecute with diligence;

5. By the court, for disobedience by the party of an order concerning the pleadings or any proceeding in the action.

On the merits. R. § 3128.

SEC. 2845. In all other cases upon the trial of the action, the decision must be upon the merits.

Counter claim tried. R. § 3129.

SEC. 2846. In any case, when a counter claim has been filed, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed his action or failed to appear.

Or dismissed. R. § 3130.

SEC. 2847. The defendant may, also, at any time before the final submission of the cause to the jury, or to the court when the trial is by the court, dismiss his counter claim without prejudice.

Dismissal in vacation: costs: judgment. R. § 3131.

SEC. 2848. Any party to any claim may dismiss the same in vacation, and the clerk shall make the proper entry of dismissal on the record, and, if the costs are not paid, may enter judgment against such party therefor in favor of the party entitled thereto, and issue execution therefor at the order of such party. The party so dismissing shall be liable for no costs made by the other party after notice to him of such dismissal.

JUDGMENT.

Every final adjudication is. R. § 3121.

SEC. 2849. Every final adjudication of the rights of the parties in an action, is a judgment; and such adjudication may consist of many judgments, one of which judgments may determine for the plaintiff or defendant on the claim of either as an entirety; or when a claim consists of several parts or items, such judgment may be for either of them on any specific part or item of such aggregate claim, and against him on the other part thereof; or a judgment may, in either of these ways, determine on the claims of co-parties on the same side against each other.

May be for and against same party. R. § 3122.

SEC. 2850. Any party who succeeds in part of his cause, or in part of his causes, and fails as to part, may have the entry in such case express judgment for him for such part as he succeeds upon, and against him on the other part.

Abatement: how distinguished. R. § 3124.

SEC. 2851. Where matter in abatement is plead in connection with other matter not such, the finding of the jury or court must distinguish between matter in abatement and matter in bar, and the judgment must, if it is rendered on the matter in abatement, and not on the merits, so declare.

When special execution desired. R. § 3125.

SEC. 2852. Where any other than a general execution of the common form is required, the party must state in his pleading the facts entitling him thereto, and the judgment may be entered in accordance with the finding of the court or jury thereon.

Several plaintiffs and defendants. R. §§ 3122, 3126.

SEC. 2853. In an action by several plaintiffs, or against several defendants, the court may, in its discretion, render judgment for or against one or more of them whenever a several judgment is proper, leaving the action to proceed as to the others.

When all not served proceed against those served. R. § 3132.

SEC. 2854. Though all the defendants have been served with notice, judgment may be rendered against any of them severally, where the plaintiff would be entitled to judgments against such defendants if the action had been against such alone.

Relief asked or that is consistent granted. R. § 3133.

SEC. 2855. The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his petition. But, in any other case, the court may grant him any relief consistent with the case made by the petition and embraced within the issue.

When part controverted. R. § 3135.

SEC. 2856. If only part of the claim is controverted by the pleading, judgment may at any time be rendered for the part not controverted.

SEC. 2857. When a trial by jury has been had, judgment must be entered by the clerk in conformity with the verdict, unless it is special or the court orders the case to be reserved for future argument or consideration. Judgment on verdict. R. § 3136.

SEC. 2858. When the verdict is special, or when there has been a special finding on particular questions of fact or issues, or when the court has ordered the case to be reserved, it shall order what judgment shall be entered. When verdict is special. R. § 3137.

SEC. 2859. When, by the statements of the pleadings, one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court, though a verdict has been found against such party, unless the other party proceed as provided in section two thousand eight hundred and forty-two of this chapter. Judgment notwithstanding verdict. R. § 3138.

SEC. 2860. If a counter claim, proved, exceed the plaintiff's claim so established, judgment for the defendant must be given for the excess; or, if it appears that the defendant is entitled to any other affirmative relief, judgment must then be given therefor. Judgment for excess of counter claim. R. § 3139.

SEC. 2861. Any judgment in a case pending other than for divorce which may be agreed upon between the parties interested therein, may at any time, be entered and if not done in open court, the judgment agreed to shall be in writing, signed and filed with the clerk, who shall thereupon enter the same accordingly, and execution thereon may issue forthwith unless therein otherwise agreed upon between the parties. Judgment by agreement. R. § 3143.

SEC. 2862. In all actions where the plaintiff recovers a sum of money, the amount to which he is entitled may be awarded him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of debt or damages. No distinction between debt and damages. R. § 3144.

SEC. 2863. The provisions of this chapter relative to juries, are intended to be applied to the court when acting as a jury on the trial of a cause so far as they are applicable and not incompatible with other provisions herein contained. Provisions as to juries to govern court. R. § 3145.

CLERK.

SEC. 2864. All judgments and orders must be entered on the record of the court and must specify clearly the relief granted, or order made in the action. Judgments and orders entered of record. R. § 3140.

SEC. 2865. Where a judgment is set aside or satisfied by execution or otherwise, the clerk shall at once enter a memorandum thereof on the column left for that purpose in the judgment docket. Satisfaction of to be entered by clerk. R. § 3141.

SEC. 2866. In cases where the title to land is involved and expressly 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 will pay the expense of such record. Complete record in land cases made. R. § 3142.

DISCHARGE OF JUDGMENT.

SEC. 2867. A defendant against whom a judgment has been rendered, or any person interested therein, having some good matter of discharge which has arisen since the judgment, may, May be done on motion [illegible]

upon motion, in a summary way, have the same discharged either in whole or in part, according to the circumstances.

Fraudulent assignment of. R. § 3147.

SEC. 2868. The court shall have power, on motion, to inquire into the facts attending or connected with the assignment of a judgment, or the entry of the same to the use of any party, and to strike out such use, or to declare such assignment void either in whole or in part, whenever such assignment or use shall be determined to be inequitable or fraudulent, or in bad faith.

DEFAULT.

When made and entered. R. § 3148.

SEC. 2869. If a party fail to file or amend his pleading by the time prescribed by the rules of pleading, or, in the absence of rules, by the time fixed by the court; or if, having plead, his answer or reply on motion or demurrer is held insufficient or is struck out, and he fail to amend or to answer or reply further as required by the rules of or by the court, or if he withdraw his pleading without authority or permission to replead, judgment by default may be rendered against him on demand of the adverse party made before such pleading is filed.

Notice. R. § 3149.

SEC. 2870. Where no appearance is made, default shall not be had until the court determines from an inspection of the record that notice has been given as required by this code.

May be set aside: terms of. R. § 3150.

SEC. 2871. Default may be set aside on such terms as the court may deem just, among which must be that of pleading issuably and forthwith, but not unless an affidavit of merits be filed and a reasonable excuse shown for having made such default, nor unless application therefor be made at the term in which default was entered, or if entered in vacation, then on the first day of the succeeding term.

When clerk to compute amount. R. § 3151.

SEC. 2872. When the action is for a money demand, and the amount of the proper judgment is a mere matter of computation, the clerk shall ascertain the amount, but no fee shall be charged therefor. When long accounts are to be examined, the court may refer the matter. In other cases the court shall assess the damages, unless a jury be demanded by the party not in default. The proper amount having been ascertained by either of the above methods, judgment shall be rendered therefor.

Witness cross-examined. R. § 3152.

SEC. 2873. The party in default may appear at the time of the assessment and cross-examine the witnesses against him, but for no other purpose.

In equitable proceeding. R. § 3153.

SEC. 2874. When the action is of an equitable character, the court, upon hearing the pleadings and proofs, and hearing the testimony offered, shall render such judgment as is consistent with the rules of equity.

When no personal service. R § 3154.

SEC. 2875. A defendant served by publication alone, shall be allowed at any time before judgment to appear and defend the action, and upon a substantial defense being declared, time may be given on reasonable terms to prepare for trial.

SERVICE BY PUBLICATION.

Plaintiff required to give security. C. 150, 9 G. A.

SEC. 2876. When judgment by default is rendered against a defendant who has not been personally served, the court, before

issuing process to enforce such judgment, may, if deemed expedient, require the plaintiff to give security to abide the future order of the court as contemplated in the following section.

May move for new trial after judgment. R. § 3160.

SEC. 2877. When a judgment has been rendered against a defendant or defendants served by publication only and who do not appear, such defendants, or any one or more of them, or any person legally representing him or them, may, at any time within two years after the rendition of the judgment, appear in court and move to have the action re-tried, and, security for the costs being given, they shall be admitted to make defense; and thereupon the action shall be re-tried as to such defendants as if there had been no judgment; and upon the new trial, the court may confirm the former judgment or may modify or set it aside, and may order the plaintiff to restore any money of such defendant paid to him under it and yet remaining in his possession, and pay to the defendant the value of any such property which may have been taken in attachment in the action or under the judgment and not restored.

Title to property not affected. R. § 3163.

SEC. 2878. The title of a purchaser in good faith to any property sold under attachment or judgment, shall not be affected by the new trial permitted by the preceding section, except the title of property obtained by the plaintiff and not bought of him in good faith by others.

Copy of judgment served on defendant. R. § 3161.

SEC. 2879. The plaintiff may, at any time after the judgment, cause a certified copy thereof to be served on a defendant served by publication only, whereupon the period in which such defendant is allowed to appear and have a new trial shall be reduced to six months after such service.

Manner of. R. § 3162.

SEC. 2880. The service of the copy of the judgment shall be, whether made within or without the state, actual and personal by delivery of copy, and made and returned as in case of original notice.

Personal judgment: when rendered. R. § 3164.

SEC. 2881. No personal judgment shall be rendered against a defendant served by publication only who has not made an appearance. But a personal judgment shall be rendered against a defendant, whether he appear or not, who has been served in any mode in this code provided other than by publication, whether served within or without this state.

LIENS.

Of judgments. R. § § 4105, 4106.

SEC. 2882. Judgments in the supreme, district or circuit 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 for the period of ten years from the date of the judgment.

When attach. R. § 4106.

SEC. 2883. When the lands lie in the county wherein the judgment was rendered, the lien shall attach from the date of such rendition.

In another county how effected. R. § 4107.

SEC. 2884. 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.

Duty of clerk. R. § 4108.

SEC. 2885. 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.

CONVEYANCE BY COMMISSIONER.

When made. R. § 3165.

SEC. 2886. Real property may be conveyed by a commissioner appointed by the court:

1. Where, by judgment in an action, a party is ordered to convey such property to another;

2. Where such property has been sold under a judgment or order of the court, and the purchase money paid.

Reference to judgment in. R. § 3166.

SEC. 2887. The deed of the commissioner shall refer to the judgment, orders, and proceedings authorizing the conveyance.

Title. R. § 3167.

SEC. 2888. A conveyance made in pursuance of a judgment, shall pass to the grantee the title of the parties ordered to convey the land.

Same. R. § 3168.

SEC. 2889. A conveyance made in pursuance of a sale ordered by the court, shall pass to the grantee the title of all the parties to the action or proceeding.

Approval by court. R. § 3169.

SEC. 2890. A conveyance by a commissioner shall not pass any right until it has been examined and approved by the court, which approval shall be endorsed on the conveyance and recorded with it.

Form of conveyance. R. § 3170.

SEC. 2891. It shall be necessary for the conveyance to be signed by the commissioner only, without affixing the names of the parties whose title is conveyed; but the name of such parties shall be recited in the body of the conveyance.

Recorded. R. § 3171.

SEC. 2892. The conveyance shall be recorded in the office in which, by law, it should have been recorded had it been made by the parties whose title is conveyed by it.

Judge may approve conveyances.

SEC. 2893. In all cases under this code, whenever by law it is permitted or required that judicial or other sales and conveyances of land may or shall be confirmed and approved by a court, it shall be lawful for the judge of the court, in vacation, to confirm or approve the same, and to cause the proper entry or entries thereof to be made required by law and the rules of such court.

CHAPTER 10.

OF JUDGMENT BY CONFESSION.

Clerk may enter. R. § 3397.

SECTION 2894. A judgment by confession without action, may be entered by the clerk of the district or circuit court in the manner hereinafter prescribed.

Can only be for money. R. § 3398.

SEC. 2895. 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. 2896. 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: Verified statement filed with clerk. R. § 3399.

1. If for money due or to become due, it must state concisely the facts out of which the indebtedness arose, and that the sum confessed therefor is justly due, or to become due as the case may be.

2. If for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting such liability, and must show that the sum confessed therefor does not exceed the same.

SEC. 2897. The clerk shall thereupon make an entry of judgment in his court record for the amount thus confessed and costs, and shall issue execution thereon as in other cases. Judgment: execution. R. § 3400.

SEC. 2898. Before an action for the recovery of money is brought against any person, he may go before the clerk of the courts of the county of his residence, or of that in which the person having the cause of action resides, and offer to confess judgment in favor of such person for a specified sum on such cause of action as provided for in the foregoing sections. Whereupon, if such person, having had the same notice as if he were defendant in an action, that the offer would be made of its amount and of the time and place of making it, refuses to accept it, and should afterwards commence an action upon such cause and not recover more than the amount so offered to be confessed, he shall pay all the costs of action; and on the trial thereof, the offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff was entitled, nor be given in evidence. Offer to confess before action: effect and procedure. R. § 3403.

SEC. 2899. After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. Whereupon, if the plaintiff, being present, refuses to accept such confession of judgment in full of his demands against the defendant in the action, or, having had three days notice that the offer would be made, of its amount and of the time of making it, fails to attend and on the trial does not recover more than was so offered to be confessed, such plaintiff shall pay the costs of the defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action, or amount to which the plaintiff was entitled, nor be given in evidence upon trial. Same after action brought. R. § 3404.

CHAPTER 11.

OF AN OFFER TO COMPROMISE.

SECTION 2900. The defendant in an action for the recovery of money only, may, at any time after service of notice and before the trial, serve upon the plaintiff or his attorney an offer in writing to allow judgment to be taken against him for the sum of money, or to the effect therein specified with costs. If the plaintiff accept the By allowing judgment to be taken for a certain sum. R. § 3405.

offer, and gives notice thereof to the defendant or his attorney within five days after the offer is made, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance with a copy of the offer verified by affidavit; and in either case, the offer and acceptance shall be entered upon record and judgment shall be rendered by the court accordingly. If the notice of acceptance is not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he cannot recover costs but shall pay the defendant's costs from the time of the offer.

Same: conditional offer. R. § 3406.

SEC. 2901. In an action for the recovery of money only, the defendant, having answered, may serve upon the plaintiff or his attorney an offer in writing, that if he fails in his defense the amount of recovery shall be assessed as a specified sum. If the plaintiff accepts the offer, and gives notice thereof to the defendant or his attorney within five days after it was served, or within three days if served in term time, and the defendant fails in his defense, the judgment shall be for the amount so agreed upon. If the plaintiff does not so accept the offer, he shall prove the amount to be recovered as if the offer had not been made, and the offer shall not be given in evidence or mentioned on the trial. And if the amount recovered by the plaintiff does not exceed the sum mentioned in the offer, the defendant shall recover his costs incurred in the defense, and in respect to the question of amount, to be taxed under the direction of the court.

No cause for continuance. R. § 3467.

SEC. 2902. The making of any offer pursuant to the provisions of this chapter, shall not be a cause for a continuance of an action or a postponement of a trial.

CHAPTER 12.

OF RECEIVERS.

When and how appointed. R. § 3419.

SECTION 2903. On the petition of either party to a civil action or proceeding, wherein he shows that he has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court or judge shall prescribe, the court, or, in vacation, the judge thereof, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to him. Upon the hearing of the application, affidavits, and such other proof as the court or judge deems

proper, may be introduced, and upon the whole case such order made as will be for the best interest of all parties concerned.

SEC. 2904. 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 the court or judge, and conditioned for the faithful discharge of his duties and that he will obey the orders of the court in respect thereto. Oath and bond of. R. § 3420.

SEC. 2905. Subject to the control of the court or judge, 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 may be authorized. Power of. R. § 3421.

CHAPTER 13.

OF SUMMARY PROCEEDINGS.

SECTION 2906. Judgments or final orders may be obtained on motion by sureties against their principals, by sureties against their co-securities, for the recovery of money due them on account of payments made by them as such; by clients against attorneys; plaintiffs in execution against sheriffs, constables, and other officers, for the receiving of money or property collected for them, and damages, and in all other cases specially authorized by statute. Judgments on motion in certain cases. R. § 3422.

SEC. 2907. Notice of such motion shall be served on the party against whom the judgment or order is sought at least ten days before the motion is made. Notice: service. R. § 3423.

SEC. 2908. The notice shall state in plain and ordinary language the nature and grounds of the motion, and the day on which it will be made. Form of. R. § 3424.

SEC. 2909. Unless the motion is made and filed with the case on or before the day named in the notice, it shall be considered as abandoned. When abandoned. R. § 3425.

SEC. 2910. The motion shall be heard and determined without written pleadings, and judgment given according to law and the rules of equity. No written pleadings. R. § 3426.

CHAPTER 14.

OF MOTIONS AND ORDERS.

SECTION 2911. A motion is a written application for an order addressed to the court, or to a judge in vacation, by any party to a suit or proceeding, or by any one interested therein. Motion defined. R. § 3428.

Several objects included. R. § 3438.

SEC. 2912. Several objects may be included in the same motion, if they all grow out of, or are connected with, the action or proceeding in which it is made.

Proof to sustain or resist: how taken. R. § 3440.

SEC. 2913. Testimony to sustain or resist a motion may be in the form of affidavits, or in such other form as the parties may agree on or the court or judge direct. If by affidavit, the person making the same may be required to appear by the court or judge and submit to a cross-examination.

Notice of motion: how and when taken. R. § 3429.

SEC. 2914. A party who has appeared in an action, or who has been served with the original notice in such action in any manner provided by this code, shall take notice of all motions filed during term time upon the same being filed by the clerk and entered in the appearance docket. All motions filed in vacation shall be entered on such docket and served as herein required.

Notice: what to state. R. § 3430.

SEC. 2915. When notice of a motion is required to be served, it shall state the names of the parties to the action or proceeding in which it is made, the name of the court or judge before whom it is to be made, and the place where, and the day on which it is to be heard, and, if affidavits are to be used on the hearing, the notice shall be accompanied with copies thereof and shall be served such length of time before the hearing as the court or judge deems reasonable.

SERVICE.

Service: how made. R. § 3431.

SEC. 2916. Notices, and copies of motions mentioned in this chapter, may be served by any one who would be authorized to serve an original notice.

Same. R. § 3432.

SEC. 2917. The service shall be on each of the parties adverse to the motion, if more than one, or on an attorney of record of such party.

Same. R. § 3433.

SEC. 2918. The service may be personal on such party or attorney, or may be made in the same manner as is provided for the service of the original notice in civil actions; or it may be served on the attorney by being left at his office with any person having the charge thereof.

Return. R. § 3435.

SEC. 2919. Any officer authorized to serve any notice, shall serve at once the same and make prompt return to the party who delivered the same to him, and a failure to do so shall be punished as a disobedience of the process of the court.

Same. R. § 3436.

SEC. 2920. The return of proof of service must state the manner in which it was made.

When court may direct manner of service. R. § 3437.

SEC. 2921. When the party has no known place of abode in this state, and no attorney in the county where the action is pending, or where the parties, plaintiffs or defendants, are numerous, the court or judge may direct the mode of serving notices, and on whom they shall be served.

ORDERS.

Order defined. R. § 3427.

SEC. 2922. Every direction of a court or judge, made or entered in writing and not included in a judgment, is an order.

SEC. 2923. 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. May issue in vacation. R. § 3795.

SEC. 2924. Such order shall be in force only during the vacation in which it is granted and for the first two days of the ensuing term. How long in force. R. § 3796.

SEC. 2925. 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. Bond. R. § 3797.

SEC. 2926. Orders made out of court shall forthwith be filed with and entered by the clerk in the journal of the court in the same manner as orders made in the term. To be filed and entered of record. R. § 3439.

CHAPTER 15.

OF SECURITY FOR COSTS.

SECTION 2927. If a defendant shall, at any time before answering, make and file an affidavit stating that he has a good defense in whole or in part, the plaintiff, if he be a non-resident of this state or a private or foreign corporation, before any other proceeding in the cause shall file in the clerk's office a bond, with a sufficient security to be approved by the clerk, for the payment of all costs which may accrue in the action in the court in which it is brought or in any other to which it may be carried, either to the defendant or to the officers of the court. The application for such security shall be by motion, filed with the case, and the facts supporting it must be shown by affidavits annexed thereto, which may be responded to by counter affidavits on or before the hearing of the motion, and each party shall file all his affidavits at once, and none thereafter. Must be given when. R. §§ 3442, 3418.

SEC. 2928. An action in which a bond for costs is required by the last section, shall be dismissed if a bond is not given in such time as the court may allow. Cause dismissed. R. § 3443.

SEC. 2929. If the plaintiff in an action, after its institution becomes a non-resident of this state, he may be required to give security for costs in the manner and under the restrictions provided in the preceding sections of this chapter. When plaintiff becomes non-resident. R. § 3444.

SEC. 2930. In an action in which a bond for costs has been given, the defendant may, at any time before trial, make a motion for additional security on the part of the plaintiff; and if on such motion the court is satisfied that the surety in the plaintiff's bond has removed from the state, or is not sufficient for the amount thereof, it may dismiss the action, unless, in a reasonable time to be fixed by the court, sufficient security is given by the plaintiff. Additional security. R. § 3445.

SEC. 2931. No attorney or other officer of the court shall be received as security in any proceeding in court. Attorney or officer cannot be. R. § 3446.

Judgment on bond rendered on motion. R. § 3447.

SEC. 2932. After final judgment has been rendered in an action in which security for costs has been given as required by this chapter, the court, on motion of the defendant or any other person having the right to such costs or any part thereof, may render judgment summarily, according to the chapter on summary proceedings, in the name of the defendant or his legal representatives, against the sureties for costs, for the amount of costs adjudged against the plaintiff or so much thereof as may remain unpaid.

CHAPTER 16.

OF COSTS.

Recoverable by successful party. R. § 3449.

SECTION 2933. Costs shall be recovered by the successful against the losing party. But where the party is successful as to a part of his demand, and fails as to part, unless the case is otherwise provided for, the court may, on rendering judgment, make an equitable apportionment of costs.

Where several parties and causes of action. R. § 3451.

SEC. 2934. In actions where there are several plaintiffs or several defendants, the costs shall be apportioned according to the several judgments rendered; and where there are several causes of action embraced in the same petition, or several issues, the plaintiff shall recover costs upon the issues determined in his favor, and the defendant shall recover costs upon the issues determined in his favor.

Uncollected costs: party making to pay. R. § 3452.

SEC. 2935. All costs accrued at the instance of the successful party which cannot be collected of the other party, may be recovered on motion by the person entitled to them against the successful party.

What included in. R. § 3453.

SEC. 2936. The necessary fees paid by the successful party in procuring copies of deeds, bonds, wills, or other records filed as a part of the testimony, shall be taxed in the bill of costs.

Same. R. § 3454.

SEC. 2937. Postage paid by the officers of the court, or by the parties in sending process, depositions, and other papers being part of the record by mail, shall be taxed in the bill of costs.

Cost: allowed party who confess matter which arose after action. R. § 3455.

SEC. 2938. When a pleading contains a defense stating matter which arose after the commencement of the action, whether such matter of defense be alone or with other matter of defense which arose before the action, the party affected by such matter may confess the same, and thereupon shall be entitled to the costs of the cause as to the party pleading such matter up to the time of such pleading.

On dismissal of action or death of party. R. § 3456.

SEC. 2939. When a plaintiff dismisses the action or any part thereof, or suffers it to abate by the death of the defendant or other cause, or where the suit abates by the death of the plaintiff and his representatives fail to revive the same according to law, judgment for costs may be rendered against such plaintiff or

representative, and, if against a representative, shall be paid as other claims against the estate.

SEC. 2940. The co-parties against whom judgment has been recovered, are entitled as between themselves to a taxation of the costs of witnesses whose testimony was obtained at the instance of one of the co-parties, and inured exclusively to his benefit. Between co-parties. R. § 3457.

SEC. 2941. Where an action is dismissed from any court for want of jurisdiction, or because it has not been regularly transferred from an inferior to a superior court, the costs shall be adjudged against the party attempting to institute or bring up the cause. When dismissed for want of jurisdiction. R. § 3458.

SEC. 2942. The clerk shall tax in favor of the party recovering costs, the allowance of his witnesses, the fees of officers, the compensation of referees, the necessary expenses of taking depositions by commission or otherwise, and any further sum for any other matter which the court may have awarded as costs in the progress of the cause or may deem just to be taxed. Clerk to tax. R. § 3459.

SEC. 2943. In actions in which the cause of action shall, by assignment after the commencement of the action, or in any other manner, become the property of a person not a party to the action, such party shall be liable for the costs in the same manner as if he were a party. When cause of action is assigned. R. § 3460.

SEC. 2944. Any person aggrieved by the taxation of a bill of costs, may, upon application, have the same re-taxed by the court, or by a referee appointed by the court in which the application or proceeding was had, and in such re-taxation all errors shall be corrected; and if the party aggrieved shall have paid any unlawful charge by reason of the first taxation, the clerk shall pay the costs of re-taxation, and also to the party aggrieved the amount which he may have paid by reason of the allowing of such unlawful charges. Re-taxation. R. § 3461.

SEC. 2945. In cases of appeals from the district or circuit court, the clerk shall make a complete bill of costs showing the items which shall accompany the record, and a copy of the same shall be placed upon the execution docket of the court below. On appeals to supreme court. R. § 3462.

SEC. 2946. When the costs accrued in the supreme court and the court below are paid to the clerk of the supreme court, he shall pay so much of them as accrued in the court below to the clerk of said court and take his receipt for the same. Clerk of supreme court: duty of. R. § 3463.

SEC. 2947. On receiving such costs, the clerk of the court below shall charge himself with the money upon his execution docket, and pay it to the persons entitled to the same. Duty of clerk below. R. § 3464.

SEC. 2948. When the judgment is for the recovery of money, interest from the time of the verdict or report until judgment be finally entered, shall be computed by the clerk and added to the costs of the party entitled thereto. Interest from verdict to be computed. R. § 3466.

TITLE XVIII.

OF ATTACHMENTS, EXECUTIONS, AND SUPPLEMENTARY PROCEEDINGS.

CHAPTER 1.

OF ATTACHMENTS AND GARNISHMENT.

Property attached. R. § 3172.

SECTION 2949. The plaintiff in a civil action may cause any property of the defendant which is not exempt from execution to be attached at the commencement or during the progress of the proceeding, by pursuing the course hereinafter prescribed.

Separate petition. R. § 3173.

SEC. 2950. 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.

Petition must state. R. § 3174. C. 161, § 1, 13 G. A.

SEC. 2951. The petition which asks an attachment must in all cases be sworn to. It must state:

1. That the defendant is a foreign corporation, or acting as such; or,

2. That he is a non-resident of the state; or,

3. That he is about to remove his property out of the state without leaving sufficient remaining for the payment of his debts; or,

4. That he has disposed of his property, in whole or in part, with intent to defraud his creditors; or,

5. That the defendant is about to dispose of his property with intent to defraud his creditors; or,

6. That he has absconded, so that the ordinary process cannot be served upon him; or,

7. That he is about to remove permanently out of the county and has property therein not exempt from execution, and that he refuses to pay or secure the plaintiff; or,

8. That he is about to remove permanently out of the state, and refuses to pay or secure the debt due the plaintiff; or,

9. That he is about to remove his property, or a part thereof, out of the county with intent to defraud his creditors; or,

10. That he is about to convert his property, or a part thereof, into money for the purpose of placing it beyond the reach of his creditors; or,

11. That he has property or rights in action which he conceals; or,

12. That the debt is due for property obtained under false pretences.

SEC. 2952. Where the petition states, in addition to the other facts required, that the plaintiff will lose his claim unless the attachment issues and is served on Sunday, it may be issued and served on that day. Issued and served on Sunday: when. C. 14, 10 G. A.

SEC. 2953. 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. On contract petition must state. R. § 3175.

SEC. 2954. 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. Amount of property attached. R. § 3176.

SEC. 2955. If the demand is not founded on contract, the original petition must be presented to some judge of the supreme, district, or circuit court, who shall make an allowance thereon of the amount in value of the property that may be attached. The provisions of this section apply only to cases in the district and circuit court. Not on contract: judge to allow. R. § 3177.

FOR DEBTS NOT DUE.

SEC. 2956. 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: What petition must state. R. § 3178.

1. That the defendant is about to dispose of his property with intent to defraud his creditors; or,

2. That he is about to remove from the state and refuses to make any arrangements for securing the payment of the debt when it falls due, and which contemplated removal was not known to the plaintiff at the time the debt was contracted; or,

3. That the defendant has disposed of his property in whole or in part with intent to defraud his creditors; or,

4. That the debt was incurred for property obtained under false pretences.

SEC. 2957. If the debt or demand on which the attachment suit is brought is not due at the time of the service of the attachment, the defendant is not required to file any pleadings until the maturity of such debt or demand; but he may, in his discretion, do so and go to trial as early as the cause is reached. When to plead in such case. R. § 3179.

SEC. 2958. And no final judgment shall be rendered upon such attachment unless the party consents as in the last section, until the debt or demand upon which it is based becomes due. But property of perishable nature may be sold as in other attachment cases. Judgment in. R. § 3180.

BOND.

SEC. 2959. In all cases before it can be issued, the plaintiff must file with the clerk a bond for the use of the defendant, with sureties to be approved by such 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 in a court of record, nor Must be first given: amount. R. § 3181.

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.

Additional security. R. § 3182.

SEC. 2960. The defendant may, at any time before judgment, move the court or judge for additional security on the part of the plaintiff, and if, on such motion, the court or judge is satisfied that the surety in the plaintiff's bond has removed from this state, or is not sufficient, the attachment may be vacated and restitution directed of any property taken under it, unless, in a reasonable time to be fixed by the court or judge, security is given by the plaintiff.

Action on or by way of counter claim. R. § 3183.

SEC. 2961. In an action on such bond, the plaintiff therein may recover if he shows that the attachment was wrongfully sued out, and that there was no reasonable cause to believe the ground upon which the same was issued to be true, the actual damages sustained and reasonable attorney's fees to be filed by the court; and if it be shown such attachment was sued out maliciously, he may recover exemplary damages, nor need he wait until the principal suit is determined before suing on the bond.

MODE OF ATTACHMENT.

To whom directed. R. § 3185.

SEC. 2962. The clerk shall issue an attachment, directing the sheriff of the county therein named to attach the property of the defendant to the requisite amount therein stated.

More than one attachment may issue and to several counties at same time. R. § 3184.

SEC. 2963. Attachments may be issued from courts of record to different counties, and several may, at the option of the plaintiff, be issued at the same time, or in succession and subsequently, until sufficient property has been attached; but only those executed shall be taxed in the costs, unless otherwise ordered by the court; and if more property is attached in the aggregate than the plaintiff is entitled to have held, the surplus must be abandoned and the plaintiff pay all costs incurred in relation to such surplus.

Property attached: officers duty. R. § 3187.

SEC. 2964. The sheriff shall in all cases attach the amount of property directed if sufficient, not exempt from execution, 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. 2965. Where there are several attachments against the same defendant, they shall be executed in the order in which they were received by the sheriff.

May follow to another county: when. R. § 3188.

SEC. 2966. If, after an attachment has been placed in the hands of the sheriff, any property of the defendant is moved from the county, the sheriff may pursue and attach the same in an adjoining county within twenty-four hours after removal.

What may be attached and how done. R. § 3194.

SEC. 2967. Stock or interest owned by the defendent in any company, and also debts due him, or property of his held by third persons, may be attached, and 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 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.

Defendant examined on oath before judge. C. 167, § 21, 13 G. A.

SEC. 2968. Whenever it appears by the affidavit of the plaintiff, or by the return of the attachment, that no property is known to the plaintiff or the officer on which the attachment can be executed, or not enough to satisfy the plaintiff's claim, and, it being shown to the judge of any court by affidavit, that the defendant has property within the state not exempt, the defendant may be required by such judge to attend before him, or before the court in which the action is pending, and give information on oath respecting his property.

When property bound. R. § 3215.

SEC. 2969. Property attached otherwise than by garnishment, is bound thereby from the time of the service of the attachment only.

Receiver appointed: when and how. R. § 3216.

SEC. 2970. The court before whom the action is pending, or the judge thereof in vacation, may, at any time, appoint a receiver to take possession of property attached under the provisions of this chapter, and to collect, manage, and control the same, and pay over the proceeds according to the nature of the property and the exigency of the case.

Money attached to be paid clerk. R. § 3217.

SEC. 2971. All money attached by the sheriff, or coming into his hands by virtue of the attachment, shall forthwith be paid over to the clerk to be by him retained till the further action of the court.

Other property. R. § 3218.

SEC. 2972. The sheriff shall make such disposition of other attached property as may be directed by the court or judge, and where there is no direction upon the subject he shall safely keep the property subject to the order of the court.

PARTNERSHIP PROPERTY.

Inventory and appraisement. R. § 3190.

SEC. 2973. In executing an attachment against a person who owns property jointly or in common with another, or who is a member of a partnership, the officer may take possession of such property so owned jointly, in common, or in partnership, sufficiently to enable him to inventory and appraise the same, and for that purpose shall call to his assistance three disinterested persons; which inventory and appraisement shall be returned by the officer with the attachment, and such return shall state who claims to own such property.

Lien of plaintiff enforced by equitable proceedings. R. § § 3191, 3192.

SEC. 2974. The plaintiff shall, from the time such property is taken possession of by the officer, have a lien on the interest of the defendant therein, and may, either before or after he obtains judgment in the action in which the attachment issued, commence an action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien; and, if deemed

necessary or proper, the court or judge may appoint a receiver under the circumstances and conditions provided in chapter twelve, of title seventeen.

GARNISHMENT.

How effected. R. § 3115.

SEC. 2975. 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, and the sheriff shall summon such persons as garnishees as the plaintiff may direct.

Sheriff garnished for money in his hands. R. § 3196.

SEC. 2976. A sheriff or constable may be garnished for money of the defendant in his hands. So may a judgment-debtor of the defendant when the judgment has not been previously assigned on the record, or by writing filed in the office of the clerk and by him minuted as an assignment on the margin of the judgment docket, and also an executor for money due from the decedent to the defendant may be garnished, but a municipal or political corporation shall not be garnished.

Fund in court. R. § 3197.

SEC. 2977. Where the property to be attached is a fund in court, the execution of a writ of attachment shall be by leaving with the clerk of the court a copy thereof, with notice, specifying the fund.

Death of garnishee. R. § 3198.

SEC. 2978. If the garnishee die after he has been summoned by garnishment and pending the litigation, the proceedings may be revived by or against his heirs or legal representatives.

When garnishee to appear at court. R. § 3199.

SEC. 2979. Unless exempted as provided in the next section, the notice must also require the garnishee to appear on the first day of the next term of the court wherein the main cause is pending, 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.

Sheriff may take answers of garnishee. R. §§ 3200, 3201.

SEC. 2980. When the plaintiff, in writing, directs the sheriff to take the answer of the garnishee, the sheriff shall put to the garnishee the following questions:

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 defendants? If so, what is the value of the same, and state all particulars;

3. Do you know of any debts owing to the said defendant, whether due or not due, 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, and append the examination to his return.

MODE.

SEC. 2981. If the garnishee refuses to answer fully and unequivocally all the foregoing interrogatories, he shall be notified to appear and answer on the first day of the next term of court, or on the day fixed for trial as above provided, and so he may be required in any event, if the plaintiff so notify him. When garnishee refuses to answer. R. § 3202.

SEC. 2982. 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. Examination in court. R. § 3203.

SEC. 2983. Where the garnishee is required to appear at court, unless he has refused to answer as contemplated above, he is entitled to the pay and mileage of a witness, and may, in like manner, require payment beforehand in order to be made liable for non-attendance. When garnishee entitled to fees. R. § 3204.

SEC. 2984. If, when duly summoned, and his fees tendered when 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. Presumption for failure to attend. R. § 3205.

SEC. 2985. But, for a 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. May exonerate himself. R. § 3206.

SEC. 2986. A garnishee may, at any time after answer, exonerate himself from further responsibility, by paying over to the sheriff the amount owing by him to the defendant, and 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 afterwards be treated as though attached in the usual manner. By paying over money or property in his hands. R. § 3207.

SEC. 2987. When the garnishee has answered the interrogatories propounded to him, the plaintiff may controvert the same by pleading by him filed, and issue may be joined and the same tried in the usual manner. The answer of the garnishee shall be competent testimony on such trial. Answer controverted. R. § 3208.

JUDGMENT.

SEC. 2988. 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 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 conditional judgment shall be entered up against him accordingly, unless he prefers paying or delivering the same to the sheriff as above provided. May be entered. R. § 3209.

SEC. 2989. If the debt of the garnishee to the defendant is not due, execution shall be suspended until its maturity. When debt not due. R. § 3210.

Negotiable paper. R. § 3211.

SEC. 2990. The garnishee shall not be made liable on a debt due by negotiable paper, unless such paper is delivered, or the garnishee completely exonerated or indemnified from all liability thereon after he may have satisfied the judgment.

Judgment conclusive. R. § 3212.

SEC. 2991. The judgment of the garnishment suit condemning the property or debt in the hands of the garnishee to the satisfaction of the plaintiff's demand, is conclusive between the garnishee and defendant.

Docket of original case shall contain. R. § 3213.

SEC. 2992. The docketing of the original case shall contain a statement of all the garnishments therein, and when judgment is rendered against a garnishee, the same shall distinctly refer to the original judgment.

Appeal. R. § 3214.

SEC. 2993. An appeal lies in all garnishment cases at the instance of the plaintiff, the defendant, the garnishee, or an intervenor claiming the property or money.

RELEASE OF PROPERTY.

By defendant executing a bond. R. § § 3191, 3192, 4129.

SEC. 2994. If the defendant, at any time before judgment, causes a bond to be executed to the plaintiff with sufficient securities to be approved by the officer having the attachment, or, after the return thereof by the clerk, to the effect that he will perform the judgment of the court, the attachment shall be discharged and restitution made of property taken or proceeds thereof. The execution of such bond shall be deemed an appearance of such defendant to the action.

Judgment on bond. R. § 3193.

SEC. 2995. Such bond shall bepart of the record, and, if judgment go against the defendant, the same shall be entered against him and sureties.

By defendant or person in possession giving bond. R. § 3219.

SEC. 2996. The defendant, or any person in whose possession any attached property is found, or any person making affidavit that he has an interest in it, may, at any time before judgment, discharge the property attached, or any part thereof, by giving bond with security, to be approved by the sheriff, in a penalty at least double the value of the property sought to be released, but if that sum would exceed three times the claim, then in such sum as equals three times the claim, conditioned that such property, or its estimated value, shall be delivered to the sheriff to satisfy any judgment which may be obtained against the defendant in that suit within twenty days after the rendition thereof. This bond shall be filed with the clerk of the court.

Appraisement of property. R. § 3220.

SEC. 2997. To determine the value of property in cases where a bond is to be given, unless the parties agree otherwise, the sheriff shall summon two disinterested persons having the qualification of jurors, who, after having been sworn by him to make the appraisement faithfully and impartially, shall proceed to the discharge of their duty. If such persons disagree as to the value of the property, the sheriff shall decide between them.

Defense to action on bond. R § 3221.

SEC. 2998. In an action brought upon the bond above contemplated, 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, or was exempt from seizure under such attachment.

SALE OF PERISHABLE PROPERTY.

SEC. 2999. When the sheriff thinks the property attached in danger of serious and immediate waste and decay, or when the keeping of the same will necessarily be attended with such expense as greatly to depreciate the amount of proceeds to be realized therefrom, or when the plaintiff makes affidavit to that effect, the sheriff may summon three persons having the qualification of jurors to examine the same. The sheriff shall give the defendant, if within the county, three days' notice of such hearing, and he may appear before such jury and have a personal hearing. If they are of the opinion that the property requires soon to be disposed of, they shall specify in writing a day beyond which they do not deem it prudent that it should be kept in the hands of the sheriff. If such day occurs before the trial day, he shall thereupon give the same notice as for sale of goods in execution, and for the same length of time, unless the condition of the property renders a more immediate sale necessary. The sale shall be made accordingly. If the defendant gives his written consent, such sale may be made without such finding.

How and when done. C. 167 § 22, 13 G. A.

SPECIFIC ATTACHMENTS.

SEC. 3000. In an action to enforce a mortgage of, or lien upon personal property, or for the recovery, sale, or partition of such property, or by a plaintiff having a future estate or interest therein, for the security of his rights, where it satisfactorily appears by the petition, verified on oath or by affidavits, or the proofs, in the cause that the plaintiff has a just claim, and that the property has been or is about to be sold, concealed, or removed from the state, or where plaintiff states on oath that he has reasonable cause to believe, and does believe, unless prevented by the court, the property will be sold, concealed, or removed from the state, an attachment may be granted against the property.

In actions to enforce liens, recovery, sale, or partition of real property. C. 167, § 23, 13 G. A.

SEC. 3001. In an action by a vendor of property fraudulently purchased, to vacate the contract and have a restoration of the property, or compensation therefor, where the petition shows such fraudulent purchase of property and the amount of the plaintiff's claim, and is verified by his oath, an attachment against the property may be granted.

By vendor of property fraudulently purchased. R. § 3226.

SEC. 3002. The attachment in the cases mentioned in the last two sections may be granted by the court in which the action is brought, or by the judge of any court, upon such terms and conditions as to security on the part of the plaintiff for the damages which may be occasioned by them, and with such directions as to the disposition to be made of the property attached, as may be just and proper under the circumstances of each case.

Granted by court or judge: terms of. C. 167, § 24, 13 G. A.

SEC. 3003. The attachment shall describe the specific property against which it is issued, and shall have endorsed upon it the direction of the court or judge as to the disposition to be made of the attached property. It shall be directed, executed, and returned as other attachments.

Describe property: to be endorsed by court or judge. R. § 3230.

Court to fix terms of bond given to discharge property. R. § 3231.

SEC. 3004. The court may, in any of the cases mentioned under this head of specific attachments, direct the terms and conditions of the bond to be executed by the defendant, with security, in order to obtain a discharge of the attachment or to retain the attached property.

INDEBTEDNESS DUE THE STATE.

Duty of district attorney and attorney general. C. 133, § 1, 10 G. A.

SEC. 3005. In all cases in which any person is indebted to the state of Iowa, or to any officer or agent of the state for the use or benefit of the state, the proper district attorney, or the attorney general, shall demand payment or security therefor, whenever, in the opinion of said district attorney or attorney general, the debt is not sufficiently secured.

Attachment may issue: conditions of. Same, § 2.

SEC. 3006. In all suits for money due to the state of Iowa, or due to any state agent or officer for the use of the state, it shall be lawful for an attachment to issue against the property or debts of the defendant not exempt from execution, upon the filing of an affidavit by the district attorney of the proper district, or of the attorney general, that he verily believes that a specific amount therein stated is justly due, and the defendant therein has refused to pay or secure the same, and that unless an attachment is issued against the property of the defendant there is danger that the amount due will be lost to the state.

No bonds can be required. Same, § 3.

SEC. 3007. The attachment so issued shall be levied as in other cases of attachment, and no bond shall be required of the plaintiff in such cases, and the sheriff shall not be authorized to require any indemnifying bond before levying the same.

Property released: how. Same, § 4.

SEC. 3008. Any property taken on attachment under the provisions of the two preceding sections, shall be subject to be released upon the execution of a delivery bond, with sufficient security as provided by law in other cases.

Damages paid by sheriff becomes a debt against the state. Same, § 5.

SEC. 3009. In case any sheriff shall be held liable to pay any damages by reason of the wrongful execution of any writ of attachment issued under the three preceding sections, and if a judgment be rendered therefor by any court of competent jurisdiction, the amount of such judgment when paid by such sheriff shall become a claim against the state of Iowa in favor of such sheriff, and a warrant therefor shall be drawn by the auditor upon proper proof.

Sheriff's return: contents of specified. R. § 3224.

SEC. 3010. The sheriff shall return upon every attachment what he has done under it. The return must show the property attached, the time it was attached, and the disposition made of it, by a full and particular inventory; also the appraisement above contemplated, when such has been made. When garnishees are summoned, their names, and the time each was summoned, must be stated. And where real property is attached, the sheriff shall describe it with certainty to identify it, and, where he can do so, by a reference to the book and page where the deed under which the defendant holds is recorded. He shall return with the writ all bonds taken under it. Such return must be made immediately after he shall have attached sufficient property, or all that he can find; or, at latest, on the first day of the first term on which the defendant is notified to appear.

SEC. 3011. If judgment is rendered for the plaintiff in any case in which an attachment has been issued, the court shall apply in satisfaction thereof, the money arising from the sales of perishable property, and if the same is not sufficient to satisfy the plaintiff's claim, the court shall order a sale by the sheriff of any other attached property which may be under his control. Judgment: how satisfied. R. § 3232.

SEC. 3012. The court may, from time to time, make and enforce proper orders respecting the property, sales, and the application of the moneys collected. Court may control property. R. § 3233.

SEC. 3013. The sheriff shall be allowed by the court the necessary expenses of keeping the attached property, to be paid by the plaintiff and taxed in the costs. Expenses for keeping. R. § 3234.

SEC. 3014. Any surplus of the attached property and its proceeds shall be returned to the defendant. Surplus. R. § 3235.

SEC. 3015. If judgment is rendered in the action for the defendant, the attachment shall be discharged, and the property attached, or its proceeds, shall be returned to him. Discharge of property. R. § 3236.

SEC. 3016. Any person other than the defendant may, before the sale of any attached property, or before the payment to the plaintiff of the proceeds thereof or any attached debt, present his petition, verified by oath, to the court, disputing the validity of the attachment, or stating a claim to the property or money, or to an interest in, or lien on it under any other attachment or otherwise, and setting forth the facts upon which such claim is founded; and the petitioner's claim shall be in a summary manner investigated. The court may hear the proof or order a reference, or may empanel a jury to inquire into the facts. If it is found that the petitioner has title to, a lien on, or any interest in such property, the court shall make such order as may be necessary to protect his rights. The costs of such proceedings shall be paid by either party at the discretion of the court. Intervention: how made and tried. R. § 3237.

SEC. 3017. The fact stated as a cause of attachment, shall not be contested in the action by a mere defense. The defendant's remedy shall be on the bond, but he may, in his discretion, sue thereon by way of counter claim, and in such case shall recover damages as in an original action on such bond. Defendant's remedy only on bond. R. § 3238.

SEC. 3018. A motion may be made to discharge the attachment, or any part thereof, at any time before trial for insufficiency of statement of cause thereof, or for other cause making it apparent of record that the attachment should not have issued, or should not have been levied on all or on some part of the property held. Discharge of attachment on motion: causes for. R. § 3239.

SEC. 3019. When an attachment has been discharged, if the plaintiff then announce his purpose to appeal from such order of discharge, he shall have two days in which to perfect his appeal, and during that time such discharge shall not operate a return of the property nor divest any lien, if such appeal be so perfected at the end thereof. Plaintiff to have two days to appeal. R. § 3241.

SEC. 3020. But, if judgment in the action be also given against the plaintiff, he must also, within the same time, take his appeal thereon, or such discharge shall be final. Same. R. § 3241.

SEC. 3021. This chapter shall be liberally construed, and the plaintiff, at any time when objection is made thereto, shall be permitted to amend any defect in the petition, affidavit, bond, To be liberally construed: amendments made as in other cases. R. § 3242.

writ, or other proceeding; and no attachment shall be quashed, dismissed, or the property attached released, if the defect in any of the proceedings has, or can be amended so as to show that a legal cause for the attachment existed at the time it was issued; and the court shall give the plaintiff a reasonable time to perfect such defective proceedings; the causes for attachment shall not be stated in the alternative.

Encumbrance book: notice of attachment to be entered in. R. § 3243.

SEC. 3022. No levy of attachment on real estate shall be notice to a subsequent vendee or encumbrancer in good faith, unless the sheriff making such levy shall have entered in a book which shall be kept in the clerk's office of each county by the clerk thereof, and called "encumbrance book," a statement that the land, describing it, has been attached, and stating the cause in which it was so attached, and when it was done and signed by such sheriff; and such book shall be open as other books kept by such clerk to public inspection.

Sheriff: constables. R. § 3244.

SEC. 3023. The word "sheriff" as used in this chapter, is meant to apply to constables when the proceedings are in a justice's court, or the like officer of any other court.

Justice: clerk. R. § 3245.

SEC. 3024. When the proceedings are in a justice's court, the justice is to be regarded as the clerk of the court for all purposes herein contemplated.

CHAPTER 2.

OF EXECUTIONS.

Limitation on issuance of. R. § 3246.

SECTION 3025. Executions may issue at any time before the judgment is barred by the statute of limitations, and but one execution shall be in existence at the same time.

Judgments: orders enforced by. R. § 3247.

SEC. 3026. 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.

From courts of record. R. § 3248.

SEC. 3027. Executions from any court of record may issue into any county which the party ordering them may direct.

When issued and served on Sunday. R. § 3263.

SEC. 3028. An execution may be issued and executed on Sunday, whenever an affidavit shall be filed by the plaintiff or some person in his behalf, stating that he believes he will lose his judgment unless process issue on that day.

Issued on demand of party: duty of clerk. R. § 3265.

SEC. 3029. Upon the rendition of judgment, execution may be at once issued, and shall be by the clerk on the demand of the party entitled thereto; and upon its issuance, the clerk shall enter on the judgment docket the date of its issuance, and to what county and what officer issued, and shall also enter on said docket the return of the officer with the date of the return, the dates and amount of all moneys received into or paid out of the office thereon; and these entries shall be made at the time of the thing done.

SEC. 3030. The clerk wilfully neglecting or refusing to perform any one of the duties in this chapter imposed, shall be liable to a penalty of five hundred dollars, and to damages to the party aggrieved, and shall be guilty of a misdemeanor in office, and on conviction thereof, shall be removed from office. Penalty for clerk's failure of duty. R. § 3246.

SEC. 3031. In case execution is issued to a county other than that in which the judgment is rendered, a transcript of such judgment must be filed in the office of the clerk of the district court of such county, who shall make an entry thereof in the judgment docket of such court; and the officer having such execution shall return a copy thereof, with his return and doings endorsed thereon, to such clerk, who shall make entries thereof in the same manner and extent as if such judgment had been entered in and execution issued from such court. When issued to another county what done. R. § 3249.

SEC. 3032. When sent into any county other than that in 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. Return: how made: money: how sent. R. § 3250.

SEC. 3033. The execution must intelligibly refer to the judgment, stating the time and place at which it was rendered, the names of the parties to the action as well as to the judgment, its amount, and the amount still to be collectd thereon, if for money; and, if not for money, it must state what specific act is required to be performed. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment and interest out of property of the debtor subject to execution. General form of execution. R. § 3251.

SEC. 3034. If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the sheriff to satisfy the judgment and interest out of such property. When against representatives. R. § 3252.

SEC. 3035. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the sheriff to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment out of the property of the party against whom it was rendered subject to execution, and the value of the property for which judgment was recovered to be specified therein if a delivery thereof cannot be had, and shall in that respect be deemed an execution against property. When for delivery of possession of real property. R. § 3253.

SEC. 3036. When it requires the performance of any other act, a certified copy of the judgment may be served on the person against whom it is given, or upon the person or officer who is required thereby, or by law, to obey the same, and his obedience thereto enforced. When for performance of any other act. R. § 3254.

SEC. 3037. Every officer to whose hands an execution may legally come shall give a receipt therefor, if required, stating the hour when the same was received, and shall make sufficient return thereof, together with the money collected, on or before the seventieth day from such delivery. Officer to receipt for. R. § 3255.

SEC. 3038. The officer to whom an execution is legally issued, shall endorse thereon the day and hour when he received it, and the levy, sale, or other act done by virtue thereof, with the date, Officer to endorse when received and what he does under it. R. § 3257.

and the dates and amounts of any receipts or payment in satisfaction thereof; the endorsements must be made at the time of the receipt or act done.

PRINCIPAL AND SURETY.

Property of principal first liable. R. § 3258.

SEC. 3039. When a judgment is against a principal and his surety, the officer having the collection thereof shall exhaust the property of the principal before proceeding to sell that of the surety.

Meaning of term surety. R. § 3259.

SEC. 3040. The term "surety" in the foregoing section, shall embrace accommodation endorsers, stayers, and all other persons whose liability on the claim is posterior to that of another; but the surety shall, if requested by the officer, show property of the principal to entitle himself to the benefit of this provision.

Property of surety liable: when. R. § 3260.

SEC. 3041. After exhausting the property of the principal, the officer shall subject the property of the other parties in the order of their liability in the execution. But the party subsequently liable, shall, if requested by the officer, show property of the party liable before him so as to entitle himself to the benefit of this provision.

Judgment recite order of liability. R. § 3261.

SEC. 3042. But all the parties will be considered as equally liable in all cases, unless the order of liability is shown to the court and recited in the judgment, and the clerk issuing execution on the judgment containing such recital shall state the order of liability in the execution.

LEVY.

Mode of: duty of officer. R. § 3262.

SEC. 3043. When an execution is delivered to an officer, he must proceed to execute the same with diligence; if executed, an exact description of the property at length, with the date of the levy, shall be endorsed upon or appended to the execution, and if the writ was not executed, or only executed in part, the reason in such case must be stated in the return.

Same. R. § 3267.

SEC. 3044. The officer 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.

What property he shall take. R. § 3268.

SEC. 3045. 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, and having made one levy, may, at any time thereafter, make other levies if he deem it necessary. But no writ of execution shall be a lien on personal property before the actual levy thereof.

Judgments, bank bills, things in action. R. § 3272.

SEC. 3046. Judgments, bank bills, and other things in action, may be levied upon and sold, or appropriated as hereinafter provided, and assignment thereof by the officer shall have the same effect as if made by the defendant.

Persons indebted to defendant may pay. R. § 3273.

SEC. 3047. 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

sheriff to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge therefor.

SEC. 3048. Public buildings owned by the state, or any county, city, school district, or other municipal corporation, or any other public property which is necessary and proper for carrying out the general purpose for which such corporation is organized, are exempt from execution. The property of a private citizen can in no case be levied on to pay the debt of any such.

Public property not liable. R. § 3271.

SEC. 3049. If no property of a municipal corporation against which execution has issued can be found, or if the judgment creditor elect not to issue execution against such corporation, a tax must be levied as early as practicable to pay off the judgment. When a tax has been so levied and any part thereof shall be collected, the treasurer of such corporation shall pay the same to the judgment creditor, or to the clerk of the court in which the judgment was rendered, in satisfaction thereof.

Tax levied to pay corporate debt. R. § 3275. C. 87, 13 G. A.

SEC. 3050. Stock or interests owned by the defendant in any corporation, and also debts due him, and property of his in the hands of third persons, may be levied upon in the same manner provided for attaching the same.

Stocks or interests levied upon. R. § 3269.

PROCEEDINGS BY GARNISHMENT.

SEC. 3051. In proceedings by garnishment on execution, the garnishee shall be served as in case of attachment. The plaintiff may, also, if the garnishee is called into court, have a case docketed against him without docket fee, and upon his answer to the officer, issue may be made and notice thereof given him, or issue may be made on his answer in court without any notice thereon, if made at the same term; and in all these and every other particular, the proceedings shall be the same as under garnishment on attachment, as near as the nature of the case will allow.

How done: proceedings. R. § 3270.

SEC. 3052. Proceedings by garnishment on execution shall not be in any manner affected by the expiration of the execution or its return; and where parties thereunder have been garnished, the officer shall return to the next term thereafter a copy of the execution with all his doings thereon, so far as the garnishments thereon are concerned.

Not affected by expiration of execution. R. § 3271.

PARTNERSHIP PROPERTY.

SEC. 3053. When an officer has an execution against a person who owns property jointly, in common, or in partnership with another, such officer may levy on and take possession of the property owned jointly, in common, or in partnership, sufficiently to enable him to appraise and inventory the same, and for that purpose shall call to his assistance three disinterested persons, which inventory and appraisement shall be returned by the officer with the execution, and shall state in his return who claims to own the property.

Officer may take possession, inventory, and appraise. R. § 3287.

Lien enforced by equitable proceeding. R. §§ 3289, 3290, 3291.

SEC. 3054. The plaintiff shall, from the time such property is so levied on, have a lien on the interest of the defendant therein, and may commence an action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien; and, if deemed necessary or proper, the court or judge may appoint a receiver under the circumstances provided in chapter twelve of title seventeen of this code.

INDEMNIFYING BOND.

May be required when. R. § 3277.

SEC. 3055. An officer is bound to levy an execution on any personal property in the possession of, or that he has reason to believe belongs to the defendant, or on which the plaintiff directs him to levy, unless he has received notice in writing from some other person, his agent, or attorney, that such property belongs to him; or, if after levy he receives such notice, such officer may release the property unless a bond is given as provided in the next section; but the officer shall be protected from all liability by reason of such levy until he receives such written notice.

Terms and conditions of. R. § 3277.

SEC. 3056. When the officer receives such notice he may forthwith give the plaintiff, his agent, or attorney, notice that an indemnifying bond is required. Bond may thereupon be given by or for the plaintiff, with one or more sufficient sureties, to be approved by the officer, to the effect that the obligors will indemnify him against the damages which he may sustain in consequence of the seizure or sale of the property, and will pay to any claimant thereof the damages he may sustain in consequence of the seizure or sale, and will warrant to any purchaser of the property such estate or interest therein as is sold; and thereupon the officer shall proceed to subject the property to the execution, and shall return the indemnifying bond to the district court of the county in which the levy is made.

If not given levy discharged. R. § 3278.

SEC. 3057. If such bond is not given, the officer may refuse to levy, or if he has done so, and the bond is not given in a reasonable time after it is required by the officer, he may restore the property to the person from whose possession it was taken, and the levy shall stand discharged.

Officer protected if bond good when taken. R. § 3279.

SEC. 3058. The claimant or purchaser of any property, for the seizure or sale of which an indemnifying bond has been taken and returned by the officer, shall be barred of any action against the officer levying on the property if the surety on the bond was good when it was taken. Any such claimant or purchaser may maintain an action upon the bond, and recover such damages as he may be entitled to.

Application of proceeds of such property. R. § 3280.

SEC. 3059. Where property, for the sale of which the officer is indemnified, sells for more than enough to satisfy the execution under which it was taken, the surplus shall be paid into the court to which the indemnifying bond is directed to be returned. The court may order such disposition or payment of the money to be made, temporarily or absolutely, as may be proper in respect to the rights of the parties interested.

Executions issued by justices. R. § 3286.

SEC. 3060. The provisions of the preceding sections as to bonds, shall apply to proceedings upon executions issued by

justices of the peace. Indemnifying bonds shall be returned in such cases with the execution under which they are taken.

STAY OF EXECUTION.

SEC. 3061. On all judgments for the recovery of money, except those rendered in any court on an appeal or writ of error thereto, or against any officer, person, or corporation, or the sureties of any of them, for money received in a fiduciary capacity, or for the breach of any official duty, there may be a stay of execution if the defendant therein shall, within ten days from the entry of judgment, procure one or more sufficient freehold sureties to enter into a bond acknowledging themselves security for the defendant for the payment of the judgment, interest, and costs from the time of rendering judgment until paid, as follows: How effected: for what time. R. § 3293.

1. If the sum for which judgment was rendered, inclusive of costs, does not exceed one hundred dollars, three months;

2. If such sum and costs exceed one hundred dollars, six months; *provided*, that the provisions of this chapter in relation to stay of execution shall not apply to existing contracts, but such contracts shall be governed by the laws in force at the time they were made, which are as follows: Debts previously contracted: law of.

When judgment has been rendered against any one for recovery of money, he may, by procuring one or more sufficient freehold securities to enter into a recognizance acknowledging themselves security for the defendant for the payment of the judgment, together with the interest and costs accrued and to accrue, have a stay of the execution from the time of rendering judgment, as follows:

If the sum for which judgment was rendered, inclusive of costs, does not exceed five dollars, one month;

If such sum and costs exceed five, but not twenty dollars, two months;

If such sum and costs exceed twenty, but not forty dollars, three months;

If such sum and costs exceed forty, but not sixty dollars, four months;

If such sum and costs exceed sixty, but not one hundred dollars, six months;

If such sum and costs exceed one hundred, but not one hundred and fifty dollars, nine months;

If such sum and costs exceed one hundred and fifty dollars, twelve months;

And provided further, that all judgments shall bear interest at the rate of ten per cent. per annum on which stay is taken. Interest on.

SEC. 3062. Officers approving stay bonds shall require the affidavit of the signers of such bond that they own real estate, not exempt from execution and aside from encumbrance, to the value of twice the amount of the judgment.

SEC. 3063. No appeal shall be allowed after such stay has been obtained, nor shall a stay be taken on a judgment entered as herein contemplated against one who is surety in the stay of No appeal where stay is taken. R. § 3294.

execution, nor shall such stay be allowad to any judgment obtained by a laboring man or mechanic for his wages.

Clerk to take and record bond. R. §§ 3295, 3298.

SEC. 3064. The surety for stay of execution may be taken and approved by the clerk, and the bond shall be recorded in a book kept for that purpose and have the force and effect of a judgment confessed from the date thereof against the property of the sureties, and the clerk shall enter and index the same in the proper judgment docket, as in case of other judgments.

Execution recalled. R. § 3296.

SEC. 3065. When the surety is entered after execution issued, the clerk shall immediately notify the sheriff of the stay, and he shall forthwith return the execution with his doings thereon.

Property levied on released. R. § 3297.

SEC. 3066. All property levied on before stay of execution, and all written undertakings for the delivery of personal property to the sheriff, shall be relinquished by the officer upon stay of execution being entered.

Execution against form of. R. § 3299.

SEC. 3067. At the expiration of the stay, the clerk shall issue a joint execution against the property of all the judgment debtors and sureties, describing them as debtors or sureties therein.

Surety may prevent stay. R. § 3300.

SEC. 3068. When any court shall render judgment against two or more persons, any of whom is surety for any other in the contract on which judgment is founded, there shall be no stay of execution allowed if the surety object thereto at the time of rendering the judgment, whereupon it shall be ordered by the court that there be no stay, unless the surety for the stay of execution will undertake specifically to pay the judgment in case the amount thereof cannot be levied of the principal defendant.

Surety my determine stay. R. § 3301.

SEC. 3069. Any surety for the stay of execution may file with the clerk an affidavit, stating that he verily believes he will be liable for the judgment, interest, and costs thereon unless execution issues immediately; and the clerk shall thereupon issue execution forthwith, unless other sufficient surety be entered before the clerk as in other cases.

Other surety given. R. § 3302.

SEC. 3070. If other sufficient surety be entered, it shall have the force of the original surety entered before the filing of the affidavit, and shall discharge the original surety.

Judgment lien not released. R. § 3303.

SEC. 3071. Where a stay of execution has been taken, such confessed judgment shall not release any judgment lien by virtue of the original judgment for the amount then due. The officer holding the said execution shall return thereon what amount was made from the principal debtor, and how much from the surety.

EXEMPTIONS.

Property enumerated. R. §§ 3304, 3305, 3308. C. 91, 11 G. A. C. 167, §§ 27, 28, 13 G. A. C. 42, 14 G. A.

SEC. 3072. If the debtor is a resident of this state and is the head of a family, he may hold exempt from execution the following property: All wearing apparel of himself and family kept for actual use and suitable to their condition, and the trunks or other receptacles necessary to contain the same; one musket or rifle and shot gun; all private libraries, family bibles, portraits, pictures, musical instruments, and paintings, not kept for the purpose of sale; a seat or pew occupied by the debtor or his family in any house of public worship; an interest in a public or private bury-

ing ground, not exceeding one acre for any defendant; two cows and calf; one horse, unless a horse is exempt as hereinafter provided; fifty sheep and the wool thereon; six stands of bees; five hogs, and all pigs under six months; the necessary food for all animals exempt from execution, for six months; all flax raised by the defendant on not exceeding one acre of ground and the manufactures therefrom; one bedstead and the necessary bedding for every two in the family; all cloth manufactured by the defendant, not exceeding one hundred yards in quantity; household and kitchen furniture, not exceeding two hundred dollars in value; all spinning wheels and looms, one sewing machine and other instruments of domestic labor kept for actual use; the necessary provisions and fuel for the use of the family for six months; the proper tools, instruments, or books of the debtor, if a farmer, mechanic, surveyor, clergyman, lawyer, physician, teacher, or professor; the horse, or the team, consisting of not more than two horses or mules, or two yoke of cattle, and the wagon or other vehicle, with the proper harness or tackle, by the use of which the debtor, if a physician, public officer, farmer, teamster, or other laborer habitually earns his living; and to the debtor, if a printer, there shall also be exempt a printing press and the types, furniture, and material necessary for the use of such printing press and a newspaper office connected therewith, not to exceed in all the value of twelve hundred dollars.

Family defined. R. § 3306.

SEC. 3073. The word "family," as used in the last section, does not include strangers or boarders lodging with the family.

Personal earnings. R. § 3307.

SEC. 3074. 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.

Unmarried persons. R. § 3308.

SEC. 3075. There shall be exempt to an unmarried person not the head of a family, and to non-residents, their own ordinary wearing apparel and trunk necessary to contain the same.

Persons who have started to leave the state. R. § 3308.

SEC. 3076. Where the debtor, if the head of a family, has started to leave this state, he shall have exempt only the ordinary wearing apparel of himself and family, and such other property, in addition, as he may select, in all not exceeding seventy-five dollars in value; which property shall be selected by the debtor and appraised according to the provisions of section two thousand nine hundred and ninety-seven of chapter one of this title, but any person coming into this state with the intention of remaining, shall be considered a resident within the meaning of this chapter.

Purchase money. C. 167, § 27, 13 G. A.

SEC. 3077. None of the exemptions prescribed in this chapter shall be allowed against an execution issued for the purchase money of property claimed to be exempt, and on which such execution is levied.

Absconding debtor. R. § 3309.

SEC. 3078. Where a debtor absconds and leaves his family, such property shall be exempt in the hands of the wife and children, or either of them.

SALE.

Notice of. R. § 3310.

SEC. 3079. The sheriff must give four weeks' notice of the time and place of selling real property, and three weeks' notice of personal property.

How given. R. § 3311.

SEC. 3080. Notice shall be given by being posted up in at least three public places of the county, one of which shall be at the place where the last district court was held. In addition to which, in case of the sale of real estate, or where personal property to the amount of two hundred dollars or upwards is to be sold, there shall be two publications of such notice in some newspaper printed in the county, if there be one. In constables' sales, there shall be no newspaper publication, and the notice shall be posted in three public places of the township of the justice, and one of them at his office door. The time of such notice shall be two weeks.

Penalty for selling without notice. R. § 3312.

SEC. 3081. 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.

Time. R. § 3313.

SEC. 3082. The sale must be at public auction, between nine o'clock in the forenoon and four o'clock in the afternoon, and the hour of the commencement of the sale must be fixed in the notice.

Officer may postpone when. R. § 3314.

SEC. 3083. When there are no bidders, or when the amount offered is grossly inadequate, or when from 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, and such postponement shall be publicly announced when the sale should have taken place.

Disposition of excess. R. § 3315.

SEC. 3084. When the 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.

Another execution. R. § 3316.

SEC. 3085. 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.

Levy holds good unless plaintiff abandons. R. § 3317.

SEC. 3086. When property is unsold for want of bidders, the levy still holds good; and, if there be sufficient time, it may again be advertised or the execution returned and one issued commanding the officer to sell the property, describing it, previously levied on, to which a clause may be added, that if such property does not produce a sum sufficient to satisfy such execution, the officer shall proceed to make an additional levy, on which he shall proceed as on other executions, or the plaintiff may, in writing filed with the clerk or justice, abandon such levy upon paying the costs thereof. In which case execution may issue with the same effect as if none had ever been issued.

Notice to defendant: sale void without. R. § 3318.

SEC. 3087. If the defendant is in actual occupation and possession of any part of the land levied on, the officer having the execution, shall, at least twenty days previous to such sale,

serve the defendant with written notice, stating that the execution is levied on said land, and mentioning the time and place of sale; and sales made without the notice required in this section, may be set aside on motion made at the same or the next term thereafter.

Defendant may divide land and give officer plan. R. § 3319.

SEC. 3088. At any time before nine o'clock A. M. of the day of the sale, the defendant may deliver to the officer a plan of division of the land levied on, subscribed by him, and in that case the officer shall sell according to said plan so much of the land as may be necessary to satisfy the debt and costs and no more. If no such plan is furnished, the officer may sell without any division.

When purchaser fails to pay. R. § 3320.

SEC. 3089. 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 on the same day, or after a postponement as above authorized.

Sales vacated when execution is not a lien. R. § 3321.

SEC. 3090. When any person shall purchase at a sheriff's sale any real estate on which the judgment upon which the execution issued was not a lien at the time of the levy, and which fact was unknown to the purchaser, the court shall set aside such sale on motion, notice having been given to the debtor as in case of action, and a new execution may be issued to enforce the judgment, and upon the order being made to set aside the sale, the sheriff or judgment-creditor shall pay over to the purchaser the purchase money; said motion may also be made by any person interested in the real estate.

Disposition of money levied on. R. § 3322.

SEC. 3091. 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 the 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.

Judgment against executor or decedent, how satisfied from real property. C. 167, § 29, 13 G. A.

SEC. 3092. When a judgment has been obtained against the executor of one deceased, or against the decedent in his lifetime, which the personal estate of the deceased is insufficient to satisfy, the plaintiff may file his petition in the office of the clerk of the court where the judgment is a lien against the executor, the heirs and devisees of real estate, if such there be, setting forth the facts, and that there is real estate of the deceased, describing its location and extent, and praying the court to award execution against the same.

Notice. C. 150, § 1, 13 G. A.

SEC. 3093. The person against whom the petition is filed shall be notified by the plaintiff to appear on the first day of the term, and show cause, if any he have, why execution should not be awarded.

How served and returned. C. 150, § 2, 13 G. A.

SEC. 3094. The notice shall be served and returned in the ordinary manner, and the same length of time shall be allowed for appearance as in civil actions, and service of such notice on non-resident defendants may be had in such cases by publication.

Execution awarded. R. § 3326.

SEC. 3095. At the proper time, the court shall award the execution unless sufficient cause be shown to the contrary.

Non-age. R. § 3327.

SEC. 3096. The non-age of the heirs or devisees shall not be deemed such sufficient cause.

Mutual judgments set off. R. § 3328.

SEC. 3097. 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 set off, unless the balance of cash actually collected on the large judgment is sufficient to pay the costs of both judgments, and such costs shall be paid therefrom accordingly.

When sale absolute. R. § 3320.

SEC. 3098. When real property has been levied upon, if the estate is less than a leasehold having two years of an unexpired term, the sale is absolute.

When redeemable. R. § 3329.

SEC. 3099. When the estate is of a larger amount, the property is redeemable as hereinafter prescribed.

APPRAISEMENT OF PERSONAL PROPERTY.

How done and amount it must sell for.

SEC. 3100. Personal property levied upon and advertised for sale on execution must be appraised before sale by two disinterested householders of the neighborhood, one of whom shall be chosen by the execution debtor and the other by the plaintiff, or in case of the absence of either party, or if either or both parties neglect or refuse to make choice, the officer making the levy shall choose one or both, as the case may be, who shall forthwith proceed to return to said officer a just and true appraisement, under oath, of said property if they can agree; and in case they cannot agree, they shall choose another disinterested householder, and with his assistance they shall complete such appraisement, and the property shall not be sold for less than two-thirds of said valuation; provided, the same shall be offered for three successive days at the same place and hour of day as advertised, and if no offer equal to two-thirds the value thereof be made, then it shall be lawful to sell said property for one-half of said valuation.

REDEMPTION.

Officer to execute deed or certificate. R. § 3331.

SEC. 3101. If the property sold is not subject to redemption, the sheriff must execute a deed therefor to the purchaser; but if the same is subject to redemption, he shall execute to such 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.

By defendant when. C. 167, § 30, 13 G. A.

SEC. 3102. The defendant may redeem real property at any time within one year from the day of sale as herein provided, and will, in the meantime, be entitled to the possession of the property. But in no action where the defendant has taken an appeal from the circuit or district court, or stayed execution on the judgment, shall he be entitled to redeem.

When by creditors. R. § 3333.

SEC. 3103. 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 mechanics' lien, before judgment thereon, is not of such character as to entitle the holder to redeem.

Who creditor. R. § 3334.

SEC. 3104. Any creditor whose claim becomes a lien prior to the expiration of the time allowed by law for the redemption by

creditors, may redeem. A mortgagee may thus redeem before or after the debt secured by the mortgage falls due.

SEC. 3105. Creditors having the right of redemption may redeem from each other within the time above limited, and in the manner herein provided. May redeem from each other. R. § 3335.

SEC. 3106. 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. Terms of. R. § 3336.

SEC. 3107. When a senior creditor thus redeems from his 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. Senior creditor. R. § 3337.

SEC. 3108. The junior creditor may in all such cases prevent a redemption by the holder of the paramount lien, by paying off the lien, or by leaving with the clerk beforehand the amount necessary therefor. Junior. R. § 3338.

SEC. 3109. A junior judgment creditor may redeem from a senior judgment creditor, by paying to the party, the clerk, or the sheriff, if execution has issued, the full sum due, with interest and costs, and shall become thereby vested with the title to the judgment so redeemed. Same. R. § 3339.

SEC. 3101. If paid to the sheriff, he shall give to the party redeeming a certificate that he has paid such sum for the redemption of the judgment, describing it, which being presented to the clerk, he shall enter such redemption on the judgment docket, as he shall also do if the money is paid to himself. When money paid to sheriff. R. § 3340.

SEC. 3111. 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. Junior from senior creditor. R. § 3341.

SEC. 3112. 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. When right of creditors expire. R. § 3342.

SEC. 3113. Unless the defendant thus redeems, the purchaser, or the creditor who has last redeemed prior to the expiration of the nine months aforesaid, will hold the property absolutely. Who gets property. R. § 3343.

SEC. 3114. In case it is thus held by a redeeming creditor, his lien, and the claim out of which it arose, will he held to be extinguished, unless he pursues the course pointed out in the next section. Claim extinct. R. § 3344.

SEC. 3115. 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 nine months aforesaid, enter on the sale book the utmost amount that he is thus willing to credit on his claim. Exception. R. § 3345.

Farther redemptions. R. § 3346.

SEC. 3116. Any unsatisfied lien creditor, within ten days after the expiration 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 interests and costs.

Same. R. § 3347.

SEC. 3117. 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 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.

Mode of redemption. R. § 3348.

SEC. 3118. 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 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.

Same. R. § 3349.

SEC. 3119. 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.

Entitled to assignment. R. § 3350.

SEC. 3120. 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.

Sale in parcels. R. § 3351.

SEC. 3121. When the property has been sold in parcels, any distinct portion may be redeemed by itself.

Tenants in common. R. § 3352.

SEC. 3122. 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.

Defendant may transfer right. R. § 3353.

SEC. 3123. The rights of a defendant in relation to redemption are transferable, and the assignee has the like power to redeem.

Deed made to whom. R. § 3354.

SEC. 3124. 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 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 lifetime.

When evidence of title to be recorded. R. § 3355.

SEC. 3125. 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.

Deeds imply regularity. R. § 3356.

SEC. 3126. Deeds executed by a sheriff in pursuance of the sales contemplated in this chapter, are presumptive evidence of the regularity of all previous proceedings in the case, and may be given in evidence without preliminary proof.

SEC. 3127. 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. Damages. R. § 3357.

SEC. 3128. 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 is issued. "Defendant" "plaintiff." R. § 3358.

SEC. 3129. The provisions of this chapter are intended to embrace proceedings in justices' 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. Application to justices' proceedings. R. § 3359.

REVIVOR OF JUDGMENTS.

SEC. 3130. The death of one or all the plaintiffs shall not prevent an execution being issued, but on such execution the clerk shall endorse the death of such of them as are dead, and if all be dead, the names of the personal representatives, or the last survivor, if the judgment passed to the personal representatives, or the names of the survivors' heirs, if the judgment was for real property. Death of plaintiff: how execution may issue. R. § 3482.

SEC. 3131. The sheriff, in acting upon an execution endorsed as provided in the last section, shall proceed as if the surviving plaintiff or plaintiffs, or the personal representatives or heirs, were the only plaintiffs in the execution, and take bonds accordingly. Officers duty. R. § 3483.

SEC. 3132. Before making the endorsements named above, an affidavit shall be filed with the clerk by one of the plaintiffs or personal representatives, or heirs or their attorney, of the death of the defendant, and that the persons named as such are the personal representatives or heirs, and in the case of personal representatives, they shall file with the clerk a certificate of their qualification, according to law in this state. Affidavit required. R. § 3484.

SEC. 3133. The death of part only of the defendants, shall not prevent execution being issued, which, however, shall operate alone on the survivors and their property. Death of part of defendants. R. § 3485.

SEC. 3134. The defendant may move the court to quash an execution, on the ground that the personal representatives or heirs of a deceased plaintiff are not properly stated in the endorsement on the execution, and, during the vacation of the court, may obtain an injunction, upon its being made to appear that the persons named are not entitled to the judgment on which the execution was issued. When execution may be quashed. R. § 3486.

CHAPTER 3.

PROCEEDINGS AUXILIARY TO EXECUTION.

SECTION 3135. When execution against the property of a judgment debtor, or one of several debtors in the same judgment, has been issued from the district, circuit, or supreme court to the Defendant examined. R. § 3375.

sheriff of the county where such debtor resides, or if he do not reside in the state, to the sheriff of the county where the judgment was rendered or a transcript of a justice's judgment has been filed, and execution issued thereon is returned unsatisfied in whole or in part, the owner of the judgment is entitled to an order for the appearance and examination of such debtor.

Same. R. § 3376.

SEC. 3136. The like order may be obtained at any time after the issuing of an execution, upon proof, by the 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.

By whom order granted. R. §§ 3377, 3385.

SEC. 3137. Such order may be made by the district or circuit court of the county in which the judgment was rendered, or to which execution has been issued, or in vacation by a judge thereof. And the debtor may be required to appear and answer before either of such courts or judges, or before a referee appointed for that purpose by the court or judge who issued the order, to report either the evidence or the facts.

Debtor interrogated. R. § 3378.

SEC. 3138. The debtor, on his appearance, may be interrogated in relation to any facts 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. All examinations and answers under this chapter shall be on oath, and no person shall, on such examination, be excused from answering any question on the ground that his examination will tend to convict him of a fraud, but his answers shall not be used as evidence against him in a prosecution for such fraud.

Witness examined. R. § 3379.

SEC. 3139. Witnesses may be required by the order of the court or judge, or by subpœnas from the referee, to appear and testify upon any proceedings under this chapter in the same manner as upon the trial of an issue.

Property found: disposition of. R. § 3380.

SEC. 3140. If any property, rights, or credits, subject to execution are thus ascertained, an execution may be issued and they may be levied upon accordingly. The court or judge may order any property of the judgment debtor not exempt by law, in the hands either of himself or any other person or corporation, or due to the judgment debtor, to be delivered up, or in any other mode applied towards the satisfaction of the judgment.

Receiver. R. § 3381.

SEC. 3141. The court or judge may also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, and may also, by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, or may forbid any interference therewith.

Equitable interest. R. § 3382.

SEC. 3142. If it shall appear that the judgment debtor has any equitable interest in real estate in the county in which proceedings are had, as mortgagor, mortgagee, or otherwise, and the interest of said debtor can be ascertained as between himself and the person holding the legal estate, or having any lien on, or

interest in the same, without controversy as to the interest of such person, the receiver may be ordered to sell and convey such real estate or the debtor's equitable interest therein, in the same manner as is provided by this code for the sale of real estate upon execution.

Sheriff liable. R. § 3383.

SEC. 3143. If the sheriff shall be appointed receiver, he and his sureties shall be liable on his official bond for the faithful discharge of his duties as such.

Continuance. R. § 3384.

SEC. 3144. The judge or referee acting under the provisions of this chapter, shall have power to continue his proceedings from time to time until they shall be completed.

Defendant failing to appear. R. § 3386.

SEC. 3145. 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. And if any person, party, or witness, disobey an order of the court or judge, or referee, duly served, such person, party, or witness may be punished as for contempt.

Service of order. R. § 3387.

SEC. 3146. The order mentioned herein shall be in writing and signed by the court or judge or referee making the same, and shall be served in the same manner as an original notice in other cases.

Compensation of officers and witnesses. R. § 3388.

SEC. 3147. Sheriffs, referees, receivers, and witnesses, shall receive such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and the collection thereof from such party or parties as ought to pay the same shall be enforced by an order.

When warrant of arrest to issue. R. § 3389.

SEC. 3148. 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.

Defendant to give bond. R. § 3390.

SEC. 3149. Upon being brought before the court or officer, he may enter into an undertaking in such sum as the court or officer shall prescribe, with one or more sureties, that he will attend from time to time for examination before the court or officer as shall be directed, and will not, in the meantime, dispose of his property, or any part thereof; in default whereof he shall continue under arrest, and may be committed to jail on the warrant of such court or officer from time to time for safe keeping until the examination shall be concluded.

EQUITABLE PROCEEDINGS.

How and when brought. R. § 3391.

SEC. 3151. At any time after the rendition of a judgment, an action by equitable proceedings may be brought to subject any property, money, rights, credits, or interest therein belonging to the defendant, to the satisfaction of such judgment. In such

action, persons indebted to the judgment debtor, or holding any property or money in which such debtor has any interest, or the evidences of securities for the same, may be made defendants.

Answers verified: petition taken as true. R. § 3392.

SEC. 3151. The answers of all defendants shall be verified by their own oath, and not by that of an agent or attorney, and the court shall enforce full and explicit discoveries in such answers by process of contempt; or upon failure to answer the petition, or any part thereof, as fully and explicitly as the court may require, the same, or such part not thus answered, shall be deemed true, and such order made or judgment rendered as the nature of the case may require.

Lien created from time of service of notice. R. §§ 3393, 3394.

SEC. 3152. In the case contemplated in the two preceding sections, a lien shall be created on the property of the judgment debtor, or his interest therein, in the hands of any defendant or under his control, which is sufficiently described in the petition, from the time of the service of notice and copy of the petition on the defendant holding or controlling such property or any interest therein.

Surrender of property enforced. R. § 3395.

SEC. 3153. The court shall enforce the surrender of the money or securities therefor, or of any other property of the defendant in the execution which may be discovered in the action, and for this purpose may commit to jail any defendant or garnishee failing or refusing to make such surrender until it shall be done, or the court is satisfied that it is out of his power to do so.

TITLE XIX.

OF PROCEEDINGS TO REVERSE, VACATE, OR MODIFY JUDGMENTS, OR THE PROCEEDINGS OF BOARDS OR INDIVIDUALS ACTING JUDICIALLY.

CHAPTER 1.

OF PROCEEDINGS TO REVERSE, VACATE, OR MODIFY JUDGMENTS IN THE COURTS IN WHICH RENDERED.

By court where rendered. R. § 3499.

SECTION 3154. The district or circuit court in which a judgment has been rendered, or by which, or by the judge of which, a final order has been made, shall have power after the term at which such judgment or order was made to vacate or modify such judgment or order:

1. By granting a new trial for the cause within the time and in the manner prescribed by the sections on new trials;
2. By a new trial granted on proceedings against defendants served by publication only, as prescribed in title seventeen, chapter nine, section two thousand eight hundred and seventy-seven;
3. For mistake, neglect, or omission of the clerk, or irregularity in obtaining a judgment or order;
4. For fraud practiced by the successful party in obtaining the judgment or order;
5. For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the errors in the proceedings;
6. For the death of one of the parties before the judgment in the action;
7. For unavoidable casualty or misfortune preventing the party from prosecuting or defending;
8. For error in a judgment shown by a minor within twelve months after arriving at full age.

Petition for new trial: when proper mode. R. § 3116.

SEC. 3155. Where the grounds for a new trial could not with reasonable diligence have been discovered before, but are discovered after the term at which the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed as in other cases, not later than the second term after the discovery, on which notice shall be served and returned, and the defendant held to appear as in an original action. The facts stated in the petition shall be considered as denied without

answer. The case shall be tried as other cases by ordinary proceedings, but no petition shall be filed more than one year after the final judgment was rendered.

Mistakes of clerk and irregularity. R. § 3500.

SEC. 3156. The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion served on the adverse party, or on his attorney in the action, and within one year; and when made to vacate a judgment because of irregularity in obtaining it, must be made on the second day of the succeeding term.

When petition must be filed. R. § 3501.

SEC. 3157. The proceedings to obtain the benefit of subdivisions four, five, six, seven, and eight of section three thousand one hundred and fifty-four, of this chapter, shall be by petition, verified by affidavit, setting forth the judgment or order, the facts or errors constituting a cause to vacate or modify it, and the facts constituting a defense to the action if the party applying was a defendant, and such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto be a minor or person of unsound mind, and then within one year from the removal of such disability.

Party brought into court in the ordinary way. R. § 3502.

SEC. 3158. In such proceedings the party shall be brought into court in the same way, on the same notice as to time, mode of service, and mode of return, and the pleadings shall be governed by the principles, and issues be made up by the same form, and all the proceedings conducted in the same way, as near as can be, as in original action by ordinary proceedings, except that defendant shall introduce no new cause, and the cause of the petition shall alone be tried.

Not vacated until it is adjudged there is a defense. R. § 3503.

SEC. 3159. The judgment shall not be vacated on motion or petition until it is adjudged that there is a valid defense to the action in which the judgment is rendered; or, if the plaintiff seeks its vacation, that there is a valid cause of action; and when judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

First try grounds to vacate. R. § 3504.

SEC. 3160. The court may first try and decide upon the grounds to vacate or modify a judgment or order before trying or deciding upon the validity of the defense or cause of action.

Injunction. R. § 3505.

SEC. 3161. The party seeking to vacate or modify a judgment or order, may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or the judge upon its being rendered probable, by affidavit or petition sworn to, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified.

When judgment is affirmed. R. § 3506.

SEC. 3162. In all cases of affirmance of the judgment or order, when the proceedings have been suspended, judgment shall be rendered against the plaintiff in error for the amount of the former judgment, interests, and costs, together with damages at the discretion of the court, not exceeding ten per cent. on the amount of the judgment.

CHAPTER 2.

OF APPELLATE PROCEEDINGS IN THE SUPREME COURT.

SECTION 3163. The supreme court has appellate jurisdiction over all judgments and decisions of all other courts of record, as well in case of civil actions as in proceedings of a special or independent character. From what appeals may be taken. R. § 2631.

SEC. 3164. An appeal may also be taken to the supreme court from the following orders: Same. R. § 2632.

1. An order made affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment from which an appeal might be taken;

2. A final order made in special proceedings affecting a substantial right therein, or made on a summary application in an action after judgment;

3. When an order grants or refuses, continues or modifies a provisional remedy; or grants, refuses, dissolves, or refuses to dissolve an injunction or attachment; when it grants or refuses a new trial, or when it sustains or overrules a demurrer;

4. An intermediate order involving the merits and materially affecting the final decision;

5. An order or judgment on habeas corpus.

SEC. 3165. If any of the above orders are made by a judge, the same is reviewable in the same way as if made by a court. Same. R. § 2633.

SEC. 3166. The court may also, in its discretion, prescribe rules for allowing appeals on such other intermediate orders or decisions as is deemed 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 court from which the appeal is taken. Court may prescribe rules. R. § 2634.

SEC. 3167. A mistake of the clerk shall not be ground for an appeal until the same has been presented and acted upon by the court below. Mistake of clerk below. R. § 3498.

SEC. 3168. A judgment or order shall not be reversed for an error which can be corrected on motion in an inferior court, until such motion has been made there and overruled. When not to be reversed. R. § 3545.

SEC. 3169. The supreme court may review and reverse on appeal any judgment or order of the district or circuit court, although no motion for a new trial was made in such courts. Motion for new trial. C. 49, § 1, 11 G. A.

SEC. 3170. Where a cause is tried by the court, it shall not be necessary in order to secure a review of the same in the supreme court, that there should have been any finding of facts or conclusions of law stated in the record, but the supreme court shall hear and determine the same whenever it shall appear from a certificate of the judge, agreement of parties or their attorneys, or, in case the evidence consists wholly of written testimony, from the certificate of the clerk, that the transcript contains all the evidence introduced by the parties on the trial in the court below. Finding of facts: evidence certified. Same, § 2.

How docketed. R. § 3508.

SEC. 3171. The cause shall be docketed as it was in the court below, and the party taking the appeal shall be called the appellant, and the other party the appellee.

Process. R. § 2635.

SEC. 3172. The court may issue all writs and process necessary for the exercise and enforcement of its appellate jurisdiction.

Appeals when taken; limitation on right. R. § 3507.

SEC. 3173. Appeals from the district and circuit courts may be taken to the supreme court at any time within six months from the rendition of the judgment or order appealed from, and not afterward. But no appeal shall be taken in any cause in which the amount in controversy between the parties, as shown by the pleadings, does not exceed one hundred dollars, unless the trial judge shall certify that such cause involves the determination of a question of law upon which it is desirable to have the opinion of the supreme court, but this limitation shall not affect the right of appeal in any cause in which is involved any interest in real property.

Part of co-parties may appeal. R. § 3517.

SEC. 3174. A part of several co-parties may appeal; but in such 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.

When they refuse to join. R. § 3518.

SEC. 3175. If the other co-parties refuse to join, they cannot, nor can any of them, take an appeal afterwards; nor shall they derive any benefit from the appeal, unless from the necessity of the case.

When deemed to have joined. R. § 3519.

SEC. 3176. Unless they appear and decline to join, they shall be deemed to have joined and shall be liable for their due proportion of costs.

Appeal from part of judgment or order. R. § 3510.

SEC. 3177. An appeal from part of an order, or from one of the judgments of a final adjudication, or from part of a judgment, shall not disturb or delay the rights of any party to any judgment, or part of a judgment, or order not appealed from, but the same shall proceed as if no such appeal had been made.

NOTICE AND FILING TRANSCRIPTS.

How taken: notice. R. § 3509.

SEC. 3178. An appeal is taken by the service of a notice in writing on the adverse party, his agent, or any attorney who appeared for him in the case in the court below, and also upon the clerk of the court wherein the proceedings were had, stating the appeal from the same, or from some specific part thereof, defining such part.

When perfected. R. § 3511.

SEC. 3179. An appeal shall not be perfected until the notice thereof has been served upon both the party and the clerk, and the clerk paid or secured his fees for a transcript; whereupon the clerk shall forthwith transmit by mail, express, or messenger, not a party nor the attorney of a party, a transcript of the record in the cause, or so much thereof as the appellant in writing in the notice has directed, to which shall be appended copies of the notices of appeal, and of the supersedeas bond if any.

When tried. R. § 3513.

SEC. 3180. The notice of appeal must be served at least thirty days, and the cause filed and docketed at least fifteen days before the first day of the next term of the supreme court, or the same shall not then be tried unless by consent of parties. If the

appeal is taken less than thirty days before the term, it must be so filed and docketed before the next succeeding term.

For failure to file transcript and docket appeal: dismissed or judgment affirmed. R. § 3514.

SEC. 3181. If the appellant fails to file a transcript and have the cause docketed as provided in the preceding section, or fails to file at the time the transcript should be filed, the certificate of the clerk of the inferior court, stating when he was served with notice, and that he has not had sufficient time to prepare the transcript, the appellee may file a certified copy of the judgment or order appealed from, and of the notice served on such clerk, and, on motion, have the appeal dismissed or the judgment or order appealed from affirmed.

Same. R. § 3515.

SEC. 3182. If the transcript has been sent up, but the appellant does not file the same when the same should be filed as herein provided, the appellee may file the same, and may, on motion, have the appeal dismissed or the judgment affirmed, as the court, from the circumstances of the case, shall determime.

Same as to assignment of errors. R. § 3516.

SEC. 3183. If, the transcript being filed, errors are not assigned and filed with the clerk of the supreme court, and a copy of the same served on the appellee or his attorney ten days before the first day of the trial term, the appellee may have the appeal dismissed or the judgment or order affirmed, unless good cause for the failure be shown by affidavit.

What shall be sent up. R. § 3512.

SEC. 3184. In an action by ordinary proceedings, and in an action by equitable proceedings, tried in whole or in part on oral testimony, all proper entries made by the clerk, and all papers pertaining to the cause and filed therein, except subpœnas, depositions, and other papers which are used as mere evidence, are to be deemed part of the record. But in an action by equitable proceedings, tried upon written testimony, the depositions and all papers which were used as evidence are to be certified up to the supreme court, and shall be so certified, not by transcript but in the original form. But a transcript of a motion, affidavit, or other paper, when it relates to a collateral matter, shall 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 blameable therefor to pay the costs thereof.

Power to obtain perfect transcript. R. § 3524.

SEC. 3185. The appellant shall file a perfect transcript, and to that end the clerk of the court below must, at any time on his suggestion of the diminution of the record and on the payment of fees, certify up any omitted part of the record, according to the truth, as the same appears in his office of record; and such applicant shall not be entitled to any continuance in order to correct the record, unless it shall clearly appear to the court that he is not in fault. Subject to which requirement, either party may, on motion before trial day, obtain an order on the clerk below, commanding him to transmit at once to the supreme court a true copy of such imperfect or omitted part of the record as shall be in general terms described in the affidavit or order. Such motion must be supported by affidavit, unless the diminution be apparent or admitted by the adverse party, and must not be granted unless the court is satisfied that it is not made for delay.

STAY OF PROCEEDINGS.

How obtained: bond: conditions and approval. R. § § 3527, 3528.

SEC. 3186. An appeal shall not stay proceedings on the judgment or order, or any part thereof, unless the appellant shall cause to be executed before the clerk of the court which rendered the judgment or order, by one or more sufficient sureties to be approved by such clerk, a bond to the effect that the appellant shall pay to the appellee all costs and damages that shall be adjudged against the appellant on the appeal; also that he will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the supreme court may render, or order to be rendered by the inferior court, not exceeding in amount or value the original judgment or order, and all rents, or damages to property during the pendency of the appeal out of the possession of which the appellee is kept by reason of the appeal. If the bond is intended to stay proceedings on only a part of the judgment or order, it shall be varied so as to secure the part stayed alone. When such bond has been approved by the clerk, and filed, he shall issue a written order commanding the appellee and all others to stay proceedings on such judgment or order, or on such part as is superseded as the case may be. No appeal or stay shall vacate or affect the judgment appealed from.

When supreme court or judge may fix conditions of bond and approve same. C. S. 14 G. A.

SEC. 3187. In cases wherein the appellant has perfected his appeal to the supreme court, and the clerk of the district or circuit court has unjustly refused to approve the appeal bond offered, or makes the penalty therein too large, or the conditions thereof unjust, the appellant may move the supreme court if in session, or in its vacation, on such written notice to the appellee as the judge may prescribe, may move any judge thereof to determine the conditions, fix the penalty, and approve the appeal bond. The motion, verified by the affidavit of the appellant or his attorney, shall contain a brief statement of the nature of the action in which the appeal was taken, of the judgment or order appealed from, of the steps taken by the appellant with reference to his appeal, and of his giving, or offering to give, an appeal bond, of the action of the clerk of the court below with reference to such bond, and wherein he has acted wrongfully; and if the supreme court, or any judge thereof, considers that the clerk has made unjust conditions in the bond, or the penalty thereof too high, or has wrongfully refused to approve the same, such court or judge shall issue an order prescribing the conditions of the appeal bond, fixing the penalty thereof, and either approve it or direct the clerk of the supreme court so to do, which bond shall be filed with the officer last named. The supreme court, or judge thereof, may order that all or any part of the papers and records in the cause appealed, or certified copies thereof, be produced on the hearing of such motion, and pending the disposition thereof may make an order staying the enforcement of the judgment or order appealed from, and on such terms as are just. The order, if made by the judge, shall be in writing and signed by him, and upon the service thereof, or of a certified copy, when made in court, upon the clerk of the court below, all proceedings in the

court appealed from shall be stayed, and all orders, processes, executions, or other papers issued therefrom shall be recalled, and the appellant be placed in the same condition that he was when the judgment or order appealed from was made or rendered.

How and when additional surety obtained. R. § 3529.

SEC. 3188. If the appellee believe the bond defective, or the sureties insufficient, he may move the supreme court if in session, or in its vacation, on ten days written notice to the appellant, may move any judge of said court, or the judge of the court below where the appeal was taken, to discharge the bond, and if the court or such judge shall consider the sureties insufficient, or the bond substantially defective in securing the rights of the appellee, the court or such judge shall issue an order discharging such bond, unless a good bond, with sufficient sureties, be executed by a day by him fixed. The order, if made by a judge, shall be in writing and signed by him; and upon his filing, or the filing of a certified copy of the order when made in court, in the office of the clerk of the inferior court, execution and other proceedings for enforcing the judgment or order may be taken if a new and good bond is not filed and approved by the day as aforesaid.

Proceedings stayed. R. § 3530.

SEC. 3189. But another order staying proceedings may be issued by the clerk, upon the execution before him of a new and lawful bond with sufficient sureties as hereinbefore provided.

Penalty of bond. R. § 3531.

SEC. 3190. If the judgment or order is for the payment of money, 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.

When appeal is from a party only. R. § 3532.

SEC. 3191. The taking of the appeal from a part of a judgment or order, and the filing of a bond as above directed, does not cause a stay of execution as to any part of the judgment or order not appealed from.

Execution recalled. R. § 3533.

SEC. 3192. If execution has issued prior to the filing of the bond above contemplated, the clerk shall countermand the same.

Property surrendered. R. § 3534.

SEC. 3193. 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.

TRIAL—JUDGMENT.

Power of court. R. § 3536.

SEC. 3194. The supreme court may reverse or affirm the judgment or order below, or the part of either appealed from, or may render such judgment or order as the inferior court or judge should have done, according as it may think it proper.

Judgment against sureties on stay bond. R. § 3537.

SEC. 3195. The supreme court, where it affirms the judgment, shall also, if the appellee moves therefor, render judgment against the appellant and his sureties on 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.

Damages for delay. R. § 3538.

SEC. 3196. Upon the affirmance of any judgment or order for the payment of money, the collection of which in whole or part has been superseded by bond as above contemplated, the court

shall award to the appellee damages upon the amount superseded; and, if satisfied by the record that the appeal was taken for delay only, must award such sum as damages, not exceeding fifteen per cent. thereon, as shall effectually tend to prevent the taking of appeals for delay only.

Cause remanded. R. § 3539.

SEC. 3197. If the supreme court affirm the judgment or order, it may send the cause to the court below 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, as the party may require.

Restitution of property. R. § 3540.

SEC. 3198. 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 or order, either the supreme court or the court below may direct execution or writ of restitution to issue for the purpose of restoring to such appellant his property or the value thereof.

Title not affected. R. § 3541.

SEC. 3199. Property acquired by a purchaser in good faith under a judgment subsequently reversed, shall not be affected by by such reversal.

Power to imprison. R. § 3542.

SEC. 3200. The supreme court shall have power to enforce its mandates upon inferior courts and officers by fine and imprisonment, which imprisonment may be continued until obeyed.

Rehearing. R. § 3543.

SEC. 3201. If a petition for rehearing be filed, the same shall suspend the decision, if the court, on its presentation, or one of the judges, if in vacation, shall so order, in either of which case such decision shall be suspended until the next term.

Same. R § 3544.

SEC. 3202. The petition for re-hearing shall be the argument of the applicant therefor, and if the court think that such argument requires a reply, it shall so indicate to the other party, and he may make reply within such time as said court shall allow, and with a view to a re-hearing the court may extend the suspension of proceeding yet farther, if need be.

GENERAL PROVISIONS.

Clerk to docket and arrange causes: notice of. R. § 3535.

SEC. 3203. The clerk shall docket the causes as the same are filed in his office, and shall arrange and set a proper number for trial for each day of the term, placing together those from the same judicial district, and shall cause notice of the manner he has set such causes to be published and distributed in such manner as the court may direct.

Hear causes: argument. R. § 3548.

SEC. 3204. The court shall hear all the causes docketed, when not continued by consent, or for cause shown by the party, and the party may be heard orally or otherwise, in his discretion.

Opinion filed. R. § 2550.

SEC. 3205. No cause is decided until the opinion in writing is filed with the clerk.

What done in court below on reversal. R. § 3551.

SEC. 3206. If remanded to the inferior court to be carried into effect, such decision and the order of the court thereon, being certified thereto and entered on the records of the court, shall have the same force and effect as if made and entered during the session of the court in that district.

SEC. 3207. An assignment of error need follow no stated form, but must, in a way as specific as the case will allow, point out the very error objected to. Among several points in a demurrer, or in a motion, or instructions, or rulings in an exception, it must designate which is relied on as an error, and the court will only regard errors which are assigned with the required exactness; but the court must decide on each error assigned. Assignment of errors: form of R. § 3546.

SEC. 3208. All motions must be entered in the motion book, and shall stand over till the next morning after the morning on which entered, and till after having been publicly called by the court, unless the parties otherwise agree, and the adverse party shall be deemed to have notice of such motion. Motion book. R. § 3547.

SEC. 3209. Where a view of an original paper in the action may be important to a correct decision of the appeal, the court may order the clerk of the court below to transmit the same, which he shall do in some safe mode to the clerk of the supreme court, who shall hold the same subject to the control of the court. When original paper sent up. R. § 3525.

SEC. 3210. The appellant may be required to give security for costs under the same circumstances as those in which plaintiffs in civil actions in the inferior court may be so required. Security for costs. R. § 3526.

SEC. 3211. The death of one or all of the parties shall not cause the proceedings to abate, but the names of the proper persons shall be substituted, as is provided in such cases in the district and circuit court, and the case may proceed. The court may also, in such case, grant a continuance when such a course will be calculated to promote the ends of justice. Does not abate by death. R. § 3530.

SEC. 3212. Where appellant has no right, or no further right to prosecute the appeal, the appellee may move to dismiss the appeal, and if the grounds of the motion do not appear in the record, or by a writing purporting to have been signed by the appellant and filed, they must be verified by affidavit. Right to appeal may be lost. R. § 3521.

SEC. 3213. The appellee may, by answer filed and verified by himself, agent, or attorney, plead any facts which render the taking of the appeal improper or destroy the appellant's right of further prosecuting the same, to which answer the appellant may file a reply, likewise verified by himself, his agent, or attorney, and the questions of law or fact therein shall be determined by the court. Proceedings in such case. R. § 3522.

SEC. 3214. The service of all notices of appeal, or in any way growing out of such rights or connected therewith, and all notices in the supreme court, shall be in the way provided for the services of like notices in the circuit or district court, and they may be served by the same person and returned in the same manner, and the original notice of the appeal must be returned immediately after service to the office of the clerk of the district or circuit court where the suit is pending. Notices: how served. R. § 3523.

SEC. 3215. Executions issued from the supreme court shall be the same as those from the district or circuit court and attended with the same consequences, and shall be returnable in the same time. Executions: form of. R. § 3552.

CHAPTER 3.

OF CERTIORARI.

When writ may issue. R. § 3487.

SECTION 3216. The writ of certiorari may be granted whenever specially authorized by law, and especially in all cases where an inferior tribunal, board, or officer exercising judicial functions is alleged to have exceeded his proper jurisdiction, or is otherwise acting illegally, when in the judgment of the superior court there is no other plain, speedy, and adequate remedy.

By whom granted. R. § 3488.

SEC. 3217. The writ may be granted by the district or circuit court, or, in vacation, by a judge or clerk thereof, but if to be directed to either of such courts or judges, then by the supreme court, or, in vacation, by a judge thereof, and shall command the defendant therein to certify fully to the court from which the same issues, at a specified time and place, a transcript of the records and proceedings, as well as the facts in the case, describing or referring to them, or any of them, with convenient certainty, and also to have then and there the writ.

When stay of proceedings is asked. R. § 3489.

SEC. 3218. If a stay of proceedings is sought, the writ can only be issued by a court or judge, who may require a bond and fix the penalty and conditions thereof; the sureties thereon may be approved by the judge granting, or clerk who issues the writ.

Petition. R. § 3490.

SEC. 3219. The petition for the writ must state facts constituting a case wherein the writ may issue, and must be verified by affidavit, and the supreme court or judge issuing the writ, may require notice of the application to be given the adverse party, or may grant the writ without notice. If a stay of proceedings is sought, the writ can only be granted on reasonable notice of the time, place, and court or judge before whom the application will be made.

Service and return. R. § 3491.

SEC. 3220. 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.

Same. R. § 3492.

SEC. 3221. If the return of the writ be defective, the court may order a further return to be made, and may compel obedience to the writ and to such further order, by attachment if necessary.

Trial: judgment. R. § 3493.

SEC. 3222. When full return has been made, the court must proceed to hear the parties, or such of them as may attend for that purpose, on the record proceedings and facts as certified, and such other testimony, oral or written, as either party may introduce pertinent to the issue, and may give judgment affirming or annulling the proceedings in whole or in part, or, in its discretion, correcting the same and prescribing the manner in which the party or either of them shall further proceed.

How prosecuted: appeal. R. § 3494.

SEC. 3223. The action shall be prosecuted by ordinary proceedings so far as applicable, and from the decision of the district or circuit court an appeal lies as in other ordinary actions, and the record shall be prepared in the same manner.

Limitation on right.

SEC. 3224. No writ shall be granted after twelve months have elapsed from the time the inferior court, tribunal, board, or officer has, as alleged, exceeded his proper jurisdiction, or has otherwise acted illegally.

TITLE XX.

OF PROCEDURE IN PARTICULAR CASES.

CHAPTER 1.

OF ACTIONS FOR THE RECOVERY OF SPECIFIC PERSONAL PROPERTY.

Where brought: statements and verification of petition. R. § 3558.

SECTION 3225. An action for the recovery of specific personal property may be brought in any county in which the property or some part thereof is situated; the petition must be verified and must contain:

1. A particular description of the property claimed;
2. Its actual value, and where there are several articles, the actual value of each;
3. The facts constituting the plaintiff's right to the present possession thereof, and the extent of his interest in the property, whether it be full or qualified ownership;
4. That it was neither taken on the order or judgment of a court against him, nor under an execution or attachment against him, or against the property. But if it was taken by either of these modes, then it must state the facts constituting an exemption from seizure by such process;
5. The facts constituting the alleged cause of detention thereof, according to his best belief;
6. The amount of damages which the affiant believes the plaintiff ought to recover for the detention thereof.

No counter claim R. § 4175.

SEC. 3226. The action shall be by ordinary proceedings, but there shall be no joinder of any cause of action not of the same kind, nor shall there be allowed any counter claim.

When process may issue on Sunday. C. 14, 16 G. A.

SEC. 3227. If the plaintiff allege in his petition that he will lose his property unless process issue on Sunday, the order may be issued and served on that day.

New parties. R. § 3561.

SEC. 3228. If a third person claim the property or any part thereof, the plaintiff may amend and bring him in as a co-defendant, or the defendant may obtain his substitution by the proper mode, or the claimant may himself intervene by the process of intervenor.

BOND—ORDER.

When bond required. R. § 3564.

SEC. 3229. When the plaintiff desires the immediate delivery of the property, he shall 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. The bond shall be filed with the clerk of the court, and is for the use of any person injured by the proceeding, and a judgment for money rendered against the plaintiff shall go against the sureties on the bond.

Clerk to issue order. R. § 3555. C. 128, 14 G. A.

SEC. 3230. The clerk shall thereupon issue an order, under his hand and seal of the court, directed to the sheriff, requiring him to take the property therein described and deliver the same to the plaintiff. And where the petition shows that the property has been wrongfully removed into another county from the one in which the action is commenced, the order may issue from the county whence the property was so wrongfully taken, and may be served in any county where the property may be found in the same manner and with like effect as in the county where suit is brought.

Order follow property. R. § 3556.

SEC. 3231. When any of the property is removed to another county after the commencement of the action, counterparts of the proper order may issue on the demand of the plaintiff to such other county, and may be executed upon such goods found in such county, and farther orders and the necessary counterparts thereof may issue as often as may be necessary.

ORDER—EXECUTION OF.

Execution of: duty of officer. R. § 3557.

SEC. 3232. The sheriff must forthwith execute the order by taking possession of the property therein mentioned, if it is found in the possession of the defendant, or of his agent, or of any other person who obtained possession thereof from the defendant, directly or indirectly, after the order was placed in the sheriff's hands, for which purpose he may break open any dwelling house or other enclosure, having first demanded entrance and exhibited his authority, if required.

Defendant examined on oath to discover property. R. § 3558.

SEC. 3233. When it appears by affidavit that the property claimed has been disposed of, or concealed so that the order cannot be executed, the court or judge may compel the attendance of the defendant, and examine him on oath as to the situation of the property, and punish a wilful obstruction or hindrance, or disobedience of the order of the court in this respect as in case of contempt.

Property delivered to plaintiff. R. § 3560.

SEC. 3234. The sheriff having taken the property, or any part thereof, shall forthwith deliver the same to the plaintiff.

Defendant may prevent delivery of property to plaintiff.

SEC. 3235. At any time before the actual delivery to the plaintiff, the defendant may stay all proceedings under the aforesaid order and retain the property in his own possession, by executing a bond to the plaintiff, with sureties to be approved by the clerk or sheriff, conditioned that he will appear in and defend the action, and deliver the property to the plaintiff if he recover judgment therefor in as good a condition as it was when the action was commenced, and that he will also pay all costs and damages that may be adjudged against him for the taking or detention of the property.

SEC. 3236. But when the property is so retained by the defendant, he shall permit the sheriff and plaintiff to inspect the same; and if the plaintiff so request, the sheriff shall cause the property to be examined and appraised by two sworn appraisers, chosen by the parties to the action, or, in their default, by the sheriff himself, in the manner provided for other cases of appraisement; and he shall return their appraisement with the execution. Must let plaintiff inspect property: appraisement of.

SEC. 3237. The sheriff must return the order on or before the first day of the trial term, and shall state fully what he has done thereunder. If he has taken any property he shall describe particularly the same. And if he has taken a bond from the defendant as provided in the preceding section, he shall file the same with his return. Return of order. R. § 3559.

JUDGMENT AND EXECUTION.

SEC. 3238. The jury must assess the value of the property, as also the damages for taking or detention, whenever by their verdict there will be a judgment for the recovery or the return of the property, and when required so to do by either party, must find the value of each article thereof. Jury to assess value and damages. R. § 3082.

SEC. 3239. The judgment shall determine which party is entitled to the possession of the property, and shall designate his right therein, and if such party have not the possession thereof, shall also determine the value of the right of such party, which right shall be absolute as to an adverse party having no right in such property, and shall also award such damages to either party as he may be entitled to for illegal detention of such property. Form of judgment. R. §§ 3562, 3567.

SEC. 3240. The execution shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the sheriff to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment, out of the property of the party against whom it was rendered subject to execution, and the value of property for which judgment was recovered to be specified therein, if a delivery thereof cannot be had, and shall in that respect be deemed an execution against property. Execution: form of. R. § 3253.

SEC. 3241. If the party found to be entitled to the property, be not already in possession thereof by delivery under the provisions of this chapter, or otherwise, he may, at his option, have execution for the specific delivery of the property, or for the value thereof as determined by the jury. And if any article of the property cannot be obtained on execution, he may take the remainder with the value of the missing articles. Plaintiff's option as to what he will take. R. §§ 3563, 3568.

SEC. 3242. When property for which a bond has been given, as hereinbefore provided, is not forthcoming to answer the judgment, and the party entitled thereto elects to take judgment for the value thereof, such judgment may be entered against the principal and sureties in the bond. Judgment on bond.

SEC. 3243. When it appears by the return of the officer, or by the affidavit of the plaintiff, that any specific property which has been adjudged to belong to one party, has been concealed or removed by the other, the court or a judge may require him to When property has been concealed. R. § 3564.

attend and be examined on oath respecting such matter, and may enforce its order in this respect as in the case of contempt.

Exemption. R. § 4176.

SEC. 3244. A money judgment taken under the provisions of this chapter in lieu of property exempt from execution, shall also be, to the same extent, exempt from execution, and from all set-off or diminution either by the adverse party or by any other person, and such exemption may, at the option of the party, be stated in the judgment.

CHAPTER 2.

OF ACTIONS FOR THE RECOVERY OF REAL PROPERTY.

By ordinary proceedings: counter claim. R. § 4177.

SECTION 3245. Actions for the recovery of real property shall be by ordinary proceedings, and there shall be no joinder and no counter claim therein, except of like proceedings and as provided in this chapter.

Who may maintain: against whom. R. § 3589.

SEC. 3246. Any person having a valid subsisting interest in real property, and a right to the immediate possession thereof, may recover the same by action against any person acting as owner, landlord, or tenant of the property claimed.

Title. R. § 3591.

SEC. 3247. The plaintiff must recover on the strength of his own title.

Joint or tenant in common. R. § 3605.

SEC. 3248. In an action 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.

Service on agent when. R. § 3572.

SEC. 3249. When the defendant is a non-resident, having an agent of record 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.

PETITION—ANSWER—TRIAL.

Form of petition. R. § 3570.

SEC. 3250. The petition may state generally that the plaintiff is entitled to the possession of the premises, particularly describing them, also the quantity of his estate and the extent of his interest therein, and that the defendant unlawfully keeps him out of possession, and the damages, if any, which he claims for withholding the property; but if he claims other damages than the rents and profits, he shall state the facts constituting the cause thereof.

Abstract of title to be attached.

SEC. 3251. The plaintiff shall attach to his petition, and the defendant to his answer, if he claims title, an abstract of the title relied on, showing from and through whom such title was obtained, together with a statement showing the page and book where the same appears of record. If such title, or any portion thereof, is not in writing, or does not appear of record, such fact shall be stated in the abstract, and either party shall furnish the adverse party with a copy of any unrecorded conveyance, or furnish a

satisfactory reason for not so doing within a reasonable time after demand therefor. No written evidence of title shall be introduced on the trial, unless it has been sufficiently referred to in such abstract, which, on motion, may be made more specific, and may be amended as other proceedings.

Answer. R. § 3573.

SEC. 3252. The answer of the defendant, and of each if more than one, must set forth what part of the land he claims, and what interest he claims therein generally, and if as mere tenant, the name and residence of his landlord.

Landlord substituted for defendant. R. §§ 3571, 3589.

SEC. 3253. Whenever it appears that the defendant is only a tenant, the landlord may be substituted by the service upon him of original notice, or by his voluntary appearance, and the judgment shall be conclusive against him.

Possession. R. § 3575.

SEC. 3254. Where the defendant makes defense, it is not necessary to prove him in possession of the premises.

Alienation: effect of. R. § 3578.

SEC. 3255. An action for the recovery of real property against a person in possession, cannot be prejudiced by any alienation made by such person after the commencement of the action.

Power to enter and survey land. R. § 3592.

SEC. 3256. 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 land in controversy and make survey and admeasurement thereof, for the purposes of the action.

Same. R. § 3593.

SEC. 3257. 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.

Verdict: form of. R. § 3594.

SEC. 3258. The verdict may specify the extent and quantity of the plaintiff's estate, and the premises to which he is entitled, with reasonable certainty, by metes and bounds and other sufficient description according to the facts as proved.

General verdict. R. § 3595.

SEC. 3259. A general verdict in favor of the plaintiff without such specifications, entitles the plaintiff to the quantity of interest or estate in the premises as set forth and described in the petition.

Judgment for damages only. R. § 3579.

SEC. 3260. If the interest of the plaintiff expire before the time in which he could be put in possesion, be can obtain a judgment for damages only.

Limitation of damages. R. § 3576.

SEC. 3261. The plaintiff cannot recover for the use and occupation of the premises for more than six years prior to the commencement of the action.

Improvements set off against damages. R. § 3596.

SEC. 3262. When the plaintiff 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 the damages, unless he prefers to avail himself of the law for the benefit of occupying claimants.

Wanton aggression R. § 3597.

SEC. 3263. In case of wanton aggression on the part of the defendant, the jury may award exemplary damages.

Tenant: extent of liability. R. § 3588.

SEC. 3264. A tenant in possession in good faith, under a lease or license from another, is not liable beyond the rent in arrear at the time of suit brought for the recovery of land, and that which may afterward accrue during the continuance of his possession.

Where crop is sowed, planted or growing: finding R. § 3599.

SEC. 3265. If the defendant aver that he has a crop sowed, planted, or growing on the premises, the jury finding for the plaintiff, and also finding that fact, shall further find the value of the premises from the date of the trial until the first day of

January next succeeding, and no execution for possession shall be issued until that time, if the defendant executes, with surety to be approved by the clerk, a bond in double such sum to the plaintiff, conditioned to pay at said date the sum so assessed. This bond shall be part of the record, and shall have the force and effect of a judgment, and if not paid at maturity, the clerk, on the application of the plaintiff, shall issue execution thereon against all the obligors.

Writ of possession. R. § 3577.

SEC. 3266. When the plaintiff shows himself entitled to the immediate possession of the premises, judgment shall be entered and a writ of possession issued accordingly.

Judgment for rent accruing after judgment and before possession. R. § 3600

SEC. 3267. The plaintiff may have judgment for the rent of the possession which accrues after judgment and before delivery of possession, by motion in the court in which the judgment was rendered, ten days' notice thereof in writing being given, unless judgment is stayed by appeal and bond given to suspend the judgment, in which case the motion may be made after the affirmance thereof.

NEW TRIAL.

When granted: grounds of. C. 167, § 31, 13 G. A.

SEC. 3268. In any of the cases provided for by this chapter, the court, in its discretion, may grant a new trial on the application of any party thereto, or those claiming under a party made at any time within one year after the former trial, although the grounds required for a new trial in other cases are not shown; but only one such new trial shall be granted.

Notice of application to adverse party. R. § 3585.

SEC. 3269. If the application for a new trial is made after the close of the term at which the judgment was rendered, the party obtaining a new trial shall give the opposite party ten days' notice thereof before the term at which the action stands for trial.

Not to affect rights of other parties. R. § 3586.

SEC. 3270. 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 rights of third persons acquired in good faith for a valuable consideration since the former trial.

Damages. R. § 3587.

SEC. 3271. But the party who, on such new trial, shows himself entitled to lands which have thus passed to a purchaser in good faith, may recover the proper amount of damages against the other party, either in the same or a subsequent action.

Writ of restitution. R. § 3588.

SEC. 3272. 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.

QUIETING TITLE.

Who may bring action. R. § 3601.

SEC. 3273. An action to determine and quiet the title of real property may be brought by any one having, or claiming an interest therein, whether in or out of possession of the same, against any person claiming title thereto though not in possession.

Petition: form of. R. § 3602.

SEC. 3274. The plaintiff must file his petition under oath, setting forth the nature and extent of his estate, and describing the premises as accurately as may be, and averring that he is

credibly informed and believes that the defendant makes some claim adverse to the estate of the petitioner, and praying for the establishment of the plaintiff's estate against such adverse claims, and that the defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to the plaintiff. The notice in such action shall accurately describe the property, and, in general terms, the nature and extent of plaintiff's claim, and shall be served as in other cases.

If defendant disclaim title. C. 167. § 33, 13 G. A.

SEC. 3275. If the defendant shall appear and disclaim all right and title adverse to the plaintiff, he shall recover his costs. In all other cases the costs shall be in the discretion of the court.

To be prosecuted by equitable proceedings. R. § 3604.

SEC. 3276. In all other respects, the action contemplated in the three preceding sections shall be conducted as other actions by equitable proceedings, with the modifications prescribed by this chapter so far as the same may be applicable.

CHAPTER 3.

OF PARTITION.

By equitable proceedings. R. § 4178.

SECTION 3277. The action for partition shall be by equitable proceedings, and no joinder or counter claim of any other kind shall be allowed therein, except as provided by this chapter.

PLEADINGS—PARTIES—TRIAL.

Petition: form of. R. § 3606, 3607.

SEC. 3278. The petition must describe the property and respective interests of the several owners thereof, if known. If any interests, or the owners of any interests are unknown, contingent, or doubtful, these facts must be set forth in the petition with reasonable certainty.

Abstract of title to be attached to pleading.

SEC. 3279. The plaintiff shall attach to his petition, and the defendant to his answer, if he claims title, an abstract of the title relied on, showing from and through whom such title was obtained, together with a statement showing the page on which the same appears of record. If such title, or any portion thereof, is not in writing, or does not appear of record, such fact shall be stated in the abstract, and either party shall furnish the adverse party with a copy of any unrecorded conveyance, or furnish a satisfactory reason for not so doing within a reasonable time after demand therefor. No written evidence of title shall be introduced on the trial, unless it has been sufficiently referred to in such abstract, which, on motion, may be made more specific, and may be amended as other pleadings.

Contingent interests. R. § 3647, 3648.

SEC. 3280. 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. The ascertained share of any absent owner shall be retained, or the proceeds invested for his benefit under like order.

Lien creditors. R. § 3608.

SEC. 3281. Creditors having a specific or general lien upon the entire property may be made parties at the option of the plaintiff or defendant.

Answer: statements of. R. § 3610.

SEC. 3282. 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.

Issue trial. R. § 3612.

SEC. 3283. Issues may thereupon be joined and tried between any of the contesting parties, the question of cost on such issues being regulated between the contestants agreeably to the principles applicable to other cases.

ENCUMBRANCES.

Reference to ascertain encumbrances. R. §§ 3623, 3624.

SEC. 3284. Before making any order of sale or partition, the court may refer to a clerk, or a referee, to report the nature and amount of general encumbrances by mortgage, judgment, or otherwise, if any there be upon any portion of the property.

Proof of. R. § 3625.

SEC. 3285. 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 encumbrances.

Issue as to encumbrance: how tried. R. §§ 3628, 3629.

SEC. 3286. If any question arise as to the validity or amount of an encumbrance, or the payment of the same, the court may direct an issue to be made up between the encumbrancer and an owner, which shall be decisive of their respective rights; and upon a sale it may order the money to be retained or invested to await final action in relation to its disposition, and notice thereof to be forthwith given to the encumbrancer unless he has already been made a party.

Undivided interests: lien on. R. § 3609.

SEC. 3287. If the lien is upon one or more undivided interests, the holder thereof shall be made a party, and the lien shall, after partition or sale, remain a charge upon the particular interests of the proceeds thereof, but the amount of costs is a charge upon those interests, paramount to all other liens.

Not to delay distribution. R. § 3631.

SEC. 3288. The proceedings in relation to encumbrances shall not delay the distribution of the proceeds of other shares in respect to which no such difficulties exist.

Judgment of confirmation. R. § 3615.

SEC. 3289. After all the shares and interests of the parties have been settled in any of the methods aforesaid, judgment shall be rendered confirming those shares and interests, and directing partition to be made accordingly.

PARTITION.

Referees appointed to. R. §§ 3616, 3618, 3619.

SEC. 3290. Upon entering such judgment, the court shall appoint referees to make partition into the requisite number of shares, or if it is apparent, or the parties so agree, that the property cannot be equitably divided into the requisite number of shares, a sale may be ordered.

SEC. 3291. 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. Shares marked out. R. § 3637.

SEC. 3292. 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, and must allot the shares to their several owners. Report of referees. R. § 3638.

SEC. 3293. 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. Special allotments. R. § 3617.

SEC. 3294. 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 hereinafter provided. Partition of part. R. § 3640.

SEC. 3295. On good cause shown, the report may be set aside and the matter again referred to the same or other referees. Report set aside. R. § 3641.

SEC. 3296. Upon the report of the referees being confirmed, judgment thereon shall be rendered that the partition be firm and effectual forever. Judgment. R. § 3642.

SEC. 3297. 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. Costs. R. § 3645.

SALE.

SEC. 3298. Before proceeding to sell, the referees shall give a bond, in a penalty to be fixed by the court, payable to the parties who are entitled to the proceeds, with sureties to be approved by the clerk, conditioned for the faithful discharge of their duties. At any time thereafter, the court may require farther and additional security, and upon failure of the referees to comply with such order, they may be removed by the court and others appointed; and the court may at any time, for satisfactory reasons, remove such referees and appoint others. Referees to give bond before selling. R. § 3620.

SEC. 3299. 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. Notice. R. § 3621.

SEC. 3300. 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. Report. R. § 3622.

SEC. 3301. If the sale 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 sale. 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. Conveyance. R. § 3633.

SEC. 3302. 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 Validity of. R. § 3634.

at the time who were made parties to the proceedings in the mode pointed out by law.

When parties are married. R § 3635.

SEC. 3303. If the owner of any share thus sold has a husband or wife living, and if such husband and wife do not agree as 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.

Sales disapproved. R. § 3636.

SEC. 3304. If the sales are disapproved, the money paid and the securities given must be returned to the persons respectively entitled thereto.

Security to refund money. R. § 3632.

SEC. 3305. 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.

Life estates. R. § 3630.

SEC. 3306. If a tenant for life or years be entitled as such to a part of the proceeds of sale, 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 encumbered property to be invested, and the proceeds to be paid to the encumbrancer during the lifetime of the encumbrance.

CHAPTER 4.

OF THE FORECLOSURE OF MORTGAGES.

Of personal property: how foreclosed. R. § 3649.

SECTION 3307. Any mortgage of personal property 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, or may be foreclosed by action in the proper court.

Notice. R. § 3650.

SEC. 3308. The notice must contain a full description of the property mortgaged, together with the time, place, and terms of sale.

Service: on whom. R § 3651.

SEC. 3309. Such notice must be served on the mortgagor, and upon all purchasers from him subsequent to the execution of the mortgage, and all persons having recorded liens upon the same property which are junior to the mortgage, or they will not be bound by the proceedings.

Return. R. § 3652.

SEC. 3310. The service and return must be made in the same manner as in the 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.

Notice of sale. R. § 3653.

SEC. 3311. 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.

Title of purchaser. R. § 3654.

SEC. 3312. The purchaser shall take all the title and interest on which the mortgage operated.

Bill of sale. R. § 3655.

SEC. 3313. The sheriff conducting the sale shall execute to the purchaser a bill of sale of the personal property, which shall be effectual to carry the whole title and interest purchased.

Evidence of service perpetuated. R. § 3656.

SEC. 3314. 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.

Same. R. § 3657.

SEC. 3315. Such affidavits shall be attached to the bill of sale, and shall then be receivable in evidence to prove the facts they state.

Validity of sales. R. § 3658.

SEC. 3316. Sales made in accordance with the above requirements, are valid in the hands of a purchaser in good faith, whatever may be the equities between the mortgagor and mortgagee.

Contest: how effected. R. § 3659.

SEC. 3317. 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 or circuit court, for which purpose an injunction may issue if necessary.

Deeds of trust. R. § 3673.

SEC. 3318. Deeds of trust of real or personal property may be executed as securities for the performance of contracts, and shall be considered as, and foreclosed like mortgages.

OF REAL PROPERTY.

By equitable proceedings. R. § § 3660, 3673, 4179.

SEC. 3319. No deed of trust, or mortgage of real estate, with or without power of sale, made since the first day of April, A. D. 1861, shall be foreclosed in any other manner than by action in court by equitable proceedings.

Separate suits on note and to foreclose. R. § 3663.

SEC. 3320. If separate suits are brought in the same county on the bond or note, and on the mortgage given to secure it, the plaintiff must elect which to prosecute. The other will be continued at his cost.

Judgment: sale and redemption. R. § 3661.

SEC. 3321. When a mortgage or deed of trust is foreclosed by equitable proceedings, the court shall render judgment for the entire amount found to be due, and must direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the same, with interests and costs. A special execution shall issue accordingly, and the sale thereunder shall be subject to redemption as in cases of sale under general execution.

General execution: when. R. § 3662.

SEC. 3322. 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.

Junior encumbrances entitled to assignment. R. § 3665.

SEC. 3323. At any time prior to the sale, a person having a lien on the property which is junior to the mortgage, will be entitled to an assignment of all the interest of the holder of the mortgage, by paying him the amount secured, with interest and costs, together with the amount of any other liens of the same holder which are paramount to his. He may then proceed with the foreclosure or discontinue it at his option.

Overplus. R. § 3666.

SEC. 3324. If there is an overplus remaining after satisfying the mortgage and costs, and if there is no other lien upon the property, such overplus shall be paid to the mortgagor.

In case there are other liens. R. § 3667.

SEC. 3325. If there are any other liens on the property sold, or other payments secured by the same mortgage, they shall be paid off in their order. And if the money secured by any such lien is not yet due, a suitable rebate of interest must be made by the holder thereof, or his lien on such property will be postponed to those of a junior date, and if there are none such, the balance will be paid to the mortgagor.

How much sold. R. § 3668.

SEC. 3326. As far as practicable, the property sold must be only sufficient to satisfy the mortgage foreclosed.

Satisfaction to be acknowledged. R. § 3670.

SEC. 3327. 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, or by execution of an instrument in writing, referring to the mortgage, and duly acknowledged and recorded. If he fails to do so within sixty days after being requested, he shall forfeit to the mortgagor the sum of twenty five dollars.

Same, duty of clerk. C. 67, 14 G. A.

SEC. 3328. Whenever a judgment of foreclosure shall be entered in any court, the clerk thereof shall make upon the margin of the record of the mortgage foreclosed, in the recorder's office, a minute showing that said mortgage was foreclosed, in what court foreclosed, and giving the date of the decree; and when such decree shall be fully paid off and satisfied upon the judgment docket of such court, the clerk of said court shall enter satisfaction in full upon the margin of such mortgage, and he shall be allowed as compensation for such service the sum of twenty-five cents, to be taxed as a part of the costs in the case.

Bond given by vendors treated as mortgages. R. § 3671.

SEC. 3329. In cases where the vendor of real estate has given a bond or other writing to convey the same on payment of the purchase money, and such money or any part thereof remains unpaid after the day fixed for payment, whether time is or is not of the essence of the contract, such vendor 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.

Parties in such case. R. § 3672.

SEC. 3330. 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.

CHAPTER 5.

OF ACTIONS FOR NUISANCE, WASTE, AND TRESPASS.

Nuisance: definition of. R. § § 3713, 3714, 3715.

SECTION 3331. 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 a civil action by ordinary proceedings may be brought thereon by any person injured

thereby; in which action the nuisance may be enjoined or abated, and damages also recovered therefor.

Waste by guardian or tenants: damages. R. § 3716.

SEC. 3332. If a guardian, tenant for life or years, joint tenant 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.

Forfeiture and eviction. R. § 3717.

SEC. 3333. 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.

Who deemed to have committed. R. § 3718.

SEC. 3334. 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.

Treble damages: who liable for. R. § 3719.

SEC. 3335. For wilful trespass 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 of the suit of any person entitled to protect or enjoy the property aforesaid.

Actual value: when assessed on highway. R. § 3720.

SEC. 3336. 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.

Remainder and reversion. R. § 3721.

SEC. 3337. 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.

Heir. R. § 3722.

SEC. 3338. 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.

Purchaser under execution. R. § 3723.

SEC. 3339. 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.

Suitable repairs. R. § 3724.

SEC. 3340. 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.

Same. R. § 3725.

SEC. 3341. But if for this purpose he employs timber vastly superior to that required for the occasion, he will be deemed to have committed waste and will be liable accordingly.

Settlers on public lands. R. § 3726.

SEC. 3342. 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 materials necessary and proper to enable him to do so, provided 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.

Certificate for land sold for taxes. C. 154, § 1, 9 G. A. C. 93, 10 G. A.

SEC. 3343. The owner of a treasurer's certificate of purchase of land sold for taxes, may recover treble damages of any person committing waste or trespass thereon as hereinbefore provided.

Disposition of money. C. 174, § 2, 9 G. A.

SEC. 3344. All moneys recovered in an action brought under the preceding section, shall be paid by the officer collecting the same, to the auditor of the county in which such lands are situated, and the same shall be held by such auditor, and an entry thereof made by him in a book kept for that purpose, until such lands are redeemed or a treasurer's deed therefor shall have been executed to the holder of said certificate. If redemption be made, the money shall be paid to the owner of the land, and if not redeemed, to the person to whom such deed is executed.

CHAPTER 6.

OF ACTIONS TO TEST OFFICIAL AND CORPORATE RIGHTS.

Where state is plaintiff: for what causes brought. R. § § 3732, 3757.

SECTION 3345. A civil action by ordinary proceedings may be brought in the name of the state as plaintiff in the following cases:

1. Against any person unlawfully holding or exercising any public office or franchise within this state, or any office in any corporation created by this state;

2. Or against any public officer who has done or suffered any act which works a forfeiture of his office;

3. Or against any person acting as a corporation within this state without being authorized by law;

4. Or against any corporation doing or omitting acts, which amount to a forfeiture of their rights and privileges as a corporation, or exercising powers not conferred by law;

5. Or against any persons claiming under any letters patent, granted by the proper authorities of this state, for the purpose of annulling or vacating the same, as having been obtained by fraud, or through mistake or ignorance of a material fact, or when the defendants have done or omitted an act in violation of the terms or conditions on which the letters were granted, or have by any other means forfeited the interest acquired under the same.

Joinder: counter claim. R. § 4180.

SEC. 3346. To such action there shall be no joinder of any other cause of action, nor any counter claim.

When and by whom commenced. R. § § 3733, 3734.

SEC. 3347. Such action may be commenced by the district attorney at his discretion, and must be so commenced when directed by the governor, the general assembly, or a court of record.

By private person. R. § 3735.

SEC. 3348. If the district attorney, on demand, neglect or refuse to commence the same, any citizen of the state having an interest in the question, may apply to the court in which the action is to be commenced, or to the judge thereof, for leave to do so, and, upon obtaining such leave may, prosecute the action to final judgment in other respects as provided.

Petition: statements of. R. § § 3736, 3737, 3738.

SEC. 3349. The petition shall contain a plain statement of the facts which constitute the grounds of the proceeding, and, with the notice, and all the subsequent pleadings and proceedings

shall conform to the rule given for procedure in civil actions in title seventeen of this code, except so far as the same are modified by this chapter.

Private individual: costs. R. § 3746.

SEC. 3350. When such action is brought upon the relation of a private individual, that fact shall be stated in the petition, and the order allowing him to prosecute may require that he shall be responsible for costs in case they are not adjudged against the defendant. In other cases the payment of costs shall be regulated by the same rule as in criminal actions.

When defendant holds an office. R. § 3739.

SEC. 3351. When the defendant is holding an office to which another is claiming the right, the petition shall set forth the name of such claimant, and the trial must, if practicable, determine the rights of the contesting parties.

Same. R. § 3743.

SEC. 3352. When several persons claim to be entitled to the same office or franchise, a petition may be filed against all or any portion thereof, in order to try their respective rights thereto, in the manner provided by this chapter.

JUDGMENT.

Effect of. R. § 3740.

SEC. 3353. 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.

Books and papers. R. § 3741.

SEC. 3354. 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.

Execution for damages. R. § 3742.

SEC. 3355. 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.

Judgment of ouster from corporation. R. § 3744.

SEC. 3356. 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 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.

Same. R. § 3745.

SEC. 3357. 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.

Pretended corporation: costs. R. § 3747.

SEC. 3358. In case judgment is rendered against a pretended but not real corporation, the cost may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

Action against officers. R. § 3755.

SEC. 3359. When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby.

TRUSTEES APPOINTED.

When corporation is dissolved R. § 3748.

SEC. 3360. 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.

Bond. R. § 3749.

SEC. 3361. Said trustees shall enter into a bond in such a penalty and with such security as the court approves, conditioned for the faithful discharge of their trust.

Action on. R. § 3750.

SEC. 3362. 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.

Duty of trustees. R. § 3751.

SEC. 3363. 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.

Books delivered to. R. § 3752.

SEC. 3364. The court shall, upon 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.

Inventory. R. § 3753.

SEC. 3365. 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.

Power of. R. § 3754.

SEC. 3366. 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 into their hands.

Penalty for refusing to obey order of court. R. § 3756.

SEC. 3367. Any person who, without good reason, refuses to obey any order of the court, as herein provided, shall be deemed guilty of 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.

CHAPTER 7.

OF ACTIONS ON OFFICIAL SECURITIES, AND FINES AND FORFEITURES.

Official bonds construed. R. § 3728.

SECTION 3368. 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.

Judgment no bar. R. § 3728.

SEC. 3369. 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. 3370. 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. Fines and forfeitures. R. § 3729.

SEC. 3371. 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. Who prosecuted by. R. § 3730.

SEC. 3372. A judgment for a penalty or forfeiture rendered by collusion, does not prevent another prosecution for the same subject matter. Collusion. R. § 3731.

CHAPTER 8.

OF ACTIONS OF MANDAMUS.

SECTION 3373. The action of mandamus is one brought in a court of competent jurisdiction, to obtain an order of such court commanding an inferior tribunal, board, corporation, or person, to do or not to do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station. Where discretion is left to the inferior tribunal or person, the mandamus can only compel it to act, but cannot control such discretion. Definition of. R. §§ 3761, 3763.

SEC. 3374. The order may be issued by the district or circuit court, to any inferior tribunal, or to any corporation, officer, or person; and by the supreme court, to any district or circuit court, if necessary, and also in any other case where it is found necessary for that court to exercise its legitimate power. Issued by whom. R. §§ 3761, 3764.

SEC. 3375. The plaintiff in any action, except those brought for the recovery of specific, real, or personal property, may also as an auxiliary relief have an order of mandamus to compel the performance of a duty established in such action. But if such duty, the performance of which is sought to be compelled, is not one resulting from an office, trust, or station, it must be one for the breach of which a legal right to damages is already complete at the commencement of the action, and must also be a duty of which a court of equity would enforce the performance. Extent of remedy by. R. § 3767.

SEC. 3376. An order of mandamus shall not be issued in any case where there is a plain, speedy, and adequate remedy in the ordinary course of the law, except as herein provided. When not to issue. R. § 3765.

SEC. 3377. The order of mandamus is granted on the petition of any private party aggrieved, without the concurrence of the prosecutor for the state, or on the petition of the state by the district attorney, when the public interest is concerned, and is in the name of such private party or of the state, as the case may be in fact brought. Who entitled to benefit of. R. § 3761.

SEC. 3378. The plaintiff in such action shall state his claim, and shall also state facts sufficient to constitute a cause for such claim, and shall also set forth that the plaintiff, if a private individual, is personally interested therein, and that he sustains and Petition: form of. R. § 3762.

may sustain damage by the non-performance of such duty, and that performance thereof has been demanded by him, and refused or neglected, and shall pray an order of mandamus commanding the defendant to fulfill such duty.

Other pleadings. R. § 3766.

SEC. 3379. The pleadings and other proceedings in any action in which a mandamus is claimed, shall be the same in all respects as nearly as may be, and costs shall be recoverable by either party as in an ordinary action for the recovery of damages.

Injunction may issue: when: joinder. R. § 4181.

SEC. 3380. When the action is brought by a private person, it may be joined with a cause of action for such an injunction as may be obtained by ordinary proceedings, or with the causes of action specified in section three thousand three hundred and seventy-five, but no other joinder, and no counter-claim shall be allowed.

Peremptory. R. § 3768.

SEC. 3381. When the plaintiff recovers judgment, the court may include therein a peremptory order of mandamus, directed to the defendant, commanding him forthwith to perform the duty to be enforced, together with a money judgment for damages and costs, upon which an ordinary execution may issue.

Same: no return but compliance allowed. R. § 3769.

SEC. 3382. The order shall simply command the performance of the duty, shall be directed to the party and not the sheriff, and may be issued in term or vacation, and returnable forthwith, and no return except that of compliance shall be allowed; but time to return it may, upon sufficient grounds, be allowed by the court or judge, either with or without terms.

Acts performed by another at defendant's costs. R. § 3770.

SEC. 3383. The court may, upon application of the plaintiff, besides, or instead of proceeding against the defendant by attachment, direct that the act required to be done, may be done by the plaintiff or some other person appointed by the court at the expense of the defendant, and upon the act being done, the amount of such expense may be ascertained by the court, or by a reference appointed by the court, as the court or judge may order, and the court may render judgment for the amount of such expenses and costs, and enforce payment thereof by execution.

Temporary orders. R. § 3771.

SEC. 3384. During the pendency of the action, the court, or judge in vacation, may make temporary orders for preventing damage or injury to the plaintiff until the case is decided.

Security. R. § 3772.

SEC. 3385. When the state is a party, it may appeal without security.

CHAPTER 9.

OF INJUNCTIONS.

When and for what causes obtained. R. §§ 3773, 3798.

SECTION 3386. An injunction may be obtained as an independent remedy in an action by equitable proceedings, in all cases where such relief would have been granted in equity previous to the adoption of this code; and in all cases of breach of contract or other injury, where the party injured is entitled to maintain, and

has brought an action by ordinary proceedings, he may, in the same cause, pray and have a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right, and he may also, in the same action, include a claim for damages or other redress.

Same.

SEC. 3387. In any of the cases mentioned in the preceding section, the injunction may either be a part of the judgment rendered in the action, or it may, if proper grounds therefor are shown, be granted by order at any stage of the case before judgment, and shall then be known as a temporary injunction.

Same.

SEC. 3388. Where it appears by the petition therefor, which must be supported by affidavit, that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act which would produce great or irreparable injury to the plaintiff; or where, during litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring, or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. It may also be granted in any case where it is specially authorized by statute.

By whom granted.

SEC. 3389. A temporary injunction may be granted:

1. By the court or judge thereof in which the action is pending or is to be brought;

2. By any judge of the district or circuit court of such district;

3. By any judge of the supreme, or a judge of any other district or circuit court.

But in cases where an action is pending, and it is applied for to affect the subject matter of such action, it can only be granted by the court, or judge thereof, in which such action is pending. Nor shall it be granted by any judge mentioned in the second subdivision hereof, unless it satisfactorily appears by affidavit that the court or judge thereof in which the action is brought, can not, for want of time, sickness, or other disability, hear the same, or that the residence of the judge is inconvenient, or that it is for some sufficient reason impracticable to make the application to him. Nor shall it be granted by any judge mentioned in the third subdivision hereof, unless it be made satisfactorily to appear to such judge, by affidavit, that the application therefor can not, for some sufficient reason, be made to either of the courts or judges mentioned in the first or second subdivision of this section.

Notice: when required.

SEC. 3390. An injunction shall not be granted against a defendant who has answered, unless he has had notice of the application.

Same.

SEC. 3391. An injunction to stop the general and ordinary business of a corporation, or the operations of a railway, or of a municipal corporation, or the erection of any building or other work, or the board of supervisors of any county, or to restrain a nuisance, can only be granted upon reasonable notice of the time and place of the application to the party to be enjoined.

Not by judge when overruled by court.

SEC. 3392. No injunction shall be granted by a judge, after the application therefor has been overruled by the court; nor by a court or judge when it has been refused by the court or judge thereof in which the action is brought. A judge refusing an injunction, shall, if requested by either party, give him a certificate thereof.

Motion to dissolve. R. § 3790.

SEC. 3393. The defendant may move to dissolve the injunction, either before or after the filing of the answer.

Issued by clerk. R. § 3776.

SEC. 3394. If the order is made by the court, the clerk shall make an entry thereof in the court record, and issue the order accordingly. If made in vacation, the judge must endorse said order upon the petition.

Bond. R. § 3777.

SEC. 3395. In the cases contemplated in the preceding sections, the order of allowance must direct the injunction to issue only after the filing of a bond in the office of the clerk of the proper court, in a penalty to be therein fixed, with sureties to be approved by such clerk, and conditioned for the payment of all damages which may be adjudged against petitioner by reason of such injunction.

Condition of bond when to restrain judgment. R § 3778.

SEC. 3396. When proceedings in a civil action, or on a judgment or final order, are sought to be enjoined, the suit must be brought in the county and court in which such action is pending, or the judgment or order was obtained. The bond must also in that case be further conditioned to pay such judgment, or comply with such final order if the injunction is not made perpetual, or to pay any judgment that may be ultimately recovered against the party obtaining the injunction on the cause of action enjoined.

Penalty. R. § 3779.

SEC. 3397. 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.

Defendant to show cause. R. § 3781.

SEC. 3398. 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.

VACATION OF.

Application for: to whom made. R. § 3782. C. 112, 14 G. A.

SEC. 3399. If the order 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; or the application may be made to the judge of the court in which the action is pending.

Notice of application. R. § 3783.

SEC. 3400. Such application must be with notice to the plaintiff, and may rest upon the ground that the order was improperly granted, or it may be founded on the answer of defendants and affidavits. In the latter case the plaintiff may fortify his application by counter affidavits, and have reasonable time therefor.

Dissolution. R. § 3781.

SEC. 3401. The judge may thereupon decide the matter at once, unless some good cause for delay is shown. But the vacation of the order shall not prevent the cause from proceeding if anything be left to proceed upon.

SEC. 3402. Only one motion to dissolve or modify an injunction upon the whole case shall be allowed. Only one motion. R. § 3793.

VIOLATION OF.

SEC. 3403. Any judge of the supreme, district, or circuit court, being furnished with an authenticated copy of the 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. Disobedience of: how punished. R. § 3785.

SEC. 3404. 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. Contempt purged. R. § 3786.

SEC. 3405. 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. Bond required. R. § 3787.

SEC. 3406. 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. Committed to jail. R. § 3788.

SEC. 3407. If the security be given, the court at the next term shall act upon the case and punish the contempt in the usual mode. Contempt punished. R. § 3789.

CHAPTER 10.

OF SUBMITTING CONTROVERSIES WITHOUT ACTION OR IN ACTION.

SECTION. 3408. Parties to a question in difference which might be the subject of a civil action, may, without action, present an agreed statement of the facts thereof to any court having jurisdiction of the subject matter. Agreed statement of facts. R. § 3408.

SEC. 3409. 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. Controversy real. R. § 3409.

SEC. 3410. The court shall thereupon hear and determine the case, and render judgment thereon as if an action were pending. Judgment. R. § 3410.

SEC 3411. The statement, the submission, and the judgment, shall constitute the record. Record. R. § 3411.

SEC. 3412. The judgment shall be with costs, and it may be enforced, and shall be subject to review, in the same manner as if it had been rendered in an action, unless otherwise provided for in the submission. How enforced. R. § 3412.

SEC. 3413. The same may be also done at any time before trial in any action then pending, subject to the same requirements and attended by the same results as in a case without action, and Pending cause. R. § 3413.

such submission of a stated case shall be an abandonment by both parties of all pleadings filed in such cause, and the cause shall stand on the agreed case alone, which must provide also for any lien had by any attachment, and for any property in the custody of the law, else such lien and such legal custody will be held waived.

Agreement when facts are found: judgment accordingly. R. § 3414.

SEC. 3414. The parties may, if they think fit, enter into an agreement in writing, that upon the judgment of the court being given in the affirmative or negative of the questions of law raised by such special case, particular property therein described, or a sum of money fixed by the parties, or to be ascertained by the court, or in such manner as the court may direct, shall be delivered to and vested in one of the parties by the other, or in case of money, shall be paid by one of such parties to the other of them, either with or without costs of the action, and the judgment of the court may be entered for the transfer and delivery of such property, or for such sum as shall be so agreed or ascertained, with or without costs, as the case may be.

Costs. R. § 3415.

SEC. 3415. In case no agreement shall be entered into as to the costs of such action, the same shall follow the event, and be recovered by the successful party.

CHAPTER 11.

OF ARBITRATIONS.

What may be. R. § 3675.

SECTION 3416. All controversies which might be the subject of civil action, may be submitted to the decision of one or more arbitrators, as hereafter provided.

How done. R. § § 3676, 3677. C. 174, § 5, 9 G. A.

SEC. 3417. The parties themselves, or those persons who might lawfully have controlled a civil action in their behalf for the same subject matter, must sign and acknowledge a written agreement, specifying particularly what demands are to be submitted, the names of the arbitrators and court by which the judgment on their award is to be rendered.

What submitted. R. § 3678.

SEC. 3418. 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.

Of action pending. R. § 3679.

SEC. 3419. 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.

Rules. R. § 3680.

SEC. 3420. 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.

Revocation. R. § 3681.

SEC. 3421. Neither party shall have the power to revoke the submission without the consent of the other.

Neglect to appear. R. § 3682.

SEC. 3422. If either party neglect to appear before the arbitrators after due notice, except in case of sickness, they may, nevertheless, proceed to hear and determine the cause upon the evidence which is produced before them.

SEC. 3423. 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. Award. R. § 3683.

SEC. 3424. 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. Same. R. § 3684.

SEC. 3425. 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. Same. R. § 3685.

HEARING IN COURT.

SEC. 3426. The cause shall be entered on the docket of the 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. Hearing in court. R. § 3686.

SEC. 3427. 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. Rejection: rehearing. R. § 3687.

SEC. 3428. 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. Force and effect of award. R. § 3688.

SEC. 3429. 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. Appeal. R. § 3689.

SEC. 3430. If there is no provision in the submission respecting costs, the arbitrators may award them in their discretion. Costs. R. § 3690.

SEC. 3431. Nothing herein contained shall be construed to affect in any manner the control of the 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. Rights saved. R. § 3692.

CHAPTER 12.

OF ACTIONS AGAINST BOATS OR RAFTS.

SECTION 3432. In an action brought against the owners of any boat to recover any debt contracted by such owner, or by the master, agent, clerk, or consignee thereof, for supplies furnished, or for labor done, in, about, or on such boat, or for materials furnished in building, repairing, fitting out, furnishing or equiping the same, or to recover for the non-performance of any contract Boats: when and for what liable. R. § 3693.

relative to the transportation of persons or property thereon, made by any of the persons aforementioned, or to recover injuries to persons or property by such boat, or the officers or the crew thereof, done in connection with the business of such boat, a warrant may issue for the seizure of such boat, as hereinafter provided.

Petition and warrant. R. § 3701.

SEC. 3433. 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.

Warrant issued on Sunday. R. § 3702.

SEC. 3434. And the warrant may be issued on Sunday, if the plaintiff, his agent or attorney, shall state in his petition and swear thereto, that it would be unsafe to delay proceedings till Monday.

Service of notice. R. § 3703.

SEC. 3435. It shall be sufficient service of the original notice in such an action, to serve it on the defendant, or on the master, agent, clerk, or consignee of such boat; and if none of them can be found, the notice may be served by posting up a copy thereof on some conspicuous part of the boat. The warrant shall be served according to the direction it contains.

By whom served. R. § 3704.

SEC. 3436. Any constable or marshal of any corporate town may serve and execute the warrant provided for in said section, whether the same issue from the office of the clerk of the district or circuit court, or of a justice.

Who may appear for boat. R. § 3705.

SEC. 3437. 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.

Discharge by giving bond. R. § 3706.

SEC. 3438. The boat may be discharged at any time before final judgment, by the giving 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 amount which may be found due to the plaintiff, together with the costs.

Special execution. R. § 3707.

SEC. 3439. 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 further proceedings.

What first to be sold. R. § 3708.

SEC. 3440. The officer 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.

Fractional share sold. R. § 3709.

SEC. 3441. If a fractional share of the boat be thus sold, the purchaser shall hold such share or interest jointly with the other owners.

Appeal. R. § 3710.

SEC. 3442. 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. 3443. 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. Saving clause. R. § 3711.

SEC. 3444. 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. Petition: allegation of. R. § 3712.

RAFTS.

SEC. 3445. Any raft found in the waters of this state, shall be liable for all debts contracted by the owner, agent, clerk, or pilot thereof, on account of work done or services rendered for such raft. Rafts: liability of. R. § 3698.

SEC. 3446. Claims growing out of either of the above causes shall be liens upon the raft, its tackle, and appendages, for the term of twenty days from the time the right of action therefor accrued. Lien. R. § 3699.

SEC. 3447. The action may be brought directly against the raft, and the same rules shall govern, and the same process shall be had in such action, as are in this chapter prescribed for actions against owners of boats. Action against raft. R. § 3700.

SEC. 3448. The execution by or for the owner of such boat or raft, of a bond, whereby possession of the same is obtained or retained by him, shall be an appearance of such owner as a defendant to the action. Appearance: what deemed. R. § 4130.

CHAPTER 13.

OF HABEAS CORPUS.

SECTION 3449. The petition for the writ of habeas corpus must be sworn to, and must state: Petition sworn to: statements of. R. § 3801.

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.

Same. R. § 3802.

SEC. 3450. The 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.

Writ: by whom allowed. R. § 3803.

SEC. 3451. The writ of habeas corpus may be allowed by the supreme, district, or circuit court, or by any judge of either of those courts, and may be served in any part of the state.

Application: to whom made. R. § 3805.

SEC. 3452. Application for the writ 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 court, or a judge thereof.

May refuse writ. R. § 3806.

SEC. 3453. 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.

Reasons for endorsed on. R. § 3809.

SEC. 3454. 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.

WRIT ALLOWED.

Form of writ. R. § 3837.

SEC. 3455. 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:

THE STATE OF IOWA,

To the sheriff of, &c., [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, &c., 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.

By court: issued by clerk. R. § 3808.

SEC. 3456. 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 mame thereto without any seal.

Penalty for refusing. R. § 3810.

SEC. 3457. Any judge, whether acting individually or as a member of the 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.

Judge to issue on his own motion. R. § 3811.

SEC. 3458. 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, such court or judge shall issue, or cause to be issued, the writ as aforesaid, though no application be made therefor.

District attorney notified. R. § 3828.

SEC. 3459. The court or officer allowing the writ, must cause the district attorney of the proper county to be informed of the issuing of the writ, and of the time and place, where and when it is made returnable.

SERVICE.

SEC. 3460. The writ may be served by the sheriff, or by any other person appointed for that purpose, in writing, 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 same penalty for a non-performance of his duty, as though he were the sheriff. By whom. R. § 3812.

SEC. 3461. 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. How. R. § 3813.

SEC. 3462. 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. When defendant not found. R. § 3814.

SEC. 3463. 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. Power of officer when defendant is concealed. R. § 3815.

SEC. 3464. 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. Arrest. R. § 3816.

SEC. 3465. 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 p[illegible]r as is given by the last section for the arrest of the defendant. Same. R. § 3817.

SEC. 3466. The writ of habeas corpus must not be disobeyed for any defects of form or misdescription of the plaintiff or defendant, provided enough is stated to show the meaning and intent of the writ. Want of form. R. § 3822.

SEC. 3467. If the defendant attempt to elude the service of the writ of habeas corpus, or to avoid the effect thereof by transfering 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. Penalty for eluding writ. R. § 3841.

SEC. 3468. An officer refusing to deliver a copy of any legal process by which he deta'ns 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. Refusal to give copy of process. R. § 3842.

PRECEPT.

SEC. 3469. 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 When to issue. R. § 3818.

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.

Evidence. R. § 3819.

SEC. 3470. 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.

How served. R. § 3820.

SEC. 3471. 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.

Examination. R. § 3821.

SEC. 3472. The defendant may also be examined and committed, or bailed, or discharged, according to the nature of the case.

PLEADINGS—TRIAL—JUDGMENT.

Presumption. R. § 3823.

SEC. 3473. 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.

Appearance. R. §§ 3824, 4182.

SEC. 3474. Service being made in any of the modes hereinbefore provided, the defendant must appear at the proper time and answer the said petition, but no verification shall be required to the answer.

Body of plaintiff. R. § 3825.

SEC. 3475. He must also bring up the body of the plaintiff, or show good cause for not doing so.

Penalty for willful failure. R. § 3826.

SEC. 3476. A wilful failure to comply with the above requisitions, renders the defendant liable to be attached for 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.

Attachment: how served. R. § 3827.

SEC. 3477. 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.

Answer. R. § 3829.

SEC. 3478. 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.

Same. R. § 3830.

SEC. 3479. 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.

Same. R. § 3831.

SEC. 3480. If he holds him by virtue of a legal process or written authority, a copy thereof must be annexed.

Demur or reply. R. § 3832.

SEC. 3481. The plaintiff may demur or reply to the defendant's answer, but no verification shall be required to the reply, and all issues joined therein shall be tried by the judge or court.

SEC. 3482. Such replication 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 or judge in connection with any other testimony which may then be produced. Replication: statement of. R. § 3833.

SEC. 3483. But it is not permissable to question the correctness of the action of the grand jury in finding a bill of indictment, or of the trial jury in trial of a cause, nor of a court or judge when acting within their legitimate province and in a lawful manner. Grand jury. R. § 3834.

SEC. 3484. If no sufficient legal cause of detention is shown, the plaintiff must be discharged. Discharge. R. § 3835.

SEC. 3485. 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. Irregularity of commitment. R. § 3836.

SEC. 3486. The plaintiff may also, in any case, be committed, let to bail, or his bail be mitigated or increased, as justice may require. Bail increased or diminished. R. § 3837.

SEC. 3487. 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. Defendant retained in custody. R. § 3838.

SEC. 3488. 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. Right to be present waived. R. § 3839.

SEC. 3489. Disobedience to any order of discharge subjects the defendant to attachment for 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. Penalty for disobeying any order. R. § 3840.

SEC. 3490. 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, and a brief memorandum thereof shall be entered by the clerk upon his judgment docket. Papers filed with clerk. R. § 3843.

CHAPTER 14.

OF CONTEMPTS.

SECTION 3491. The following acts or omissions are deemed to be contempts, and are punishable as such by any of the courts of this state, or by any judicial officer acting in the discharge of an official duty, as hereinafter provided: What are. R. § 2888.

1. 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. Any wilful disturbance calculated to interrupt the due course of its official proceedings;

3. Illegal resistance to any order or process made or issued by it;

4. Disobedience to any subpœna issued by it and duly served, or refusing to be sworn, or to answer as a witness;

5. 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. Any other act or omission specially declared a contempt by law.

In courts of record. R. § 2689.

SEC. 3492. In addition to the above, any court of record 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 counselor 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.

How punished. R. § 2690.

SEC. 3493. The punishment for contempts may be by fine or imprisonment, or both, but where not otherwise specially provided, courts of record 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.

Same. R. § 2691.

SEC. 3494. 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 the commitment.

When affidavit necessary. R. § 2692.

SEC. 3495. Unless the contempt is committed in the immediate view and presence of the court, or comes officially to its knowledge, an affidavit showing the nature of the transaction is necessary as a basis for further action in the premises.

Notice to show cause. R. § 2693.

SEC. 3496. Before punishing for 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.

Testimony reduced to writing. R. § 2694.

SEC. 3497. 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. 3498. 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 in the keowledge of the court, or was proved by witnesses. Warrant: statement of. R. § 2695.

SEC. 3499. No appeal lies from an order to punish for a contempt, but the proceedings may, in proper cases, be taken to a higher court for revision by certiorari. Certiorari. R. § 2696.

SEC. 3500. 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. No bar to indictment. R. § 2697.

SEC. 3501. Any officer authorized to punish for contempt, is a court within the meaning of this chapter. "Court" defined. R. § 2698.

CHAPTER 15.

OF CHANGING NAMES.

SECTION 3502. The district or circuit court has power to change the names of persons in the following manner. Courts may. R. § 3844.

SEC. 3503. 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 an actual resident of the state. It must also 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. Petition. R. § 3845.

SEC. 3504. 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. Order. R. § 3846.

SEC. 3505. 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. Publication. R. § 3847.

SEC. 3506. 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. Proof filed. R. § 3848.

TITLE XXI.

OF JUSTICES OF THE PEACE AND THEIR COURTS.

CHAPTER 1.

OF JUSTICES OF THE PEACE AND THEIR COURTS.

Jurisdiction: local. R. § 3849.

SECTION 3507. The jurisdiction of justices of the peace, when not specially restricted, is co-extensive with their respective counties; but does not embrace suits for the recovery of money against actual residents of any other county, except as provided in section three thousand five hundred and thirteen of this chapter.

As to amount. R. § 3850.

SEC. 3508. Within the prescribed limit, it extends to all civil cases, except cases by equitable proceedings, where the amount in controversy does not exceed one hundred dollars; and, by consent of parties, it may be extended to any amount not exceeding three hundred dollars.

WHERE SUITS MAY BE BROUGHT.

Where parties reside. R. § 3851. C. 149, 12 G. A.

SEC. 3509. Suits may in all cases be brought in the township where the plaintiff or defendant, or one of several defendants, resides.

Where served. R. § 3852.

SEC. 3510. 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.

To recover personal property: attachment. R. § 3853.

SEC. 3511. Actions to recover personal property, and suits commenced by attachment, may be commenced in any county and township wherein any portion of the property is found, and justices shall have jurisdiction therein within the county.

Non-resident. R. § 3854.

SEC. 3512. 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.

Contracts in writing. R. § 3855.

SEC. 3513. 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.

In adjoining township. R. § 3856.

SEC. 3514. 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.

JUSTICE'S DOCKET.

Docket and contents. R. § 3857.

SEC. 3515. Every justice of the peace shall keep a docket in which shall be entered, in continuous order, with the proper date to each act done:

1. The title to each cause;
2. A brief statement of the nature and amount of the plaintiff's demand, and defendant's counter claim, if any, giving date to each where dates exist;
3. The issuing of the process, and the return thereof;
4. The appearance of the respective parties;
5. Every adjournment, stating at whose instance and for what time;
6. The trial, and whether by the justice or by a jury;
7. The verdict and judgment;
8. The execution, to whom delivered, the renewals, if any, and the amount of debt, damages, and costs endorsed thereon;
9. The taking and allowance of an appeal, if any;
10. The giving a transcript for filing in the clerk's office, or for counter claim, if one is given;
11. A note of all motions made, and whether refused or granted.

SUITS—HOW BROUGHT.

SEC. 3516. The parties to the action may be the same as in the circuit 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. Practice. R. § 3858.

SEC. 3517. Actions in justices' courts are commenced by voluntary appearance or by notice. Same. R. § 3859.

SEC. 3518. When by notice, no petition need be filed, 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. Petition not necessary. R. § 3860.

SEC. 3519. 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. Notice to whom. R. § 3861.

SEC. 3520. 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. State amount. R. § 3862.

SEC. 3521. The time thus fixed in the notice must not be more than fifteen days from the date, and the notice must be served not less than five days previous to the trial. Limit of time. R. § 3863.

SEC. 3522. The service and return thereto must be made in the same manner as in the circuit 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. Service and return. R. § 3864.

SEC. 3523. The defendant may at any time pay to the officer 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 proceedings shall cease. Defendant may pay officer. R. § 3865.

APPEARANCE OF PARTIES.

Agents authority. R. § 3866.

SEC. 3524. 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.

One hour given. R. § 3867.

SEC. 3525. 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.

Postponement. R. § 3868.

SEC. 3526. 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.

Adjournment. R. § 3869.

SEC. 3527. 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.

Same. R. § 3870.

SEC. 3528. 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 circuit court for the like cause.

Condition of. R. § 3871.

SEC. 3529. 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.

Pleadings. R. § 3872.

SEC. 3530. The pleadings must be substantially the same as in the circuit 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.

Counter claim. R. § 3873.

SEC. 3531. A counter claim must be made, if at all, at the time the answer is put in.

Written instruments. R. § 3874.

SEC. 3532. The original, or a copy of all written instruments upon which a cause of action or counter claim is founded, must be filed with the claim founded thereon, or a sufficient reason given for not doing so.

Change of place of trial. R. § 3875. C. 127, 14 G. A.

SEC. 3533. Either party, before the trial is commenced, may have the place of trial changed, upon filing an affidavit that the justice is prejudiced against him, or is a near relation to the other party, or is a material witness for the affiant, or that the affiant cannot obtain justice before him; but no more than one change shall be allowed to each party, unless the justice to whom the case shall be transmitted is related to either party by consanguinity or affinity within the fourth degree, or is a witness, or has been an attorney employed in the action, in either of which events, a second change may be allowed to the same party.

Case sent to another justice. R. § 3876.

SEC. 3534. When said change is allowed, said justice shall transmit all the original papers in said case, and a transcript of his proceedings to the next nearest justice in the township, if there be any, if not, to the next nearest justice in his county, and said justice shall proceed to try said case, and if he cannot try the same immediately, he shall then fix a time therefor, of which all parties shall take notice.

When title to real property is plead. R. § § 3877, 3878.

SEC. 3535. If the title to real property be put in issue by the pleadings, supported by affidavit, or shall manifestly appear from the proof on the trial of the issue, the justice shall, without

further proceedings, certify the cause and papers, with transcript of his docket, showing the reason of such transfer to the circuit court, where the same shall be tried on the merits. No cause so transferred shall be dismissed because the justice erred in transferring the same.

Same. R. § 3879.

SEC. 3536. But when a case is thus transferred, or dismissed on account of the title to land 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.

By justice. R. § 3880.

SEC. 3537. 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.

Dismissal of action. R. § 3881.

SEC. 3538. 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 dismiss the case and render judgment against him for costs, except in the case provided in the next section.

Not when founded on writing. R. § 3882.

SEC. 3539. 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.

Default. R § 3883.

SEC. 3540. 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.

Same. R. § 3884.

SEC. 3541. 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.

Counter claim. R. § 3885.

SEC. 3542. In the cases contemplated in the last two sections, if the defendant has previously filed a counter claim, founded on a written instrument purporting to have been signed by the plaintiff, calling for a certain sum, the justice shall allow such counter claim in the same manner as though the defendant had appeared, and shall render judgment accordingly.

Judgment set aside. R. § 3886.

SEC. 3543. Judgment dismissing the cause, 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.

New trial. R. § 3887.

SEC. 3544. In such case a new day shall be fixed for trial, and notice thereof given to the other party or his agent.

Costs. R § 3888.

SEC. 3545. Such orders shall be made in relation to the additional costs thereby created as the justice shall think equitable.

Execution recalled. R. § 3889.

SEC. 3546. Any execution which may in the meantime have been issued, shall be recalled in the same manner as in cases of appeal.

Jury summoned C. 174, § 6, 9 G. A.

SEC. 3547. If a jury trial be demanded, the justice shall 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 circuit court.

Number of jurors. R. § 3891.

SEC. 3548. 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 and no more. Any deficiency in their number, arising from any cause, may be supplied by summoning others in the manner above directed.

Discharge of jury. R. § 3892.

SEC. 3549. 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.

Motion in arrest. R. § 3893.

SEC. 3550. No motion in arrest of judgment, or to set aside a verdict, can be entertained by a justice of the peace.

Verdict. R. § 3894.

SEC. 3551. 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.

Judgment. R. § 3895.

SEC. 3552. In cases of dismissal, 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.

In excess of jurisdiction. R. § 3896.

SEC. 3553. 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.

Same. R. § 3897.

SEC. 3554. Instead of so remitting the excess, the party obtaining such verdict may elect to have judgment dismissing the action, in which case the plaintiff shall pay the costs.

Mutual judgments. R. § 3898.

SEC. 3555. Mutual judgments between the same parties, rendered by the same or different justices, may be set off against each other.

Same. R. § 3899.

SEC. 3556. When rendered by the same court, the same course shall be pursued as is prescribed in the circuit court.

By different justices. R § 3900.

SEC. 3557. 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 endorsed thereon, stating that no appeal has been taken, and that the transcript was obtained for the purpose of being used as a counter claim in that case.

Time. R. § 3901.

SEC. 3558. Such transcript shall not be given until the time for taking an appeal has elapsed.

Docket entry. R. § 3902.

SEC. 3559. 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.

Execution for balance. R. § 3903.

SEC. 3560. 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.

Same. R. § 3904.

SEC. 3561. 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.

Duty of officer. R. § 3905.

SEC. 3562. Such officer shall treat the lesser execution as so much cash collected on the larger, and proceed to collect the balance accordingly.

Costs. R. § 3906.

SEC. 3563. The above rules as to counter claim 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 circuit court.

Transcript filed R. § 3907.

SEC. 3564. 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 to be so used, and the proper entry made in the justice's docket.

Refusal to allow counter claim. R. § 3908.

SEC. 3565. 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 transcript had been certified by him.

Judgment by confession. R. §§ 3397, 3451.

SEC. 3566. A judgment by confession without action, may be entered by a justice of the peace for an amount within his jurisdiction, and the provisions of law regulating judgments by confession in courts of record, shall, as far as applicable, apply to confessions of judgment before a justice of the peace, and the justice shall enter such judgments on his docket, and may issue execution thereon as in other cases.

FILING TRANSCRIPTS IN THE CLERK'S OFFICE.

May be done when. R. § 3909.

SEC. 3567. 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 circuit court in the county.

Manner and effect. R. § 3910.

SEC. 3568. The clerk shall forthwith file such transcript, and enter a memorandum thereof in his judgment docket, noting 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 circuit court as of that date. And no execution can thereafter be issued by the justice on the judgment.

EXECUTIONS AND PROCEEDINGS THEREON.

When and by whom issued. R. § 3911.

SEC. 3569. Executions for the enforcement of judgments in a justice's court, may be issued as provided in this chapter, at any time within ten years from the entry of the judgment, but not afterward.

Substance of. R. § 3912.

SEC. 3570. Such execution shall be against the goods and chattels of the defendant therein, and shall be directed to any constable of the county.

Return. R. § 3913.

SEC. 3571. It must be dated on the day on which it is issued, and made returnable within thirty days thereafter.

Renewable. R. § 3914.

SEC. 3572. If not satisfied when returned, it may be renewed from time to time by an endorsement thereon to that effect, signed by the justice, and dated of the date of such renewal.

For thirty days. R. § 3915.

SEC. 3573. Such endorsement must state the amount paid on such execution, and shall continue the execution in full force for thirty days from the date of renewal.

Property. R. § 3916.

SEC. 3574. Property levied on before such renewal, may be retained by the officer and sold after renewal.

APPEALS.

When allowed. R. § 3917.

SEC. 3575. Any person aggrieved by the final judgment of a justice, may appeal therefrom to the circuit court in the county.

Time. R. § 3918.

SEC. 3576. The appeal must be taken and perfected within twenty days after the rendition of the judgment.

By clerk. R. § 3919.

SEC. 3577. If within 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 circuit court of the county for the allowance of his appeal.

And how. R. § 3920.

SEC. 3578. 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.

Same. R. § 3921.

SEC. 3579. 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 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.

Form of bond. R. § 3922.

SEC. 3580. The appeal shall in no case be allowed until a bond in the following form, or its equivalent, is taken and filed in the office of the justice or clerk as above provided, in an amount sufficient to secure the judgment and costs of appeal:

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 said appellant pays whatever amount is legally adjudged against him in the further progress of this cause, then this bond to be void.

Approved.	A....B ..., principal.
E....F...., justice.	C....D...., surety.

If the judgment be affirmed, or if on a new trial the appellee recovers, or if the appeal be withdrawn or dismissed, judgment shall be rendered against the principal and surety in said bond.

Proceedings suspended. R. § 3923.

SEC. 3581. Upon the appeal being taken in accordance with the foregoing provisions, all farther proceedings in the cause by him shall be suspended.

SEC. 3582. 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. *If execution issued. R. § 3924.*

SEC. 3583. Upon the taking of any appeal, the justice shall file in the office of the clerk of the circuit court, all the original papers relating to the suit, with a transcript of all the entries in his docket. *Papers filed. R. § 3925.*

SEC. 3584. Upon the return of the justice being filed in the office of the clerk, the cause will be deemed in the circuit court. *Same. R. § 3926.*

SEC. 3585. The circuit court may, by rule, compel the justice to allow an appeal, or to make or amend his return according to law. *Return amended. R. § 3927.*

SEC. 3586. Where an omission or mistake has been made by the justice in his docket entries, and that fact is made unquestionable, the circuit court may correct the mistake or supply the omission, or direct the justice to do so. *Mistakes corrected. R. § 3928.*

SEC. 3587. If an appeal is allowed ten days before the next term of the circuit court, the justice's return must be made at least five days before that term. All such cases must be tried when reached, unless continued for cause. *Return: when made. R. § 3929.*

SEC. 3588. If an appeal is not allowed on the day on which judgment is rendered, written notice thereof must be served on 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. *Notice of appeal. R. § 3930.*

SEC. 3589. 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. *How served. R. § 3931.*

SEC. 3590. An appeal brings up a cause for trial on the merits, and for no other purpose. All errors, irregularities, and illegalities are to be disregarded under such circumstances, if the cause might have been prosecuted in the circuit court. *Effect of appeal. R. § 3932.*

SEC. 3591. No new demand or counter claim can be introduced into a case after it comes into the circuit court, unless by mutual consent. *New demand. R. § 3933.*

SEC. 3592. The appellant must pay the costs of the appeal, unless he obtains a more favorable judgment than that from which he appealed. *Appellant pay costs. R. § 3934.*

SEC. 3593. 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 costs of appeal. *When appellee pay. R. § 3935.*

SEC. 3594. Any judgment in the circuit court against the appellant shall be entered up against him and his sureties jointly. *Sureties. R. § 3936.*

SEC. 3595. If an appeal is taken for delay, the circuit court shall award such damages, not exceeding ten per cent. on the amount of the judgment below, as may seem right. *Damages. R § 3937.*

SEC. 3596. If the appeal is taken from a judgment by default, the defendant may file in the circuit court, and the plaintiff reply *Pleadings filed in circuit court.*

thereto, any pleadings necessary to properly set forth any defense he may have to the action. In such case, the costs of the trial before the justice shall be taxed to the defendant.

WRITS OF ERROR.

When allowed. R. § 3938.

SEC. 3597. Any person aggrieved by an erroneous decision in a 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 circuit court for correction.

Affidavit. R. § 3939.

SEC. 3598. The basis of the proceedings is an affidavit filed in the office of the clerk, setting forth the errors complained of, and must be filed in the same time, and the notice must be the same as in case of appeal.

Writ. R. § 3940.

SEC. 3599. The clerk shall thereupon issue an order commanding the justice to certify the record and proceedings, so far as they relate to the facts stated in the affidavit.

Copy. R. § 3941.

SEC. 3600. A copy of the affidavit shall accompany the order, and be served upon the justice, who shall, with the least practicable delay, make the return required.

Proceedings stayed. R. § 3942.

SEC. 3601. All proceedings in the justice's court subsequent to judgment, may be stayed by a bond, entered into like that required in cases of appeals, and on which judgment shall be entered against the principal and surety in like manner and under like circumstances.

Amended return. R. § 3943.

SEC. 3602. The circuit court may compel an amended return when the first is not full and complete.

Judgment. R. § 3944.

SEC. 3603. The circuit court may render final judgment, or it may remand the cause to the justice for a new trial, or such further proceedings as shall be deemed proper, and may prescribe the notice necessary to bring the parties again before the justice.

Restitution. R. § 3945.

SEC. 3604. If the circuit 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.

RECOVERY OF PERSONAL PROPERTY—ATTACHMENT.

Action to recover personal property. R. § 3946.

SEC. 3605. The proceedings to gain possession of personal property wrongfully withheld, will be the same as are prescribed in such cases in the circuit court, except as modified in this chapter.

Attachments. R. § 3947.

SEC. 3606. 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.

Garnishee. R. § 3948.

SEC. 3607. The constable has the same power to administer an oath to the garnishee and to take his answer, as is given to the sheriff in cases of attachment in the circuit court.

Appearance. R. § 3949.

SEC. 3608. Garnishees may be required to appear and answer at the time fixed for the appearance of the parties to the action.

Against non-residents. R. § 3950.

SEC. 3609. When an attachment or order for the delivery of property has been issued by any justice of the peace in any

action, and it shall be found that the defendant is absent so that personal service cannot be had, the justice, upon the return day, unless the defendant appear, shall make an order fixing the day for the trial, not less than sixty days thereafter, and requiring notice to be given by any constable as provided in the next section.

Notice to be given. R. § 3951.

SEC. 3610. Upon such order being made, at least sixty days' notice of the pendency of such action shall be given by posting up written or printed notices in three public places in the township where the action was commenced, and such notices shall have the effect of a service by publication in the circuit court, and the justice shall proceed to hear the cause upon the day specified for that purpose; but no bond shall be required of the plaintiff after judgment as may be in the circuit court.

FORCIBLE ENTRY OR DETENTION OF REAL PROPERTY.

Action for: when allowed. R. § 3952.

SEC. 3611. A summary remedy for forcible entry or detention of real property is allowable:

1. Where the defendant has by force or intimidation, or fraud, or stealth, entered upon the prior actual possession of another in 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; in either of which cases, such title shall be clearly and concisely set forth in the defendant's pleading.

Rent in arrear. R. § 3953.

SEC. 3612. 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.

Who may bring. R. § 3954.

SEC. 3613. The legal representative of a person who might have been plaintiff if alive, may bring this suit after his death.

Notice to quit. R. § 3955.

SEC. 3614. Before suit can be brought in any except the first of the above classes, three day's notice to quit must be given to the defendant in writing.

Petition. R. § 3956.

SEC. 3615. The petition must be in writing and sworn to.

Before what justice brought. R. § 3957.

SEC. 3616. 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.

Time for appearance. R. § 3958.

SEC. 3617. The time for appearance and pleading must not be less than two, nor more than six days from the time the notice is served on the defendant.

Adjournment. R. § 3959.

SEC. 3618. No adjournment shall be made for more than ten days, nor to any other place except by consent of parties.

Judgment. R. § 3960.

SEC. 3619. 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 an order of removal

shall issue accordingly, to which shall be added a clause commanding the officer to levy the costs as in ordinary cases.

Title not investigated. R. § 3961.

SEC. 3620. 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.

Bar. R. § 3962.

SEC. 3621. Thirty days' peaceable and uninterrupted possession with the knowledge of the plaintiff after the cause of action accrued, is a bar to this proceeding.

No joinder. R. § 3963.

SEC. 3622. An action of this kind cannot be brought in connection with any other, nor can it be made the subject of counter claim.

Order for removal. R. § 3964.

SEC. 3623. The order for removal can be executed only in the day time.

Restitution. R. § 2966.

SEC. 3624. The circuit court, on the trial of the appeal, may issue an order of removal or restitution as the case may require.

GENERAL PROVISIONS.

Official papers to successor. R. § 3967.

SEC. 3625. 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.

Or county auditor. R. § 3968.

SEC. 3626. If his office becomes 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 county auditor, to be by him turned over to the successor of the justice when elected and qualified.

Successor may issue execution. R. § 3969.

SEC. 3627. 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 the judgment might have done; and in case of the death, absence, or inability to act of any justice, or in case of the vacation of the office of any justice from any cause, then in such case execution may be issued from the docket of said justice or transcript given therefrom, by any other justice in said township with like effect as might have been done by the justice who rendered the judgment.

Successor: how determined. R. §§ 3970, 3971.

SEC. 3628. When two or more justices are equally entitled to be deemed the successor in office of any justice as aforesaid, the county auditor shall determine by lot which is the successor, and certify accordingly; such certificate shall be in duplicate, one copy of which shall be filed in the office of such auditor, and the other given to such successor.

Interchange. R. § 3972.

SEC. 3629. In case of sickness or 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 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.

Special constables. R. § 3973.

SEC. 3630. Any justice of the peace may, in writing, specially depute any person of suitable age to perform any particular duty properly devolving upon a constable, and for that particular purpose he shall be subject to the same obligations and receive the same fees. If such person be appointed to serve an attachment, execution, or order, for the delivery of property, he shall, before levying upon such property, execute a bond to the state of Iowa in a penal sum of not less than two hundred dollars, to be fixed by the justice, with one or more freeholders as sureties, to be approved by and filed with the justice making the appointment, and the usual official oath shall be endorsed thereon and signed. For any breach of such bond, any person injured thereby may bring suit thereon in his own name, and recover the same damages as upon a constable's bond in like cases.

No process. R. § 3974.

SEC. 3631. No process can issue from a justice's court into another county, except when specially authorized.

Sheriff and constable. R. § 3975.

SEC. 3632. The constable is the proper executive officer in 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 circuit court, so far as the same are applicable and not modified by statute, devolve upon the constable in relation to the justice's court.

Justice his own clerk. R. § 3976.

SEC. 3633. The justice may be regarded as his own clerk and perform the duty of both judge and clerk.

Successor to renew execution. R. § 3977.

SEC. 3634. When the term of office of a justice of the peace for any cause expires, his successor may issue execution, or renew 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.

Board of supervisors furnish docket. C. 53, 11 G. A.

SEC. 3635. The board of supervisors of each county shall furnish to each justice of the peace of such county, a well bound blank-record book of not less than four quires, with index suitable for a docket, upon the certificate of such justice that the same is necessary for the business of the office.

TITLE XXII.

OF EVIDENCE.

CHAPTER 1.

OF GENERAL PRINCIPLES OF EVIDENCE.

Who competent. R. § 3978.

SECTION 3636. 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.

Credibility. R. § 3979.

SEC. 3637. Facts which have heretofore caused the exclusion of testimony, may still be shown for the purpose of lessening its credibility.

Interest. R. § 3980.

SEC. 3638. No person offered as a witness in any action or proceeding in any court, or before any officer acting judicially, shall be excluded by reason of his interest in the event of the action or proceeding, or because he is a party thereto, except as provided in this chapter.

Same: when one party is deceased. Same.

SEC. 3639. No party to any action or proceeding, nor any person interested in the event thereof, nor any person from, through, or under whom any such party or interested person derives any interest or title by assignment or otherwise, and no husband or wife of any said party or person, shall be examined as a witness in regard to any personal transaction or communication between such witness and a person at the commencement of such examination, deceased, insane, or lunatic; against the executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee, or survivor of such deceased person, or the assignee or guardian of such insane person or lunatic. But this prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee, survivor, or guardian, shall be examined on his own behalf, or as to which the testimony of such deceased or insane person or lunatic shall be given in evidence.

Depositions taken conditionally.

SEC. 3640. Any person may have his own deposition, or that of any other person, read and used as evidence in all cases where his evidence would be incompetent by the provisions of the preceding section, by causing such deposition to be taken either before or after suit brought during the lifetime or sanity of the person against whom his executor, heir, or other representative, the same is to be used; *provided*, such deposition shall have been taken and filed ten days prior to the death or insanity of such

person. If after suit brought, such deposition may be taken in the usual manner; if before, then the same may be taken *de bene esse*, as provided by law.

Husband and wife. R. § 3983.

SEC. 3641. The husband nor wife shall in no case be a witness for or against the other, except in a criminal proceeding for a crime committed by one against the other, or in a civil action or proceeding one against the other, but they may, in all civil and criminal cases, be witnesses for each other.

Same. R. § 3984.

SEC. 3642. 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.

Professional confidence.

SEC. 3643. No practicing attorney, counselor, physician, surgeon, minister of the gospel, or priest of any denomination, shall be allowed in giving testimony to disclose any confidential communication properly entrusted 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. Such prohibition shall not apply to cases, where the party in whose favor the same are made waives the rights conferred.

Public officers. R. § 3987.

SEC. 3644. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

Judge competent. R. § 4005.

SEC. 3645. The judge of the court is a competent witness for either party, and may be sworn upon the trial. But in such case it is in his discretion to order the trial to be postponed or suspended and to take place before another judge.

Civil liability. R. § 3988.

SEC. 3646. No witness is excused from answering a question upon the mere ground that he would be thereby subjected to a civil liability.

Criminal. R. § 3989.

SEC. 3647. 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.

Provisions: conviction. R. § 3990.

SEC. 3648. 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.

Moral character. R. § 3991.

SEC. 3649. The general moral character of a witness may be proved for the purpose of testing his credibility.

Whole of a writing or conversation. R. § 3992.

SEC. 3650. 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.

Writing and printing. R. § 3993.

SEC. 3651. When an instrument consists partly of written and partly of printed form, the former controls the latter when the two are inconsistent.

Understanding of parties. R. § 3994.

SEC. 3652. 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.

Historical and works of science. R. § 3995.

SEC. 3653. 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.

Subscribing witness. R. § 3996.

SEC. 3654. 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.

Handwriting. R. § 3997.

SEC. 3655. Evidence respecting handwriting may be given by comparison made by experts, or by the jury, with writings of the same person which are proved to be genuine.

Private writing. R. § 4000.

SEC. 3656. 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.

Entries by deceased person. R. § 3998.

SEC. 3657. 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.

BOOKS OF ACCOUNT.

When and how admitted in evidence. R. § 3999.

SEC. 3658. 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 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.

INSTRUMENTS AFFECTING REAL PROPERTY.

Evidence. R. § 4001.

SEC. 3659. 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. 3660. 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 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 records 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. Record or certified copy. R. § 4002.

SEC. 3661. The provisions of the preceding section are intended to apply to all instruments heretofore recorded, as well as those hereafter to be recorded. Retrospective. R. § 4003.

SEC. 3662. Neither the certificate, nor the record, nor the transcript thereof, is conclusive evidence of the facts therein stated. Not conclusive. R. § 4004.

STATUTE OF FRAUDS.

SEC. 3663. Except when otherwise specially provided, no evidence 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. Written evidence only admissable. R. § 4007.

SEC. 3664. Such contracts embrace: Contracts. R. § 4007.

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;

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. 3665. The provision of the first sub-division 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 sub-division 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. Exceptions. R. § 4008.

SEC. 3666. 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. When not denied in the pleadings. R. § 4009.

Party made witness. R. § 4010.

SEC. 3667. 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.

Notary public: certificate of. R. §§ 199, 4011.

SEC. 3668. The usual protest of a notary public without proof of his signature or notarial seal, is prima facie evidence of what it recites concerning the dishonor and notice of a bill of exchange or promissory note, and a copy from his record, properly certified to by him, shall receive such faith and credit as it is entitled to by the law and custom of merchants.

Inferior tribunals: presumption. R. § 4120.

SEC. 3669. The future proceedings of all officers, and of all courts of limited and inferior jurisdiction within this state, shall, like those of a general and superior jurisdiction, be presumed regular, except in regard to matters required to be entered of record, and except where otherwise expressly declared.

Records of court in same county. C. 86, § 7, 12 G. A.

SEC. 3670. The records and papers properly filed in a cause in either the district or circuit court of a county, are equally evidence in the other court. Depositions taken for either court may be used in the other with the same effect, subject to like objection, as if taken in such court.

HOW TESTIMONY IS TO BE PROCURED.

Clerks to issue subpœnas. R. § 4012.

SEC. 3671. The clerks of the several courts shall, on application of any person having a cause or any matter pending in court, issue a subpœna for witnesses under the seal of the court, inserting all the names required by the applicant in one subpœna, which may be served by the sheriff, coroner, or any constable of the county, or by the party or any other person. When a subpœna is not served by the sheriff, coroner, or constable, proof of service shall be shown by affidavit; but no costs of serving the same shall be allowed.

To whom directed: contents of. R. § 4013.

SEC. 3672. The subpœna shall be directed to the person therein named, requiring him to attend at a particular time or place to testify as a witness, and it may contain a clause directing the witness to bring with him any book, writing, or other thing under his control, which he is bound by law to produce as evidence.

How far witnesses in civil cases can be compelled to attend. R. § 4014.

SEC. 3673. Witnesses in civil cases cannot be compelled to attend the district or circuit 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 subpœna, unless within the same county. No other subpœna but that from the district or circuit 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.

May demand payment in advance. R. § 4015.

SEC. 3674. 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 further 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.

Penalty for failure to obey. R. § 4016.

SEC. 3675. For a failure to obey a valid subpœna, without a sufficient cause or excuse, or for a refusal to testify after appear-

ance, the delinquent is guilty of contempt of court. He is also liable to the party by whom he was subpœnaed for all consequences of such delinquency, together with fifty dollars additional damages.

Same. R. § 4017.

SEC. 3676. 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 subpœna, if left at his usual place of residence, came into his hands, together with the said fees and traveling expenses above mentioned.

When witness conceals himself: power of officer. R. § 4018.

SEC. 3677. If a witness conceal himself, or in any other manner attempt to avoid being personally served with a subpœna, any sheriff or constable having the subpœna 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 admission.

Prisoner. R. § 4019.

SEC. 3678. A person confined in any prison in this state, may, by order of any court of record, be required to be produced for oral examination in the county where he is imprisoned, and in a criminal case in any county in the state; but in all other cases his examination must be by a deposition.

Deposition of. R. § 4020.

SEC. 3679. While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the depositions.

Persons authorized by laws of other states: power of. R. § 4021.

SEC. 3680. 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 subpœnas and compel obedience thereto, to administer oaths, and to do any other act of a court which is necessary for the accomplishment of the purpose for which they are acting.

Same. R. § 4022.

SEC. 3681. Subpœnas issued by them are valid to the same extent as those emanating from a justice's court, and may be served and returned in the same manner.

Officers to serve. R. § 4023.

SEC. 3682. Any sheriff or constable, when called upon for that purpose, shall serve such subpœnas and make return thereof.

When party fails to obey subpœna. R. § 4024.

SEC. 3683. In addition to the above remedies, if a party to a suit in his own right, on being duly subpœnaed, 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.

Same. R. § 4025.

SEC. 3684. Or if he shows by his own testimony or otherwise, that he could not have a full personal knowledge of the transaction, the court may order his pleading to be taken as true; such order, however, is subject to be reconsidered during the term of the court, upon satisfactory reasons being shown for such delinquency.

PRODUCTION OF BOOKS AND PAPERS.

When and how done. R. § 4026.

SEC. 3685. The district or circuit court may, by rule, require the production of any papers or books which are material to the just determination of any cause pending before it, for the purpose of being inspected and copied by or for the party thus calling for them.

Petition. R. § 4027.

SEC. 3686. 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.

Consequences of failure to obey. R. § 4028.

SEC. 3687. 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 subpœnaed by the party now calling for the books and papers.

Writing called for by one party. R. § 4029.

SEC. 3688. 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.

Affidavit. R. § 4030.

SEC. 3689. An affidavit is a written declaration under oath, made without notice to the adverse party.

Before whom made. R. § 4035.

SEC. 3690. An affidavit may be made within or without this state before any person authorized to administer oaths.

Out of the state. R. § 4036.

SEC. 3691. 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 the state.

How compelled. R. § 4038.

SEC. 3692. When 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.

Same. R. § 4039.

SEC. 3693. If such officer is satisfied that the object is legal and proper, he shall issue his subpœna 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.

Notice. R. § 4040.

SEC. 3694. 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.

Cross interrogatories. R. § 4041.

SEC. 3695. The court or officer to whom any 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.

Signature and seal: presumption. R. § 4037.

SEC. 3696. 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 evidence of the genuineness of such signature as well as of the official capacity of the officer, except as herein otherwise declared.

Publications: how proved. R. § 4042.

SEC. 3697. 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 purposes now contemplated, be made within six months after the last day of publication.

Posting up papers. R. § 4043.

SEC. 3698. 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.

Other facts. R. § 4044.

SEC. 3699. 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.

How perpetuated. R. § 4045.

SEC. 3700. Such proof so made may be perpetuated and preserved for future use, by filing the papers above mentioned in the office of the clerk of the circuit 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.

MAPS, PLATS, RECORDS, ENTRIES.

Field notes and plats. R. § 4046.

SEC. 3701. 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.

Copies of record and entries. R. § 4047.

SEC. 3702. Duly certified copies of all records and entires, 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 papers so filed.

Books of original entries. R. § 4048.

SEC. 3703. The recorder in each of the several counties in this state, shall cause to be procured a book, entitled "copies of original entries" to be kept as a record in his office, in which shall be copied a list of the original entries of land within his county, with name of the person or persons entering the same and the date of such entry, for which he shall receive a reasonable compensation, to be audited and allowed by the board of supervisors of his county.

Copies of. R. § 4049.

SEC. 3704. Said book, containing a copy of such entries, when compared with the originals, and certified to as true copies by the register of the land office at which such original entries were made, shall be deemed a matter of record, and certified copies thereof under the hand of said recorder may be received and read

in evidence in all the courts in this state, with like effect as other certified copies of original papers recorded in his office.

Same. R. § 4050.

SEC. 3705. Said recorder shall from time to time, as he may deem it necessary, procure in the same manner copies of any additional entries, under the same restrictions and with like effect until all the lands in his county shall have been entered and certified copies of the entries thereof procured.

Officer to give copies. R. § 4051.

SEC. 3706. 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.

Copies, maps, etc., in office of surveyor general. R. § 4052.

SEC. 3707. Copies of all maps, official letters, and other documents in the office of the surveyor-general of the United States, when certified to by that officer according to law, shall be received by the courts of this state as presumptive evidence of the existence of the originals and that said copies are copies of the original, notwithstanding such maps, official letters, or other papers, may themselves be copied.

Certificate as to loss of paper. R. § 4053.

SEC. 3708. 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.

Duplicate receipt of receiver of land office. R. § 4054.

SEC. 3709. 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.

Certificate of register. R. § 4055

SEC. 3710. The certificate of the register or receiver of any land office of the United States as to the entry of land within his district, shall be presumptive evidence of title in the person entering to the real estate therein named.

Signature presumed genuine. R. § 4056.

SEC. 3711. In the cases contemplated in the last seven sections, the signature of the officer shall be presumed to be genuine, until the contrary is shown.

JUDICIAL RECORDS.

Of this state or federal courts. R. § 4057.

SEC. 3712. 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.

Of another state. R. § 4058.

SEC. 3713. That of another 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.

Of a justice of the peace. R. § 4059.

SEC. 3714. 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 is genuine, is sufficient evidence of such proceedings and judgment.

SEC. 3715. Copies of records and proceedings in the courts of a foreign country may be admitted in evidence, upon being authenticated as follows: Of a foreign country. R. § 4060.

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.

EXECUTIVE AND LEGISLATIVE RECORD.

SEC. 3716. 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. Of the executive of U. S. or any state or foreign government. R. § 4061.

SEC. 3717. The proceedings of the legislature of this or any other state of the Union, or 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 proceeding was had, or by a copy purporting to have been printed by their order. Of the legislature of this or other state or foreign government. R. § 4062.

SEC. 3718. 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. Printed copies of the statutes. R. § 4063.

SEC. 3719. The public seal of the state or county affixed to a copy of the written law or other public writing, is also admissable as evidence of such law or writing respectively. The unwritten laws of any other state or government may be proved as facts by parole evidence, and also by the books of reports of cases adjudged in their courts. Written law. R. § 4064.

SEC. 3720. The printed copies of the ordinances of any municipal corporation published by its authority, and transcripts of any ordinances or of any act or proceeding of a municipal corporation recorded in any book, or entries on any minutes or journals kept under the direction of such municipal corporation, and certified by its clerk, shall be received in evidence for any purpose for which the original ordinances, books, minutes, or journals would be received and with as much effect. The clerk shall furnish such transcripts, and he shall be entitled to charge therefor at the rate that the clerk of the district court is entitled to charge for transcripts of records from that court. Printed copies of ordinances of any city or town. R. § 1076.

DEPOSITIONS.

When taken and by whom. R. § 4065.

SEC. 3721. After the commencement of a civil action or other civil proceeding, if a witness resides within this state but in a different county from the place of trial, or is about to go beyond the reach of a subpœna, 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 deems it expedient, take his depotion in writing before any person having authority to administer oaths; and if the action is by equitable proceedings and to be tried on written evidence, then without any other reason therefor, either party may so take the deposition of any witness.

Notice. R. § 4066.

SEC. 3722. Reasonable notice of the name of a witness and the time and place when and where the same will be taken, must be given to the opposite party; but if notices are given in the same case by the same party, and of the taking of depositions at different places upon the same day, they shall be invalid; and no party shall be required to take depositions on the day of the general election, or on the fourth day of July.

Of witness out of county. R. § 4067.

SEC. 3723. The deposition of a witness residing out of the county, may be taken before one or more commissioners on written interrogatories.

Who commissioners. R. § 4068.

SEC. 3724. The officer wishing to take such deposition, may select any of the officers mentioned in the next section as such commissioners, or the parties may agree upon, or the court appoint in the commission, any other individual for that purpose.

Same. R. § 4069.

SEC. 3725. The clerk, or any judge of any court of record, or any commissioners appointed by the governor of this state to take acknowledgment of deeds in another state, or any notary public, or any consul or consular agent of the United States, may be selected and appointed by the party such commissioner, either by the name of office of such officer, or by his individual name and official style and the name of the court of which such constituted commissioner is clerk or judge, and the name of the state and county; or, if without the United States and Canada, the name of the state and town, or city in which such commissioner of deeds, notary, or consul or consular agent resides, must be stated in the notice and in the commission issued.

Qualification. R. § 4070.

SEC. 3726. None of the above named officers are permitted to take the depositions aforesaid, by virtue of a commission directed to him merely as such officer, unless within the limits to which his official jurisdiction extends.

Notice: action before a justice. R. §§ 4071, 4092.

SEC. 3727. Reasonable notice must be given the adverse party of a time when a commission will be sued out of the office of the clerk of the court in which the action is pending; if such action is in an inferior court, then from the office of the clerk of the circuit court for taking the deposition of the witness, naming him, which notice must be accompanied with a copy of the interrogatories to be asked such witness.

Cross interrogatories. R. § 4072.

SEC. 3728. At or before the time thus fixed, the opposite party may file cross-interrogatories. If cross-interrogatories are not filed, the clerk shall file the following:

1. Are you directly or indirectly interested in this action? and if interested, explain the interest you have;

2. Are all your statements in the foregoing answers made from your personal knowledge? and if not, do your answers show what are made from your personal knowledge, and what are from information, and the source of that information? if not, now show what is from information, and give its source;

3. State everything you know concerning the subject of this action, favorable to either party.

Rules. R. § 4077.

SEC. 3729. Subject to the regulations herein contained, the court may establish farther rules for taking depositions and all other acts connected therewith.

NOTICE—SERVICE OF.

Reasonable notice: what deemed. R. § 4073.

SEC. 3730. The notice hereinbefore mentioned, is at least, when served on the attorney, ten days, and when served on the party within the county, five days; if served on the party anywhere else, the notice shall be that required under other similar circumstances in the service of an original notice; 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 that where the depositions are to be taken. No party shall be required to take depositions when the court is in actual session.

How served. R. § 4074.

SEC. 3731. The notice, or notice and copy of interrogatories, may be served by the same persons on the same persons in the same manner, and may be returned, and the return shall be authenticated in the same way, as should be an original notice in the same cause when served other than by publication.

On attorney. R. § 4075.

SEC. 3732. It may also be served personally on any attorney of the adverse party of record in the cause.

By filing in clerk's office. R. § 4076.

SEC. 3733. Whenever the adverse party has been notified by publication only, and has not appeared, he shall be deemed served with the notice, or the notice and interrogatories, by the filing of the same with the clerk in the cause.

MANNER OF TAKING DEPOSITIONS.

Commission: form of. R. § 4078.

SEC. 3734. 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, instructions to guide him, and a statement of the cause and court in which the testimony is to be used, and a copy of the interrogatories on each side appended.

How taken. R. § 4079.

SEC. 3735. 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.

Exhibits appended. R. § 4080.

SEC. 3736. 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.

Certificate. R. § 4081.

SEC. 3737. 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.

Neither party to be present. R. § 4082.

SEC. 3738. Where a deposition is taken upon interrogatories, neither party, nor his agent or attorney, shall be present at the examination of a witness, unless both parties are present or represented by an agent or attorney, and the certificate shall state such fact if party or agent is present.

Opened: not to be taken from clerk's office. R. § 4083.

SEC. 3739. 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.

Returned by mail. R. § 4084.

SEC. 3740. The depositions when thus returned by mail, must be directed to the clerk of the court. They shall state on the outside of the envelope the title of the cause in which they are to be used.

Unimportant deviations. R. § 4085.

SEC. 3741. 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.

Authentication of. R. § 4086.

SEC. 3742. 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 proper court, under his seal of office, verifying the fact that the person who took the deposition is really such officer.

Deposition to show reason for taking. R. § 4087.

SEC. 3743. 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 the time, the witness himself is produced in court.

In justice's court. R. § 4093.

SEC. 3744. Depositions taken to be used in a justice's court, shall be transferred to the court to which the cause is appealed, and used on the trial of such appeal in the same nanner as if regularly taken therein.

PERPETUATING TESTIMONY.

Testimony. R. § 4094.

SEC. 3745. The testimony of a witness may be perpetuated in the following manner.

Petition: statements. R. § 4095.

SEC. 3746. The applicant shall file in the office of the clerk of the district or circuit court, a petition, to be verified, in which shall be set forth specially, the subject matter relative to which testimony is to be taken, and the names of the persons interested,

if known to the applicant; and if not known, such general description as he can give of such persons, as heirs, devisees, alienees, or otherwise. The petition shall also state the names of the witnesses to be examined, and the interrogatories to be propounded to each; that the applicant expects to be a party to an action in a court of this state, in which such testimony will, as he believes, be material, and the obstacles preventing the immediate commencement of the action, where the applicant expects to be the plaintiff.

Order of court or judge. R. § 4096.

SEC. 3747. The court, or the judge thereof, may forthwith make an order allowing the examination of such witnesses. The order shall prescribe the time and place of the examination; how long the parties interested shall be notified thereof, and the manner in which they shall be notified.

Notice: if cannot be done: proceedings. R. § 4097.

SEC. 3748. When it appears satisfactorily to the court or judge that the parties interested can not be personally notified, such court or judge shall appoint a competent attorney to examine the petition and prepare and file cross interrogatories to those contained therein. The witnesses shall be examined upon the interrogatories of the applicant, and upon cross interrogatories where they are required to be prepared, and no others shall be propounded to them; nor shall any statement be received which is not responsive to some of them. The attorney filing the cross interrogatories shall be allowed a reasonable fee therefor, to be taxed in the bill of costs.

Before whom taken. R. § 4098.

SEC. 3749. Such depositions shall be taken before some one authorized by law to take depositions, or before some one specially authorized by the court or judge, and shall be returned to the clerk's office of the court in which the petition is filed.

Court or judge to approve.

SEC. 3750. The court or judge, if satisfied that the depositions have been properly taken and as herein required, shall approve the same and order them to be filed; and if a trial be had between the parties named in the petition, or their privies or successors in interest, such depositions, or certified copies thereof, may be given in evidence by either party where the witnesses are dead or insane, or where their attendance for oral examination cannot be obtained as required; but such depositions shall be subjected to the same objections for irrelevancy and incompetency as may be made to depositions therein pending an action.

EXCEPTIONS TO DEPOSITIONS.

When and how taken. R. §§ 4088, 4089.

SEC. 3751. No exception to depositions other than for incompetency or irrelevancy shall be regarded, unless made by motion, filed by the morning of the second day of the first term held after the depositions have been filed by the clerk. If the depositions are afterwards received during such term, such motion shall be filed on the morning of the day after the same are filed. All motions to suppress depositions must be filed before the cause is reached for trial.

Hearing.
R. § 4090.

SEC. 3752. The court shall, on motion of either party, hear and decide the questions arising on exceptions to depositions before the commencement of the trial.

Errors waived.
R. § 4091.

SEC. 3753. Errors of the court in its decision upon exception to depositions are waived, unless excepted to.

Costs.
R. § 4100.

SEC. 3754. 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.

TITLE XXIII.

OF COMPENSATION OF OFFICERS.

CHAPTER 1.

OF STATE AND DISTRICT OFFICERS.

SECTION 3755. The salary of the governor shall be three thousand dollars per annum; and the salary of the private secretary of the governor twelve hundred dollars per annum.

Governor and secretary. C. 112, § 13, 13 G. A.

SEC. 3756. The salary of the secretary of state shall be twenty-two hundred dollars per annum; and the salary of the deputy secretary of state shall be twelve hundred dollars per annum. The secretary of state shall collect the following fees:

Secretary of state and deputy. Same, § 2. R. § 4133. C. 44. § 13, 13 G. A. Joint resolution No. 21, 12 G. A.

For each commission to commissioners in other states, three dollars.

For each commission to notaries public, one dollar and twenty-five cents.

For certificate, with seal attached, one dollar.

For a copy of any law or record, upon the request of any private person or corporation, for every hundred words, ten cents.

For recording articles of incorporation other than those of a public character, for every hundred words, ten cents.

SEC. 3757. The salary of the auditor of state shall be twenty-two hundred dollars per annum; and the salary of the deputy auditor of state shall be twelve hundred dollars per annum; and the auditor shall collect fees as provided in chapters on insurance.

Auditor and deputy. C. 112, § § 2, 3, 13 G. A.

SEC. 3758. The salary of the treasurer of state shall be twenty-two hundred dollars per annum; and the salary of the deputy treasurer of state twelve hundred dollars per annum.

Treasurer and deputy. Same.

SEC. 3759. The salary of the register of the state land office shall be twenty-two hundred dollars per annum; and the salary of the deputy register of the state land office twelve hundred dollars per annum. Such register shall also collect such fees as is provided in chapter five, title two of part one of this code.

Register state land office and deputy. Same.

SEC. 3760. The salary of the superintendent of public instruction shall be twenty-two hundred dollars per annum; and the salary of the deputy superintendent of public instruction, twelve hundred dollars per annum.

Superintendent public instruction and deputy. Same.

SEC. 3761. The salary of the adjutant-general shall be two thousand dollars per annum.

Adjutant general. C. 17, 10 G. A.

State librarian. C. 82, § 8, 14 G. A.

SEC. 3762. The salary of the state librarian shall be twelve hundred dollars per annum, nor shall any extra amount be paid for any assistant librarian.

Superintendent of weights and measures. C. 82, § 15, 9 G. A.

SEC. 3763. The salary of the state superintendent of weights and measures shall be fifty dollars per annum.

STATE PRINTER.

State printer. R. § § 148, 149, 150, 151, 152, 153.

SEC. 3764. The state printer shall receive for work done for the state, compensation as follows:

For composition on the laws, journals, reports, circulars, and all other printed matter, except blanks, sixty cents per thousand ems, and ninety cents per thousand ems for figure work, where the figures are arranged in columns, and one dollar and twenty cents per thousand ems for rule and figure work.

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

For printing blanks, where the blanks require one side of a sheet of folio-post or any larger sized paper, there shall be allowed for the first quire one dollar and seventy-five cents; for the balance of the first ream sixty cents per quire, and twenty-five cents per quire for any number exceeding one ream.

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

For printing blanks upon any paper mentioned in the preceding section, or any smaller paper, and when two or more blanks are printed upon a half sheet, seventy-five cents shall be allowed for the first quire, and fifteen cents per quire for any number exceeding one ream; provided that for this kind of blanks twelve sheets of paper shall constitute a quire.

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

No constructive charges allowed. R. § 155.

SEC. 3765. No constructive charges of any kind shall be allowed the state printer, and he shall be allowed only for composition, press work, and type actually set up and imposed, or for paper actually printed, and he shall file with the secretary of state

a copy of each job of work on which each item of charge is made at the time of rendering his account, before the secretary can issue him the receipt contemplated by law. The actual number of ems and tokens of press work in each job shall be specified, with a statement that the law has been strictly complied with and that no constructive charges are embraced in his account as rendered, which statement shall be verified by the affidavit of the state printer.

To receive half pay as work progresses. R. § 146.

SEC. 3766. At any time during the progress of printing the laws or journals of either house of the general assembly, the secretary of state may issue his certificate for one-half of the value of the work done, such value to be determined by the secretary, upon the production of which, the auditor of state shall audit the same and draw a warrant therefor on the state treasury.

STATE BINDER.

State binder. C. 96, 12 G. A.

SEC. 3767. The state binder shall be paid the following prices for all work for the state:

For folding and trimming all documents not stitched, fifteen cents per hundred copies;

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

For folding, sewing, and binding the journals of the two houses of the general assembly in paper covers, twenty-five cents per copy;

For folding, sewing, and binding in muslin or cases, with gilt letters for title, same style as agricultural reports for eighteen hundred and sixty-six, thirty-five cents per copy for a volume of four hundred pages or less, and for each additional hundred pages, or fraction thereof over fifty pages, five cents;

For folding, sewing, and binding in "half sheep," with gilt letters for title, same style as the legislative documents of eighteen hundred and sixty-six, sixty cents per copy for each volume of four hundred pages or less, and five cents for each additional hundred pages, or fraction thereof over fifty pages;

For folding, stitching, and binding the laws of each general assembly in boards, with muslin backs and paper sides, same as the laws of eighteen hundred and sixty-six, eighteen cents per copy; and for all styles of work not named in this chapter, he shall be paid as nearly as possible in accordance with the rates above specified;

For folding, sewing, and binding in "law sheep," same style as Iowa reports, eighty cents per copy for each volume of four hundred pages or less, and five cents for each additional hundred pages, or fraction thereof over fifty.

To receive half pay during progress of work. R. § 175.

SEC. 3768. At any time during the progress of the binding of the laws or journals of the general assembly, the secretary of state may issue his certificate for one half of the value of the work done

and performed, to be ascertained by said secretary, and the amount so certified shall be audited by the auditor of state, and a warrant drawn therefor by him on the state treasury.

SUPREME JUDGES—ATTORNEY GENERAL—CLERK.

Judges of supreme court. C. 112, § 4, 13 G. A. C. 27, § 5, 12 G. A. C. 37, § 5, 14 G. A.

SEC. 3769. The salary of each judge of the supreme court shall be four thousand dollars per annum, and fifteen cents for each mile traveled to the terms at Davenport, Dubuque, and Council Bluffs, to be computed by the nearest practicable route.

Attorney general. C. 67, § 1, 11 G. A. C. 53, § 1, 12 G. A.

SEC. 3770. The salary of the attorney-general shall be fifteen hundred dollars per annum, and whenever he is required by the duties of his office, or by direction of the governor or general assembly to attend any of the courts of this state, or any of the federal courts of this or any other state, other than the supreme court when held at the capital, he shall receive five dollars for each day he actually attends the sessions of such courts in addition to his salary, and shall also in addition to his salary be entitled to charge and receive such fees as are allowed him by the chapters on insurance.

Clerk of the supreme court. R. §§ 2949, 4134, 4135. C. 27, § 5, 12 G. A. C. 37, § 5, 13 G. A.

SEC. 3771. The clerk of the supreme court shall receive five dollars for every day of the session of such court at Davenport, Dubuque, and Council Bluffs, and fees as follows:

Upon filing each appeal, three dollars;

Upon entering each judgment where the cause has been decided on its merits, two dollars;

Upon each continuance, one dollar;

Upon issuing each execution, one dollar and twenty-five cents;

Upon entering satisfaction of each judgment, fifty cents;

Upon issuing each writ, rule, or order to be served upon any person not in court, twenty-five cents;

For copying an opinion to be transmitted to an inferior court upon the reversal of a judgment or order, to be paid by the party against whom the costs are adjudged, or for a copy of such opinion, or any record made at the request of any person, for each hundred words, ten cents;

For recording the opinions of the court, eight cents per hundred words, to be paid by the state.

SEC. 3772. Such clerk shall charge no fees in criminal cases against the county or state, except where a judgment is reversed he shall be entitled to the same fees for a copy of the decision and opinion of the court, to be paid by the county as against the accused, as are allowed in civil cases.

SEC. 3773. If any of the foregoing fees of the clerk are not paid in advance, execution may issue therefor except where the fees are payable by a county or the state.

DISTRICT OFFICERS.

District and circuit judges. C. 112, §§ 4, 5, 13 G. A. C. 22, § 3, 14 G. A.

SEC. 3774. The salary of each judge of the district and of the circuit court shall be twenty-two hundred dollars per annum.

SEC. 3775. The salary of each district attorney shall be six hundred dollars per annum, and they shall receive in addition thereto the following fees, to be audited and paid like other claims against the counties:

District attorney. R. § 381. C. 38, 10 G. A.

For each conviction on a plea of guilty, five dollars;

For each jury trial in cases of misdemeanor, ten dollars;

For each jury trial in cases of felony, twenty dollars;

For each judgment for costs only, five dollars;

For prosecuting an information before a justice of the peace for a violation of the laws in relation to the sale of intoxicating liquors, five dollars;

For all fines and forfeitures actually collected by him, ten per cent. upon all sums less than two hundred dollars, and upon all sums exceeding that amount, one per cent.

SEC. 3776. In cases of conviction, the fees contemplated in the preceding section shall be taxed against the defendant, and when collected paid into the county treasury.

In case of conviction. C. 38, § 2, 10 G. A.

SEC. 3777. Short-hand reporters shall receive compensation as follows:

Short-hand reporters. C. 99, § § 2, 3, 14 G. A.

For each day actually employed in court taking testimony, such sum as may be fixed by the judge, not exceeding eight dollars per day, to be audited and paid by the county upon the certificate of such judge, and for making transcripts thereof for each one hundred words, ten cents; the same in criminal cases, to be audited and paid in the same manner, but where such transcripts are desired in any civil case, the fees therefor shall be paid by the party desiring the same and the amount allowed such reporter shall, in all instances, except where the defendant in a criminal case is acquitted, be taxed as a part of the costs.

SEC. 3778. The secretary of state, auditor of state, and register of the state land office, shall keep an accurate and particular account of all fees received by them, which shall be verified by affidavit, and rendered monthly to the treasurer of state, and they shall pay the amounts thus received to such treasurer at the end of each month.

Certain state officers to pay fees to state treasurer. C. 112, § 8, 13 G. A.

SEC. 3779. During the term for which any judge may have been elected or appointed, his salary shall not be increased by this chapter, except that any judge elected to fill a vacancy shall receive the salary herein provided.

Judges salary not increased. C. 112, § 6, 13 G. A.

SEC. 3780. The salaries of all officers mentioned in this chapter shall be paid in monthly instalments at the end of each month, and shall be in full compensation for all services, except as otherwise expressly provided in this chapter.

Salaries paid monthly. Same, § 7.

CHAPTER 2.

OF COUNTY AND TOWNSHIP OFFICERS.

SECTION 3781. The clerk of the district or circuit court shall be entitled to charge and receive the following fees:

Clerk of district and circuit court. R. § § 430, 1852

For filing any petition, appeal, or writ of error, and docketing the same, one dollar and fifty cents;

For every attachment, fifty cents;

For every cause tried by jury, one dollar and fifty cents;

For every cause tried by the court, seventy-five cents;

For every equity cause, one dollar and fifty cents;

For each injunction, or other extraordinary process or order, one dollar;

For all causes continued on application of a party by affidavit, fifty cents;

For all other continuances, fifteen cents;

For entering any final judgment or decree, seventy-five cents;

For taxing costs, fifty cents;

For issuing execution or other process after judgment or decree, fifty cents;

For filing and properly entering and endorsing each mechanic's lien, the same to be taxed as other costs in case a suit is brought thereon, one dollar;

For certificate and seal, fifty cents;

For filing and docketing transcript of judgment from another county or a justice of the peace, fifty cents;

For entering any rule or order, twenty-five cents;

For issuing writ or order, not including subpœnas, fifty cents;

For issuing commission to take depositions, fifty cents;

For entering sheriff's sale of real estate, fifty cents;

For entering judgment by confession, one dollar;

For entering satisfaction of any judgment, twenty-five cents;

For all copies of record or papers filed in his office, transcripts, and making complete record, ten cents for each hundred words;

For taking and approving a bond and sureties thereon, fifty cents;

For declaration of intentions by an alien to become a citizen, twenty-five cents;

For all services on naturalization of aliens, including oaths and certificate, fifty cents;

In criminal cases.

In criminal cases, and in all causes in which the state or county is a party plaintiff, the same fees for same services as in suits between private parties. When judgment is rendered against the defendant, the fees shall be collected from such defendant. Where the state fails, the clerk's fees shall be paid by the county;

For making out transcripts in criminal cases appealed to the supreme court, when the defendant is unable to pay, for each one hundred words, ten cents, to be paid by the county.

Pensions and bounties. C. 88, 10 G. A.

SEC. 3782. The clerks of the district court shall certify under the seal of such court, to all applications and other papers requiring the certificate and seal of a court of record to procure pensions, bounties, and back pay for soldiers or other persons entitled thereto, whenever requested by the applicant, his agent, or attorney, and such clerk shall be entitled to the sum of ten cents only for such service.

In probate matters. C. 134, § 1, 12 G. A.

SEC. 3783. There shall be such compensation paid such clerk for his services in probate matters out of the fees collected by him for probate business, as the board of supervisors may allow.

SEC. 3784. The total amount of compensation of such clerk for all official services, shall not exceed the sum of two thousand dollars in any one year, except that in each county having two county seats, such compensation, including the amount paid to deputies, shall not exceed three thousand dollars in any one year, and if the fees received by said clerk shall amount in the aggregate to more than the sum above stated for any one year, the excess shall be paid into the county treasury. In case the amount of fees so received by such clerk is deemed an inadequate compensation, the board of supervisors may allow such additional compensation as they deem best and proper.

Compensation limited. R. § 432. C. 88, 10 G. A.

SEC. 3785. The clerk of the district court as such, and as clerk of the circuit court, shall report to the board of supervisors of his county at each regular session, a full and complete statement of the amount of fees received by him, which shall be verified by the affidavit of such clerk.

Report to supervisors; fees collected. R. § 451.

SEC. 3786. The clerk of the district and circuit courts shall pay into the county treasury all money received for witness fees remaining unclaimed in his hands for six months after the receipt of the same, and at the time of so doing shall deliver to the treasurer a written statement, giving the title of the cause and style of the court in which the same was pending, with the name of the witnesses and the amount each one is entitled to receive and the treasurer shall keep an account of the money thus received separate from other funds, and shall pay the same to the persons entitled thereto as shown by such statement, taking proper receipts therefor.

Pay money received for witnesses that is uncalled for to county treasurer. R. § § 353, 354, 355, 356.

SEC. 3787. There shall be paid the clerk of the circuit court the following fees:

For issuing marriage licenses, one dollar;

For all services performed in the settlement of the estate of any decedent, except where actions are brought by the administrator or against him, or as may be otherwise provided herein, where the value of the estate does not exceed three thousand dollars, three dollars;

Where such value is between three and five thousand dollars, five dollars;

Where such value is between five and seven thousand dollars, eight dollars;

Where the value exceeds eight thousand dollars, ten dollars;

And in addition to the foregoing, for making a complete record in cases where the same is required by law or directed by an order of the court, for every one hundred words, ten cents;

All of which fees shall be paid into the county treasury.

For marriage licenses and fees in probate matters. C. 137, 9 G. A. C. 86, § 15, 12 G. A.

SHERIFF.

SEC. 3788. The sheriff is entited to charge and receive the following fees:

Sheriff. R. § § 2625, 4145.

For attending the supreme court, to be paid out of the amount appropriated for contingent expenses of such court, two dollars per day;

For serving any order or notice and making return thereof, for the first person served, fifty cents; for each additional person twenty-five cents; and for each warrant two dollars, mileage, and all necessary expenses as sworn to by the sheriff;

For each copy of such order, warrant, or notice when required, for each hundred words, ten cents;

For serving any order or warrant, and calling to his aid when necessary to serve the same the power of the county, one dollar and fifty cents;

Each commitment to prison, twenty-five cents;

Discharge from same, twenty-five cents;

Attending with a person before a court or judge when required, for each day, besides mileage, one dollar;

Copy of a paper required by law, when made by him, for each hundred words, ten cents;

For serving and returning subpœna for each person, twenty cents;

Calling a jury in each case, ten cents;

Summoning a grand or trial jury, for each panel, including mileage, to be paid out of the county treasury, eight dollars;

Traveling fees in other cases required by law, going and returning, per mile, five cents;

Selling land or other property on execution, for each day, one dollar;

Making and executing a deed for land sold on execution, one dollar;

Summoning a jury in cases of forcible entry and detainer, including mileage, one dollar and fifty cents;

Serving an execution or order for the partition of real estate or assignment of dower, two dollars;

For taking each bond required by law, twenty-five cents;

For summoning a jury to assess the damages to the owner of lands taken for any work of internal improvements and attending upon them, including mileage, five dollars;

If such case occupies more than one day, for each additional day or fraction thereof, one dollar and fifty cents;

For serving each attachment, one dollar;

For the time necessarily employed in making an inventory of property attached or levied upon, per day, one dollar;

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 part thereof, two per cent.;

On all excess over five hundred dollars one per cent.;

But where the property is purchased by the plaintiff in execution, or where the money is collected without sale of property, one half the above rates;

For returning any order, warrant, or notice not served, five cents;

For receiving a prisoner on surrender by bail, twenty-five cents;

For taking new bail or bond, twenty-five cents;

For boarding prisoners and conveying to penitentiary C. 52, 9 G. A. C. 152, 13 G. A.

For dieting a prisoner, for each day, fifty cents; and for dieting a prisoner in conveying him to state prison or jail outside of his county, one dollar per day;

For conveying each convict to the penitentiary, and as full compensation therefor, sixteen cents for each mile traveled, to be computed from the county seat where the conviction took place by the most direct route of travel; the same to be paid out of the county treasury.

Salary. C. 52, 9 G. A. C. 132, 12 G. A.

SEC. 3789. The sheriff is also entitled for attending district and circuit court and delivering notices, including mileage, and for other services for which no compensation is allowed by law, such annual salary in each county with a population of ten thousand inhabitants, not less than fifty dollars.

In each county with a population of fifteen thousand inhabitants, not less than one hundred and fifty dollars.

In each county with a population of twenty thousand inhabitants or over, not less than two hundred dollars.

In criminal causes. R. § 4146.

SEC. 3790. In all criminal cases where the prosecution fails, or where the money cannot be made from the person liable to pay the same, the facts being certified by the clerk or justice as far as their knowledge extends, and verified by the affidavit of the sheriff, the fees allowed by law in such cases shall be audited by the county auditor, and paid out of the county treasury.

COUNTY SUPERVISORS.

Members of board of supervisors. C 148, § 4, 13 G. A.

SEC. 3791. The members of the board of supervisors shall each receive four dollars for each day actually in session, and two dollars and fifty cents per day, e clusive of mileage, when not in session but employed on committee service, and six cents per mile for every mile traveled in going to and from said session of the board: *provided*, that in counties having a population as shown by the last preceding census of less than ten thousand, they shall not receive compensation for more than twenty days in one year; and in counties having a population of more than ten thousand, but less than thirty thousand, for more than thirty days in the year; and in counties having a population of thirty thousand or over, not more than forty days in one year.

RECORDER—TREASURER.

Recorder. R. § 4143.

SEC. 3792. The recorder shall be entitled to charge and receive the following fees:

For recording each instrument containing four hundred words, fifty cents;

For every additional hundred words, or fraction thereof, ten cents.

Treasurer. R. § 777. C. 129, § 6, 9 G. A. C. 75, 11 G. A. C. 166, 13 G. A.

SEC. 3793. Each county treasurer shall receive for his services the following compensation:

1. Two per cent. of all money collected by him as taxes due any incorporated city or town, to be paid out of the same;

2. Three per cent. of all taxes collected by him for all other tax funds, to be paid out of the county treasury;

3. All fees now allowed him, exclusive of his annual salary;

4. For each certificate of purchase issued for land sold for nonpayment of taxes, thirty-five cents;

5 For mileage by the nearest traveled route when paying money into the state treasury or national bank when required by law, ten cents for each mile, counting one way.

6. Such additional compensation as the board of supervisors may deem proper. When the aggregate amount of the compensation authorized by this section exceeds fifteen hundred dollars, exclusive of what is received under the following section and the fourth sub-division hereof, the excess shall be paid into the county treasury for the use of the county, except that in counties having two county seats, such aggregate compensation shall not exceed two thousand dollars. But the compensation for clerks necessary for the proper transaction of the business shall be paid by the county.

To give information of amount of taxes due from any person. C. 168, § 1, 9 G. A.

SEC. 3794. The county treasurer shall, if applied to by letter, enclosing thirty cent's value in postage stamps, asking for information of the amount of taxes upon any specified parcel or parcels of land in his county, answer the same correctly by mail, giving direct answers to all the inquiries in such letter respecting the amount and interest of the unpaid taxes as the same appears from the tax books in his office. If the total of such land specified in any one letter exceeds three hundred and twenty acres, then such treasurer is not bound to answer such letter unless it contains, besides the thirty cents above provided, ten cents in addition for every one hundred and sixty acres when the total acres specified in such letter exceed the said three hundred and twenty acres; but the aggregate fees thus charged shall in no case exceed the sum of fifty cents; and upon the return to such treasurer of the letter or a copy thereof so sent by him, with the amount due as shown by such letter, such treasurer shall pay such taxes and return a receipt therefor by mail.

Penalty for failure. Same, § 2.

SEC. 3795. Any treasurer who shall neglect for twenty days after the receipt of any such letter, with money enclosed as aforesaid, to answer the same fully as required in the preceding section, or who shall directly or indirectly receive or be concerned in receiving any greater compensation for the service mentioned in the preceding section than is therein provided, shall forfeit to the person aggrieved, for each offense the sum of fifty dollars, which may be recovered in a civil action in any court having jurisdiction.

Render account of money received as compensation to supervisors. C. 129, § 9, 10 G. A.

SEC. 3796. The county treasurer shall enter in a book kept for that purpose, all moneys received by him for services rendered, designating for what the same was received, and shall render an account verified by affidavit to the board of supervisors at each session thereof, stating fully all money so received and from what source derived, and any excess to which he would be entitled under the preceding section over and above the sum therein limited, shall be paid into the county treasury.

AUDITOR.

County auditor. R. § 777. C. 25, § 3, 9 G. A.

SEC. 3797. The county auditor shall be entitled to charge and receive the following fees:

For recording each bond required to be by him recorded, fifty cents;

For transfers made in the transfer books, for each deed, twenty-five cents;

For issuing certificate of redemption of land sold for taxes, twenty-five cents;

For each certificate issued by the treasurer for lands sold for non-payment of taxes, fifteen cents;

SEC. 3798. Such auditor shall enter in a book kept for that purpose, all fees contemplated in the preceding section received by him, and shall render to the board of supervisors at each session, an account verified by affidavit, stating the amount of fees received and from what source derived; and the said board shall allow him such additional compensation as is deemed just and proper.

Render account of fees to supervisors: additional compensation C. 160, § § 3, 6, 12 G. A.

CORONER—SURVEYOR.

SEC. 3799. The coroner is entitled to charge and receive the following fees:

Coroner. R. § 4148.

For a view of each body and taking and returning an inquest on same, five dollars;

For a view of each body and examination without inquest, three dollars;

For issuing subpœna, warrant, or order for a jury, twenty-five cents;

For each mile traveled to and returning from an examination or inquest, ten cents;

Which fees shall be paid out of the county treasury when they cannot be obtained from the estate of the deceased;

For all other services, the same fees as are allowed sheriffs in similar cases, to be paid in like manner.

SEC. 3800. The county surveyor is entitled to charge and receive the following fees:

Surveyor. R. § 4155. C. 109, 11 G. A.

For each day's service actually performed in traveling to and from the place where any survey is to be made, and for making the same and return thereof, three dollars;

For certified copy of the plat or field-notes, twenty-five cents.

NOTARIES PUBLIC.

SEC. 3801. Notaries public shall be entitled to charge and receive the following fees:

Notaries public. R. § 4151.

For every protest of a bill or note, seventy-five cents;

For registering any protest, fifty cents;

For being present at a demand, tender, or deposit, and noting the same, fifty cents;

For administering an oath, five cents;

For certifying to the same under his official seal, twenty-five cents;

For certificate under seal, twenty-five cents;

For other services, the same fees as are allowed justices of the peace for similar services.

SEALER.

Sealer of weights and measures. C. 82, § 23, 9 G. A.

SEC. 3802. Each sealer of weights and measures shall receive the following fees:

For sealing and marking every beam, ten cents;

For sealing and marking measures of extension at the rate of ten cents per yard, not to exceed fifty cents for any one measure;

For sealing and marking every weight, five cents;

For sealing and marking liquid and dry measures, five cents for each measure;

He shall also be entitled to a reasonable compensation for making weights and measures conform to the standards in his possession.

Inspector of lumber and shingles. R. § 1913.

SEC. 3803. The inspector of lumber and shingles shall receive:

For inspecting and measuring lumber, for each thousand feet, board measure, fifteen cents;

For inspecting shingles, for each thousand, fifteen cents.

JUSTICES OF THE PEACE.

Justices of the peace. C. 134, 14 G. A.

SEC. 3804. Justices of the peace shall be entitled to charge and receive the following fees:

For docketing each case in any action, except in garnishment proceedings, fifty cents;

For issuing each original notice, fifty cents;

For issuing attachment or order for the delivery of property, twenty-five cents;

For drawing and approving bond when required in any case, fifty cents;

For entering judgment by confession after the suit brought, fifty cents;

For entering judgment by confession not on suit brought, one dollar;

For entering judgment by default, or on a plea of guilty, fifty cents;

For entering judgment when contested, fifty cents;

For additional when a jury is called, one dollar;

For issuing venire for jury, twenty-five cents;

For each subpœna in civil cause, when demanded, twenty-five cents;

For each oath or affirmation, except in proceedings connected with suits before him, five cents;

For each continuance at the request of either party, fifty cents;

For setting aside each judgment by default, fifty cents;

For each information and affidavit, fifty cents;

For each execution, renewal of execution, or warrant of any kind, fifty cents;

For each bond or recognition, fifty cents;

For each mittimus or order of discharge, fifty cents;

For each official certificate or acknowledgment, twenty-five cents;

For making and certifying transcript, fifty cents;

For trial of all causes, civil or criminal, for each six hours or fraction threof, one dollar;

For all money collected and paid over without suit, five per cent; and for all money collected and paid over after suit brought without judgment, two per cent., which shall be added to the costs.

CONSTABLES.

SEC. 3805. Constables shall be entitled to charge and receive the following fees: Constables. C. 184, 14 G. A.

For serving any notice or civil process on each person named therein, fifty cents;

For copy thereof when required, ten cents;

For serving attachment or order for the delivery of property, fifty cents;

For traveling fees, going and returning, per mile, five cents;

For summoning a jury, including mileage, one dollar;

For attending the same on trial, for each calendar day, one dollar;

For serving execution, besides mileage, fifty cents;

For advertising and selling property, seventy-five cents;

For advertising without selling, twenty-five cents;

For return of execution when no levy is made, ten cents;

For serving each subpœna, besides mileage, fifteen cents;

For posting up each notice required by law, fifteen cents;

For serving each warrant of any kind, seventy-five cents;

For attending each trial in a criminal case, for each calendar day, one dollar;

For serving each mittimus or order of release, besides mileage, thirty cents;

For all money collected on execution and paid over except costs, five per cent, which shall constitute part of the costs.

SEC. 3806. The fees contemplated in the two preceding sections, in criminal cases shall be audited and paid out of the county treasury in any case where the prosecution fails, or where such fees cannot be made from the person liable to pay the same, the facts being certified by the justice and verified by affidavit. In criminal cases.

SEC. 3807. A constable or other officer who serves any warrant for the seizure of intoxicating liquors shall be allowed: Officers seizing intoxicating liquors. R. § 1570.

For such service, one dollar;

For the removal and custody of such liquor, his reasonable expenses;

For the destruction of such liquor under the order of the court, his reasonable expenses and one dollar;

For posting and leaving notices in such cases, one dollar.

TOWNSHIP TRUSTEES.

SEC. 3808. The township trustees shall receive:

For each day's service of eight hours necessarily engaged in official business, to be paid out of the county treasury, to each trustee, two dollars; Township trustees. R. § 4156.

For each day engaged in assessing damages done by trespassing animals, one dollar per day each, to be paid as are other costs in such cases;

But when acting as fence viewers, or viewing or locating any ditch or drain, or in any other case where provision is made for their payment otherwise, they shall not be paid out of such treasury.

TOWNSHIP CLERK—ASSESSOR.

Township clerk. R. § 909. C. 90, 9 G. A.

SEC. 3809. The township clerk shall receive:

For each day of eight hours necessarily engaged in official business, where no other compensation or mode of payment is provided, to be paid from the county treasury, two dollars;

For all money coming into his hands by virtue of his office, five per cent.;

For filing each application for a drain or ditch, fifty cents;

For recording each person's mark or brand for animals, twenty-five cents;

For making out and certifying the papers in any appeal taken from an assessment by the trustees of damages done by trespassing animals, such additional compensation in such cases as the board of supervisors may deem reasonable and allow.

Assessors. C. 173, § 3, 9 G. A.

SEC. 3810. Each township assessor shall receive for each day of eight hours necessarily engaged in the discharge of his official duties, to be paid out of the county treasury, two dollars.

CHAPTER 3.

OF WITNESSES, JURORS, AND SPECIAL CASES.

Jurors. R. § 4154. C. 15, § § 2, 3, 9 G. A. C. 92, 10 G. A.

SECTION 3811. Jurors shall receive the following fees:

For each day's service or attendance in courts of record, two dollars, and for each mile traveled from his residence to the place of trial; the sum of ten cents;

For each day's service before a justice of the peace, one dollar;

No mileage shall be allowed jurors before justices, nor to talesmen.

Jurors' fees in justice's courts shall be taxed as part of the costs.

Immediately after the adjournment of each term of a court of record, the clerk thereof shall certify to the county auditor a list of the jurors, with the number of days' attendance and mileage to which each one is entitled.

Fees taxed as part of costs. C. 15, § 4, 9 G. A.

SEC. 3812. For every case tried in a court of record by jury, there shall be taxed as a part of the costs as a jury fee the sum of six dollars, which shall be collected as other costs and paid into the county treasury by the clerk, who shall report the same

to the board of supervisors at each regular session thereof, who shall cause the same to be charged to the treasurer.

Commissioners to appraise property taken for public use. R. § 4158.

SEC. 3813. Every appraiser or commissioner appointed or selected to appraise the damages caused by taking private property for public use, shall receive the same compensation as jurors in courts of record, but when called to appraise property taken on judicial process, they shall receive twenty-five cents per hour.

Witnesses. R. § 4153.

SEC. 3814. Witnesses in any court of record shall receive for each day's attendance, one dollar and twenty-five cents;

Before a justice of the peace, fifty cents for each day;

Mileage for actual travel per mile each way, five cents;

An attorney, juror, or officer, who is in habitual attendance on the court for the term at which he is examined as a witness, shall be entitled to but one day's attendance;

Experts.

Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, shall receive additional compensation, to be fixed by the court, with reference to the value of the time employed and the degree of learning or skill required;

Criminal cases.

For attending before the grand or trial jury, or court, in criminal cases where the defendant is adjudged not guilty, the fees above provided for attending the district or justice's court shall be paid by the county, upon a certificate of the clerk or justice showing the amount of the services to which they are entitled.

Justices of the peace to pay money received for witness into county treasury. R. § 351.

SEC. 3815. Any witness fees which may be received by justices of the peace for witnesses appearing before them, which shall not have been called for within one year after the date of collection, shall be paid into the county treasury for the use of the county, accompanied with a statement of the amount due each witness, but the witness entitled to such fees shall receive the same from the county treasury, upon a certificate from the justice of the peace before whom he may have appeared as such witness, or his successor in office, stating that he is entitled to such fees and the amount of the same; and any person or officer paying any sum of money into the county treasury under the provisions of this section, shall take duplicate receipts from the treasurer therefor, one of which he shall file with the county auditor who shall charge the amount thereof to the treasurer as so much county revenue.

Penalty for failure. R. § 352.

SEC. 3816. Any failure to pay over to the county treasurer witness fees as contemplated by this title, is a misdemeanor, and shall be prosecuted as provided by law.

When witness fees are paid by a party or county. C. 165, 9 G. A.

SEC. 3817. When the county or any party has paid the fees of any witness, and the same is afterward collected from the adverse party, the person or county so paying the same shall, upon the production of the receipt of such witness or other satisfactory evidence, be entitled to such fee, whether it be in the hands of the justice or clerk, or has been paid into the county treasury.

Fees of in criminal cases. C. 141, 12 G. A.

SEC. 3818. In all criminal cases, the fees of witnesses for the defense, shall be paid by the county.

Where no other fees are fixed. R. § 4132.

SEC. 3819. Any officer legally called on to perform any of the following services, in cases where no fees have been fixed therefor, shall be entitled to receive:

For drawing and certifying an affidavit, or giving a certificate not attached to any other writing, twenty-five cents;

For affixing his official seal to any paper, whether the certificate be under seal or not, thirty-five cents;

For making out a transcript of any public papers or records under his control, for the use of a private person or corporation, or recording articles of incorporation, for every one hundred words, ten cents.

For committing persons to jail: carriage hire. C. 97, 14 G. A.

SEC. 3820. Every officer or person who shall arrest any person with a warrant or order issued by any court or officer, or who shall be required to convey a prisoner from a place distant from the county jail to such jail on an order of committment, shall be allowed to charge as fees, which shall be collectable the same as other fees in criminal cases, besides the fees allowed by law, whatever sums such officer or person shall actually and ncessarily pay for carriage hire in so conveying such person to jail.

For taking up estrays. C. 102, § § 22, 23, 9 G. A.

SEC. 3821. Any person taking up any estray horse, mule, jack or jenny, fifty cents;

For every head of neat cattle, twenty-five cents;

For all other kinds of animals, fifteen cents;

For appointing the appraisers, making the necessary entry, certificate, and return, the justice shall receive fifty cents.

Trespassing animals. R. § 1520. C. 20, § 4, 14 G. A.

SEC. 3822. In all cases where services shall be performed by any officer or other person in respect to estrays or trespassing animals, the following fees or compensation shall be allowed: to the justice of the peace for administering the oath to the taker-up or finder, making an entry thereof, with the report of the appraisers, and making and transmitting a certificate thereof to the clerk of the district court, fifty cents; to the clerk for taking proof of the ownership of the property and granting certificate of the same, twenty-five cents; for registerng each certificate transmitted to him by the justice as aforesaid, ten cents; for advertisements, including the newspaper publication, fifty cents; to the sheriff on account of sales made by him in pursuance of chapter three, of title eleven, four per cent. on the amount; to the constable, for each warrant served on appraisers, twenty-five cents; to each appraiser, twenty-five cents; all which said costs and charges, with the exception of the justice's for granting a certificate of ownership, and the sheriff's commission, shall be paid by the taker-up to the person entitled thereto, whenever the service shall be performed; the printer of the county paper for publishing the notice shall receive the price of his published or ordinary advertising rates; in allcases where it shall be necessary to make publication in a newspaper, the taker-up or finder, as the case may be, shall be required to deposit with the clerk of the district court, a sum of money sufficient to pay the same, previous to the publication thereof; all which costs and charges shall be reimbursed to the taker-up or finder in all cases where restitution of the property shall be made to the owner, or the same shall be delivered to the sheriff to be sold, or where money or bank notes shall be paid

into the county treasury, in addition to the reward to which such person may be entitled for such taking up or finding as aforesaid.

SEC. 3823. The public printer shall receive for each estray notice published, a sum agreed upon by the secretary of state, not, however, exceeding thirty cents for each insertion; and when the appraised value of the estray exceeds fifteen dollars, the finder shall pay the justice a sum sufficient to pay the clerk's fee, postage, and the cost of publishing such notice. If more than one animal is taken up at the same time, they shall be included in one entry and advertisement, and no additional fees shall be required or allowed in such case, and said clerk shall subscribe for one copy of such paper, to be paid for out of the county treasury, which paper shall be filed and preserved in the office of said clerk.

Public printer for publishing estray notices. C. 102, § 9, 10, 14, 9 G. A.

SEC. 3824. The following fees shall be paid persons engaged in laying out and changing highways:

For laying out public highways. R. § § 872, 877.

Commissioners for each day, two dollars;

Surveyor for each day, four dollars;

Chain carriers, markers, and other assistants, for each day, one dollar and fifty cents;

If the highway extends into more than one county, such expenses when so adjudged shall be paid by the several counties in proportion to the length of time occupied on the highway in each county.

SEC. 3825. The commissioners of insanity shall be allowed at the rate of three dollars per day each, for all the time actually employed in the duties of their office. They shall also be allowed their necessary and actual expenses, not including charges for board. The clerk, in addition to what he is entitled to as commissioner, shall be allowed one-half as much more for making the required record entries in all cases of inquest and of meetings of the board for any purpose, and for the filing of any papers required to be filed. He shall also be allowed twenty-five cents for each notice or process given or issued under seal as herein required. The examining physician shall be entitled to the same compensation as a commissioner, and to mileage at the rate of five cents per mile each way. The sheriff shall be allowed for his personal services in conveying a patient to the hospital and returning therefrom, at the rate of three dollars per day for the time necessary and actually employed, and mileage the same as is allowed him in other cases, and for other services the same fees as for like services in other cases. Witnesses shall be entitled to the same fees as witnesses in the circuit court. The compensation and expenses provided for above, shall be allowed and paid out of the county treasury in the usual manner. Whenever the commissioners issue their warrant for the admission of a person to the hospital, and funds to pay the expenses thereof are needed in advance, they shall estimate the probable expense of conveying such person to the hospital, including the necessary assistance, and not including the compensation allowed the sheriff, and on such estimate, certified by the clerk, the auditor of the county shall issue an order on the county treasurer for the amount as estimated in favor of the sheriff or other person intrusted with

Commissioners of insanity. B. 109, § 48, 13 G. A.

Sheriff.

Witnesses.

When paid out of county treasury.

the execution of such warrant; the sheriff or other person executing such warrant, shall accompany his return with a statement of the expenses incurred, and the excess or deficiency may be deducted from or added to his compensation, as the case may be. If funds are not so advanced, such expenses shall be certified and paid in the manner above prescribed on the return of the warrant. When the commissioners order the return of a patient, compensation and expenses shall be in like manner allowed.

Visiting committee to hospital for the insane. C. 91, § 9, 14 G. A.

SEC. 3826. The visiting committee shall be allowed five dollars per day for the time taken in visiting the hospital for the insane, and mileage at the rate of five cents per mile each way. The disbursing officer of each hospital for the insane shall pay the per diem and mileage allowed such visiting committee, and each member of such visiting committee shall certify under oath to such disbursing officer, the number of days he has served and the number of miles traveled.

Messengers sent for election returns. R. § 529.

SEC. 3827. Messengers sent for the returns of elections, shall be paid ten cents a mile going and returning, to be audited and paid from the state or county treasury, as the case may be.

Marriages: solemnization. R. § 4159.

SEC. 3828. Any person authorized to solemnize marriage, is entitled to charge two dollars for officiating in each case, and making return thereof.

Attorney appointed to defend criminals. R. § § 1578, 4168.

SEC. 3829. An attorney appointed by a court to defend a person indicted for any offense, is entitled to receive from the county treasury the following fees:

For a case of murder, such fee as the court may fix;

For felony, such fee as the court may fix;

For misdemeanor, five dollars;

Any attorney selected by a peace officer, for appearing and prosecuting before a justice of the peace a prosecution for selling intoxicating liquors, five dollars.

Same. R. § 4169.

SEC. 3830. An attorney cannot in such case be compelled to follow a case to 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.

Only one attorney allowed. R. § 4170.

SEC. 3831. 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 source.

For publication of legal notices. C. 115, § 1, 10 G. A.

SEC. 3832. In all cases where publication of legal notices of any kind are required or allowed by law, the person or officer desiring such publication shall not be required to pay more than one dollar per square of ten lines of brevier type, or its equivalent, for the first insertion, and fifty cents per square for each subsequent insertion; and any person desiring such publication, who shall have tendered such notice to the editor, proprietor, or person conducting some newspaper, published weekly or oftener in such county, having the largest circulation, and has offered to pay for the publication of the same at the rate herein named, and in case the publication of such notice is refused at the price above fixed, then the officer or person desiring such publication shall procure the insertion of such notice in the newspaper nearest the county

seat of such county having a general circulation that will publish such notice at the rate herein provided; which publication shall in all respects have the same effect in law and equity as if such notice had been published in the county where such action was commenced or sale is to take place. And in all cases of publication of notices in connection with commencement of actions in court, or sales upon execution, the plaintiff may designate the newspaper published within the county in which such notice shall be published.

Plaintiff may designate paper.

SEC. 3833. The compensation for printing the delinquent tax list, shall be at a rate not exceeding twenty cents for each tract of real property advertised for sale; and in case there is no newspaper published in the county where such lands lie, then the treasurer shall cause the publication to be made in the nearest newspaper having a circulation in such county, provided that no newspaper shall be considered as one of general circulation unless it has two hundred regular weekly subscribers.

For printing delinquent tax list. Same, § 2.

SEC. 3834. The compensation of arbitrators shall be, for each day actually and necessarily spent in the discharge of their duty, two dollars, or such other sum as may be agreed upon by the parties in interest. The fees of referees acting under a submission made by or agreed to by the parties in a case pending in a court of record, shall be fixed by the court or judge and taxed as a part of the costs in the case.

Arbitrators. R. § 3691.

SEC. 3835. Any officer or person taking depositions is authorized to charge therefor at the rate of ten cents per hundred words, exclusive of the certificate.

Depositions. R. § 4160.

SEC. 3836. Every person charging fees shall, if required by the person paying them, give him a receipt therefor, setting forth the items and the date of each.

Receipt for fees paid. R. § 4157.

SEC. 3837. When 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.

Bill of particulars. R. § 4164.

SEC. 3838. 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.

Putting up advertisements. R. § 4165.

SEC. 3839. 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 tables of fees thus posted up.

Officers to keep list of fees posted up. R. § 4166.

SEC. 3840. 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.

Penalty for taktaking more than allowed. R. § 4167.

SEC. 3841. Where costs are paid by a county other than the one where the offense was committed, the amount of such costs shall be deemed a charge in favor of such county and against the one in which the offense was committed, and may be recovered by action in any court having jurisdiction.

When paid by a county. C. 66, § 2, 9 G. A.

When fees must be levied in advance.

SEC. 3842. No officer or other person mentioned in this title, is entitled to any of the fees mentioned herein in advance, where the same grows out of any criminal prosecution. But in all other cases, except where the fees or compensation is payable by the state or county, or when the orders, judgments, or decrees of courts or justices of the peace are to be entered or performed, or their writs executed, the officer performing any of the services named in this chapter, is entitled to his fees in advance if he demand them. After the expiration of sixty days from the rendition of a final judgment not appealed, removed, or reversed, the clerk of the court or a justice of the peace in whose office the judgment is entered, may, and on demand of any party entitled to any part thereof shall, issue a fee bill for all costs of such judgment, which shall have the same force and effect as an execution issued by such officer, and shall be served and executed in the same manner.

Fee bill issued to have same force as execution.

When fees are payable by state or county.

SEC. 3843. In all cases where fees or compensation as distinguished from a certain and fixed salary, are, by the provisions of this title to be paid any officer or other person out of the county or state treasury, no part of the same shall be audited or paid, until a particular account has been filed in the auditor's office of the county or state, verified by affidavit and showing clearly for what services such fees or compensation are claimed and when the same was rendered.

Supervisors to furnish officers with office, fuel, and stationery.

SEC. 3844. The board of supervisors shall furnish the clerk of the district and circuit court, sheriff, recorder, treasurer, auditor, and county superintendent, with offices at the county seat, together with fuel, lights, blanks, books, and stationery necessary and proper to enable them to discharge the duties of their respectice offices; but in no case shall any of such officers be permitted to occupy an office also occupied by a practicing attorney.

PART FOURTH.

CODE OF CIVIL PRACTICE.

TITLE XXIV.

OF CRIMES AND PUNISHMENTS.

CHAPTER 1.

OF OFFENSES AGAINST THE SOVEREIGNTY OF THE STATE.

SECTION 3845. Whoever is guilty of treason, by levying war against the state, or adhering to its enemies, giving them aid and comfort, shall be punished by imprisonment for life at hard labor in the state penitentiary. Treason is not a bailable offense. Treason. R § 4188. C. 136, 14 G. A.

SEC. 3846. 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 misprison 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. Misprison of treason. R. § 4189.

SEC. 3847. 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. Evidence. R. § 4190.

CHAPTER 2.

OFFENSES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

Murder. R. § 4191.

SECTION 3848. Whoever kills any human being with malice aforethought, either express or implied, is guilty of murder.

First degree. R. § 4192. C. 136, 14 G. A.

SEC. 3849. 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, mayhem, or burglary, is murder of the first degree, and shall be punished by imprisonment for life at hard labor in the state penitentiary.

Second degree. R. § 4193.

SEC. 3850. Whoever committs 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.

Degree: how determined. R. § 4194.

SEC. 3851. 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.

Dueling. R. § 4195.

SEC. 3852. 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.

Same: aiding and abetting. R. § 4196.

SEC. 3853. 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.

Accepting challenge. R. § 4197.

SEC. 3854. 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.

Posting for not accepting challenge. R. § 4198.

SEC. 3855. If any person post another, or in writing or print use any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be fined not exceeding three hundred dollars nor less than one hundred dollars, and shall be imprisoned in the county jail not more than six months nor less that two months.

Manslaughter. R. § 4199.

SEC. 3856. Any person guilty of the crime of manslaughter, shall be punished by imprisonment in the penitentiary not exceeding eight years, and by fine not exceeding one thousand dollars.

Maiming or disfiguring. R. § 4200.

SEC. 3857. If any person, with intent to maim or disfigure, cut or maim the tongue; cut out or destroy an eye; cut, slit, or

tear off an ear; cut, slit, bite, or mutilate the nose or lip; 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.

Robbery. R. § 4201.

SEC. 3858. 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.

Same. R. § 4202.

SEC. 3859. 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 has any confederate aiding or abetting him in such robbery present and so armed, he shall be punished by imprisonment in the penitentiary for a term not exceeding twenty years nor less than ten years.

Same. R. § 4203.

SEC. 3860. If such offender committ the 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.

Rape. R. § 4204.

SEC. 3861. 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.

Compelling to marry. R. § 4205.

SEC. 3862. 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, or to be defiled, he shall be fined not exceeding one thousand dollars and imprisoned in the penitentiary not exceeding ten years.

Carnal knowledge. R. § 4206.

SEC. 3863. 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, or have such carnal knowledge of an idiot or female naturally of 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.

Producing miscarriage of pregnant woman. R. § 4221.

SEC. 3864. If any person, with intent to produce the miscarriage of any pregnant woman, wilfully administer to her any drug or substance whatever, or, with such intent, use any instrument or other means whatever, unless such miscarriage shall be necessary to save her life, he shall be imprisoned in the state prison for a term not exceeding one year, and be fined in a sum not exceeding one thousand dollars.

Enticing female child under fifteen years. R. § 4207.

SEC. 3865. 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.

When under twelve years. R. § 4208.

SEC. 3866. If any person maliciously, forcibly, or fraudulently lead, take, decoy, or entice away any child under the age 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.

Seduction. R. § 4209.

SEC. 3867. 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.

Marriage a bar. R. § 4210.

SEC. 3868. If, before judgment upon an indictment, the defendant marry the woman thus seduced, it is a bar to any further prosecution for the offense.

Kidnapping. R. § 4211.

SEC. 3869. 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 this state against his will, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine and imprisonment at the discretion of the court.

Exposing child. R. § 4212.

SEC. 3870. If the father and 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.

Malicious threats to extort. R. § 4213.

SEC. 3871. 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 a fine not exceeding five hundred dollars.

Assault with intent to murder. R. § 4214.

SEC. 3872. If any person assault another with intent to commit murder, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

With intent to commit rape. R. § 4215.

SEC. 3873. 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.

With intent to maim, rob, steal, etc. R. § 4216.

SEC. 3874. If any person assault another with intent to maim, 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. 3875. 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. Great bodily injury. R. § 4217.

SEC. 3876. 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. With intent to commit any felony. R. § 4218.

SEC. 3877. 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. Mingle poison with food etc. R. § 4219.

SEC. 3878. 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 thirty days, or by fine not exceeding one hundred dollars. Assault and battery. R. § 4220.

SEC. 3879. If any person carry upon his person any concealed weapon, he shall be deemed guily of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than thirty days; *provided*, that this section shall not apply to police officers and other persons whose duty it is to execute process or warrants, or make arrests. Carrying concealed weapons.

CHAPTER 3.

OFFENSES AGAINST PROPERTY.

SECTION 3880. If any person willfuly or 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. Burning inhabited dwelling in night time. R. § 4222.

SEC. 3881. If any person wilfully or 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; 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. In day time. R. § 4223.

Burning uninhabited dwelling etc., in night time. R. § 4224.

SEC. 3882. 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.

In the day time. R. § 4225.

SEC. 3883. 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.

Burning mills, locks, dams, depots, etc. R. § 4226.

SEC. 3884. 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 sections of this chapter, or any bridge, lock, dam, or flume, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

Setting fire with intent to burn. R. § 4227.

SEC. 3885. 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.

Burning or destroying lumber, fences, grain, etc. R. § 4228.

SEC. 3886. If any person wilfully and maliciously burn, or otherwise destroy or injure any pile or parcel of wood, boards, timber, or lumber, or any fence, bars, or gate, or any grain, hay, or other vegetable product severed from the soil, or any standing tree, grain, grass, or other standing product of the soil the property 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.

Married woman: liability of. R. § 4229.

SEC. 3887. The preceding sections of this chapter, severally, extend to a married woman who commits either of these offenses therein described, though the property burnt or set fire to may belong partly or wholly to her husband.

Burning to injure insurers. R. § 4230.

SEC. 3888. If any person wilfully burn any building, goods, wares, merchandize, or other chattels which are insured against loss or damage by fire, or wilfully cause or procure the same to be burned, with intent to injure the insurer, whether such person be the owner of such property or not, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

Setting out fire. R. § 4231.

SEC. 3889. 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.

Same. C. 53, 9 G. A.

SEC. 3890. If any person set fire to and burn, or cause to be burned, any prairie or timber land, and allow such fire to escape

from his control, between the first day of September in any year and the first day of May following, he shall be deemed guilty of misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding one hundred dollars.

Burglary. R. § 4232.

SEC. 3891. If any person break and enter any dwelling house in the night time, with intent to commit any public offense; or, after having entered with such intent, break any such dwelling house in the night time, he shall be deemed guilty of burglary, and shall be punished according to the aggravation of the offense as is provided in the next two sections.

Being armed or assaulting a person. R. § 4233.

SEC. 3892. If such offender, at the time of committing such burglary, is armed with a dangerous weapon, or so armed himself after having entered such dwelling house, or actually assault any person being lawfully therein, or has 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.

When not armed. R. § 4234.

SEC. 3893. 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.

Breaking in day time into railway cars, etc., to commit a public offense. C. 138, 13 G. A.

SEC. 3894. If any person with intent to commit any public offense, 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, railroad-car, boat, or vessel, or any buildings 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 one hundred dollars and imprisonment in the county jail not more than one year.

Selling or concealing mortgaged property. R. § 4236.

SEC. 3895. If any mortgagor of personal property, while his mortgage of it remains unsatisfied, wilfully destroy, conceal, sell, or in any manner dispose of the property covered by such mortgage without the consent of the then holder of such mortgage, he shall be deemed guilty of larceny and be punished accordingly.

Driving stock from home or pasture. C. 108, 12 G. A. C. 88, 14 G. A.

SEC. 3896. If any person knowingly or wilfully drive off, or suffer or permit to be driven off, any horned or other stock of another to a distance exceeding three miles from the residence of the owner, or of his agent having charge of such stock, or the range in which such stock is usually in the habit of running, without the consent of such owner or agent, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days; and any justice of the peace in any county through which the stock thus driven off should pass, or in which it may be found, shall have jurisdiction of the offense.

Stealing, injuring, or disfiguring fruit in day time. C. 126, 9 G. A. C. 74, § 1, 12 G. A.

SEC. 3897. If any person maliciously or mischievously enter the enclosure of another, with intent to knock off, pick, destroy, or carry away; or having lawfully entered, do afterwards wrongfully knock off, pick, destroy, or carry away any apples, peaches, pears, plums, grapes, or any other fruit or flower of any tree, shrub, bush, or vine, he shall be punished, for the first offense, by a fine not less than five dollars nor exceeding one hundred dollars,

with the costs of conviction, or by imprisonment in the county jail not exceeding thirty days; and should any person be found guilty of a second violation hereof, he shall be fined not less than ten dollars and costs of conviction, or imprisonment as above provided.

Same in night time. C. 74, § 2, 12 G. A.

SEC. 3898. If any person maliciously or mischievously enter the enclosure of another in the night time, and knock off, pick, destroy, or carry away any apples, peaches, pears, plums, grapes, or other fruit or flower of any tree, shrub, bush, or vine; or, if any person having entered the enclosure of another in the night-time, with the intent to knock off, pick, destroy, or carry away any fruit or flower as aforesaid be actually found therein, he shall, on conviction thereof, be punished by a fine not less than twenty-five nor to exceed one hundred dollars and costs of conviction, or by imprisonment in the county jail not exceeding thirty days.

Destroying or injuring fruit trees. Same, § 3.

SEC. 3899. If any person maliciously or mischievously bruise, break, pull up, cut down, carry away, destroy, or in anywise injure any fruit or ornamental tree, shrub, or vine, growing or standing on the land of another, he shall be punished by a fine not less than ten nor exceeding one hundred dollars and costs of conviction, or by imprisonment in the county jail not exceeding thirty days.

Discharging fire arms near where stock is being fed. C. 14, § 1, 14 G. A.

SEC. 3900. Any person who knowingly discharges fire arms of any description within, or in the immediate vicinity of, any enclosure where cattle, hogs, or sheep are being fed for the purpose of fattening the same; or any person who enters such enclosure with fire arms, or dog, unless such person shall be the owner of said stock, or have the control of the same, or shall have permission from such owner or the person having control thereof to enter said premises, shall be guilty of a misdemeanor.

Mixing for sale illuminating oils at a less fire test than one hundred and ten degrees. C. 47, 14 G. A.

SEC. 3901. If any person mixes for sale naptha and illuminating oils, or shall keep or offer for sale or sell such mixture, or shall keep or offer for sale or sell oil made from petroleum for illuminating purposes, or any other product of petroleum inflammable at a less temperature or fire test than one hundred and ten degrees Fahrenheit, he shall be deemed guilty of a misdemeanor, and punished for the first offense by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days; and for the second and every succeeding offense, by fine not less than one hundred and not more than one thousand dollars, or by imprisonment in the county jail not less than thirty days nor more than twelve months, or by both such fine and imprisonment.

CHAPTER 4.

LARCENY AND RECEIVING STOLEN GOODS.

Larceny. R. § 4237.

SECTION 3902. 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, or imprisonment in the county jail not exceeding thirty days.

In night time in house, store, boat, etc. R. § 4238.

SEC. 3903. 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.

Same in day time. R. § 4239.

SEC. 3904. 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.

From building on fire R. § 4250.

SEC. 3905. If any person commit the crime of larceny by stealing from any building 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.

Falsely personating another to receive money, etc. R. § 4241.

SEC. 3906. If any person falsely personate or represent another and in such assumed character receive any money or property intended to be delivered to the person so personated, with intent to convert the same to his own use, he is guilty of larceny, and shall be punished accordingly.

Finding and appropriating property. R. § 4242.

SEC. 3907. 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 own use, he is guilty of larceny, and shall be punished accordingly.

Embezzlement of public money by officers. R. § § 806, 807, 4243.

SEC. 3908. If any state, county, township, school, or municipal officer, or officer of any state institution, or other public officer within the state charged with the collection, safe keeping, transfer, or disbursement of public money, fails or refuses to keep in any place of deposit that may be provided by law for keeping such money, until the same is withdrawn therefrom upon warrants issued by the proper officer, or deposits such money in any other place than in such safe, or unlawfully converts 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 col-

lection, safe keeping, transfer, or disbursement, or converts to his own use any money that may come into his hands by virtue of his office, shall be guilty of embezzlement to the amount 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, is forever after disqualified from holding any office under the laws or constitution of this state.

Same by officers, clerks, etc., of private persons or corporations. R. § 4244.

SEC. 3909. If any officer, agent, clerk, or servant of any incorporated company; or if any clerk, agent, or servant of a copartnership; or 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.

Same by carriers and others. R. § 4245.

SEC. 3910. 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 entrusted 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.

Receiving stolen goods. C. 121, 9 G. A.

SEC. 3911. 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 to have been so obtained, he shall be punished, when the value of the property so bought, received, or concealed by him exceeds the sum of twenty dollars, by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not more than one year; and when the value of the property so bought, received, or concealed by him does not exeed the sum of twenty dollars, by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days.

Same on second conviction. R. § 4248.

SEC. 3912. If any person after having been convicted of the offense 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.

Receiver convicted without proof that principal has been. R. § 4249.

SEC. 3913. 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.

Measure of value of stolen goods. R. § 4250.

SEC. 3914. If the property stolen consist 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 affected, as the case may be, shall be adjudged the value of the thing stolen.

Removal of goods from custody of officer. R. § 4251.

SEC. 3915. If any person knowingly and without authority of law, take, carry away, secrete, or destroy any goods or chattels while the same are lawfully in the custody of any sheriff, coroner, marshal, constable, or other officer, and rightfully held by such officer by virtue of execution, writ of attachment, or other legal process issued under the laws of Iowa, he shall be deemed guilty of larceny, and shall be punished, when the value of the property so taken, carried away, secreted, or destroyed, exceeds the sum of twenty dollars, by imprisonment in the penitentiary not more than one year; and when the value of the same does not exceed twenty dollars, by fine not exceeding one hundred dollars, or imprisonment in the county jail not more than thirty days.

When left by officer with another for safe keeping. R. § 4252.

SEC. 3916. The possession or custody of goods and chattels by any person with whom the same have been left or deposited for safe keeping, to be returned for the purpose of being disposed of on legal process, shall be deemed to be the possession and custody of the officer having or depositing the same, and entitled to the custody thereof, and in a prosecution under the preceding section, the property taken, carried away, secreted, or destroyed, as therein mentioned, may be laid in the officer entitled to the custody thereof at the time of the commission of the offense.

CHAPTER 5.

FORGERY AND COUNTERFEITING.

Forgery of records and instruments in writing. R. § 4253.

SECTION 3917. 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; or any charter, deed, will, testament, bond, writing obligatory, power 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 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.

Uttering same. R. § 4254.

SEC. 3918. 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.

Forgery of public securities. R. § 4255.

SEC. 3919. 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 endorsement 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.

Counterfeiting bank notes, etc. R. § 4256.

SEC. 3920. 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.

Having same in possession to defraud. R. § 4257.

SEC. 3921. 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 imprisonment 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.

Uttering counterfeit securities. R. § 4258.

SEC. 3922. If any person utter or pass or, tender in payment as true, any false, altered, forged, or counterfeited 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 counterfeited, with the 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.

Second conviction. R. § 4259.

SEC. 3923. If any person, having been convicted of the offenses described in the preceding section, afterward be con-

victed 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.

Making tools etc., adapted for counterfeiting. R. § 4260.

SEC. 3924. 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.

Counterfeiting coin. R. § 4261.

SEC. 3925. 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.

Uttering counterfeit coin and having possession thereof. R. § 4262.

SEC. 3926. Any 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; 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.

Counterfeiting parts of bank notes and instruments. R. § 4263.

SEC. 3927. If any person fraudently 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.

Affixing fictitious signatures. R. § 4264.

SEC. 3928. 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 a 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 imprisonment in the county jail not more than one year.

Fraudulent obliteration of instruments. R. § 4265.

SEC. 3929. 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 the 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.

Second and third convictions. R. § 4266.

SEC. 3930. If any person having been convicted of either of the offenses mentioned in the preceding section be afterwards 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.

Having instruments for counterfeiting. R. § 4267.

SEC. 3931. 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 and 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.

Counterfeiting foreign coin. R. § 4268.

SEC. 3932. 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.

Forging or counterfeiting seals. R. § 4269.

SEC. 3933. 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.

Existence of corporation proved by reputation. R. § 4270.

SEC. 3934. 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.

Counterfeiting brands or stamps. R. § 1911.

SEC. 3935. If any person with intent to defraud, falsely make, forge, or counterfeit any stamp or brand authorized by law to be affixed to any substance or thing whatever; or, knowing such stamp or brand to be counterfeit, use the same as genuine with intent to defraud, he shall be punished by imprisonment in the penitentiary not exceeding ten years.

CHAPTER 6.

OFFENSES AGAINST PUBLIC JUSTICE.

SECTION 3936. 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 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 net more than ten years nor less than two years. Perjury. R. § 4271.

SEC. 3937. 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. Subornation of. R. § 4272.

SEC. 3938. If any person endeavor to incite or procure another to commit perjury, though no perjury be committed, 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. Attempt to suborn. R. § 4273.

SEC 3939. 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. Bribery of public officers. R. § 4274.

SEC. 3940. 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. Acceptance of bribes by such officers. R. § 4275.

SEC. 3941. 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. Same. R. § 4276.

Corrupt solicitation of places of trust. R. § 4277.

SEC. 3942. 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.

Acceptance of such rewards. R. § 4278.

SEC. 3943. 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 dollars and imprisonment in the county jail not exceeding one year.

Bribery of jurors, referees etc. R. § 4279.

SEC. 3944. 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.

Acceptance of bribes by such persons. R. § 4280.

SEC. 3945. 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.

Attempt to corrupt such persons. R. § 4281.

SEC. 3946. If any person attempt to improperly 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 a fine not exceeding five hundred dollars, and by imprisonment in the county jail not more than six months.

Jurors acting corruptly. R. § 4282.

SEC. 3947. If any person drawn, summoned, or sworn as a 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 imprisonment in the county jail not exceeding three months.

SEC. 3948. 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 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. Sheriff and other officers receiving bribes. R. § 4283.

SEC. 3949. 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. Refusing to execute process in criminal cases. R. § 4284.

SEC. 3950. 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. Extortion. R. § 4285.

SEC. 3951. If any person having knowledge of the commission of any offense punishable with imprisonment in the penitentiary for life, take any money, or valuable consideration, or gratuity, or any promise therefor, upon an agreement or understanding, expressed 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. Compounding felonies. R. § 4286.

SEC. 3952. 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. Same. R. § 4287.

SEC. 3953. If any jailor or other officer voluntarily suffer any prisoner in his custody upon a charge or conviction of a felony punishable by imprisonment for life to escape, he shall be punished by imprisonment in the penitentiary not more than ten years, nor less than one year. Suffering prisoner to escape. R. § 4288.

SEC. 3954. If any jailor or other officer voluntarily suffer any prisoner in his custody upon charge or conviction of any other felony 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. Same. R. § 4289.

SEC. 3955. If any jailor or other officer suffer any prisoner in his custody upon charge or conviction of any public offense to Same. R. § 4290.

escape, he shall be punished by fine not exceeding one thousand dollars and by imprisonment in the penitentiary not exceeding five years.

Assisting prisoner to escape. R. § 4291.

SEC. 3956. 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 effected 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.

Same. R. § 4292.

SEC. 3957. 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 in an attempt to escape, whether such escape be effected or not; or who conveys into such jail or place of confinement any disguise, instrument, arms, or other things proper or useful to facilitate the escape of any prisoner so committed, whether such escape be effected 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.

Same from officer. R. § 4293.

SEC. 3958. 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 one thousand dollars and imprisonment in the penitentiary not exceeding five years.

Prisoner escaping from county jail. R. § 4295.

SEC. 3959. 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 the former sentence, and fined not exceeding three hundred dollars.

Resisting execution of process. R. § 4296. C. 150, 12 G. A.

SEC. 3960. 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, or shall knowingly and wilfully resist any such officer in the discharge of his duties without such writ, rule, order, or process, 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.

Refusing to assist officer. R. § 4297.

SEC. 3961. 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.

Falsely assuming to be judge, etc. R. § 4298.

SEC. 3962. 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 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.

Exercising office without authority, and officers exceeding authority. R. § 4299.

SEC. 3963. 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 capactiy, 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.

Stirring up quarrels. R. § 4300.

SEC. 3964. 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.

Neglect of duty by public officers. R. § 4301.

SEC. 3965. 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.

Misdemeanors. R. § 4302.

SEC. 3966. 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.

Punishment of when none other prescribed. R. § 4303.

SEC 3967. 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.

Public officers making false entries and returns. R. § 4304.

SEC. 3968. If any public officer fraudulently make or give false entries, or false returns, or false certificates of receipts in cases where entries, returns, certificates, or receipts are authorized by law, he shall be fined not exceeding five hundred dollars, or be imprisoned in the county jail not exceeding one year, or both, at the discretion of the court.

Oppression by officers. R. §§ 4305, 4306.

SEC. 3969. If any judge or other officer by color of his office, wilfully and maliciously oppress any person under pretense of acting in his official capacity, he shall be punished by fine not exceeding three hundred dollars and imprisonment in the county jail not less than five nor more than thirty days, and be liable to the injured party for any damage sustained by him in consequence thereof.

Officers failing to pay over fees. R. § 4308.

SEC. 3970. If any justice of the peace, clerk of the district or other court, county recorder, or any other officer who by law is authorized to receive and required to pay over fees of office, or who is or may be authorized to impose or collect fines, shall fail, neglect, or refuse to pay over as prescribed or as may hereafter be prescribed by law, all such fees and fines, he shall be deemed guilty of a misdemeanor, besides being liable in a civil action for the amount of such fines and fees as he may have thus illegally withheld or appropriated.

Making false entries in relation to fees. R. § 4309.

SEC. 3971. If any justice of the peace, clerk of the district or other court which is now or may hereafter be established, county recorder, or other officer, who by law is authorized or required to keep a court docket, or who is or may be required to keep an account of fees or fines, and to pay over, or in any way account for the same, shall in any manner falsify such docket or account, or shall fail, neglect, or refuse to make an entry upon such docket, or account of such fees and fines, as are required to be paid over according to law, such justice of the peace, clerk of the district court, or clerk of any other court, county recorder and other officer shall be guilty of a misdemeanor, and shall be subject and liable to be prosecuted therefor in any court having jurisdiction of the offense.

Officers appropriating fees to their own use. R. § 4310.

SEC. 3972. Any justice of the peace, clerk of the district or of any other court which is or may be established, county recorder, or other officer who may be found guilty of the offense of appropriating to his own use fees of office or fines collected for violation of law, or of neglecting to pay over the same as prescribed by law, shall be removed from office by the court before or by whom the offense may be tried and judgment or conviction had, and each and every person so found guilty shall be punished by a fine not exceeding three hundred dollars nor less than ten dollars, or imprisonment in the county jail for a period not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

Officers to report fees to supervisors. R. § 4314.

SEC. 3973. All officers required by the provisions of this code to collect and pay over fines and fees, shall, on the first Monday in January in each year, make report thereof under oath to the board of supervisors of the proper county, showing the amount of fines assessed and the amount of fines and fees collected, together with the vouchers for the payment of all sums by him collected to the proper officer required to keep the same.

Clerks and justices to report fines, fees, etc.; penalty for failure. C. 29, 9 G. A. C. 58, 14 G. A.

SEC. 3974. The clerks of the several courts of this state, except of the supreme court, and all mayors of incorporated towns and cities, and justices of the peace, shall, on the first Monday of January of each year, make a report in writing to the board of supervisors of their respective counties, of all forfeited recognizances in their several offices; of all fines, penalties, and forfeitures imposed in their respective courts, and which by law go into the county treasury for the benefit of the school fund; in what cause or proceedings, when, for what purpose, against whom, and for what amount rendered; whether said fines, penalties, forfeitures and recognizances have been paid, remitted, canceled, or otherwise satisfied; if so, when, how, and in what manner; if not paid, remitted, canceled, or otherwise satisfied, what steps have been taken to enforce the collection thereof, and the prospect of such collection. Such report must be verified under oath, to the effect that the same is full, true, and complete of the matters therein contained, and of all things required by this section to be reported; and any officer failing so to do shall be deemed guilty of a misdemeanor, and upon conviction thereof, may be fined in any sum not less than one hundred dollars.

SEC. 3975. If any notary public exercise the duties of his office after the expiration of his commission, or when otherwise disqualified, or appends his official signature to documents when the parties have not appeared before him, he shall be deemed guilty of a misdemeanor, and be punished by a fine of not less than fifty dollars, and shall also be removed from office by the governor.

Notary public exercising improperly duties of office. R. § 210.

SEC. 3976. If any officer or person wilfully fails to take the oath required by law before entering on the discharge of the duties of any office, trust, or station, or makes any contract which contemplates an expenditure in excess of the law under which he was elected or appointed, or fails to report to the proper officer showing the expenditure of all public moneys with proper vouchers therefor by the time required by law, he shall be punished by a fine not exceeding five thousand dollars, or by imprisonment in the penitentiary not exceeding five years, or by both at the discretion of the court.

Failure to take oath before entering on duties of office. R. § § 216, 2184.

CHAPTER 7.

MALICIOUS MISCHIEF AND TRESPASS ON PROPERTY.

SECTION 3977. 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.

Injuries to beasts. R. § 4318.

SEC. 3978. 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 extinguishing of fires, he shall be punished by imprisonment in the county jail not exceeding one year and by fine not exceeding five hundred dollars.

To dams, locks, mills, machinery, etc. R. § 4319.

SEC. 3979. 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.

To bridges, railways, highways, etc. R. § 4320.

Setting loose rafts, boats, and injuries to same. R. § 4321.

SEC. 3980. 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.

Injuring trees and breaking down fences, gates, etc. R. § 4322.

SEC. 3981. If any person maliciously cut down, injure, or destroy any fruit or ornamental trees 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 enclosing 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 anything 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.

Injuring monuments, mile stones, sign boards, etc. R. § 4323.

SEC. 3982. If any person maliciously take down, injure, or remove any monument erected on any tree marked as a boundary of any tract of land, city, or town 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.

Trespass by digging, cutting, carrying away, etc. R. § 4324. C. 98, 11 G. A.

SEC. 3983. 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. If in any case the value of the property so cut down, carried away, or otherwise taken shall not exceed the sum of fifty dollars, then the person so offending shall be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days.

On gardens, orchards, etc. R. § 4325.

SEC. 3984. 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, shrubs, grain, grass, hay, fruit, or vegetables there being, he shall

be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than thirty days.

Injuries to buildings and pastures. R. § 4326.

SEC. 3985. 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.

Defacing public buildings. R. § 4327.

SEC. 3986. 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 enclosing the same, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not more than thirty days.

Defacing and destroying proclamations, notices, etc. R. § 4328.

SEC. 3987. 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, or imprisoned in the county jail not exceeding thirty days.

Taking property from boat or vessel. R § 4329.

SEC. 3988. 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.

Injuries to monuments of state boundary. R. § 4330.

SEC. 3989. 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 by both such fine and imprisonment at the discretion of the court.

Placing obstructions on railways. R. § 4331.

SEC. 3990. If any person or persons shall wilfully and maliciously place any obstruction on the track of any railroad in this state, or remove any rail therefrom, or in any other way injure such railroad, or do any other thing thereto, whereby the life of any person is or may be endangered, he or they shall be punished by confinement in the state penitentiary for life, or for any term not less than two years.

Breaking levees. R. § 4332.

SEC. 3991. If any person maliciously injure, break, or cause to be broken, any levee erected to prevent the overflow of land within this state, such person so offending shall, upon conviction, 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.

Obstructing public ditches or drains. C. 135, 9 G. A.

SEC. 3992. If any person place any obstruction in any of the public ditches or drains made for the purpose of draining any of the swamp lands in this state, he shall, upon conviction, be compelled to remove said obstructions and be fined not less than five dollars nor more than one hundred dollars, or be imprisoned in the county jail not more than thirty days at the discretion of the court.

CHAPTER 8.

OFFENSES AGAINST THE RIGHT OF SUFFRAGE.

Bribery of electors. R. § 4333.

SECTION 3993. 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.

Voting more than once. R. § 4334.

SEC. 3994. 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.

When not qualified. R. § 4335.

SEC. 3995. 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.

When not a resident of the county. R. § 4336.

SEC. 3996. 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.

When not a resident of the state for six months. R. § 4337.

SEC. 3997. 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.

Counseling one to vote when not qualified. R. § 4338.

SEC. 3998. If any person procure, aid, 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.

Inducing one to vote by false representation. R. § 4339.

SEC. 3999. 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 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.

Preventing from voting by force or threats. R. § 4340.

SEC. 4000. 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.

Bribing clerks judges etc. R. § 4341.

SEC. 4001. 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.

Procuring vote by influence or threats. R. § 4342.

SEC. 4002. 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.

Judges or clerks making false entries, etc. R. § 4343.

SEC. 4003. 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.

Refusing to permit electors to vote and the contrary. R. § 4344.

SEC. 4004. 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 nor less than twenty dollars, or by imprisonment in the county jail not exceeding six months.

Officers doing any act which renders election void. R. § 4345.

SEC. 4005. 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.

Not returning poll books. R. § 4346.

SEC. 4006. 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.

Improper registry as a voter. C. 171, § 10, 12 G. A.

SEC. 4007. Any person who shall cause his name to be registered, knowing that he is not or will not become a qualified voter; in the township where his name is registered previous to the next election, or who shall wrongfully personate any registered voter, and any person causing, aiding, or abetting any person in either of said acts, shall be deemed guilty of a felony, and punished for each offense by imprisonment in the state prison not less than one year.

CHAPTER 9.

OFFENSES AGAINST CHASTITY, MORALITY, AND DECENCY.

Adultery. R. § 4347.

SECTION 4008. 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 beween parties only one of whom is married, both are guilty of adultery and shall be punished accordingly. No prosecution for adultery can be commenced but on the complaint of the husband or wife.

Bigamy. R. § 4348.

SEC 4009. 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 hnudred dollars and imprisonment in the county jail not more than one year.

Exceptions. R. § 4349.

SEC. 4010. The provisions of the preceding section do not extend to any person whose husband or wife has continually 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.

Knowingly marrying husband or wife. R. § 4350.

SEC. 4011. 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.

Lewdness. R. § 4851.

SEC. 4012. If any man or woman not being married to each other lewdly and viciously 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.

Keeping house of ill-fame. R. § 4852.

SEC. 4013. 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.

Lease of to person convicted void. R. § 4853.

SEC. 4014. 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.

Leasing house for such purpose. R. § 4854.

SEC. 4015. 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 imprisoned in the county jail not exceeding six months.

Enticing virtuous females to house of ill-fame. R. § 4855.

SEC. 4016. 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.

Violating of sepulchre and exposure of dead bodies. R. § 4856.

SEC. 4017. 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.

Remains of deceased persons delivered to medical schools or physician. C. 132, § § 1, 4, 14 G. A.

SEC. 4018. Any coroner or undertaker in any county or city in which the population exceeds one thousand inhabitants, may deliver to any medical college or school, or any physician in this state, for the purpose of medical and surgical study, the body or remains of any deceased person, except where such body has

been interred or dressed for interment; but no such body shall be so delivered without the consent of the relatives or friends of such deceased person, if any such are known, nor where such deceased person expressed a desire during his last sickness that his body should be interred. If the body of any person who has been a resident of the county when death took place for six months is so delivered, and the same shall be subsequently claimed by any relative or friend of such deceased person, such body shall be given up to such relative or friend. Any person who delivers or receives any body or remains, having knowledge that any of the foregoing provisions have been violated, shall, upon conviction thereof, be punished as provided in the preceding section.

Burial of remains after dissection. Same, § 2.

SEC. 4019. The person receiving such body as contemplated in the preceding section, shall decently bury the remains thereof after such body shall have been used as aforesaid, and in case of a failure to so do such person shall be deemed guilty of a misdemeanor, and punished by fine not less than ten nor more than fifty dollars.

Remains to be used for medical study alone. Same, § 3.

SEC. 4020. The remains of any person received as aforesaid, shall be used for the purpose of medical and surgical study alone, and in this state only, and whoever shall use such remains for any other purpose, or shall remove the same beyond the limits of this state, or in any manner traffic therein, shall be guilty of a misdemeanor, and shall, on conviction, be imprisoned for a term not exceeding one year in a county jail.

Injuring monuments, tomb stones, etc. R. § 4357.

SEC. 4021. 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 enclosed for the burial of the dead; or wilfully destroy, injure, or remove any tree, shrub, or plant within such enclosure, 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.

Selling obscene books, pictures, etc. R. § 4359.

SEC. 4022. 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 imprisonment in the county jail not more than thirty days, or by fine not exceeding one hundred dollars.

Disturbing worshipping congregations. R. § 4360. C. 146, 9 G. A.

SEC. 4023. 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 one hundred dollars. If any person or persons unlawfully or wilfully disturb or interrupt any school, school meeting,

teachers' institute, lyceum, literary society, or any other lawful assembly of persons being in the peace of the state, such person or persons shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days.

Same. R. § 4361.

SEC. 4024. 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 any provisions or other article of traffic, he shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding one hundred dollars.

Exceptions. R. § 4362.

SEC. 4025. 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.

Keeping gambling houses. R. § 4363.

SEC. 4026. 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 be 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.

Search warrant against. R. § 4364.

SEC. 4027. 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.

Gaming and betting. R. § 4365.

SEC. 4028. 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 thirty days.

Gaming contracts void. R. § 4366.

SEC. 4029. All promises, agreements, notes, bills, bonds, or other contracts, mortgages, or other securities, when the 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.

Incest. R. §§ 4368, 4369.

SEC. 4030. If any man marry his father's sister, mother's sister, father's widow, wife's mother, daughter, wife's daughter, son's widow, sister, son's daughter, daughter's daughter, son's son's widow, daughter's son's widow, brother's daughter or sister's daughter; or if any woman marry her father's brother, mother's brother, mother's husband, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, brother's son, or sister's son; or if any person being within the degrees of consanguinity or affinity in which marriages are prohibited by this section carnally, know each other, they shall be deemed guilty of incest, and shall be punished by imprisonment in the state penitentiary for a term not exceeding ten years and not less than one year.

Cruelty to animals. C. 171, §§ 1, 2, 13 G. A.

SEC. 4031. If any person torture, torment, deprive of necessary sustenance, cruelly beat, mutilate, cruelly kill, or overdrive any animal; or unnecessarily fail to provide the same with proper food, drink, shelter, or protection from the weather; or cruelly drive or work the same when unfit for labor; or cruelly abandon the same; or carry or cause the same to be carried on any vehicle, or otherwise, in an unnecessarily cruel and inhuman manner, he shall be punished by imprisonment in the county jail not exceeding thirty days, or by fine not exceeding one hundred dollars.

By railways: when transporting. Same, § 3.

SEC. 4032. No railway company in this state, in the carrying or transportation of cattle, sheep, swine, or other animals, shall confine the same in cars for a longer period than twenty-eight consecutive hours, unless delayed by storm or other accidental cause, without unloading for rest, water, and feeding, for a period of at least five consecutive hours. In estimating such confinement, the time the animals have been confined without such rest on connecting railways from which they are received shall be computed, it being the intention of this section to prevent their continuous confinement beyond twenty-eight hours, except upon contingencies hereinbefore stated; and animals unloaded for rest, water, and feeding, under the provisions of this section, shall be properly fed, watered, and sheltered during such rest by the owners or persons in custody thereof, or in case of their default in so doing, then by the railway company transporting them, at the expense of said owners or persons in custody thereof, and said company shall have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals authorized by this section. Any railway company, owner, or custodian of such animals who shall fail to comply with the provisions of this section, shall, for each and every such offense, be liable for, and forfeit and pay a penalty of not less than one hundred and not greater than five hundred dollars.

But when such animals shall be carried in cars in which they shall and do have proper food, water, space, and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply.

Keeping cock pits and fighting dogs, bears, etc. Same, § 7.

SEC. 4033. If any person keep or use, or in any way be connected with, or be interested in the management of, or receive money for the admission of any person to any place kept or used for the purpose of fighting or baiting any bull, bear, dog, cock, or other creature, or engage in, aid, abet, encourage, or assist in any bull, bear, dog, or cock fight, or a fight between any other creature, he shall be deemed guilty of a misdemeanor.

Impounding animals without food or water. Same, § 8.

SEC. 4034. If any person impound or confine, or cause to be impounded or confined in any pound or other place, any creature, and fail to supply the same during such confinement with a sufficient quantity of food and water, he shall be deemed guilty of a misdemeanor.

CHAPTER 10.

OFFENSES AGAINST PUBLIC HEALTH.

Selling unwholesome provisions. R. § 4371.

SECTION 4035. 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 thirty days, or by fine not exceeding one hundred dollars.

Adulterating food or liquor. R. § 4372.

SEC. 4036. 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.

Drugs or medicines. R. § 4373.

SEC. 4037. 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.

Apothecaries, etc., neglecting to label poisons. R. § 4374. C. 110, 10 G. A.

SEC. 4038. If any apothecary, druggist, or other person, sell and deliver any arsenic, corosive 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 imprisonment in the county jail not more than thirty days, or by fine not exceeding one hundred dollars. Any person who may dispose of at retail any poisonous substance or liquid to any one, for any purpose, is hereby required to enter in a book,

to be kept by such apothecary, druggist, or other person so disposing, the name of the poison, when bought, by whom, and for what purpose; and if the person who calls for such poison is not personally known to the vendor, then such person shall be identified by some one known to the vendor, whose name shall also be entered in such book. Any failure to comply with the requirements of this provision shall subject the party so failing to imprisonment in the county jail not more than thirty days, or to a fine not exceeding one hundred dollars.

Innoculating with small pox with intent to spread disease. R. § 4375.

SEC. 4039. If any person innoculate himself or any other person, or suffer himself to be innoculated with the small pox within this state, or come within the state with the 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.

Selling drugged liquors. R. § 4376.

SEC. 4040. If any person wilfully sell, or keep for sale, intoxicating, malt, or vinous liquors, which have been adulterated or drugged by admixture with any deleterious or poisonous substance, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the penitentiary not exceeding two years.

Throwing dead animals in stream, spring, etc. C. 18, 10 G. A.

SEC. 4041. If any person throw, or cause to be thrown, any dead animal into any river, well, spring, cistern, reservoir, stream, or pond, he shall be punished by imprisonment in the county jail not less than ten nor more than thirty days, or by fine not less than five nor more than one hundred dollars.

Selling diluted milk or using same for making cheese or butter. C. 156, 13 G. A.

SEC. 4042. If any person knowingly sell to another, or knowingly deliver or bring to be manufactured to any cheese or butter manufactory in this state, any milk diluted with water, or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as "skimmed milk," or shall keep back any part of milk known as "strippings" with intent to defraud, or shall knowingly sell the milk, the product of a diseased animal or animals, or shall knowingly use any poisonous or deleterious material in the manufacture of cheese or butter, he shall, upon conviction thereof, be fined in any sum not less than twenty-five dollars nor more than one hundred dollars, and be liable in double the amount of damages to the person or persons, firm, association, or corporation, upon whom such fraud shall be committed.

CHAPTER 11.

OFFENSES AGAINST PUBLIC POLICY.

Lotteries and selling tickets. R. § 4377.

SECTION 4043. 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, dispose of,

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 thirty days, or by fine not exceeding one hundred dollars, or by both fine and imprisonment at the discretion of the court.

Disposing of liquors to intoxicated persons. R. § 4378.

SEC. 4044. If any person give, sell, or dispose of, any spirituous or intoxicating drinks 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.

Bringing paupers into this state. R. § 4379.

SEC. 4045. 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.

Transacting business without license. R. § 4380.

SEC. 4046. If any person carry on or transact any business or occupation without license therefore when such license is required by any law of this state, he shall be fined in a sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days.

Circulation of foreign bank notes prohibited: penalty for. C. 33, 10 G. A.

SEC. 4047. If any person pay out, or offer to pay, or in any manner put in circulation, or offer to put in circulation, any bank note, bill, or other instrument intended to circulate as money issued or purporting to be issued by any bank, individual, or corporation elsewhere than in this state, excepting treasury notes, notes of any bank organized under the law of the United States, any other description of currency issued by the authority of congress, or notes of the branches of the state bank of Iowa, he shall be deemed guilty of a misdemeanor, and shall, upon conviction before any court having jurisdiction, be fined the sum of five dollars for each note, bill, or other instrument as aforesaid so paid out or offered to be paid out, put in circulation or offered to be put in circulation. In prosecutions under this section it shall not be necessary to state in the indictment or information the name of the bank issuing the notes, nor to prove the existence of the bank or other person purporting to issue the notes; but it shall be sufficient to allege in general terms the fact of paying out, or attempting to pay out, as the case may be, of bank notes issued out of this state; and the proof may be made as if the particulars were alleged; and any number of offenses may be included in the same prosecution, provided that where the total fines alleged shall not exceed one hundred dollars, the offense shall be cognizable and may be tried before a justice of the peace and other co-ordinate jurisdictions; and when the total fines alleged exceed one hundred dollars, it shall be within the jurisdiction of the district court.

Game: killing of at certain seasons: punished. R. § 4381. C. 113, § 1, 12 G. A. C. 117, 14 G. A.

SEC. 4048. If any person elsewhere than on his own premises and for his own exclusive use, kill, ensnare, or trap any wild deer, elk, fawn, prairie hen or chicken, between the first day of January and the twenty-second day of August in any year; or any woodcock between the first day of January and July in any year;

or any ruffled grouse, or pheasant, between the fifteenth day of December and the twelfth day of September in any year; or any wild turkey between the first of February and the first of September in any year; or if any person elsewhere than on his own premises net, ensnare, or trap any of said animals or birds at any time of any year except in the month of December thereof, or if any person anywhere shoot, kill, net, ensnare, or trap any quail at any time of the year—except that it shall be lawful for any one to shoot quail upon any premises with the consent of the owner or occupant thereof—between the first day of October and the first day of January of each year; or if any person kill, ensnare, or trap any beaver, mink, otter, or muskrat, between the first day of April and the first day of November in each year; or if any person buy or sell any of the above animals or birds which have been trapped, ensnared, or killed between the days above mentioned, he shall be punished by a fine of fifteen dollars for each deer, fawn, or elk snared, entrapped, killed, bought, sold, or held in possession, and five dollars for any bird of game above mentioned thus killed, trapped, ensnared, bought, sold or held in possession, one half of such fine to be paid to the person upon whose information the same is recovered.

Common carriers punished for carrying. C. 113, § 3, 12 G. A.

SEC. 4049. If any railway, express company, or other common carrier in this state, or any of their agents or servants, have any of the above birds or animals in their possession, for transportation or other purpose, during the periods above limited and prohibited, they shall be punished by fine of not less than one hundred dollars nor more than three hundred dollars, or by imprisonment in the county jail thirty days, or by both such fine and imprisonment.

Punishment for killing on premises of another R. § 4183. C. 113, § 5, 12 G. A.

SEC. 4050. If any person go upon the premises of any other person or corporation, whether enclosed or not, and be found hunting, trapping, or ensnaring any of the above named birds or animals, in violation of the foregoing provisions, he shall be punished by fine in any sum not less than three dollars nor more than fifty dollars.

Prosecutions when brought. C. 113, § § 2, 6, 12 G. A.

SEC. 4051. A prosecution for violation of sections four thousand and forty-eight, and four thousand and forty-nine of this chapter may be brought either in the county in which the offense was committed, or in any other county where the person complained of has had, or has in his possession any animals or birds, killed, ensnared, trapped, bought, or sold in violation of said sections; and the having in possession any of the animals or birds mentioned in said sections, recently killed by any person or persons between said dates, shall be deemed and taken as presumptive evidence that the same was trapped, ensnared, or killed, by the persons having the p ssession of the same in violation thereof.

Trapping fish. C. 54, § § 1, 2, 14 G. A.

SEC. 4052. If any person shall catch or take any fish other than small fish for bait in any of the waters over which the state has exclusive jurisdiction, except in what is commonly known as bayous, with any net, seine, wire basket, trap, or any other divice whatsoever, except with a hook and line, snare, gun, or spear, he shall forfeit and pay five dollars for each fish so caught or taken.

SEC. 4053. A prosecution may be commenced against any person violating the preceding section, before any justice of the peace of the county in which said violation took place, or before any court of competent jurisdiction.

Prosecution where commenced. Same, § 4.

SEC. 4054. Any person who shall go upon the premises of any person or corporation, whether enclosed or not, and shall be found seeking to take, by any means whatsoever, except a hook and line, any fish, shall be deemed guilty of trespass, and may be prosecuted in the name of the state of Iowa by any person in possession of said premises, before any justice of the peace, or other court of competent jurisdiction, and fined in any sum not less than five nor more than fifty dollars; but a judgment under the two preceding sections shall be a bar to any prosecution under this section.

Trapping fish on the premises of another. Same, § 3.

SEC. 4055. If the owner of sheep, or any person having the same in charge, knowingly import or drive into this state sheep having any contagious disease; or turn out or suffer any sheep having any contagious disease, knowing the same to be so diseased, to run at large upon any common, highway, or unenclosed lands; or sell or dispose of any sheep, knowing the same to be so diseased, he shall be deemed guilty of a misdemeanor, and shall be punished by fine in any sum not less than fifty dollars nor more than one hundred dollars.

Bringing diseased sheep into the state. C. 35, 9 G. A.

SEC. 4056. If any person knowingly import or bring within this state, any horse, mule, or ass, affected by the diseases known as nasal gleet, glanders, or button-farcey, or suffer the same to run at large upon any common, highway, or unenclosed land, or use or tie the same in any public place, or off his own premises, or sell, trade, or offer for sale or trade any such horse, mule, or ass, knowing the same to be so diseased, he shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine of not less than fifty dollars nor more than five hundred dollars; and in default of payment shall be imprisoned for any period not to exceed twelve months, or by both fine and imprisonment at the discretion of the court.

Same as to horses, mules, etc. C. 10, 11 G. A.

SEC. 4057. If any horse, mule, or ass, reasonably supposed to be diseased with nasal gleet, glanders, or button-farcey, be found running at large without any known owner, it shall be lawful for the finder thereof to take such horse, mule, or ass, so found before some justice of the peace, who shall forthwith cause the same to be examined by some veterinary surgeon, or other person skilled in such diseases, and if, on examination, it is ascertained to be so diseased, it shall be lawful for such justice of the peace to order such diseased animal to be immediately destroyed and buried; and the necessary expense accruing under the provisions of this section shall be defrayed out of the county treasury.

Diseased horses, mules, etc., running at large. Same.

SEC. 4058. If any person bring into this state any Texas cattle, he shall be fined not exceeding one thousand dollars or imprisoned in the county jail not exceeding thirty days, unless they have been wintered at least one winter north of the southern boundary of the state of Missouri or Kansas; *provided*, that nothing herein contained shall be construed to prevent or make

Bringing Texas cattle into the state. C. 185, § § 1, 2, 12 G. A.

unlawful the transportation of such cattle through this state on railways, or to prohibit the driving through any part of this state, or having in possession any Texas cattle between the first day of November and the first day of April following.

Having such cattle in possession. Same, § 4.

SEC. 4059. If any person now or hereafter has in his possession in this state any such Texas cattle, he shall be liable for any damages that may accrue from allowing said cattle to run at large, and thereby spreading the disease among other cattle known as the Texas fever, and shall be punished as is prescribed in the preceding section.

Bringing diseased hop roots or cuttings into state. C. 195, §§ 1, 2, 12 G. A.

SEC. 4060. If any person use, transplant, or cultivate, or bring into this state for the purpose of using, planting, cultivating, or selling, any hop roots, plants, or cuttings, which may be diseased in any manner, or infected with lice or vermin of any kind, or which may be brought from any state or country in which the cultivation of hops has been retarded or impaired by the presence of any disease, lice, or vermin of a contagious character, he shall be fined not less than ten nor more than one hundred dollars, and imprisoned not less than five nor more than twenty days.

Search warrant and seizure and destruction of diseased plants and roots. Same, § 3.

SEC. 4061. If complaint is made before a justice of the peace by one or more responsible persons, that they have good reason to believe that hop roots have been introduced into, or are being cultivated in the city or township where they reside in violation of this act, the justice before whom such complaint is made shall issue a warrant authorizing any peace officer to seize such roots, and they shall be held in charge by such officer until suit has been brought against the person or persons so offending, and the cause determined; and in case it is found that the said plants, roots, or cuttings are diseased, or are infected by lice or vermin of a contagious character, the officer before whom suit is brought will order the said roots, plants, or cuttings to be burned, charging the expense of doing the same as costs upon the party owning or cultivating the roots, plants, or cuttings; and in no case will he allow them to be planted or delivered to a third party, until the fact is established that they are not infected with any vermin or disease of a contagious character.

Canada thistles. C. 177, 13 G. A.

SEC. 4062. If any person or corporation, after having been notified in writing of the presence of Canada thistles on any lands owned or occupied by such person or corporation; or if any highway supervisor, after having been notified in writing of the presence of Canada thistles on the highway under his jurisdiction, shall permit such thistles or any part thereof to blossom or mature, such person, corporation, or highway supervisor, shall be deemed guilty of a misdemeanor and be punished accordingly.

Killing birds except of prey and those useful for food. C. 74, 14 G. A.

SEC. 4063. If any person kill, trap, ensnare, or in any manner destroy any of the birds of this state, excepting birds of prey, the migratory aquatic birds, and those which are useful for food, and the killing of which at certain seasons of the year is now permitted by law, or in any manner destroy the eggs of such birds as are hereby intended to be protected from destruction, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than five nor more than twenty-five dollars. But persons killing birds for scientific purposes, or

for preservation in museums and cabinets, shall be exempt from the penalties of this section, upon making satisfactory proof of the purposes for which they have killed any such bird or birds.

Running threshing machines without boxing tumbling rods. C. 135, § 1, 11 G. A. C. 45, 12 G. A.

SEC. 4064. If any person run any threshing machine in this state, without having the two lengths of tumbling rods next the machine, together with the knuckles or joints and jacks of the tumbling rods safely boxed and secured while the machine is running, he shall be deemed guilty of a misdemeanor and be punished by fine of not less than ten nor more than fifty dollars for every day or part of a day he shall violate this section; and an action may be maintained for services rendered by or with any such threshing machine for the benefit of the school fund.

CHAPTER 12.

OFFENSES AGAINST THE PUBLIC PEACE.

Affray between two or more persons. R. § 4386.

SECTION 4065. If two or more persons voluntarily or by agreement engage in any fight, or use any blows or violence towards 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 thirty days, or by fine not exceeding one hundred dollars.

Unlawful assembly of three or more R. § 4387.

SEC. 4066. 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 thirty days, or by fine not exceeding one hundred dollars.

Riot. R. § 4388.

SEC. 4067. 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.

Who may be convicted. R. § 4389.

SEC. 4068. 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.

Exciting disturbance in certain houses. R. § 4390.

SEC. 4069. 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 thirty days.

Injuring or destroying houses, boats, etc. R. § 4391.

SEC. 4070. 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.

Racing or fast driving on highways.

SEC. 4071. Any person who shall be guilty of racing horses, or driving upon the public highway in a manner likely to endanger the persons or lives of others, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days.

Breach of Sabbath. R. § 4392.

SEC. 4072. If any person be found on the first day of the week, commonly called Sabbath, engaged in any riot, fighting, or offering to fight, or hunting, shooting, carrying fire arms, fishing, horse racing, dancing, or in any manner disturbing any worshiping assembly, or private family; or in buying or selling property of any kind, or in any labor, the work of necessity and charity only excepted, every person so offending shall, on conviction, be fined in a sum not more than five dollars nor less than one dollar, to be recovered before any justice of the peace in the county where such offense is committed, and shall be committed to the jail of said county until the said fine, together with the costs of prosecution, shall be paid; but nothing herein contained shall be construed to extend to those who conscientiously observe the seventh day of the week as the Sabbath, or to prevent persons traveling, or families emigrating from pursuing their journey, or keepers of toll bridges, toll gates, and ferrymen from attending the same.

CHAPTER 13.

CHEATING, BY FALSE PRETENSES, GROSS FRAUDS, AND CONSPIRACY.

False pretenses. R. § 4394.

SECTION 4073. 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. 4074. 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 dollars and imprisoned in the county jail not exceeding one year. Fraudulent conveyances. R. § 4395.

SEC. 4075. 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 one year. Suppression of any last will. R. § 4396.

SEC. 4076. If any person with intent to defraud, use a false balance, weight, or measure, in the weighing or measuring of anything 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. False weights and measures. R. § 4397.

SEC. 4077. 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 the standard weight or measure, may be sold and the money arising from such sale must be paid into the county treasury. Same. R. § 4398.

SEC. 4078. 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. Altering brands, stamps, mar etc. R. § 4399.

SEC. 4079. 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. Counterfeiting mark of another. R. § 4400.

SEC. 4080. 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 Using box marked by another with intent to defraud. R. § 4401.

dollars, or by both fine and imprisonment at the discretion of the court.

Gross fraud or cheat. R. § 4402.

SEC. 4081. Every person who is convicted of any gross fraud or cheat at common law, shall be punished as provided in the preceding section.

Fraudulent destruction of boats, etc. R. § 4403.

SEC. 4082. If any person cast away, sink, or otherwise destroy, any raft, boat, or vessel, within any county of this state with intent to 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.

Fitting out for that purpose. R. § 4404.

SEC. 4083. 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.

Making false bills of lading. R. § 4405.

SEC. 4084. 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 estimate 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.

Making false affidavits or protests. R. § 4406.

SEC. 4085. 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 three thousand dollars and imprisonment in the county jail not exceeding one year.

Conspiracy to prosecute. R. § 4407.

SEC. 4086. 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 fine not exceeding one thousand dollars nor less than one hundred dollars and imprisonment in the county jail not exceeding one year.

In other cases. R. § 4408.

SEC. 4087. 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 a conspiracy at common law, shall be punished by imprisonment in the penitentiary not more than three years.

Issuing false voucher by warehouse men etc. C. 84, 9 G. A.

SEC. 4088. If any person issue any receipt or voucher, stating or purporting to state the receipt by him from another, of any property for storage or safe keeping without having in good faith received, and at the time having in his possession or under his control, such property; or issue any second receipt or voucher for any property while his former receipt or voucher for the same, or any part thereof, shall be outstanding and uncancelled; or sell, encumber, transfer, ship, or in any manner remove beyond his immediate control, any property for which a receipt or voucher has been given by him as aforesaid, in violation of the terms of such receipt or voucher, without the written consent of the person holding such receipt or voucher, except to enforce his lien for storage and warehouse charges as provided by law; or sell, transfer, or dispose of any receipt or voucher, given or purporting to have been given by any person for property in store, knowing that such person has not in his possession such property or any part thereof, he shall be punished by fine not exceeding one thousand dollars and imprisonment in the penitentiary of this state not exceeding five years.

CHAPTER 14.

NUISANCES, AND ABATEMENT THEREOF.

What deemed nuisances. R. § 4409.

SECTION 4089. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which by occasioning noxious e halations, 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 encumbering by fences, buildings, or otherwise, the public highways, private ways, streets, alleys, commons, landing places, or burying grounds, are nuisances.

Manufacture of gunpowder. R. § 4410.

SEC. 4090. 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.

Houses of ill-fame, gambling, etc. R. § 4411.

SEC. 4091. Houses of ill fame kept for the purpose of prostitution and lewdness, gambling houses, or houses where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted, to the disturbance of others, are nuisances, and may be abated and punished as provided in this chapter.

Punishment and abatement of. R. § 4412.

SEC. 4092. 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.

Process. R. § 4413.

SEC. 4093. 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 or cost 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 expenses of such abatement, the court may issue a warrant therefor.

Warrant. R. § 4414.

SEC. 4094. 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.

Execution of stayed. R. § 4415.

SEC. 4095. 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.

Expenses. R. § 4416.

SEC. 4096. 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 buildings, 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 the 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 pay such expenses the officer must collect the residue thereof.

CHAPTER 15.

OF LIBEL.

SECTION 4097. 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 vilify the memory of one who is dead, and tending to scandalize or provoke his surviving relatives or friends. Definition. R. § 4417.

SEC. 4098. 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 or 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. Punishment. R. § 4418.

SEC. 4099. 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. Truth given in evidence. R. § 4419.

SEC. 4100. No printing, writing, or other thing is a libel unless there has been a publication thereof. Publication. R. § 4420.

SEC. 4101. 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. Definition of. R. § 4421.

SEC. 4102. 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. Law and fact. R. § 4422.

TITLE XXV.

OF CRIMINAL PROCEDURE.

CHAPTER 1.

OF PUBLIC OFFENSES.

Division of. R. § 4428.

SECTION 4103. Public offenses are divided into:

1. Felonies;
2. Misdemeanors.

Felony. R. § 4429.

SEC. 4104. A felony is a public offense which is, or in the discretion of the court may be, punished by imprisonment in the penitentiary.

Misdemeanor. R. § 4430.

SEC. 4105. Every other public offense is a misdemeanor.

How punishable. R. § 4431.

SEC. 4106. No person can be punished for a public offense except upon legal conviction in a court having jurisdiction thereof.

All offenses bailable except.

SEC. 4107. All defendants are bailable both before and after conviction, by sufficient surety, except for offenses heretofore punishable with death under the laws of the state, where the proof is evident, or the presumption great.

CHAPTER 2.

OF THE TERM MAGISTRATE, AND HIS POWERS, PEACE OFFICERS AND OFFICERS OF JUSTICE, AND COMPLAINTS.

Who are magistrates: duties. R. § 4447.

SECTION 4108. Any judge of the supreme, district, or circuit courts, any judge of any city court, any justice of the peace, any mayor of any incorporated city or town, any police, or other special justice of such city, or town, shall have power to hear complaints and preliminary informations, to issue warrants, order arrests, require security to keep the peace, make commitments, and take bail in the manner directed by this code. They are designated under the general term magistrate, and may exercise the jurisdiction hereby conferred on them as follows:

1. Judges of the supreme, district, and circuit courts throughout the state, in any county in which they may be at the time of complaint made;

2. Judges of city courts, justices of the peace, mayors of incorporated cities and towns, and police and other special justices of such cities and towns, within their respective counties.

SEC. 4109. The following persons respectively are designated in this code under the general term, peace officer: Who are peace officers R. § 4140.

1. Sheriffs and their deputies;
2. Constables;
3. Marshals and policemen of incorporated cities and towns.

SEC. 4110. Magistrates and peace officers are sometimes designated by the term, officers of justice. Same R. § 4441.

SEC. 4111. Complaint of preliminary information is a statement in writing, under oath or affirmation made before a magistrate, of the commission, or threatened commission, of a public offense and accusing some one thereof. Information defined. R. § 4530.

CHAPTER 3.

OF THE PREVENTION OF PUBLIC OFFENSES BY THE RESISTANCE OF THE PARTY ABOUT TO BE INJURED AND OTHERS.

SECTION 4112. Lawful resistance to the commission of a public offense may be made by the party about to be injured, or by others. Who may resist. R. § 4443.

SEC. 4113. Resistance sufficient to prevent the offense may be made by the party about to be injured: In what cases R. § 4443.

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. 4114. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense. Any person may aid another. R. § 4444.

CHAPTER 4.

OF SECURITY TO KEEP THE PEACE.

SECTION 4115. Whenever complaint is made before a magistrate, that any person has threatened to commit any public offense punishable by the laws of this state, and such magistrate is satisfied that there is reason to fear the commission of such offense, he may issue a warrant for the arrest of the person complained of; and the officer to whom the same shall be delivered for service, shall forthwith arrest and bring the accused before such magistrate; or, in case of his absence or inability to Duty of magistrate when complaint is made that a public offense is threatened. R. § § 4447, 4448, 4449, 4450, 4451, 4452, 4453, 4454.

act, before the nearest and most accessible magistrate of the same county. When the name of the person complained of is unknown, he may be designated in the warrant by any name, and the warrant issued in pursuance hereof may be executed by any peace officer in any county of the state; *provided*, that when issued by a magistrate other than a judge of the supreme, district, or circuit courts, it cannot be served in any county other than that in which it is issued, unless authenticated as is required in case of a warrant of arrest issued on a preliminary information.

Proceedings when taken before magistrate. R. § 4455.

SEC. 4116. When the person arrested is taken before a magistrate other than the one who issued the warrant, the peace officer who executed the same, and who has charge of the person arrested, must, at the same time, deliver to the magistrate before whom the person arrested is taken, the warrant with his return endorsed and subscribed by him, and the complaint and other affidavits, if any, on which the warrant was issued, must be sent to the magistrate before whom the person arrested is taken, and if they cannot be procured, the complainant and his witnesses, if any, must be subpœnaed, if necessary, by the magistrate before whom the person arrested is taken, to appear before him and make a new complaint and affidavits.

Same. R. § 4456

SEC. 4117. 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.

Discharge ordered: costs &c. R. § 4457.

SEC. 4118. If it appear that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged, and the complainant may be ordered to pay the costs of the proceeding if the magistrate regards the complaint as unfounded and frivolous, and, unless when the proceeding is before a judge of the supreme, district, or circuit court, may issue execution therefor, and when the proceeding is before a judge of the supreme, district, or circuit court, he shall transmit the complaint, affidavits, warrant, and order, to the clerk of the district court of the county, who shall file the same, make a memorandum thereof in the judgment docket, and issue execution therefor immediately.

Defendants bound over. R. § 4458.

SEC. 4119. If there be just reason to fear the commission of the offense the person complained of shall 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 district court of the county at the next term thereof, and in the meantime to keep the peace towards the people of this state, and pasticularly towards the person against whom, or whose property, there is reason to fear the offense may be committed.

Committed to jail. R. § 4459.

SEC. 4120. 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 requirements to give security, the amount thereof, and the omission to give the same.

May be discharged. R § § 4460, 4464.

SEC. 4121. If the person complained of be committed for not giving an undertaking, he may be discharged by a magistrate upon giving the same.

SEC. 4122. The undertaking, together with the complaint, affidavits, if any, and other papers in the proceeding, must be returned by the magistrate to the district court of the county by the first day of the next term thereof. Disposition of papers R. § 4461.

SEC. 4123. Any person who, in the presence of a court or magistrate, shall assault or threaten to assault another, or to commit an offense against the person or property of another, or contends with another with angry words, may be ordered, without the process, to enter into an undertaking to keep the peace for a period of time not exceeding beyond the next term of the district court of the county as hereinbefore provided, and in case of his omission to comply with said order, he may be committed accordingly. Assault in presence of court or magistrate R. § 4462.

IN DISTRICT COURT.

SEC. 4124. The district court may, on the conviction of any person for an offense against the person or property of another, when necessary for the public good, require the defendant to enter into an undertaking to keep the peace as hereinbefore provided, and on his omission to do so, may commit him accordingly. Undertaking to keep the peace. R. § 4463

SEC. 4125. A person who has entered into an undertaking to keep the peace, when required by a magistrate as hereinbefore provided, must appear on the first day of the next term of the district court of the county, and if the complainant appear and the person bound by the undertaking does not appear, the court may forfeit his undertaking, and order the same to be prosecuted unless his default be excused. Same. R. § 4465.

SEC. 4126. If the principal in the undertaking appear, and the complainant does not appear, or if neither of the parties appear, the court shall enter an order discharging the undertaking; but if both parties appear, the court shall hear their proofs, and may require a new undertaking in such sum as it shall prescribe for a period not exceeding one year; and may commit the defendant until the same be given. Judgment shall be entered against the party held to keep the peace for all the costs of the proceeding; but if it is made to appear to the court that the proceeding was instituted without probable cause, the court may render judgment against the complainant for such costs. Judgment. R. § 4466.

SEC. 4127. An undertaking to keep the peace is broken by the forfeiture of the same, by the court, as hereinbefore provided, or upon the conviction of the party bound by the undertaking of a breach of the peace. When undertaken broken. R. § 4467.

SEC. 4128. Upon the district attorney producing evidence of such conviction to the district court to which the undertaking is returned, the court must order the undertaking to be prosecuted, and the district attorney must, thereat, commence an action upon it. District attorney to bring suit. R. § 4468.

SEC. 4129. In the action, the offense stated in the record of conviction must be alleged as the breach of the undertaking, and is conclusive evidence thereof. Record of conviction. R § 4469.

CHAPTER 5.

OF VAGRANTS.

Who are. R. § 4470.

SECTION 4130. The following persons are vagrants: All persons who tell fortunes, or where lost or stolen goods may be found; all common prostitutes and 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 for charitable institutions under any false or fraudulent pretenses; 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.

Complaint, warrant, arrest. R. § 4471.

SEC. 4131. Upon complaint made on oath to any magistrate against any person as being such vagrant within his local jurisdiction as defined in this code, he shall issue a warrant for the arrest of such person, and his examination, and the complaint, warrant and arrest shall be governed by the provisions of the last chapter, as nearly as practicable, except as hereinafter provided.

Duty of peace officer. R. § 4472.

SEC. 4132. All peace officers shall arrest any vagrant whom they may find at large and not in the care of some discreet person, and take him before some magistrate of the county, city or town in which the arrest is made.

Time of making arrest. R. § 4473.

SEC. 4133. If the arrests authorized in the last two sections are made during the night, the officer must keep the person arrested in confinement until the next morning, and if arrests are made within the local jurisdiction of a police or city court, the persons arrested must be taken before a judge or justice of such court, unless he be absent.

Security for good behavior. R. § 4474.

SEC. 4134. If it appear by the confession of such person, or by competent testimony, that such person is a vagrant, the magistrate before whom he is brought may require of such person an undertaking, with sufficient surety, for good behavior for the term of one year thereafter.

Committed in default of security. R. § 4475.

SEC. 4135. The magistrate shall make up, sign, and file with the clerk of the district court of the county, 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 security being given, by warrant under his hand, commit such vagrant to the county jail of the county, city or town, as the case may be, until such security be found, or such vagrant discharged according to law.

Breach of undertaking. R. § 4476.

SEC. 4136. 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.

New security. R. § 4477.

SEC. 4137. 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 com-

mit such vagrant to the common jail of the county for any time not exceeding six months.

SEC. 4138. 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. Discharge of bail. R. § 4478.

TRIAL IN DISTRICT COURT.

SEC. 4139. The district court to which the papers are returned, shall, on demand of the defendant, empanel a jury to inquire into and determine the truth of the charge made against him; and the rules and regulations of law governing said court in the trials of misdemeanors shall be applicable to and govern it in the trial herein contemplated. Hearing in district court. R. § 4479.

SEC. 4140. If no jury be demanded, 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. Judgment. R. § 4480.

SEC. 4141. 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. Imprisonment. R. § 4481.

SEC. 4142. If there be no means 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. Labor. R. § 4482.

SEC. 4143. The expenses incurred in pursuance of such order shall be audited by the board of supervisors of the county, and paid out of the county treasury. Expenses. R. § 4483.

SEC. 4144. 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. Proceeds of labor. R. § 4484.

CHAPTER 6.

OF RESISTANCE TO PROCESS AND SUPPRESSION OF RIOTS.

SECTION 4145. When the sheriff or other officer authorized to execute process, finds, or has reason to apprehend, that resistance will be made to the execution thereof, he may command as many male inhabitants of his county as he may think proper, and any military companies in the county, armed and equipped, to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the resisters, and their aiders and abettors, to be punished by law. Calling out power of county. R. § 4489.

Certify to court names of resisters. R. § 4490.

SEC. 4146. 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.

Refuses to assist. R. § 4491.

SEC. 4147. Every person commanded by a public officer to assist him in the execution of process, as provided in section four thousand one hundred and forty-five of this chapter, who, without lawful cause, refuses or neglects to obey such command, is guilty of a misdemeanor.

When power of county not sufficient. R. § 4492.

SEC. 4148. 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.

Unlawful assemblages. R. § 4493.

SEC. 4149. 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.

Arrest. R. § 4494.

SEC. 4150. 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.

Refusing to aid. R. § 4495.

SEC. 4151. If any person commanded to aid the magistrate or officer, without good cause neglect to do so, he is guilty of a misdemeanor.

Failure of duty. R. § 4496.

SEC. 4152. If a magistrate or officer having notice of an unlawful or riotous assembly as above provided in this chapter, neglect to proceed to the place of 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.

Assembly will not disperse. R. § 4497.

SEC. 4153. 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.

When armed force is called out. R. § 4498.

SEC. 4154. 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 circuit court, a sheriff, or magistrate, as the case may be.

CHAPTER 7.

OF LOCAL JURISDICTION OF PUBLIC OFFENSES.

SECTION 4155. 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.

Who liable to the laws of this State. R. § 4500.

SEC. 4156. The local jurisdiction of the district court, is of offenses committed within the county in which it is held, and of such other cases as are, or may be, provided by law.

Of district court. R. § 4502.

SEC. 4157. 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.

Offenses commenced without but consummated within. R. § 4505.

SEC. 4158. 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 the 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.

Fighting duel without the state. R. § 4506.

SEC. 4159. When a public offense is committed in part in one county and part within another, or when the acts or effects constituting, or requisite to the consummation of the offense, occur in two or more counties, jurisdiction is in either county.

Offense part in one county. R. § 4507.

SEC. 4160. 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.

Near boundary of two counties. R. § 4508.

SEC. 4161. When an offense is committed within the jurisdiction of this state on board a boat, raft, 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, raft, or vessel is navigated in the course of her voyage, or in the county where the voyage shall terminate.

On boats, rafts, &c. R. § 4509.

SEC. 4162. 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 the 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 fif-

Jurisdiction in any county in certain cases. R. § 4510.

teen 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.

Bigamy R. § 4511.

SEC. 4163. When the offense of bigamy is committed in one county, and the defendant is apprehended in another, the jurisdiction is in either county.

When conviction a bar. R. § 4412.

SEC. 4164. When the offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to prosecution or indictment thereof in another.

CHAPTER 8.

THE TIME OF COMMENCING CRIMINAL ACTIONS.

Murder. R. § 4513.

SECTION 4165. A prosecution for murder may be commenced at any time after the death of the person killed.

Limitation within eighteen months R. § 4514.

SEC. 4166. An indictment for a public offense must be found within eighteen months after the commission thereof, in the following cases, and not after:

1. Taking or enticing away an unmarried female, under the age of fifteen years, for the purpose of marriage or prostitution;
2. Seducing or debauching an unmarried female, of previously chaste character;
3. For rape and adultery;
4. For an assault with intent to commit a rape.

Three years. R. § 4515.

SEC. 4167. In all other cases an indictment for a public offense must be found within three years after the commission thereof, and not afterwards.

Misdemeanor triable before a justice.

SEC. 4168. A prosecution for a misdemeanor, triable before a justice of the peace, must be commenced within one year after the commission thereof, and not after.

Defendant out of the state. R. § 4516.

SEC. 4169. 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.

When indictment is found. R. § 4517

SEC. 4170. 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 9.

OF FUGITIVES FROM JUSTICE.

SECTION 4171. The governor of the 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.

Agents appointed to apprehend: expense. R. § 4518.

SEC. 4172. No compensation, fee, or reward of any kind, can be paid to, or received by, a public officer of this state for a service rendered or expense incurred in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this state, or detaining him therein, except as provided by law.

No compensation except as provided by law. R. § 4519.

SEC. 4173. A violation of the last section is a misdemeanor.

Misdemeanor. R. § 4520.

SEC. 4174. No executive warrant for the arrest and surrender of any person demanded by the executive authority of any other state or territory, as a fugitive from the justice of such state or territory, and no requisition upon the executive authority of any other state or territory, for the surrender of any person as a fugitive from the justice of this state, shall be issued, unless the requisition from the executive authority of such other state or territory, or the application for such requisition upon the executive authority of such other state or territory shall be accompanied by sworn evidence that the party charged is a fugitive from justice, and by a duly attested copy of an indictment, or a duly attested copy of a complaint, made before a court or magistrate authorized to receive the same.

Executive warrant: for fugitive: when to issue. R. § 4521.

SEC. 4175. 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 all needful assistance in the execution thereof.

Requisition from another state. R. § 4522.

EXAMINATION BY MAGISTRATE.

SEC. 4176. 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

Warrant of magistrate: when to issue. R. § 4523.

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 for the arrest of such person.

Bail. R. § 4524.

SEC. 4177. 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.

Committed. R. § 4525.

SEC. 4178. 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.

Forfeiture of bail. R. § 4526.

SEC. 4179. A failure of such person to attend before the magistrate at the time and place mentioned in the undertaking, is a forfeiture thereof.

Discharge. R. § 4527.

SEC. 4180. 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, or 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.

Re-arrest on governors warrant. R. § 4528.

SEC. 4181. 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.

Costs. R. § 4529.

SEC. 4182. 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.

Condition as to expense before appointing agent. C. 39, § 1, 12 G. A.

SEC. 4183. Upon the appointment of any agent for the arrest of a fugitive from justice under the provisions of this chapter, the governor is hereby authorized to make it a condition upon such appointment, and the issue of the writ, that the same shall be executed without expense to the state, if in his opinion justice and equity so require.

When expenses are paid by state. Same. § 2.

SEC. 4184. When, in the opinion of the governor, expenses incurred in the arrest of fugitives from justice should be paid by the state, such expenses shall be made out by items in detail, and sworn to, and approved by him and at least two other members of the executive council, and when so approved shall be audited and paid out of the general revenue of the state, and this section shall be sufficient authority for the payment of the same.

CHAPTER 10.

OF WARRANTS OF ARREST ON PRELIMINARY INFORMATION.

SECTION 4185. When complaint is made before a magistrate of the commission of some designated public offense; triable on indictment in the county in which such magistrate has local jurisdiction, and charging some person with the commission thereof, he may issue a warrant for the arrest of such person. The complaint may be in form substantially the same as provided in section four thousand six hundred and sixty-three of chapter fifty-two of this title. Complaint.

SEC. 4186. The warrant of arrest on a preliminary information, must be substantially in the following form: Warrant: form of. R. § 4584.

COUNTY OF.....

THE STATE OF IOWA,

To any Peace Officer in the State:

Preliminary information upon oath having been this day laid before me that the crimé of (designating it,) has been committed, and accusing A. B. thereof:

You are, therefore, commanded forthwith to arrest the said A. B. and bring him before me at (naming the place,) or in casé of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at....this....day of....A. D. 18..

C....D...., *Justice of the Peace.*
(or as the case may be.)

Subpœna as witnesses E....F....and G.... H....

SEC. 4187. The warrant must specify the name of the defendant, and if it be unknown to the magistrate, may designate him by any name. It must also state, by name or general description, an offense which authorizes the magistrate to issue the warrant, the time of issuing it, and the county, city, town, township or village where it was issued, and must be signed by the magistrate with his name of office. Same. R. § 4585.

SEC. 4188. It must be directed to "any peace officer in the state." Directed. R. § 4586.

SEC. 4189. If the offense stated in the warrant be a misdemeanor, the magistrate issuing it must make an endorsement on the warrant as follows: "Let the defendant, when arrested, be admitted to bail in the sum of....dollars, if he desires to give bail," and fix in the endorsement the amount in which bail may be taken. If offense is a misdemeanor. R. § 4587.

SEC. 4190. The warrant of arrest may be delivered to any peace officer for execution, and executed in any county in the state. How served. R. § 4588.

SEC. 4191. If the offense stated in the warrant be a felony, the officer making the arrest must take the defendant before the mag- If offense be felony. R. § 4589.

istrate who issued it at the place mentioned in the command thereof, or, in the event of his absence or inability to act, before the nearest or most accessible magistrate in the county in which it was issued.

Bail in case of misdemeanor R. § 4540.

SEC. 4192. If the offense stated in the warrant be a misdemeanor, and the defendant be arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate or the clerk of the district court of the same county in which he was arrested, for the purpose of giving bail, and the magistrate or clerk before whom he is taken in such county, must take bail from him accordingly for his appearance at the district court of the county in which the warrant was issued, on the first day of the next term thereof.

Order for discharge of defendant. R. § 4541.

SEC. 4193. On taking bail in the case provided for in the preceding section, the magistrate or clerk taking such bail must make on the warrant an order, signed by him with his name of office, for the discharge of the defendant, substantially as follows:

COUNTY OF (here name the county.)

THE STATE OF IOWA.

To (here state the name of the officer who has the defendant in custody, with the addition of his name of office, thus, A. B. sheriff of ——— county, according to the truth.)

The defendant named in the warrant of arrest in your custody, under the authority thereof, for the offense therein designated, having given sufficient bail to answer the same, by the undertaking herewith delivered to you, you are commanded forthwith to discharge him from custody, and without unnecessary delay deliver this order, together with the said undertaking of bail, to the clerk of the district court of ——— county, on or before the first day of the next term thereof.

Dated at ———, this ——— day of ———, A. D., (or as the case may be.)

———, Justice of the Peace,
(Or as the case may be.)

And must deliver the warrant with the order thereon, together with the undertaking of bail, to the officer having the defendant in custody, who shall forthwith discharge the defendant from arrest and without unnecessary delay, and on or before the first day of the next term of the court at which the defendant is required to appear, deliver or transmit by mail or otherwise the warrant, with the order thereon, together with the undertaking of bail, to the clerk of the court at which the defendant is required to appear, who shall forthwith file the same in his office; and the magistrate who issued the warrant shall return to the clerk the affidavits of the informant, and his witnesses upon which the warrant was issued, on or before the first day of the next term of the court, and the clerk shall, when the affidavits are returned by the magistrate, file the same in his office, with the warrant and undertaking of bail.

If bail be not given. R. § 4542.

SEC. 4194. If bail be not forthwith given by the defendant as provided in the two preceding sections, the magistrate or clerk must re-deliver to the officer the warrant, and the officer must

take the defendant before the magistrate who issued it, at the place mentioned in the command thereof, or, if he be absent or unable to act, before the nearest or most accessible magistrate in the county in which the warrant was issued.

SEC. 4195. In all cases when the defendant is arrested, he must be taken before the magistrate or clerk without unnecessary delay, and the officer must at the same time deliver to the magistrate or clerk the warrant, with his return thereon, endorsed and subscribed by him in his name of office. Proceedings after arrest. R. § 4543.

SEC. 4196. If the defendant be taken before a magistrate in the county in which the warrant was issued, other than the magistrate who issued it as hereinbefore provided, the affidavits on which the warrant was issued must be sent to such magistrate, or if they cannot be procured, the informant and his witnesses must be subpœnaed to make new affidavits. Same. R. § 4544.

CHAPTER 11.

OF ARREST, AND BY WHOM AND HOW MADE.

SECTION 4197. Arrest is the taking of a person in custody in a case, and in the manner authorized by law. What is. R. § 4545

SEC. 4198. An arrest may be made by a peace officer, or by a private person. By whom. R. § 4546

SEC. 4199. A peace officer may make an arrest in obedience to a warrant delivered to him. With warrant. R. § 4547.

SEC. 4200. A peace officer without a warrant may make an arrest: Without by peace officer. R. § 4548.

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 ground for believing that the person to be arrested has committed it.

SEC. 4201. A private person may make an arrest: By private person. R. § 4549.

1. For a public offense committed or attempted in his presence;

2. When a felony has been committed: and he has reasonable ground for believing that the person to be arrested has committed it.

SEC. 4202. A magistrate may orally order a peace officer, or a private person, to arrest any one committing, or attempting to commit, a public offense in the presence of such magistrate, which order shall authorize the arrest. Magistrate may orally order arrest. R. § 4550.

SEC. 4203. An arrest may be made on any day, or at any time of the day or night. When made. R. § 4551.

SEC. 4204. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, of his authority to make it, and that he is a peace How to be made. R § 4552.

officer, if such be the case, and require him to submit to his custody, except when the person to be arrested is actually engaged in the commission of, or attempt to commit, the offense, or flies immediately after its commission, and if acting under the authority of a warrant, he must give information thereof and show the warrant if required.

When resisted. R. § 4553.

SEC. 4205. When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

May break and enter premises. R. § 4554.

SEC. 4206. To make an arrest, if the offense be a felony, a private person, if any public offense, a peace officer acting under the authority of a warrant, or without a warrant, may break open a door or window of a house in which the person to be arrested may be, or in which they have reasonable grounds for believing he is, after having demanded admittance and explained the purpose for which admittance is desired.

In order to get out. R. § 4555.

SEC. 4207. Any person who has lawfully entered a house for the purpose of making an arrest under the provisions of the preceding section, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself; and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, and by his command, lawfully entered for the purpose of making an arrest, and detained therein.

Refuses to assist in making arrest. R. § 4556.

SEC. 4208. Any person making an arrest, may orally summon as many persons as he deems necessary to aid him in making the arrest, and all persons failing to obey such summons shall be guilty of a misdemeanor.

Arrest; how made. R. § 4557.

SEC. 4209. An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest.

Force. R. § 4558.

SEC. 4210. No unnecessary force or violence shall be used in making an arrest.

How created. R. § 4559.

SEC. 4211. A person arrested is not to be subjected to any more restraint than is necessary for his detention.

May take weapons from persons arrested. R. § 4560.

SEC. 4212. He who makes an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken to be disposed of according to law.

Escape. R. § 4561.

SEC. 4213. If a person, after being arrested, either by a peace officer without a warrant, or by a private person, escape, or be rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him in any part of the state, and for that purpose may, if necessary, break open the door or window of a house in which he may be, or in which he has reasonable ground to believe he is, after having stated his purpose and demanded admittance, and when the person escaping or rescued was in custody under a warrant or commitment, this may be done at any time under the original warrant or commitment.

Arrest by bystander. R. § 4463.

SEC. 4214. A peace officer may take before a magistrate a person who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

SEC. 4215. A private person who has arrested another for the commission of an offense, must, without unnecessary delay, take him before a magistrate or deliver him to a peace officer. When arrest is by private person. R. § 4563.

SEC. 4216. A private person who makes an arrest and delivers the person arrested to a peace officer, must also accompany the officer before the magistrate. Same. R. § 4564.

SEC. 4217. An officer making an arrest in obedience to a warrant, shall proceed with the person arrested as commanded by the warrant, or as provided by law. By officer with warrant. R. § 4565.

SEC. 4218. When an arrest is made without a warrant, whether by a peace officer or a private person, the person arrested shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made; and the grounds on which the arrest was made shall be stated to the magistrate by affidavit, subscribed and sworn to by the person making the statement before the magistrate, in the same manner as upon a preliminary information, as nearly as may be. When without warrant. R. § 4566.

HEARING BEFORE MAGISTRATE.

SEC. 4219. If the magistrate believes from the statements in the affidavit that the offense charged is triable in the county in which the arrest was made, and that there is sufficient ground for a trial or preliminary examination, as the case may require, and that it will not be inconvenient for the witnesses on the part of the state that such trial or preliminary examination should be had before him, he shall proceed as if the person arrested had been brought before him on arrest under a warrant, and, if the case be one within his jurisdiction to try and determine, shall order an information to be filed against him. Magistrate may order information to be filed. R. § 4567.

SEC. 4220. If the magistrate believes from the statements in the affidavit that the offense charged is triable in the county in which the arrest is made, and that there is sufficient ground for a trial or preliminary examination, and that it will be more convenient for the witnesses on the part of the state that such trial or examination should be had before some other magistrate, he shall, by a written order by him signed with his name of office, commit the person arrested to a peace officer, to be by him taken before such magistrate in the same county who has jurisdiction to try or examine the charge as the case may require, and as shall be convenient for the witnesses on the part of the state, and deliver the affidavit and the order of commitment to the peace officer, who shall proceed with the person arrested as directed by the order; and such magistrate, when the person arrested is brought before him, shall proceed as on an arrest under a warrant, and, if the case be within his jurisdiction to try and determine, shall order an information to be filed against the person arrested. May order hearing to take place before another magistrate. R. § 4568.

SEC. 4221. If the magistrate believes from the statements in the affidavit that the offense charged is triable in a county different from that in which the arrest is made, and that there is sufficient ground for a trial or preliminary examination, he shall, by a written order by him signed with his name of office, commit the When the offense is triable in another county. R. § 4569.

person arrested to a peace officer, to be by him taken before a magistrate in the county in which the offense is triable, who has jurisdiction to make either preliminary examination into the charges, or try and determine the same, as the case may require, and, if the offense be a misdemeanor only triable on indictment, shall fix in the order the amount of bail which the person arrested may give for his appearance at the district court of the county in which the offense is indictable, on the first day of the next term thereof, to answer an indictment.

Bail; commitment; discharge. R. § 1570.

SEC. 4222. If bail be given as provided in the preceding section, it may be either before the magistrate making the order, or the magistrate in the county in which the offense is triable before whom he is taken under the order, or a magistrate of any county through which he passes in going from the county in which the arrest was made to that in which the offense is triable, or the clerk of the district court of either of said counties; and, when given, the magistrate or clerk taking the same shall make on the order of commitment an order for the discharge of the person arrested from custody, who shall forthwith be discharged accordingly, and to transmit by mail, or otherwise, to the clerk of the district court of the county at which the person arrested is bound to appear, on or before the first day of the next term thereof, and as soon as it can be conveniently done after taking the bail, the affidavits, the order of commitment and discharge, together with the undertaking of the bail, who shall file the same together in his office.

Same. R. § 1571.

SEC. 4223. If bail be not given as provided in the last two sections, before the magistrate in the county in which the arrest was made, or if the offense charged is a felony, or a misdemeanor, triable on information, the magistrate must deliver the affidavits and the order of commitment to a peace officer, who shall proceed with the person arrested as directed by the order, or provided by law; and the magistrate in the county in which the offense is triable, when the person arrested is brought before him, shall proceed as on an arrest under a warrant, and if the case be within his jurisdiction to try and determine, shall order an information to be filed against the person arrested.

Officer having person in custody to take him before magistrate. R. § 1572.

SEC. 4224. In the cases contemplated in the last three sections, the officer having the person arrested in custody, under the order, shall take him before the proper magistrate in the county in which the offense is triable, which is most convenient for the witnesses on the part of the state, unless, in case of a misdemeanor triable on indictment as hereinbefore provided, the person arrested desires to give bail, in which case he shall take him before the most convenient magistrate in the county in which the offense with which he is charged is triable, or any county through which he passes in going from the county in which the arrest was made to the county in which the offense is triable, or before the clerk of the district court of either of said counties for the purpose of giving bail.

Officers return how made. R. § 4173.

SEC. 4225. In all cases, the peace officer, when he takes a person committed to him under an order as provided in this chapter before a magistrate, or clerk of the district court, either for the

purpose of giving bail, if bail be taken, or for trial or preliminary examination, must make his return on such order, and sign such return with his name of office, and deliver the same to the magistrate or clerk.

CHAPTER 12.

OF PRELIMINARY EXAMINATIONS.

SECTION 4226. When the defendant is brought before the magistrate on arrest, either with or without a warrant, 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. Right of defendant to counsel. R. § 4575.

SEC. 4227. The magistrate must allow the defendant a reasonable time to send for counsel, and, if necessary, must adjourn the examination for that purpose. Same. R. § 4576.

SEC. 4228. 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; *provided*, however, that before said examination is commenced, said defendant may have a change of venue upon filing an affidavit that the magistrate is prejudiced against him, is a material witness for either party, or that the defendant cannot obtain justice before him, as affiant verily believes. On filing of such affidavit a change of venue must be allowed, and the magistrate must immediately transmit all original papers and, a transcript of the record entire in the case, to the next nearest magistrate in the township against whom no objection exists, if there be any; if not, to the next nearest magistrate in the county against whom no such objections in the opinion of the justice exists, who shall proceed with said examination as hereinafter provided. Only one such change of venue shall be allowed. Examination. R. § 4577. Change of venue.

SEC. 4229. The examination must be terminated at one session unless the magistrate, for good cause shown, adjourn it. Same. R. § 4578.

SEC. 4230. No examination can be adjourned for a longer period than thirty days. Adjournment. R § 4579.

SEC. 4231. 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. Bail. R. § 4580.

SEC. 4232. If there is no jail in the county, the sheriff must retain the defendant in his custody until the examination. When no jail. R. § 4583.

SEC. 4233. The magistrate must issue subpœnas for any witnesses required either by the state or by the defendant, and the witnesses who appear at the examination must be examined in the presence of the defendant. Subpoenas. R. § 4584.

SEC. 4234. The deposition of a witness who resides out of the county in which the examination is had, may be taken, on application of the defendant on the order of the magistrate, before any Depositions.

officer authorized to take depositions in civil cases; which order shall not be made until three days after the filing with the magistrate of the written interrogatories to be propounded to the witness; nor until three days after the service of notice on the state, or on the attorney who appears for the state, of the filing of such interrogatories.

Cross-interrogatories.

SEC. 4235. Before the order to take the deposition is made, the state may file cross-interrogatories to be propounded to the witness, which shall be answered by him in the deposition.

Read in evidence.

SEC. 4236. At the expiration of three days from the filing of the interrogatories, and the service of the notice thereof on the state as above provided, the magistrate may order the testimony of the witness to be taken in answer to the interrogatories and cross-interrogatories, if any, on file; and the deposition thus taken may be read as evidence on the examination: nor shall the same be excluded because of any irregularity in the taking of it, if the magistrate is satisfied that the irregularity complained of could work no substantial prejudice to the opposite party.

Defendant a competent witness in his own behalf.

SEC. 4237. The defendant shall be a competent witness in his own behalf, but he cannot be called to give testimony against himself; nor shall his failure to become a witness be allowed any weight against him on the examination.

Cross-examination.

SEC. 4238. When the defendant testifies in his own behalf, he shall be subject to a cross-examination as an ordinary witness, *provided*, that, in the cross-examination, the state shall be strictly confined to the matters testified to in the examination-in-chief.

TRIAL.

Witnesses excluded. R. § 4591.

SEC. 4239. 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.

Persons excluded. R. § 4593.

SEC. 4240. The magistrate must also, upon the request of the defendant, exclude from hearing the examination all persons except the magistrate, his clerk, the peace officer who has the custody of the defendant, the attorney or attorneys representing the state, and the defendant and his counsel.

Testimony in writing. R. § 4598.

SEC. 4241. The magistrate shall, in the minutes of the examination, write out or cause to be written out, the substance of the testimony given on the examination by each witness examined before him, showing the name of the witness, his place of residence, and his business or profession, and the amount to which each witness is entitled for mileage and attendance.

Magistrate's certificate. R. § 4591.

SEC. 4242. After the examination is closed, the magistrate must attach together the complaint, the warrant or order of commitment, if any, under which the defendant was brought before him, the minutes of the examination, including all depositions on file with him and used in the examination, and annex thereto his certificate, which must set forth in substance the time and place of examination, and that the minutes thereof are true, and the certificate must be signed by the magistrate, with his name of office.

SEC. 4243. If, after hearing the testimony, it appear to the magistrate, either that a public offense has not been committed, or that there is no sufficient reason for believing the defendant guilty thereof, he must order the defendant to be discharged; and such order must be endorsed on the minutes of the examination or annexed thereto and signed by the magistrate, to the following effect: "There being no sufficient cause for believing the defendant guilty of the offense herein mentioned, or of any other offense, I order him to be discharged." Judgment. R. § 4595.

SEC. 4244. If it appears from the examination that a public offense triable on indictment has been committed, and that there is sufficient reason for believing the defendant guilty thereof, the magistrate shall in like manner endorse on or annex to the minutes of the examination, an order signed by him to the following effect: "It appearing to me by the within minutes that the offense therein mentioned, or any other offense triable on indictment, according to the fact, stating generally the nature thereof, has been committed, and there is sufficient cause for believing the defendant guilty thereof, I order that he be held to answer the same." Same. R. § 4596.

BAIL.

SEC. 4245. If bail be taken by the magistrate, the following words in substance must be added to the order mentioned in the preceding section, "and I have admitted him to bail to answer thereto by the undertaking hereto annexed,"—and the undertaking of bail must be annexed thereto. Order admitting. R. § 4598.

SEC. 4246. If bail be not given by the defendant, then the magistrate must add to the order mentioned in section forty-two hundred and forty-four the following words in substance: "and that he be admitted to bail in the sum of (here state the amount,) and that he be committed to the jail of the county of (here name the county,) until he give such bail." Same. R. § 4599.

SEC. 4247. 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: Mittimus. R. § 4600.

"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. 4248. 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 that he will Witnesses must give undertaking. R. § 4601.

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.

When to give security. R. § 4602.

SEC. 4249. Whenever the magistrate is satisfied by oath, or otherwise, that there is reason to believe that any such witness will not fulfill his undertaking and 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.

Infants and married women. R. § 4603.

SEC. 4250. Minors 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.

Witness committed. R. § 4604.

SEC. 4251. 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.

Papers returned to district court. R. § 4605.

SEC. 4252. When a magistrate has discharged a defendant, or held him to answer an indictment, he must return to the district court of the county, on or before its opening, on the first day of the next term thereof, and as soon after the closing of the examination as practicable, all the papers mentioned in section four thousand two hundred and forty-two of this chapter, together with the undertaking of bail for the appearance of the defendant, and the undertakings of the witnesses, or for them, taken by him.

When magistrate to return papers. R. § 4607.

SEC. 4253. If it appear from the examination that a public offense has been committed which is not triable on indictment, but on information only, and that there is sufficient reason for believing the defendant guilty thereof, the magistrate shall retain all the papers, and forthwith order an information to be filed against the defendant, before him. If he have not jurisdiction to try and determine the same, he shall endorse on, or annex to, the minutes of the examination an order, signed by him to the following effect: "It appearing to me by the within minutes that the offense of (here state its name, or nature generally,) has been committed, and that there is sufficient reason for believing the defendant guilty thereof, I order that an information be filed against him therefor before (here name some magistrate who is the nearest and most accessible in the same county, and who has jurisdiction, giving the name of office,) and that the defendant be committed to any peace officer to be taken before such magistrate." And the magistrate shall thereupon cause each material witness on the part of the state to enter into a written undertaking, to the effect that he will appear forthwith before the magistrate before whom the defendant is to be taken, or that he will forfeit the sum of fifty dollars, and deliver the undertaking, with all the other papers to a peace officer, who shall forthwith proceed as directed by the order, and take the defendant before such magistrate, and deliver all the papers with the undertakings of the witnesses to the magistrate directed in the order, and make his return thereto, and sign the same with his name of office, and the magistrate before whom he is taken shall thereupon proceed accordingly.

Costs.

SEC. 4254. When the defendant is discharged, the justice shall, if he is satisfied that the prosecution is malicious or without

probable cause, tax the costs against the complainant and render judgment therefor; but the person against whom such judgment is rendered may appeal in the same manner, and with the same effect, as is provided for a prosecuting witness in section four thousand six hundred and eighty-nine of this code.

CHAPTER 13.

OF SELECTING, DRAWING, SUMMONING, AND EMPANELING OF THE GRAND JURY.

SECTION 4255. The selecting, drawing, and summoning of the grand jury is as prescribed in the code of civil practice. Selecting grand jury. R. § 4608.

SEC. 4256. At a term of court at which grand jurors are required to appear, the panel shall be called, and the names of the grand jurors who shall appear shall be entered on the record. If fifteen grand jurors do not appear, or if the number appearing be reduced from any cause, either then or afterwards, to less than fifteen, the court may order the sheriff of the county to summon a sufficient number of qualified persons to complete the panel. Grand jurors. R. § 4609.

SEC. 4257. Persons summoned by the sheriff to supply a deficiency in the requisite number of grand jurors, serve only during the term at which they are summoned. Same. R § 4610.

SEC. 4258. A defendant held to answer to a public offense, may challenge the panel of the grand jury, and the state or defendant may challenge any individual juror. Challenge. R. § 4611.

SEC. 4259. A challenge to an individual juror may be made by the state, for one or more of the following causes:

1. That he is related either by affinity or consanguinity nearer than in the fifth degree, or stands in the relation of agent, clerk, servant, or employe to any person held to answer for a public offense whose case may come before the grand jury;

2. That he is bail for any one held to answer for a public offense, whose case may come before the grand jury;

3. That he is defendant in a prosecution similar to any prosecution to be examined by the grand jury;

4. That he is, or within one year preceding has been, engaged or interested in carrying on any business, calling, or employment, the carrying on of which is a violation of law, and for which the juror may be indicted by the grand jury.

SEC. 4260. A challenge to the panel can be interposed only for the reason that they were not appointed, drawn, or summoned as prescribed by law. To the panel. R. § 4612.

SEC. 4261. A challenge to an individual juror by the defendant, may be made for one or more of the following causes only: To individual juror. R § 4613.

1. That he is a minor, insane, or not competent by law to serve as such juror;

2. That he is a prosecutor upon a charge against the defendant;

3. Having formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent him from rendering a true verdict upon the evidence submitted on the trial.

Decided by the court.

SEC. 4262. Challenges to the panel or to an individual juror, must be decided by the court.

When challenge allowed. R. § 4616.

SEC. 4263. 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.

Same. R. § 4617.

SEC. 4264. 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.

Inform the court. R. § 4618.

SEC. 4265. The grand jury must inform the court of a violation of the last section, that it may be punished as a contempt.

Challenge to panel; no challenge after jury is sworn. R. § 4619.

SEC. 4266. 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 any individual juror for any cause of challenge after they are sworn.

Foreman. R. § 4620.

SEC. 4267. From the persons summoned to serve as grand jurors, the court must appoint a foreman; the court must also appoint a foreman when the person already appointed is discharged, excused, or from any cause becomes unable to act before the grand jury is finally discharged.

Oath. R. § 4621.

SEC. 4268. 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."

Same. R. § 4622.

SEC. 4269. The following oath must thereupon be adminstered 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."

Charged by the court. R. § 4623.

SEC. 4270. The grand jury being empaneled 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. And it is hereby made the duty of the court to specially give in charge to the grand jury, the provisions of law regulating the accounting by public officers for fines and fees collected by them, and providing for the suppression of intemperance.

Discharge. R. § 4625.

SEC. 4271. 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 14.

OF THE POWERS AND DUTIES OF THE GRAND JURY.

SECTION 4272. 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. Power. R. § 4626.

SEC. 4273. The indictment must in all cases be found only upon evidence given by witnesses produced, sworn and examined before the grand jury, or furnished by legal documentary evidence. Indictment: how found. R. § 4627.

SEC. 4274. The grand jury has power, by its foreman, to administer the oath to all witnesses produced and examined before it. Administer oath. R. § 4628.

SEC. 4275. It is the duty of the grand jury to appoint one of its number, who is not foreman, clerk thereof, who must take and preserve the minutes of the proceedings and of the evidence given before it, except the votes of the individual members thereof on finding an indictment. Duty. R. § 4629.

SEC. 4276. 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. Same. R. § 4630.

SEC. 4277. 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. Of a member. R. § 4631.

SEC. 4278. It is made the special duty of the grand jury to inquire: Special duty. R. § 4632.

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;
3. Into the wilful and corrupt misconduct in office of all county officers;
4. Into the obstruction of highways.

SEC. 4279. The clerk of the court must, whenever required by the foreman of the grand jury or district attorney, issue subpœnas for witnesses to appear before the grand jury. Issue subpœnas. R. § 4633

SEC. 4280. 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. Access to county jails and public records. R. § 4634.

SEC. 4281. The grand jury may, at all reasonable times, ask the advice of the district attorney, or the court; and the district attorney may attend before it for the purpose of examining witnesses when the grand jury deems it necessary. Ask advice of district attorney. R. § 4635.

SEC. 4282. 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 District attorney give information. R. § 4636.

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.

Should find indictment: when. R. § 4637.

SEC. 4283. The grand jury should find an indictment when all the evidence before it, taken together, is such as in its own judgment would, if unexplained, warrant a conviction by the trial jury. When the evidence is not such, it should not.

Proceedings secret. R. § 4638.

SEC. 4284. 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.

Exception. R. § 4639.

SEC. 4285. 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 court, or to disclose the testimony given before them by any witness upon a charge against him of perjury.

Jurors not to be questioned. R. § 4640.

SEC. 4286. 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.

When witness refuses to testify. R. § 4641.

SEC. 4287. When a witness under examination before the grand jury, refuses to testify or to answer a question put to him by the grand jury, the grand jury shall proceed with the witness into the presence of the court, and the foreman shall then distinctly state to the court the refusal of the witness, and, if the court, upon hearing the witness, shall decide that he is bound to testify, or answer the question propounded, he shall inquire of the witness if he persists in his refusal, and if he does, shall proceed with him as in cases of similar refusal in open court.

Or fails to obey subpœna. R. § 4642.

SEC. 4288. If a witness fail to attend before the grand jury, in obedience to a subpœna issued for that purpose and duly served, the court shall, upon the application of the district attorney, or foreman of the grand jury, proceed and coerce the attendance of the witness, and may punish his disobedience as in the case of a witness failing to attend on the trial.

Papers relating to arrest and preliminary examination laid before grand jury. R. § 4643.

SEC. 4289. All the papers and other matters of evidence relating to the arrest and preliminary examination of the charge against defendants who have been held to answer, returned to the court by magistrates, shall be laid before the grand jury, and if, upon investigation, it refuses to find an indictment, they must be returned to the court, with an endorsement thereon, signed by the foreman, to the effect that the charge is dismissed, and thereupon the court must order the discharge of the defendant from custody, if in jail, or the exoneration of the bail, if bail be given, unless the court should, upon good cause shown, be of opinion that the charge should again be submitted to the grand jury, in which case the defendant may be continued in custody, or on bail, until the next term of the court.

SEC. 4290. Such dismissal of the charge, does not prevent the same from being again submitted to a grand jury as often as the court may direct; but without such direction, it cannot again be submitted. Dismissal of charge. R. § 4644.

CHAPTER 15.

OF THE FINDING AND PRESENTMENT OF INDICTMENT.

SECTION 4291. An indictment cannot be found without the concurrence of twelve grand jurors; and when so found it must be endorsed "A true bill," and the endorsement must be signed by the foreman of the grand jury. Concurrence of twelve jurors. R. § 4645.

SEC. 4292. When an indictment is found at the instance of a private prosecutor, the following must be added to the endorsement required by the preceding section, "found at the instance of," (here state the name of the person,) and in such case, if the prosecution fails, the court trying the cause may award costs against the private prosecutor, if satisfied, from all the circumstances, that the prosecution was malicious or without probable cause. Private prosecutor. R. § 4646.

SEC. 4293. When an indictment is found, the names of all the witnesses examined before the grand jury in that case must be endorsed thereon before it is presented to the court, and the minutes of the evidence of each witness examined before the grand jury, taken by the clerk of the grand jury, must be presented with the indictment to the court, and filed by the clerk of the court, and remain in his office as a record; but the minutes of the evidence shall not be open to the inspection of any person except the judge of the court, the district attorney or his clerk, the defendant and his counsel, or the clerk of such counsel, and the clerk of the court must, within two days after demand made, furnish the defendant or his counsel a copy thereof without charge, or permit the defendant's counsel, or the clerk of such counsel, to take a copy. Names of witnesses indorsed on indictment. R. § 4647.

SEC. 4294. The indictment, when found and endorsed as prescribed by this chapter, must be presented by the foreman, in the presence of the grand jury, to the court, and marked "filed" by the clerk of the court, and remain in his office as a record. Presented to the court. R. § 4648.

CHAPTER 16.

OF INDICTMENT; ITS FORM AND REQUISITES.

SECTION 4295. An indictment is an accusation in writing found and presented by a grand jury, legally convoked and sworn, to the court in which it is empaneled, charging that a person therein named has done some act, or been guilty of some omission, which, by law, is a public offense punishable on indictment. Indictment defined. R. § 6449.

Must contain. R. § 4650.

SEC. 4296. The indictment must contain:

1. The title of the action, specifying the name of the court to which it is presented, and the name of the parties;

2. A statement of the facts constituting the offense, in ordinary and concise language, without repetition and in such a manner as to enable a person of common understanding to know what is intended.

Form. R. § 4651.

SEC. 4297. It may be substantially in the following form:

District court of the county of.....

The state of Iowa,
against
A. B.

The grand jury of the county of ....., in the name and by the authority of the state of Iowa, accuse A. B. of the crime of (here insert the name of the offense, if it have one, such as treason, murder, manslaughter, robbery, larceny, or the like, or if it have no general name, then a brief general description of it as given by law, such as "mingling poison with food, with intent to kill a human being,") committed as follows:

The said A. B., on the first day of January, A. D. 18.., in the county as aforesaid, (here insert the act or omission constituting the offense.)

.....District Attorney,
of the....judicial district.

Must be direct and certain. R. § 4653.

SEC. 4298. The indictment must be direct and certain as regards:

1. The party charged;

2. The offense charged;

3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

Defendant's name. R. § 4653.

SEC. 4299. When a defendant is indicted by a fictitious or erroneous name, and in any subsequent stage of the proceedings before execution, his true name is discovered, an entry shall be made in the record of the proceedings, of his true name, referring to the fact of his being indicted by the name mentioned in the indictment, and the subsequent proceedings shall be in the true name, substantially as follows:

The state of Iowa,
against
A. B., indicted by the name of C. D.

Must charge but one offense. R. § 4654.

SEC. 4300. The indictment must charge but one offense, but it may be charged in different forms to meet the testimony, and if it may have been committed in different modes and by different means, the indictment may allege the modes and means in the alternative; *provided*, that in case of compound offenses, wherein the same transaction more than one offense has been committed, the indictment may charge the several offenses, and the defendant may be convicted of any offense included therein; *provided further*, that this section shall in no manner affect any provision of this code providing for the suppression of intemperance.

Precise time need not be stated. R. § 4655.

SEC. 4301. The precise time at which the offense was committed need not be stated in the indictment, but it is sufficient if it allege that the offense was committed at any time prior to the

time of the finding thereof, except where the time is a material ingredient in the offense.

SEC. 4302. When an offense involves the commission of, or an attempt to commit, an injury to person or property, and is described in other respects with sufficient certainty to identify the act, an erroneous allegation as to the name of the person injured, or attempted to be injured, is not material. Erroneous allegation not material: when. R. § 4656.

SEC. 4303. The words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. Construction. R. § 4657.

SEC. 4304. Words used in a statute to define a public offense need not be strictly pursued in an indictment, but other words conveying the same meaning may be used. Same. R. § 46.8.

SEC. 4305. The indictment is sufficient if it can be understood therefrom: Indictment: when sufficient.

1. That it was found by a grand jury of the county empaneled in the court having authority to receive it, though the name of the court is not actually stated;

2. That the defendant is named, or, if his true name is unknown to the grand jury, that fact be stated, and that he be described by a fictitious name;

3. That the offense was committed within the jurisdiction of the court, or is triable therein;

4. That the offense was committed at some time prior to the time of the finding of the indictment;

5. That the act or omission charged as the offense, is stated with such a degree of certainty, in ordinary and concise language, and in such a manner as to enable a person of common understanding to know what is intended, and the court to pronounce judgment upon a conviction according to the law of the case;

6. That when material, the name of the person injured, or attempted to be injured, be set forth when known to the grand jury, or if not known to it, that it be so stated in the indictment.

SEC. 4306. No indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected by reason of any of the following matters, which were formerly deemed defects or imperfections: R. § 4659 When not insufficient. R. § 466 .

1. For the want of an allegation of the time or place of any material fact, when the time and place have been once stated;

2. For the omission of any of the following allegations, namely: "with force and arms," "contrary to the form of the statute, or of the statutes," or "against the peace and dignity of the state;"

3. For the omission to allege that the grand jury was empaneled, sworn, or charged;

4. For any surplusage or repugnant allegation, or for any repetition, when there is sufficient matter alleged to indicate clearly the offense and the person charged; nor,

5. For any other matter which was formerly deemed a defect or imperfection, but which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

SEC. 4307. Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment. What need not be stated. R. § 4661.

Pleading judicial proceedings. R. § 4662.

SEC. 4308. 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.

Same, private statute. R. § 4663.

SEC. 4309. 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.

Indictment for libel. R. § 4664

SEC. 4310. 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.

Instrument destroyed or withheld R. § 4 65

SEC. 4311. When an instrument which is subject of an indictment, has been destroyed or withheld by the act of 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.

Indictment for perjury. R. § 4666.

SEC. 4312. In an indictment for perjury, or subornation of perjury, 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.

Intent to defraud. R. § 4667.

SEC. 4313. 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 officer in his official capacity, or any co-partnership, or member thereof, or any particular person.

Distinction abrogated. R. § 4668.

SEC. 4314. 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 its commission, though not present, must hereafter be indicted, tried, and punished as principals.

Accessory after the fact. R § 4669

SEC. 4315. 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.

Compounding offense R. § 4670.

SEC. 4316. 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.

Indictment for embezzlement. R. § 4671.

SEC. 4317. In an indictment for the embezzlement or fraudulent conversion of money, it shall be sufficient to allege the embezzlement or fraudulent conversion to have been of money generally, without designating its particular species; and proof that the defendant embezzled, or fraudulently converted any money or bank note, will be sufficient to support the averment, although the particular species be not proved.

CHAPTER 17.

OF PROCESS UPON AN INDICTMENT.

By bench warrant. R. § 4672.

SECTION 4318. The process upon an indictment for the arrest of an individual, shall be a bench warrant.

Court or judge may order. R. § 4673.

SEC. 4319. When an indictment is filed by the clerk of the court against a defendant, not in custody, or under bail, or who has not deposited money instead of bail, the judge of the court shall make an order on the indictment, which shall be signed by him, with his name of office, that a bench warrant issue for the arrest of the defendant, and, if the offense charged in the indictment be bailable, fix the amount in which bail may be taken.

Clerk to issue warrant. R. § 4674.

SEC. 4320. The clerk, on the application of the district attorney, shall accordingly, at any time after the making of the order of the judge, whether the court be in session or not, issue a bench warrant into one or more counties.

Form, in case of felony. R. § 4675.

SEC. 4321. A bench warrant, if the offense be a felony, may be, substantially, in the following form:

County of.....,

The State of Iowa.

To any peace officer in the state:

An indictment having been found in the district court of said county, on the....day of....., A. D., 18.., (the day on which the indictment is marked filed, by the clerk of the court,) charging A. B. with the crime of (here designate the offense by the name, if it have one, or by a brief general description of it, as given by law, substantially, as in the indictment.)

You are, therefore, hereby commanded to arrest the said A. B., and bring him before said court to answer said indictment, if the said court be then in session in said county, or if the said court be not then in session in said county, that you deliver him into the custody of the sheriff of said county.

Given under my hand, and the seal of said court, at my office

SEAL] in....., in the county aforesaid, this....day of...., A. D., 18..

By order of the judge of the court.

....., clerk.

If misdemeanor. R. § 4676.

SEC. 4322. If the offense be a misdemeanor, the bench warrant may be in a similar form, adding to the body thereof a direction, substantially, to the following effect:

"Or, if the said A. B. require it, that you take him before a magistrate, or the clerk of the district court in said county, or in the county in which you arrest him, that he may give bail to answer the said indictment."

If bailable. R. § 4677.

SEC. 4323. If the offense charged be bailable, the clerk must make an endorsement on the bench warrant, to the following effect: "The defendant is to be admitted to bail in the sum of ....dollars." (The amount fixed by the judge and endorsed on the indictment.)

Where served. R. § 4678.

SEC. 4324. The bench warrant may be served in any county in the state.

Proceedings. R. § 4679.

SEC. 4325. If the defendant, when arrested, be brought before a magistrate, or the clerk of the district court of the same county in which it was issued, or another county, for the purpose of giving bail, the same proceedings must be had, in all respects, as if he had been arrested on a warrant of arrest, issued by a magistrate on a preliminary information, as nearly as may be.

Indictment against a corporation: service of and return. C. 3, § 3, 14 G. A.

SEC. 4326. The process upon an indictment against a corporation shall be a notice; which shall be issued by the clerk at any time after the filing of the indictment in his office, on the application of the district attorney. The notice shall be under the seal of the court, and shall, substantially, notify the defendant of the finding of the indictment, of the nature of the offense charged, and that he must forthwith appear and answer the same. It may be served by any peace officer in any county in the state on any officer or agent of the defendant, by reading the same to him and leaving with him a copy thereof. It shall be returned to the clerk's office without delay, with proper evidence of its service; and, from and after two days from the time of the making of such service, the defendant shall be considered in court, and thereafter shall be considered to be present to all proceedings had on the indictment.

CHAPTER 18.

OF ARRAIGNMENT OF THE DEFENDANT.

Defendant arraigned. R. § 4680. C. 3, § 8, 14 G. A.

SECTION 4327. As soon as practicable after an indictment is found, the defendant must be arraigned thereon, unless he waive the same; but where a corporation is defendant, arraignment shall not be required.

If for felony or misdemeanor. R. § 4681.

SEC. 4328. 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. 4329. When he is in custody, the court must direct the officer in whose custody he is to bring him before it to be arraigned, and the officer must do so accordingly. If in custody. R. § 4682.

SEC. 4330. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for arraignment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of the money deposited, may, on motion of the district attorney, make an order directing the clerk to issue a bench warrant for his arrest, and fix the amount in which bail will be taken if the offense be bailable. If on bail. R. § 4683.

SEC. 4331. The clerk, on the application of the district 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. Clerk issue bench warrant: when. R. § 4684.

SEC. 4332. If the defendant appear for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desire the aid of counsel, and if he does, and is unable to employ any, must allow him to select, or assign him counsel, not exceeding two, who shall have free access to him at all reasonable hours. Defendant's right to counsel. R. § 4685.

SEC. 4333. The arraignment may be made by the court, or by the clerk or district attorney under its direction, and consists in reading the indictment to the defendant, and unless previously done, delivering to him a copy of the indictment and the endorsements thereon, and informing him that if the name by which he is indicted is not his true name, he must then declare what his true name is, or be proceeded against by the name in the indictment, and asking him what he answers to the indictment. Arraignment: by whom made and what consists. R. § 4686.

SEC. 4334. If he gives no other name, or gives his true name, he is thereafter precluded from objecting to the indictment upon the ground of being therein improperly named. Precluded from objecting: when. R. § 4687.

SEC. 4335. If he alleges 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. Same. R. § 4688.

SEC. 4336. In answer to the arraignment, the defendant may move to set aside the indictment, or he may demur or plead to it, and is entitled to one day after arraignment in which to answer thereto if he demand it. Answer: time. R. §§ 4689, 4690

CHAPTER 19.

OF SETTING ASIDE THE INDICTMENT.

Motion must be sustained. R. § 4691.

SECTION 4337. The motion to set aside the indictment can be made by the defendant on one or more of the following grounds, and must be sustained:

1. When it is not endorsed "a true bill," and the endorsement signed by the foreman of the grand jury as prescribed by this code;

2. When the names of all the witnesses examined before the grand jury are not endorsed thereon; when the minutes of the evidence of the witnesses examined before the grand jury are not returned therewith;

3. When it has not been presented and marked "filed" as prescribed by this code;

4. When any person, other than the grand jurors, was present before the grand jury when the question was taken upon the finding of the indictment, or when any person, other than the grand jurors, was present before the grand jury during the investigation of the charge, except as required or permitted by law;

5. That the grand jury were not selected, drawn, summoned, empaneled, or sworn as prescribed by law.

When not sustained. R. § 4692.

SEC. 4338. A motion to set aside the indictment on the ground that the names of all the witnesses examined before the grand jury are not endorsed thereon; or that the name of any other witness than those so examined is endorsed thereon as prescribed in the second subdivision of section four thousand three hundred and thirty-seven hereof, shall not be sustained if the endorsement is corrected by the insertion or striking out of such names or name by the district attorney or the clerk of the court, under the direction of the court, so as to correspond with the minutes required to be kept by the clerk of the grand jury and returned and preserved with the indictment to the court.

What ground of motion not allowed. R. § 4698.

SEC. 4339. The ground of the motion to set aside the indictment mentioned in the fifth subdivision of section four thousand three hundred and thirty-seven hereof, is not allowed to a defendant who has been held to answer before indictment.

Hearing. R. § 4695.

SEC. 4340. The motion must be heard when it is made, unless for good cause the court postpone the hearing to another time.

If denied. R. § 4693.

SEC. 4341. If the motion be denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto.

If granted. R. § 4697.

SEC. 4342. 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. 4343. 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. *If re-submitted. R. § 4698.*

SEC. 4344. An order to set aside the indictment as provided in this chapter, shall be no bar to a future prosecution for the same offense. *Order to set aside, no bar. R. § 4699.*

CHAPTER 20.

OF PLEADING BY THE DEFENDANT.

SECTION 4345. The only pleading on the part of the defendant is a demurrer or plea. *Demurrer or plea. R. § 4700.*

SEC. 4346. The demurrer and plea must be put in in open court, and may be oral; but an entry thereof must be made on the record. *Where put in. R. § 4701*

CHAPTER 21.

OF THE MODE OF TRIAL.

SECTION 4347. Issues of law shall be tried by the court. Issues of fact shall be tried by a jury. *Issues: by whom tried. R. § 4702.*

SEC. 4348. An issue of law arises upon a demurrer to the indictment. No joinder in demurrer is necessary. *Issues of law. R. § 4703.*

SEC. 4349. An issue of fact arises on a plea of not guilty, or of former conviction or acquittal of the same offense. No replication or further pleading is necessary. *Issues of fact. R. § 4704.*

SEC. 4350. An issue of fact must be tried by a jury of the county in which the indictment is found, unless a change of venue has been awarded. *Same. R. § 4705.*

SEC. 4351. If the indictment be for a misdemeanor, the trial may be had in the absence of the defendant, if he appear by counsel; but if for a felony, he must be personally present. *Of the indictment. R. § 4706.*

CHAPTER 22.

OF DEMURRER.

Ground of. R. § 4707.

SECTION 4352. The defendant may demur to the indictment when it appears upon its face, either:

1. That it does not substantially conform to the requirements of this code;

2. That the indictment contains any matter, which, if true, would constitute a legal defense or bar to the prosecution.

Entry: form. R. § 4708.

SEC. 4353. The entry on the record of a demurrer, may be substantially in the following form: "The defendant demurs to the indictment."

Objection; when heard. R. § 4709.

SEC. 4354. When the demurrer is put in, the objection thereby presented must be heard immediately, or at such time as the court may appoint.

If sustained. R. § 4710.

SEC. 4355. If the demurrer is sustained on the ground that the offense charged was within the exclusive jurisdiction of another county in this state, the same proceedings shall be had as provided in sections four thousand four hundred and forty-six to four thousand four hundred and forty-nine, inclusive, of this code.

Same. R. § 4711.

SEC. 4356. If the demurrer is sustained because the indictment contains matter which is a legal defense or bar to the indictment, the judgment shall be final, and the defendant must be discharged.

Same. R. § 4712.

SEC. 4357. If the demurrer is sustained on any other ground than that mentioned in the last two sections, the defendant must be dealt with as provided in section four thousand three hundred and forty-one of this code, unless the court is of opinion, on good cause shown, that the objection can be remedied or avoided in another indictment; in which case the court may order the cause to be re-submitted to the same or another grand jury, and the defendant may be dealt with as provided in section four thousand three hundred and forty-two of this code.

If overruled. R. § 4713.

SEC. 4358. If the demurrer is overruled, the defendant has a right to put in a plea. If he fails to do so, final judgment may be rendered against him on the demurrer, and, if necessary, a jury may be empaneled to inquire and ascertain the degree of the offense.

CHAPTER 23.

OF PLEAS TO THE INDICTMENT.

SECTION 4359. There are but three pleas to an indictment. A plea of: Number of. R § 4714.

1. Guilty;
2. Not guilty;
3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded with or without the plea of not guilty.

SEC. 4360. The plea may be entered on the record, substantially, in the following form: Entry: form. R. § 4715.

1. A plea of guilty. "The defendant pleads that he is guilty of the offense charged in the indictment."
2. A plea of not guilty. "The defendant pleads that he is not guilty of the offense charged in the indictment."
3. A plea of former conviction or acquittal. "The defendant pleads that he has formerly been convicted or acquitted, (as the case may be,) of the offense charged in the indictment, by the judgment of the court of ....., (naming it,) rendered on the ..... day of ....., A. D. 18.., (naming the time.)"

SEC. 4361. The plea of guilty can only be put in by the defendant himself in open court. Plea of guilty. R. § 4716.

SEC. 4362. At any time before judgment, the court may permit the plea of guilty to be withdrawn, and other plea or pleas substituted. Same. R. § 4717.

SEC. 4363. The plea of not guilty is a denial of every material allegation in the indictment; and all matters of fact may be given in evidence under it, except a former conviction or acquittal. Plea of not guilty. R. § 4718.

SEC. 4364. A conviction or acquittal by a judgment upon a verdict shall bar another prosecution for the same offense, notwithstanding a defect in form or substance in the indictment on which the conviction or acquittal took place. Conviction or acquittal a bar. R. § 4719.

SEC. 4365. 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. Same. R § 4720.

SEC. 4366. The judgment for the defendant on a demurrer, except where it is otherwise provided, or for an objection to its form or substance taken on the trial, or for variance between the indictment and the proof, shall not bar another prosecution for the same offense. When judgment shall not bar. R. § 4721.

SEC. 4367. If the defendant fail or refuse to answer the indictment by demurrer or plea, a plea of not guilty must be entered by the court. Plea by court: when. R. § 4722.

CHAPTER 24.

OF CHANGE OF VENUE IN CRIMINAL CASES.

Defendant may petition for. R. § 4727.

SECTION 4368. 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.

Petition may set forth. R. § 4728.

SEC. 4369. 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 or prejudice against him in such county, and must verify the same by his affidavit stating the same to be true as he verily believes.

Verified: when. R. § 4729.

SEC. 4370. When the ground alleged in the petition is excitement and prejudice against him in the county, it must be verified by three disinterested persons, residents of the county from which the change is sought, in addition to the petitioner himself.

Need not state facts. R. § 4730.

SEC. 4371. The petition need not state the facts upon which the belief of the petitioner, or other person verifying the same, is founded, but may allege the belief of the particular ground thereof in general terms.

Additional testimony. R. § 4731.

SEC. 4372. The court may receive additional testimony, by affidavits only, either on the part of the defendant or the state, when the alleged ground in the petition is excitement and prejudice in the county against the petitioner.

Same: filed with clerk. R. § 4932.

SEC. 4373. The petition and affidavits, if any, must be filed with the clerk, and are parts of the record.

Court must decide. R. § 4733.

SEC. 4374. The court, in the exercise of a sound discretion, must decide the matter of the petition, when fully advised, according to the very right of it.

Same. R. § 4734.

SEC. 4375. If sustained, the court must, if the ground alleged be the prejudice of the judge, order the change of venue to the most convenient county in an adjoining district to which no objection exists.

Same. R. § 4735.

SEC. 4376. If sustained on the ground of excitement and prejudice in the county, it must be awarded to such county in the same district in which no such objection exists.

Duty of Clerk. R. § 4736.

SEC. 4377. Upon the making of the order, if there be but one defendant in the case, unless all have joined in the petition, the clerk must make out and certify a transcript of all papers on file in the case, including the indictment, and file the same in his office; and a certified copy of all record entries, and all the original papers on file must be, without unnecessary delay, transmitted to the clerk of the court to which the change of venue is ordered.

Same. R. § 4737.

SEC. 4378. If there be more than one defendant in the case, and all the defendants have not joined in the petition, the clerk, upon the making of such order, must, without unnecessary delay,

make out and certify a transcript of all entries appearing on the record, and of all the papers on file in the case, including the indictment, and transmit the transcript so certified to the clerk of the court, to which the change of venue is ordered, retaining the originals.

Duty of Sheriff. R. § 4738.

SEC. 4379. If a defendant who has applied for a change of venue, which has been ordered, be in custody, the sheriff of the county from which the venue is changed, 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 delivery, 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.

Court to which changed. R. § 4739.

SEC. 4380. 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 empaneled in such court.

Cost of change: by whom paid. R. § 4740.

SEC. 4381. 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.

Sheriff's fees. R. § 4741.

SEC. 4382. 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.

District judge may transfer prosecutions from one county to another. R. § 4742.

SEC. 4383. When any district judge in this state is satisfied from his own knowledge or otherwise, that any organized county in his district does not contain a sufficient number of inhabitants possessing the qualifications of jurors to compose grand and trial jurors for the presentment and trial of any person or persons, charged with the commisssion of an offense in said county requiring the intervention of a grand jury, said judge shall make an order transferring all prosecutions for such offenses committed in said county to the next nearest county in the same judicial district possessing the requisite number of inhabitants qualified to serve as jurors.

Order may be made in vacation. R. § 4743.

SEC. 4384. Said order may be made by the judge in vacation, or by the court, and the district court of the county to which said prosecution may be transferred, shall have full and complete jurisdiction of the offense, and the person or persons charged with committing the offense may be indicted and tried in the county to which the prosecution is so transferred, in the same manner as though the offense had been committed in said county.

Person charged required to appear and give bond. R. § 4744.

SEC. 4385. When any prosecution has been transferred by the court or judge under the provisions of this chapter, the person charged with committing the offense shall be required to appear at the next succeeding term of the district court of the county to which the prosecution is transferred, and shall give bond accordingly, and the court or judge may require all material witnesses in behalf of the prosecution to enter into cognizance for their

appearance at the district court of the county to which the prosecution is transferred.

Costs. R. § 4745.

SEC. 4386. The county in which the offense was committed, and from which the prosecution was transferred, shall pay all the costs attending the prosecution.

No appeal from order R. § 4746.

SEC. 4387. No appeal or writ of error shall lie from any order for the transfer of prosecutions made under the provisions of this chapter.

This chapter: to what applicable. R. § 4747.

SEC. 4388. The provisions of this chapter apply to prosecutions or charges now pending, or that may hereafter be instituted for offenses heretofore or hereafter committed.

CHAPTER 25.

OF THE FORMATION OF TRIAL JURY.

How formed. R. § 4751.

SECTION 4389. The jury for the trial of criminal actions is selected, drawn, and summoned as provided in the code of civil practice.

Ballots prepared by clerk. R. § 4752.

SEC. 4390. 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.

Party may require names of jurors called. R. § 4753.

SEC. 4391. 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.

Drawing jurors. R. § 4754.

SEC. 4392. 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.

Disposition of ballots. R. § 4755.

SEC. 4393. When the jury is completed, the ballots containing the names of the jurors sworn must be laid aside and kept apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.

Same. R. § 4756.

SEC. 4394. 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.

Juror absent. R. § 4757.

SEC. 4395. 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.

Talesmen. R. § 4758.

SEC. 4396. If by reason of there being one or more juries empaneled, 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 bystanders, or other persons, who shall be returned for the trial of the indictment.

SEC. 4397. The jury consists of twelve men accepted and sworn to try the issue. Jury: consists of. R. § 4759

CHAPTER 26.

OF CHALLENGING THE JURY.

SECTION 4398. A challenge is an objection made to the trial jurors, and is of two kinds: Challenge. R. § 4760.

1. To the panel;
2. To an individual juror.

SEC. 4399. When several defendants are tried together, they are not allowed to sever their challenges, but must join therein. No severance of. R. § 4761.

SEC. 4400. A challenge to the panel can be interposed, only on the ground that they were not selected, drawn, or summoned as prescribed by law. To panel. R. § 4762.

SEC. 4401. A challenge to the panel must be taken before a challenge to any individual juror, and must be in writing, specifying distinctly and plainly the facts constituting the ground of challenge. When and how taken. R. § 4763.

SEC. 4402. 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. Trial of challenge. R. § 4764.

SEC. 4403. If the facts of the challenge be allowed by the court, the jury must be discharged so far as the trial of the indictment in question is concerned. If it be disallowed, the court shall direct the jury to be empaneled. Challenge allowed: Jury discharged. R. § 4765.

SEC. 4404. A challenge to an individual juror may be taken orally, and is either: To individual juror. R. § 4766.

1. For cause;
2. Peremptory.

SEC. 4405. A challenge for cause may be made, either by the state or by the defendant; it must distinctly specify the facts constituting the causes of challenge, and may be made for any of the following causes: For cause. R. §§ 4767, 4768, 4769, 4770, 4771.

1. A previous conviction of the juror of a 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;
4. Affinity, or consanguinity within the ninth degree, to the person alleged to be injured by the offense charged, or on whose

preliminary information, or at whose instance the prosecution was instituted, or to the defendant, to be computed according to the rule of the civil law;

5. 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 preliminary information, or at whose instance the prosecution was instituted, or in his employ on wages;

6. Being a party adverse to the defendant in a civil action, or having been the prosecutor against, or accused by him, in a criminal prosecution;

7. 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;

8. Having served on a trial jury, which has tried another defendant for the offense charged in the indictment;

9. Having been on 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;

10. Having served as a juror, in a civil action brought against the defendant, for the act charged as an offense;

11. Having formed or expressed such an opinion as to the guilt or innocence of the prisoner as would prevent him from rendering a true verdict upon the evidence submitted on the trial;

12. Because of his being bail for any defendant in the indictment;

13. Because he is defendant in a similar indictment, or complainant or private prosecutor against the defendant or any other person indicted for a similar offense;

14. Because he is, or, within a year preceding, has been engaged or interested in carrying on any business, calling, or employment, the carrying on of which is a violation of law, and when the defendant is indicted for a like offense.

15. Because he has been a witness, either for or against the defendant, on the preliminary trial or before the grand jury.

Exemption. R. § 4772.

SEC. 4406. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Juror examined. R. § 4773.

SEC. 4407. 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, but his answers shall not afterwards be testimony against him.

Other witnesses examined. R. § 4774.

SEC. 4408. 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.

Court shall determine. R. § 4775.

SEC. 4409. In all challenges the court shall determine the law and the fact, and must either allow or disallow the challenge.

Challenges by state. R. § 4776.

SEC. 4410. The state shall first complete its challenges for cause, and the defendant afterwards.

Peremptory challenges. R. § 4777.

SEC. 4411. After twelve jurors have been obtained, against whom no cause of challenge has been found to exist, peremptory challenges may be made.

SEC. 4412. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court must exclude him. Same. R. § 4778.

SEC. 4413. If the offense charged in the indictment is punishable with imprisonment in the penitentiary for life, or may be so punishable in the discretion of the court, the state is entitled to ten peremptory challenges and the defendant twenty; if any other felony, the state is entitled to six and the defendant to twelve; and if a misdemeanor, the state to three and the defendant to six challenges. Same. C. 10, § 1, 1) G. A.

SEC. 4414. The state shall be entitled to the first challenge, and shall challenge one juror; the defendant shall be entitled to the second challenge, and shall challenge two jurors; the state shall be entitled to the third challenge, and shall challenge one juror; the defendant shall be entitled to the fourth challenge, and shall challenge two jurors; and so on, alternately, until all the challenges are exhausted. Order of challenge. Same. § 2.

SEC. 4415. The challenges of either party need not be all taken at once, but separately in the following order, including in each challenge all the causes of challenge belonging to the same class: Same. R. § 4781.

1. To the panel;
2. To an individual juror, for cause;
3. To an individual juror, peremptorily.

SEC. 4416. After each challenge which is allowed, the vacancy occasioned thereby shall, if required, be filled before any further challenge is made, and any new juror thus introduced may be challenged for cause, as well as peremptorily, if the peremptory challenges are not exhausted.

SEC. 4417. No juror shall be sworn to try the issue until twelve jurors are accepted. Jurors: when sworn. R. § 4783.

SEC. 4418. Bias in a juror against either party is no cause of challenge by the other. It may be waived by the party against whom it exists. Bias. R. § 4781.

CHAPTER 27.

OF THE TRIAL OF AN ISSUE OF FACT IN AN INDICTMENT.

SECTION 4419. The provisions of the code of civil practice, relative to the continuances of the trial of civil causes, shall apply to the continuance of criminal actions, except that no judgment for costs shall be rendered against a defendant in a criminal action on account of such continuance, and except as in this code otherwise provided; and except that the defendant shall, if he, upon entering his plea demand it, be entitled to three days in which to prepare for trial. Provisions of civil code: to what applicable.

SEC. 4420. The jury having been empaneled and sworn, the trial must proceed in the following order: Order of trial. R. § 4785.

1. The clerk or district attorney must, if the indictment be for a felony, read it, and state the defendant's plea to the jury. In all other cases this formality may be dispensed with;

2. The district attorney must then offer the evidence in support of the indictment;

3. The defendant or his counsel may then offer his evidence in support of his defense;

4. The parties may then respectively offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case;

5. When the evidence is concluded, unless the case is submitted to the jury on either side, or both sides, without argument, the district attorney must commence, the defendant follow by one or two counsel at his option, unless the court shall permit him to be heard by a larger number, and the district attorney conclude, confining himself to a response to the arguments of the defendant's counsel, provided that where two or more defendants are on trial for the same offense, they may be heard by one counsel each, and provided further, that the court, when the affirmative of the issue is with the defendant, may, in its discretion, award to the defendant the last argument;

6. The court shall then charge the jury in writing without oral explanation or qualification.

District attorney: offering evidence: notice. R. § 1786.

SEC. 4421. The district attorney in offering the evidence in support of the indictment, in pursuance of the order prescribed in the last section, under the second sub-division thereof, shall not be permitted to introduce any witness who was not examined before the grand jury, and the minutes of whose testimony was not taken by the clerk of the grand jury, and presented with the indictment to the court, unless he shall have given to the defendant a notice in writing, stating the name, place of residence, and occupation of such witness, and the substance of what he expects to prove by him on the trial, at least four days before the commencement of such trial.

Defendant's plea. R. § 1787.

SEC. 4422. When the defendant's only plea is a former conviction or acquittal, the order prescribed in the second and third sub-divisions of the section immediately preceding the last, shall be reversed, and the defendant shall first offer his evidence in support of his defense.

Counsel: time. R. § 1788.

SEC. 4423. The court shall not restrict counsel as to time in their arguments.

Tried separately. R. § 1789.

SEC. 4424. 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.

Trial for conspiracy. R. § 1790.

SEC. 4425. 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.

Rules of evidence. R. § 1805.

SEC. 4426. The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided.

SEC. 4427. The confession of the defendant, unless made in open court, will not warrant a conviction unless accompanied with other proof that the offense was committed. Confession of defendant. R. § 4806.

SEC. 4428. Where there is a reasonable doubt of the defendant being proven to be guilty, he is entitled to an acquittal. Doubt. R. § 4807.

SEC. 4429. Where there is a reasonable doubt of the degree of the offense of which the defendant is proven to be guilty, he shall only be convicted of the lower degree. Same. R. § 4808.

SEC. 4430. 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. Higher offense proved. R. § 4791.

SEC. 4431. If the indictment for the higher offense be submitted by the grand jury or be not found at the next term, the court must proceed to try the defendant on the original indictment. Same. R. § 4792.

SEC. 4432. 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. The officers must be sworn to suffer no person to speak to or communicate with the jury, on any subject connected with the trial, nor to do so themselves, except the person appointed by the court for that purpose, and that only to show the place to be viewed, and to return them into court without unnecessary delay at a specified time. Jury view premises. R. § 4800.

SEC. 4433. 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, if his evidence be admissable. Juror as a witness. R. § 4801.

SEPARATION OF JURY.

SEC. 4434. The jurors sworn to try an indictment, may, at any time before the final submission of the cause to them, in the discretion of the court, be permitted to separate, except where one of the parties object thereto, or be kept together in charge of proper officers. The officers must be sworn to keep the jury together during the adjournment of the court, and to suffer no person to speak to or communicate with them on any subject connected with the trial, nor do so themselves, and to return them into court at the time to which it adjourns. Jury permitted to separate. R. § 4802.

SEC. 4435. The jury, whether permitted to separate, or kept together in charge of sworn officers, must be admonished by the court that it is their duty not to permit any person to speak to or communicate with them on any subject connected with the trial, Not to communicate or converse. R. § 4803.

and that any and all attempts to do so, should be immediately reported by them to the court, and that they should not converse among themselves on any subject connected with the trial, or form or express an opinion thereon, until the cause is finally submitted to them. This admonition must be given or referred to by the court at each adjournment, during the progress of the trial, previous to the final submission of the cause to the jury.

TRIAL.

Minutes of testimony kept. R. § 4809.

SEC. 4436. The court shall, on the trial of every indictment, when requested by either party, keep, or cause to be kept, by some person for that purpose by it appointed, full and accurate minutes of the testimony of each witness examined on the trial, showing the name of the witness, the place of residence, and his occupation, as well as of any oral evidence introduced, either by the state or defendant, after a plea or verdict of guilty, to be considered by the court in aggravation or alleviation of the punishment in pronouncing sentence against the defendant, which shall be certified to be full and accurate by the judge, and signed by him, and filed with the clerk, and so marked by him, which shall be deemed a part of the record of the cause. The person who acts under such an appointment shall be entitled to such compensation for his services as may be allowed by the court, which shall be paid by the proper county, and shall be taxed as costs.

When several defendants. R. § 4810.

SEC. 4437. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Trial of libel. R. § 4811.

SEC. 4438. On the trial of an indictment for a libel, the jury have the right to determine the law and the fact.

Of offenses other than libel. R. § 4812.

SEC. 4439. 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 jury. And although 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.

INSTRUCTIONS.

Court instruct jury R. § 4813.

SEC. 4440. The court shall, on motion of either party, instruct the jury on the law applicable to the case, which must always be in writing, signed by the judge and filed with the clerk, and so marked by him, and it is to be deemed a part of the record of the cause, and no oral qualification thereof shall be permitted.

Same. R. § 4814.

SEC. 4441. Any instruction asked by either party to be given by the court must be in writing, and must be either given or refused, and so marked and signed by the judge, and filed with the clerk, and so marked by him, and is to be deemed a part of the record. It may be qualified in writing by the court, but not orally, and the qualification must be distinguished, intelligibly, from the instruction as originally asked by the party, and signed by the judge.

SEC. 4442. 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, water excepted, and not to suffer any person to speak to or communicate with them, nor speak to or communicate with them themselves unless it be to ask them whether they have agreed upon their verdict, and not to communicate to any one the state of their deliberation or the verdict agreed upon, until after the same shall have been declared in open court, and received by the court, and to return them into court when they shall have so agreed upon their verdict, unless by permission or order of the court, or they be sooner discharged.

Deliberation: duty of officer in charge. R. § 4815.

DISCHARGE OF JURY.

SEC. 4443. 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 afterwards be empaneled.

When juror becomes sick. R. § 4804.

SEC. 4444. 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.

Want of jurisdiction. R. § 4793.

SEC. 4445. 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 or ordered to be retained in custody a reasonable time, until the district attorney shall have a reasonable opportunity to inform the chief executive of the state in which the offense was committed of the facts, and for said officer to require the delivery of the offender.

Same. R. § 4794.

SEC. 4446. 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.

When offense committed in another county. R. § 4795.

SEC. 4447. In the case provided for in the last section, the clerk must transmit, forthwith, a certified copy of the indictment and all the papers in the action filed with him, except the undertaking mentioned in the last section, to the district attorney of the proper county.

Papers transmitted by clerk. R. § 4796.

SEC. 4448. If the defendant be not arrested on a warrant from the proper county he shall be discharged from custody, or his bail

Defendant discharged: when. R. § 4797.

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.

When arrested. R. § 4798.

SEC. 4449. 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.

Discharged when facts do not constitute offense. R. § 4799.

SEC. 4450. 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.

When defendant under bail appears for trial. R. § 4816.

SEC. 4451. 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 further order of the court; and he shall be committed and held in custody accordingly.

CHAPTER 28.

OF THE CONDUCT OF JURY AFTER THE CAUSE IS SUBMITTED TO IT.

Jury may take papers. R. § 4817.

SECTION 4452. 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.

And notes of testimony. R. § 4818.

SEC. 4453. 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.

Disagreement: information desired. R. § 4819.

SEC. 4454. 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 oral notice, to the district attorney, and the defendant or his counsel.

Juror sick. R. § 4820.

SEC. 4455. 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.

When discharged. R. § 4821.

SEC. 4456. 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 appears that there is no reasonable probability that the jury can agree.

SEC. 4457. 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. New trial. R. § 4822.

SEC. 4458. While the jury is absent the court may adjourn from time to time as to other business, but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury until a verdict be rendered or the jury is discharged. Court may adjourn. R. § 4823.

SEC. 4459. A final adjournment of the court discharges the jury. Same. R. § 4824.

CHAPTER 29.

OF THE VERDICT.

SECTION 4460. 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 again be tried at the same or another term. When jury have agreed. R. § 4825.

SEC. 4461. 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. Defendant present: when. R. § 4826.

SEC. 4462. When the jury have answered to their names, the court or the clerk shall ask them whether they have agreed upon the verdict, and if the foreman answers in the affirmative they must, on being required, declare the same. Verdict rendered. R. § 4827.

SEC. 4463. The jury may either render a general verdict, or, 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. General or special. R. § 4828.

SEC. 4464. 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." General. R. § 4829.

SEC. 4465. Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto, or of an attempt to commit the offense, if punishable by indictment. Finding an offense of different degrees. R. § 4830.

SEC. 4466. 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. Other offense than charged. R. § 4836.

Indictment against several; finding of jury. R. § 1837.

SEC. 4467. 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 judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Verdict insufficient. R. § 1838.

SEC. 4468. 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 leave the judgment to the court.

Informal verdict. R. § 1839.

SEC. 4469. 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.

Verdict rendered; jury polled. R. § 1840.

SEC. 4470. 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 further deliberation.

If any juror disagrees. R. § 1841.

SEC. 4471. When the verdict is given, and is such as the court may receive, the clerk may immediately enter it in full upon the record, and must read it to the jury, and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the record, and the jury again sent out. But if no disagreement be expressed, the verdict is complete and the jury must be discharged from the case.

If defense be insanity; jury instructed. R. § 1842.

SEC. 4472. 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 and safety, order him to be committed to the Iowa insane hospital, or retained in custody until he becomes sane.

Defendant discharged. R. § 1843.

SEC. 4473. 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.

SPECIAL VERDICT.

Special verdict defined. R. § 1830.

SEC. 4474. 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.

Same. R. § 1831.

SEC. 4475. 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. 4476. The special verdict need not be in any particular form, but shall be sufficient if it present intelligibly the facts found by the jury. Same. R. § 4832.

SEC. 4477. The court must give judgment upon the special verdict as follows: Judgment upon. R. § 4833.

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 of 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. 4478. 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 further deliberation. Verdict insufficient. R. § 4834.

CHAPTER 30.

OF BILLS OF EXCEPTION.

SECTION 4479. On the trial of an indictment, exceptions may be taken by the state, or by the defendant, to any decision of the court upon matters of law, in any of the following cases: Exceptions. R. § 4844.

1. In disallowing a challenge to an individual juror;

2. In admitting or rejecting witnesses or evidence on the trial of any challenge;

3. In admitting or rejecting witnesses or evidence, or in deciding any matter of law, not purely discretionary, on the trial of the issue.

SEC. 4480. Nothing herein contained is to be construed so as to deprive either party of the right of excepting to any action or decision of the court which affects any other material or substantial right of either party, whether before or after the trial of the indictment, or on such trial. How to be construed. R. § 4845.

SEC. 4481. The office of a bill of exceptions is to make a part of the proceedings or evidence appear of record which would not otherwise so appear. Office of bill of exceptions. R. § 4846.

SEC. 4482. All papers pertaining to the cause and filed with the clerk, and all entries made by the clerk in the record book pertaining to them, and showing the action or decision of the court upon them, or any part of them, are to be deemed parts of the record, and it is not necessary to except to any action or decision of the court so appearing of record. Papers deemed part of record. R. § 4847.

Either party may except to decision. R. § 4848.

SEC. 4483. Either party may allege an exception to any decision or action of the court, on any application of either party, which may be, and is made orally to the court, in any stage of the proceedings upon which the decision or action of the court is not required to be, and is not entered in the record book, and reduce the same to writing, and tender the same to the judge, whose duty it is to sign it; and if he sign the same, it shall be filed with the clerk and thereupon become a part of the record of the cause; but if the judge refuse to sign it, such refusal must be stated at the end thereof; and it may then be signed by two or more attorneys or officers of the court, or disinterested bystanders, and sworn to by the persons so signing the same, and filed with the clerk, and it shall thereupon become a part of the record of the cause.

Time allowed to examine. R. § 4849.

SEC. 4484. The judge shall be allowed one day to examine the bill of exceptions, and the party excepting shall be allowed three days thereafter to procure the signatures and file the same.

May be modified. R. § 4850.

SEC. 4485. If the judge and the party excepting can agree in modifying the bill of exceptions, it shall be modified accordingly.

Time allowed to prepare. R. § 4851.

SEC. 4486. Time must be given to prepare the bill of exceptions when it is necessary. When it can reasonably be done, it shall be settled at the time of taking the exception.

CHAPTER 31.

OF NEW TRIAL.

Definition. R. § 4852

SECTION 4487. A new trial is a re-examination of the issue in the same court before another jury, after a verdict has been given.

Effect. R. § 4853.

SEC. 4488. 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 the evidence or in argument.

Causes for. R. § 4854

SEC. 4489. 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;
7. When the court has refused properly to instruct the jury;

8. When from any other cause the defendant has not received a fair and impartial trial.

SEC. 4490. The application for a new trial can be made only by the defendant, and must be made before judgment. Application: when made. R. § 4855.

CHAPTER 32.

OF ARREST OF JUDGMENT.

SECTION 4491. A motion in arrest of judgment, is an application to the court in which the trial was had, on the part of the defendant, that no judgment be rendered upon a verdict against him, or on a plea of guilty, and shall be granted: Grounds of. R. § 4856.

1. Upon any ground which would have been ground of demurrer;

2. When upon the whole record no legal judgment can be pronounced.

SEC. 4492. The court may also, upon its own observation of any of these grounds, arrest the judgment on its own motion. On motion of court. R. § 4857.

SEC. 4493. If the court is of opinion from the evidence on the trial that the defendant is guilty of a public offense, of which no legal conviction can be had on the indictment, he may be held to answer the offense in like manner as upon a preliminary examination. Defendant held to answer. R § 4858.

SEC. 4494. The motion may be made at any time before judgment, or after judgment, during the same term. When motion made R. § 4859.

CHAPTER 33.

OF JUDGMENT.

SECTION 4495. Upon a verdict of not guilty for the defendant, or special verdict upon which a judgment of acquittal must be given, the court must render judgment of acquittal immediately. When rendered. R. § 4860.

SEC. 4496. Upon a plea of guilty, upon a verdict of guilty, or a special verdict, upon which a judgment of conviction must be rendered, the court must fix a time for pronouncing judgment. The time appointed for pronouncing judgment must be at least three days after the verdict is rendered, if the court remain in session so long, or if not, as remote a time as can reasonably be allowed, but in no case can the judgment be pronounced in less than six hours after the verdict is rendered. Time when judgment may be pronounced. R § § 4861, 4862.

SEC. 4497. For the purpose of judgment, if the conviction be for a felony, the defendant must be personally present; if it be for misdemeanor, judgment may be pronounced in his absence. For felony: defendant present R. § 4863.

When defendant is out on bail. R. § 4865.

SEC. 4498. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or money deposited, may make an order directing the clerk to issue a bench warrant for his arrest.

Bench warrant. R. § 4866.

SEC. 4499. The clerk, on the application of the district 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 for his arrest.

Form of. R. § 4867.

SEC. 4500. The bench warrant may be substantially in the following form:

COUNTY OF .....

THE STATE OF IOWA,

To any Peace Officer in the State:

A. B. having been duly convicted on the .... day of ....., A. D. 18.., in the district court of ..... county, of the crime of (here designate it generally, as in the indictment.)

You are, therefore, hereby commanded to arrest the said A. B. and bring him before said court for judgment, if it be then in session, or if it be not then in session, you deliver him intothe custody of the sheriff of said county.

Given under my hand and the seal of said court, at my [SEAL.] office in ———, in said county, this —— day of ———, A. D. 18—.

By order of the court.

——— ———, Clerk.

Service. R. § 4868.

SEC. 4501. The bench warrant may be served in any county in the state.

Same. R. § 4869.

SEC. 4502. 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.

Judgment. R. § 4870.

SEC. 4503. 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.

Same. R. § 4871.

SEC. 4504. He may show for cause against the judgment, that he is insane, or any sufficient ground for a new trial, or in arrest of judgment.

Insanity: how determined. R. § 4872.

SEC. 4505. If the court is of opinion that there is reasonable ground for believing him insane, the question of his insanity shall be determined as provided in this code, and if he is found to be insane, such proceedings shall be had as are herein directed.

New trial. R. § 4873.

SEC. 4506. If he move for a new trial, or in arrest of judgment, the court shall defer the judgment, and proceed to hear and decide the motions.

SEC. 4507. If no sufficient cause be alleged or appear to the court why judgment should not be pronounced, it shall thereupon be rendered. Rendition of judgment R. § 4874.

SEC. 4508. If the defendant is convicted of two or more offenses, before judgment on either, the punishment of each of which is, or may be, imprisonment, the judgment may be so rendered that the imprisonment upon any one shall commence at the expiration of the imprisonment upon any other of the offenses. When convicted of two or more offenses. R. § 4880.

SEC. 4509. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, specifying the extent of the imprisonment, which shall not exceed one day for every three and one-third dollars of the fine. Fine: how satisfied R. § 4881.

SEC. 4510. 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 the one which is most convenient and safe, and the county to which the cause originally belonged shall be holden for all the expenses thereof. Committed to jail of another county. R. § 4884.

SEC. 4511. In all cases, except murder in the first degree, the court rendering judgment must make an order fixing the amount in which bail must be taken, and there shall be no execution of the judgment until such order be made. Appeal. R. § 4885.

CHAPTER 34.

OF EXECUTION.

SECTION 4512. When a judgment of imprisonment, either in the penitentiary or county jail is pronounced, a certified copy of the entry thereof in the record book, must be forthwith furnished to the officer whose duty it is to execute the same, who shall proceed and execute it accordingly, and no other warrant or authority is necessary to justify or require its execution. Copy of judgment furnished officer. R. § 4886.

SEC. 4513. 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. Commitment of defendant. R. § 4887.

SEC. 4514. When the judgment is imprisonment in the county jail of the county in which the trial is had, or a fine and that the defendant be imprisoned in such county jail until it be satisfied, the judgment must be executed by the sheriff of that county. In all other cases, when the judgment is imprisonment, the sheriff of the county in which the trial was had, must deliver the defendant to the proper officer in execution of the judgment. By whom executed. R. § 4888.

SEC. 4515. If the judgment be imprisonment, or a fine and imprisonment until it be satisfied, in the county jail of the county in which the trial was had, the sheriff of the county in which the Same. R. § 4889.

trial was had, shall deliver a certified copy of the entry of the judgment, together with the body of the defendant, to the keeper of the jail or prison in which the defendant is to be imprisoned, and take his receipt therefor on a duplicate copy of such entry, which he must forthwith return to the clerk of the court in which the judgment was rendered, with his return thereon.

Officer's authority in committing. R. § 4900.

SEC. 4516. 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 defendant, and 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.

Return. R. § 4901.

SEC. 4517. An officer executing a judgment of imprisonment shall make a written return of the execution of such judgment forthwith after such execution, and file the same with the clerk of the court, by which the judgment was rendered.

Execution for fine. R. § 4902.

SEC. 4518. Upon a judgment for a fine, a writ of execution may be issued as upon a judgment in a civil case.

How judgment for abatement of nuisance enforced. R. § 4903.

SEC. 4519. When the judgment is for the abatement or removal of a nuisance, or for anything other than the payment of money by the defendant, a certified copy of the entry of such judgment, delivered to the sheriff of the proper county, shall authorize and require him to execute such judgment, and he shall return the same with his doings under the same thereon endorsed to the clerk of the court in which the judgment was rendered within seventy days after the date of the certificate of such certified copy, unless it be a judgment of imprisonment, which is hereinbefore provided for.

CHAPTER 35.

OF APPEALS.

In criminal cases. R. § 4904.

SECTION 4520. The mode of reviewing in the supreme court any judgment, action, or decision of the district court in a criminal case, is by an appeal.

Who may. R. § 4905.

SEC. 4521. Either the defendant or the state may take an appeal.

When taken. R. § 4906.

SEC. 4522. No appeal can be taken until after judgment, and then only within one year thereafter.

How taken. R. § 4907.

SEC. 4523. An appeal is taken by the party taking it, or the attorney of such party, serving on the adverse party, or the attorney of the adverse party who acted as attorney of record in the district court at the time of the rendition of the judgment, and also on the clerk of the district court by which the judgment was rendered, a notice in writing of the taking of the appeal from the judgment.

When deemed taken. R. § 4908.

SEC. 4524. The appeal is deemed to be taken when the notices thereof, required by the last section, are filed in the office of the

clerk of the court in which the judgment was rendered, with evidence of the service thereof endorsed thereon, or annexed thereto.

Transcript; duty of clerk. R. § 4909.

SEC. 4525. When an appeal is taken, it is the duty of the clerk of the court in which the judgment was rendered, without unnecessary delay, to make out a full and perfect transcript of all papers in the case on file in his office, except the papers returned by the examining magistrate on the preliminary examination, where there has been one, and of all entries made in the record book, and certify the same under his hand and the seal of the court, and transmit the same to the clerk of the supreme court.

Several defendants may join. R. § 4917.

SEC. 4526. When several defendants are indicted and tried jointly, any one or more of them may join in taking the appeal, but those of their co-defendants who do not join shall take no benefit therefrom, yet they may appeal afterwards.

Effect by state. R. § 4911.

SEC. 4527. An appeal taken by the state, in no case, stays the operation of a judgment in favor of the defendant.

By defendant. R. § 4914.

SEC. 4528. An appeal taken by the defendant does not stay the execution of the judgment, unless bail be put in, except as provided in the next section.

Defendant detained in custody. R. § 4915.

SEC. 4529. Where the judgment is imprisonment in the penitentiary, and an appeal is taken during the term at which the judgment is rendered, and the defendant is unable to give bail, and that fact is satisfactorily shown to the court, it may, in its discretion, order the sheriff or officer having the defendant in custody, to detain him in custody, without taking him to the penitentiary, to abide the judgment on the appeal, if the defendant desire it.

Bail: proceedings when given. R. § 4916.

SEC. 4530. When an appeal is taken by the defendant, and bail is put in, it is the duty of the clerk to give forthwith to the defendant, his agent or attorney, a certificate under his hand and the seal of the court, stating that an appeal has been taken and bail put in, and the sheriff or other officer having the defendant in custody, must, upon the delivery of such certificate to him, discharge the defendant from custody where imprisonment forms any part of the judgment, and cease all further proceedings in execution of the judgment, and return forthwith to the clerk of the court who issued it, the execution or certified copy of the entry of judgment under which he acted, with his return thereon, if such execution or certified copy has been issued, and if such execution or certified copy has not been issued, it shall not be issued, but shall abide the judgment on the appeal.

Appellant; appellee. R. § 4913.

SEC. 4531. The party taking the appeal is known as the appellant, the adverse party as the appellee, but the title of action shall not be changed in consequence of the appeal; it shall be docketed in the supreme court as it was in the district court.

How docketed; have precedence over other cases. R. § 4919.

SEC. 4532. Appeals, in criminal cases, shall be docketed in the supreme court for trial at the commencement of that portion of the term which has been assigned for trying causes from the judicial district from which the appeal comes. They shall take precedence of all other business, and shall be tried at the term at which the transcript is filed, unless continued for cause, or by consent of the parties, and shall be decided, if practicable, at the same term.

TRIAL OF THE APPEAL.

Appearance of defendant. R. § 4920.

SEC. 4533. The personal appearance of the defendant in the supreme court on the trial of an appeal, is in no case necessary.

Not dismissed for informality. R. § 4921.

SEC. 4534. An appeal shall not be dismissed for any informality or defect in taking the appeal, if the same be corrected in a reasonable time, and the supreme court must direct how it shall be corrected.

Assignment of error. R. § 4922.

SEC. 4535. No assignment of error, or joinder in error, shall be necessary.

Argument. R. § 4923.

SEC. 4536. The defendant shall be entitled to close the argument.

Opinion. R. § 4924

SEC. 537. The opinion of the supreme court must be in writing, filed with its clerk and recorded.

When appeal is taken by defendant. R. § 4925.

SEC. 4538. If the appeal was taken by the defendant from a judgment against him, the supreme court must examine the record, and without regard to technical errors or defects which do not affect the substantial rights of the parties, render such judgment on the record as the law demands. It may affirm, reverse, or modify the judgment, and render such judgment as the district court should have rendered, and may, if necessary or proper, order a new trial. It may reduce the punishment, but cannot increase it.

By state. R. § 4926.

SEC. 4539. If the appeal was taken by the state, the supreme court cannot reverse the judgment, or modify it so as to increase the punishment, but may affirm it, and shall point out any error in the proceedings, or in the measure of punishment, and its decision shall be obligatory on the district court, as the correct exposition of the law.

When judgment against defendant reversed R. § 4927.

SEC. 4540. If a judgment against the defendant be reversed without ordering a new trial, the supreme court must 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.

If affirmed. R. § 4928.

SEC. 4541. On a judgment of affirmance against the defendant, the original judgment shall be carried into execution as the supreme court shall direct, except as hereinafter provided.

Recorded and transmitted to court below. R. § 4929.

SEC. 4542. When a judgment of the supreme court is rendered it must be recorded, and a certified copy of the judgment must be forthwith remitted to the clerk of the district court in which the judgment appealed from was rendered, with proper instructions and a copy of the opinion, in such time, and in such manner, as the supreme court may, by rule, prescribe.

Same. R. § 4930.

SEC. 4543. After the certified copy of the entry of the judgment of the supreme court, and its instructions have been remitted as provided in the preceding section, the supreme court has no farther jurisdiction of the proceedings therein, and all proceedings which may be necessary to carry the judgment of the supreme court into effect, must be had in the court to which it is remitted, or by the clerk thereof, except as provided in the next two sections.

SEC. 4544. Unless where some proceedings in the district court are directed by the supreme court, a copy of the certified copy of the judgment of the supreme court, with its directions, certified by the clerk of the district court to whom the same has been transmitted, delivered to the sheriff, or other proper officer, shall authorize him to execute the judgment of the supreme court, or take any steps to bring the proceedings to a conclusion, except as provided in the next section. Same. R. § 4931.

SEC. 4545. If a defendant, who has been imprisoned during the pendency of an appeal, upon a new trial ordered by the supreme court shall be again convicted, the period of his former imprisonment shall be deducted by the district court from the period of imprisonment to be fixed on the last verdict of conviction. Time of imprisonment deducted. R. § 4933.

CHAPTER 36.

OF IMPEACHMENT.

SECTION 4546. An impeachment is the written accusation of a state officer by the house of representatives before the senate, of any misdemeanor or malfeasance in office. Form of. R. § 4937.

SEC. 4547. A majority of all the members of the house of representatives elected must concur in an impeachment. By whom found. R. § 4938.

SEC. 4548. 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 prosecution. Requisites. R. § 4939.

SEC. 4549. If the impeachment charge more than one misdemeanor or act of malfeasance, they shall be stated separately and distinctly. How stated. R. § 4940.

SEC. 4550. When possessed of an impeachment, the senate must forthwith cause the person accused to be brought before it. Senate. R. § 4941.

SEC. 4551. 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 president. Process. R. § 4942.

SEC. 4552. 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. Answer. R. § 4943.

SEC. 4553. 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. Oath. R. § 4944.

SEC. 4554. Every officer impeached shall be suspended from the exercise of his official duties until his acquittal. Suspended. R. § 4948.

SEC. 4555. If the president of the senate be impeached, notice thereof must be immediately given to the senate; which shall thereupon choose another president, to hold his office until the result of the trial is determined. President of senate. R. § 4949.

CHAPTER 37.

OF EVIDENCE.

Same as in civil cases. R. § 4805.

SECTION 4556. The rules of evidence prescribed in the civil part of this code, shall apply to criminal proceedings as far as applicable, and as they are not inconsistent with the provisions of this chapter; but nothing contained in this title shall render any person who, in any criminal proceeding, is charged with the commission of any public offense, competent or compellable to give evidence thereon for or against himself.

In prosecutions against railways. C. 8, § 6, 14 G. A.

SEC. 4557. In a prosecution against a railway company for obstructing a highway or any private way, proof that any such way is in an unsafe condition, or that it is inconvenient for travel at the place of its intersection with such railway, shall be presumptive evidence that such company has obstructed such way.

Rape. R. § 410 .

SEC. 4558. Proof of actual penetration into the body is sufficient to sustain an indictment for rape.

Accomplice. R. § 4102

SEC. 4559. 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.

Of female or on whom rape was perpetrated. R. § 4103

SEC. 4560. The defendant in a prosecution for a rape, or 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, cannot be convicted upon the testimony of the person injured, unless she be corroborated by other evidence tending to connect the defendant with the commission of the offense.

Subpœnas. R. § 4950.

SEC. 4561. A magistrate, in any criminal proceeding before him, may issue subpœnas subscribed by him with his name of office for witnesses within the state in behalf of either party thereto.

Same. R § 4951.

SEC. 4562. The clerk of the court in which any criminal case is pending must, at all times, upon the application of the defendant or his attorney, issue as many blank subpœnas under the seal of the court, subscribed by him, for witnesses within the state, as may be required by the defendant. He must also issue subpœnas, on the part of the state, when required.

Who to serve. R. § 4952.

SEC. 4563. A peace officer must serve within his town or county, as the case may be, any subpœna 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 state the time and place of service, without delay. A subpœna may, however, be served by any other person.

How R. § 4953.

SEC. 4564. The service of a subpœna must be by delivering a copy and showing the original to the witness personally.

SEC. 4565. If a witness conceal himself to avoid the service of a subpœna, the officer may break open doors or windows for the purpose of making service. May break door. R. § 4951.

SEC. 4566. Disobedience to a subpœna, or refusal to be sworn, or to answer as a witness, may be punished by the court or magistrate as a contempt. Disobedience. R. § 4955.

SEC. 4567. A witness wilfully disobeying a subpœna in a criminal case without good cause, shall be liable to the party injured for the amount of the damages sustained by such party. Witness when liable. R. § 4956.

SEC. 4568. The undertakings of witnesses in criminal cases, may be forfeited and enforced like the undertaking of bail. Forfeiture of bond. R. § 4957.

SEC. 4569. A subpœna in a criminal case, runs into any part of the state. Subpœna. R. § 4958.

SEC. 4570. In cases of impeachment, subpœnas may be issued on behalf of either party by the secretary of the senate. Impeachment. R. § 4959.

SEC. 4571. A defendant in a criminal case, either after preliminary information, indictment, or information, may examine witnesses conditionally or on commission, in the same manner and with like effect as in civil actions. Witness examined conditionally. R. § 4960.

SEC. 4572. A person apprehensive of a criminal prosecution, may perpetuate testimony in his favor, in the same manner, and with like effect, as it may be done in apprehension of any civil action. Perpetuating testimony. R. § 4961.

CHAPTER 38.

OF BAIL, UPON BEING HELD TO ANSWER BEFORE INDICTMENT.

SECTION 4573. When the defendant has been held to answer for any bailable offense, bail must be taken by the magistrate who held him to answer, or by any judge of the supreme, district, or circuit courts, or by the court to which the papers on the preliminary examination are to be returned by the magistrate who held him to answer, or by the clerk of such court, or by any magistrate of the county in which the offense is triable. Who may admit. R. § 4967.

SEC. 4574. 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, clerk, or magistrate,) acknowledged before, and accepted by, the court, clerk, or magistrate taking the same, and may be, substantially, in the following form: How given. R. § 4968.

County of.....

An order having been made on the.....day of.....A. D. 18.., by A. B., a justice of the peace of the township of...., (or as the case may be,) that C. D. be held to answer upon a charge of (stating briefly the nature of the offense,) upon which he has been duly admitted to bail, in the sum of.....dollars.

We, E. F., (stating his place of residence and occupation,) and G. H., of (stating his place of residence and occupation,) hereby undertake that the said C. D. shall appear at the district court of the county of....., at the next term thereof, and answer said

charge, and abide the orders and judgment of said court, and not depart without leave of the same, or if he fail to perform either of these conditions, that we will pay to the state of Iowa the sum of.....dollars, (inserting the sum in which the defendant is admitted to bail.)

E. F.
G. H.

Acknowledged before, and accepted by me as....., in the township of....., in the county of....., this.....day of....., A. D. 18..

I. J., justice of the peace,
(Or, as the case may be.)

Qualifications of bail. R. § 4963.

SEC. 4575. 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, clerk, or magistrate taking the 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 one sufficient bail.

Justification. R. § 4970.

SEC. 4576. The bail must in all cases justify, by affidavit taken before the court, clerk, or magistrate, as the case may be, taking such bail, and the affidavit must state that they each possess the qualifications prescribed in the last section.

Same. R. § 4971.

SEC. 4577. The district attorney, or the court, clerk, or magistrate, as the case may be, may thereupon further examine the bail upon oath, concerning their sufficiency, in such manner as may be deemed proper.

Same. R. § 4972.

SEC. 4578. The court, clerk, or magistrate, may also receive other testimony, either for or against the sufficiency of the bail.

Order. R. § 4973.

SEC. 4579. When the examination is closed, the court, clerk, 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 papers on the preliminary examination are required to be sent.

Order of discharge. R. § 4994.

SEC. 4580. Upon the allowance of the bail and the execution of the undertaking, the court, clerk, or magistrate, must make an order, signed with his name of office, for the discharge of the defendant, to the following effect:

THE STATE OF IOWA:

To the sheriff of the county of.....

C. D., who is detained by you on commitment, to answer a charge for the offense of, (here designate it generally,) having given sufficient bail to answer the same, you are commanded forthwith to discharge him from custody.

Dated at....., in the township of....., in the county of....., this.... day of....., A. D., 18..

K. L., justice of the peace.
(Or as the case may be.)

Disallowed. R. § 4971.

SEC. 4581. If the bail be disallowed, the defendant must be detained in custody until other bail be put in and justify.

CHAPTER 39.

OF BAIL UPON AN INDICTMENT BEFORE CONVICTION.

SECTION 4582. When the offense charged in the indictment is a misdemeanor, the officer serving the bench warrant, if therein required, must take the defendant before a magistrate in the county in which it was issued, or in which he is arrested, or before the clerk of the district court of either of such counties, for the purpose of giving bail. For misdemeanor. R. § 4976.

SEC. 4583. 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. Felony. R. § 4977.

SEC. 4584. When the defendant is so delivered into custody, if the felony charged be bailable, bail must be taken by that court, or the clerk of that court, or by any magistrate in the same county. By whom taken. R. § 4978

SEC. 4585. The bail must be put in by a written undertaking, executed by one sufficient surety, with or without the defendant, in the discretion of the court, clerk, or magistrate, acknowledged before and accepted by the court, clerk, or magistrate taking the same, and may be substantially in the following form: Form of undertaking. R. § 4979.

COUNTY OF .....

"An indictment having been found in the district court of the county of ....., on the ..... day of ....., A. D. 18.., charging A. B. with the crime of (designating it as in the bench warrant,) and he having been duly admitted to bail in the sum of ..... dollars:

We, A. B., of (stating his place of residence and occupation,) and C. D., of (stating his place of residence and occupation,) and E. F., of (stating his place of residence and occupation,) hereby undertake that the said A. B. shall appear and answer the said indictment, and abide the orders and judgment of said court, and not depart without leave of the same, or if he fail to perform either of these conditions, that he will pay to the state of Iowa the sum of ..... dollars (inserting the sum in which the defendant is admitted to bail.)

A. B.,
C. D.,
E. F.

Acknowledged before and accepted by me, at..... in the township of ....., in the county of ....., this ..... day of ....., A. D. 18..

G. H., justice of the peace.
(Or as the case may be.)

SEC. 4586. The provisions of the preceding chapter, subsequent to the form of the undertaking relative to the qualifications of bail, the justification, the examination, receiving other testimony Provisions of previous chapter applies. R. § 4980

against the sufficiency, and the order of allowance or disallowance thereof, and the filing of the undertaking with the affidavits, and all proceedings incidental thereto, in the cases therein provided for, apply also to the cases provided for in this chapter.

CHAPTER 40.

OF BAIL, UPON AN APPEAL TO THE SUPREME COURT, AFTER CONVICTION.

When bail taken. R. §§ 4966, 4983.

SECTION 4587. After conviction upon an appeal to the supreme court, the defendant must be admitted to bail as follows:

1. If the appeal be from a judgment imposing a fine, upon the undertaking of bail that will pay the same, or such part of it as the supreme court may direct, and in all respects abide the orders and the judgment of the supreme court upon the appeal;

2. If the appeal be from a judgment of imprisonment, upon the undertaking of bail that he will surrender himself in execution of the judgment and direction of the supreme court, and in all respects abide the orders and judgment of the supreme court upon the appeal. The bail may be taken, either by the court where the judgment was rendered, or the judge thereof, or the district court of the county in which he is imprisoned, or the judge thereof, or the judge of the circuit court of either of such counties, or by the supreme court, or a judge thereof, or by the clerk of either of such courts.

Qualifications of. R. § 1952.

SEC. 4588. The bail must possess the qualifications, must justify, and must be put in and taken in the manner prescribed in chapter thirty-eight of this title, and the same proceedings had in all respects, as nearly as applicable, varying to suit the case, and the undertaking of the bail must be, in effect, as prescribed by the preceding section.

CHAPTER 41.

OF DEPOSIT OF MONEY INSTEAD OF BAIL.

With whom and effect. R. § 4983.

SECTION 4589. 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 to which the undertaking, in case of bail, is required to be sent, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate under seal from said clerk of the deposit, he must be discharged from custody.

After giving bail R. § 4984.

SEC. 4590. If the defendant has 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.

Bail after deposit of money. R. § 4985.

SEC. 4591. 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.

Money; how applied. R. § 4986.

SEC. 4592. When money has been deposited, if it remain on deposit at the time of a judgment against the defendant, the clerk shall, under the direction of the court, apply the money in satisfaction of so much of the judgment as requires the payment of money, and after paying the same shall refund the surplus, if any, to the defendant, unless an appeal be taken to the supreme court, and bail put in, in which case the deposit shall be returned to the defendant.

CHAPTER 42.

OF SURRENDER OF THE DEFENDANT.

When and how done. R. § 4987.

SECTION 4593. 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 bail must 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 the certificate of the officer, the district court in which the indictment is pending, or was tried, at the next term after the surrender, or, if during term time, at the same term, and upon three clear days' notice thereof to the district attorney, with a copy of the undertaking and certificate, may order the bail to be exonerated.

Arrest by bail. R. § 4988.

SEC. 4594. 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 endorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so.

On surrender, money returned. R. § 4989.

SEC. 4595. 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 made, or directed in the manner prescribed in this chapter, the court in which the indictment is pending, or was tried, at the next term after the surrender, or, if during the term, at the same term, must order a return of the deposit to the defendant, upon producing

the certificate of the officer showing the surrender, and upon three clear days' notice to the district attorney, with a copy of the certificate.

CHAPTER 43.

OF FORFEITURE OF THE UNDERTAKING OF BAIL, OR DEPOSIT OF MONEY.

How forfeited. R. § 4980.

SECTION 4596. If the defendant fail to appear for arraignment, trial, or judgment, or at any other time when his personal appearance in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct an entry of such failure to be made on the record, and the undertaking of his bail, or the money deposited instead of bail, as the case may be, is thereupon forfeited.

Discharge of. R. § 4991.

SEC. 4597. If, before the final adjournment of the court for the term, the defendant appear and satisfactorily excuse his failure, the court may direct an entry to be made on the record, that the forfeiture of the undertaking or deposit be discharged.

When not. R. § 4992.

SEC. 4598. If the forfeiture is not discharged, the district attorney may, at any time after the adjournment of the court for the term, proceed by civil action only upon the undertaking of the bail.

Action on undertaking. R. § 4994.

SEC. 4599. The action on the undertaking must be in the court in which the defendant was, or would have been required to appear by the undertaking; *provided*, that when the undertaking requires the defendant to appear before a justice of the peace or a court of limited jurisdiction, or before an examining magistrate, it shall be the duty of said justice, or court, or examining magistrate, upon the forfeiture of the undertaking, and within thirty days thereafter, to file the same, together with a copy of all his official entries in relation thereto, in the office of the clerk of the district court of the county; and thereupon it shall be the duty of the district attorney to proceed to collect the same by a civil action in the district court of said county, or any other court of said county, having jurisdiction equal to the penalty of said bond.

Surrender before judgment: effect. R. § 4994.

SEC. 4600. If, before judgment is entered against the bail, the defendant be surrendered or arrested, the court may, in its discretion, remit the whole or any part of the sum specified in the undertaking.

CHAPTER 44.

OF THE RE-COMMITMENT OF THE DEFENDANT AFTER GIVING BAIL OR DEPOSITING MONEY.

SECTION 4601. The district court in which a criminal action is pending, or during the pendency of an appeal from its judgment in such action, or in which a judgment is to be carried into effect, may, by an order entered on the record, direct the defendant to be arrested and committed to jail until legally discharged, after he has given bail, or deposited money instead thereof in the following cases: Re-committed. R. § 4995.

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, either by reason of the death of one or more of them, or from any other cause, is insufficient, or have removed from the state;

3. When upon the finding of an indictment, the court deems the bail taken by the committing magistrate insufficient.

SEC. 4602. The order for 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. Order: its requisites. R. § 4996.

SEC. 4603. The defendant may be arrested pursuant to the order upon a certified copy thereof, in any county in the state. Arrest. R. § 4997.

SEC. 4604. If the order recite as the ground on which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirements of the order. Committal. R. § 4998.

SEC. 4605. 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. New bail. R. § 4999.

CHAPTER 45.

OF UNDERTAKINGS OF BAIL WHEN LIENS.

SECTION 4606. Undertakings of bail, from the time of filing the same in the office of the clerk of the district court in which they are required to be filed, shall be, and may be made, liens On real estate. R. § 5000.

upon real estate of the persons acknowledging the same, in the same manner, to the same extent, and with like effect, as in judgments in civil actions.

Same. R. § 5001.

SEC. 4607. They shall, when filed, be immediately docketed and indexed by the clerk of the court in which they are filed, as judgments in civil actions are required to be docketed and indexed.

Same. R. § 5002.

SEC. 4608. Attested copies of such undertakings may be filed in the office of the clerk of the district court of the county in which the real estate is situated, in the same manner, and with like effect, as attested copies of judgments, and shall be immediately docketed and indexed, in the same manner.

CHAPTER 46.

OF JUDGMENTS FOR FINES WHEN LIENS, AND HOW EXECUTIONS THEREON STAYED.

On real estate. R. § 5003.

SECTION 4609. Judgments for fines, in all criminal actions rendered, are, and may be made, liens upon the real estate of the defendant, in the same manner, and with like effect, as judgment in civil actions.

Stay of execution. R. § 5004.

SEC. 4610. The defendant may have a stay of execution for the same length of time, and in the same manner, as provided by law in civil actions, and with like effect, and the same proceedings may be had therein.

CHAPTER 47.

OF THE LIBERATION OF POOR CONVICTS.

When and on what conditions. R. § 5005.

SECTION 4611. 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.

False schedule R. § 5006.

SEC. 4612. 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 48.

OF THE DISMISSAL OF CRIMINAL ACTIONS BEFORE AND AFTER INDICTMENT FOR WANT OF PROSECUTION OR OTHERWISE.

When. R. § 5 07.

SECTION 4613. 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.

If not tried in certain time. R. § 5508

SEC. 4614. 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.

Discharged on his own undertaking. R. § 5509.

SEC. 4615. 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.

Discharge of. R. § 5010.

SEC. 4616. If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail must be exonerated, and if money has been deposited instead of bail it must be refunded to him.

By court or district attorney. R. § 5011.

SEC. 4617. The court may, either upon its own motion or upon the application of the district attorney, and in furtherance of justice, order an action after an 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.

Nolle prosequi. R. § 5012.

SEC. 4618. The entry of a *nolle prosequi* is abolished, and neither the attorney general nor the district attorney shall hereafter discontinue or abandon a prosecution for a public offense except as provided in the last section.

Bar. R. § 5013

SEC. 4619. An order for the dismissal of the action as provided in this chapter, is a bar to another prosecution for the same offense if it be a misdemeanor; but it is not a bar if the offense charged be a felony.

CHAPTER 49.

OF THE INSANITY OF A DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

Trial. R. § 5015.

SECTION 4620. When a defendant appears for arraignment, trial, judgment, or on any other occasion when he is required, if a reasonable doubt arise as to his sanity, the court must order a jury to be empaneled from the trial jurors in attendance at the term, or who may be summoned by the direction of the court, as provided in this code, to inquire into the fact.

Suspension. R. § 5016.

SEC. 4621. The arraignment, trial, judgment, or other proceedings, as the case may be, must be suspended until the question of insanity is determined by the verdict of the jury.

Order of procedure. R. § 5017.

SEC. 4622. The trial for the question of insanity must proceed in the following order:

1. The counsel of the defendant must offer the evidence in support of the allegation of insanity;

2. The district-attorney must then offer the evidence in support of the case on the part of the state;

3. The parties may then respectively offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case;

4. When the evidence is concluded, unless the case is submitted on either side, or both sides, without argument, the district attorney must commence, and the defendant's counsel conclude the argument to the jury;

5. If more than one counsel on each side argue the case to the jury, they must do so alternately;

6. The court shall then, on motion of either party, charge the jury. The provisions of this code, so far as the same are applicable and not herein changed, shall regulate the trial of the question of insanity.

If sane. R. § 5018.

SEC. 4623. If the jury find that the defendant is sane, the proceedings on the indictment shall be resumed.

If insane. R. § 5019.

SEC. 4624. If the jury find the defendant insane, the proceedings on the indictment shall be suspended until he becomes 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 by the sheriff to the Iowa Insane Hospital, and that upon his becoming sane, he be delivered by the superintendent of the hospital to the sheriff.

Bail: released. R. § 5020.

SEC. 4625. The commitment of the defendant, as provided in the last section, exonerates his bail, or entitles a person authorized to receive the property of the defendant, to a return of the money he may have deposited instead of bail.

Detained in hospital. R. § 5021.

SEC. 4626. If the defendant be received into the hospital, he must be detained there until he becomes sane. When he becomes sane, the superindent of the hospital must give notice of that fact

to the sheriff and to the district-attorney of the proper district. The sheriff must thereupon, without delay, bring the defendant from the hospital, and place him in the proper custody until he be brought to trial or judgment as the case may be, or be legally discharged.

Expenses. R. § 5022.

SEC. 4627. The expense of sending the defendant to the hospital, bringing him back, and any other expense incurred, are to be paid in the first instance by the county from which he was sent, but the county may recover from the estate of the defendant, if he have any, or from a relative, or another county, town, township, or city, bound to provide for or maintain him elsewhere.

Same. R. § 5023.

SEC. 4628. Sheriffs for delivering persons found to be insane, under the provisions of this chapter, are entitled to the same fees therefor, as are allowed for conveying convicts to the penitentiary.

CHAPTER 50.

OF SEARCH WARRANTS, AND PROCEEDINGS THEREON.

Search warrant: definition. R. § 5024.

SECTION 4629. 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.

Upon what grounds issued. R. § 5025.

SEC. 4630. 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 offense, 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.

Same. R. § 5026.

SEC. 4631. 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.

Complaint examined. R. § 5027.

SEC. 4632. The magistrate must, before issuing a warrant, examine on oath the applicant therefor and any witnesses he may produce, and take their affidavits in writing, and cause each affidavit to be subscribed and sworn to before him by the person making it.

Affidavits must set forth. R. § 5028.

SEC. 4633. The affidavit must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

Magistrate issues. R. § 5029.

SEC. 4634. 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, directed to any peace officer in the county, commanding him forthwith to search the person or place named for the property specified, and bring it before him.

Jurisdiction. R. § 5030.

SEC. 4635. The local jurisdiction of magistrates, in exercising the powers conferred on them by this chapter, is as defined in this code.

Form of warrant. R. § 5031.

SEC. 4636. The warrant may be, substantially, in the following form:

County of .....

The state of Iowa:

"To any peace officer of said county:

"Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken) that (stating the particular grounds of the application according to section four thousand six hundred and thirty of this chapter; or, if the affidavit be not positive, that there is probable cause for believing that — (stating the ground of the application in the same manner); you are therefore commanded, in the day time, (or at any time of the day or night, as the case may be, according to section four thousand six hundred and thirty of this chapter) to make immediate search on the person of C. D., or, in the house situated (describing it or any other place to be searched, with reasonable particularity, as the case may be), for the following property, (describing it with reasonable particularity); and if you find the same, or any part thereof, to bring it forthwith before me, at (stating the place.)

"Dated at ....., this.....day of ....., A. D. 18..

E. F., justice of the peace."

(Or, as the case may be.)

By whom served. R. § 5032.

SEC. 4637. 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.

Officer may break open doors. R. § 5033.

SEC. 4638. The officer may break open any outer or inner door or window of a house, or any part of the house, or anything therein to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

Same. R. § 5034.

SEC. 4639. He may break open any outer or inner door or window of a house for the purpose of liberating a person, who, having entered to aid him in the execution of the warrant, is detained therein, or, when necessary, for his own liberation.

Must be served in day time. R. § 5035.

SEC. 4640. The magistrate must insert a direction in the warrant, that it be served in the day time unless the affidavit be positive that the property is on the person, or in the place to be

searched; in which case, he may insert a direction that it may be served at any time of the day or night.

Return: in what time. R. § 5036.

SEC. 4641. 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.

Officer receipt for property. R. § 5037.

SEC. 4642. 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.

Return with inventory. R. § 5038.

SEC. 4643. 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 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."

Magistrate give copy. R. § 5039.

SEC. 4644. 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.

Take testimony. R. § 5040.

SEC. 4645. If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

Same. R. § 5041.

SEC. 4646. The testimony given by each witness must be reduced to writing and authenticated by the magistrate.

Property restored. R. § 5042.

SEC. 4647. 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.

Same. R. § 5043.

SEC. 4648. If the property taken by virtue of a search warrant was stolen or embezzled, it must be restored to the owner, upon his making satisfactory proof to the magistrate of his ownership thereof, or of his right of possession thereto, as provided in the next chapter. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section four thousand s x hundred and thirty 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 which the property taken was used as a means of committing, or so intended to be, is triable.

Disposition of papers. R. § 5044.

SEC. 4649. The magistrate must annex together the affidavits taken before the issuing of the warrant, the warrant, the return, and the inventory, and return them to the next district court of the county, at or before its opening, on the first day of the next term thereof.

Malicious suing out. R. § 5045

SEC. 4650. Whoever, maliciously and without probable cause, procures a search warrant to be issued and executed, is guilty of a misdemeanor.

Excess of authority. R. § 5046.

SEC. 4651. A peace officer who, in executing a search warrant, wilfully exceeds his authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

Searching person charged with felony. R. § 5047.

SEC. 4652. 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 anything 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.

Property kept for evidence R. § 5048.

SEC. 4653. When any officer, in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by this chapter, all the property and things so seized shall be safely kept by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced as evidence on any trial; and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized by virtue of such warrant shall be destroyed under the direction of the court or magistrate.

CHAPTER 51.

OF THE DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

Held by officer. R. § 5049.

SECTION 4654. 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.

Delivered to owner. R. § 5050.

SEC. 4655. On satisfactory proof of title by the owner of the property, the magistrate before 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.

Same. R. § 5051.

SEC. 4655. 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.

Same R. § 5052.

SEC. 4657. 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. 4658. If the 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 auditor of the county to be applied under the direction of the board of supervisors thereof for the benefit of the poor of the county. When not claimed. R. § 5053.

SEC. 4659. 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 statements are to be sent by the magistrate. Officer give receipts for property. R. § 5054.

CHAPTER 52.

OF PROCEEDINGS AND TRIALS BEFORE JUSTICES OF THE PEACE.

SECTION 4660. Justices of the peace have jurisdiction of, and must hear, try, and determine all public offenses less than felony, committed within their respective counties, in which the punishment described by law does not exceed a fine of one hundred dollars, or imprisonment thirty days. Jurisdiction. R. § 5055.

SEC. 4661. 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. Action commenced by information. R § 5056.

SEC. 4662. Such information must contain: Information must contain. R. § 5057.

1. The name of the county and of the justice where the information is filed;

2. The names of the parties, if the defendants be known, and if not, then such names 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. 4663. The information may be substantially in the following form: Form of. R. § 5058.

.....county, The State of Iowa, against A....B...., defendant.	Before justice.....(here insert the name of the justice.)

The defendant is accused of the crime (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.)

Justice must file. R § 5059

SEC. 4664. The justice must file such information, and mark thereon the time of filing the same.

Warrant may issue. R. § 5060.

SEC. 4665. Immediately upon the filing of such information, the justice may, in his discretion, issue a warrant for the arrest of the defendant, directed in the same manner as a warrant of arrest upon a preliminary information, and may be served in like manner.

Service. R. § 5061.

SEC. 4666. 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.

Appearance. R. § 5062.

SEC. 4667. 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 objects that he is wrongly named in the information, he must give his right name, and if he refuses 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.

Pleading. R. § 5063.

SEC. 4668. 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.

Same. R. § 5064.

SEC. 4669. Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the justice must proceed to try the issue, unless a change of venue be applied for by the defendant.

CHANGE OF VENUE.

Change of venue. § 5065.

SEC. 4670 If a change of venue be applied for, an affidavit must be filed stating that the justice is prejudiced against the defendant, or is of near relation to the prosecutor upon the charge, or the party injured or interested, or is a material witness for either party, or that the defendant cannot obtain justice before him, as the affiant verily believes.

Same R § 5066. C. 38, 9 G. A.

SEC. 4671. If such affidavit be filed the change of venue must be allowed, and the justice must immediately transmit all the original papers, and a transcript of all his docket entries in the case to the next nearest justice in the township, unless said justice be a party to the action, or 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, and in such case the justice before whom such action or proceeding is commenced, shall transmit all the original papers, together with a transcript of all his docket entries to the next nearest justice in the county against whom none of the above objections exist, who may require the defendant to plead as provided in section four thousand six hundred and sixty-seven of this chapter, if he has not already done so, and shall proceed to try the case, unless a jury trial be demanded, but no more than one change of venue in the same case shall be allowed.

SELECTION OF JURY.

SEC. 4672. Before the justice has heard any testimony upon the trial, the defendant may demand a trial by jury. Jury trial. R. § 5067.

SEC. 4673. If a trial by jury be demanded, the justice shall direct any peace officer 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. Jury: how obtained. R. § 5068.

SEC. 4674. In case the prosecutor or the defendant neglect or refuse to strike out such names, the justice 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 justice must issue a venire directed to any peace officer of the county, requiring him to summon the twelve persons whose names remain upon the list, to appear before such justice at the time and place named therein, to make a jury for the trial of the cause. Same. R. § 5069.

SEC. 4675. The officer to whom such venire is delivered must forthwith summon such jurors, and return the venire to the justice within the time therein specified, naming the persons summoned and the manner of service. Jurors summoned. R. § 5070.

SEC. 4676. The names of the persons returned as jurors shall be written on separate ballots, folded each in the same manner as nearly as possible, and so that the name be not visible, and shall, under the direction of the justice, be deposited in a box or other convenient thing. Selection of jury. R. § 5071.

SEC. 4677. The justice 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 are set aside, such further number must be drawn as will make a jury of six, after all legal challenges have been allowed. Same. R. § 5072.

SEC. 4678. 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. Challenges. R. § 5073.

SEC. 4679. 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 justice may direct the officer to summon any bystander or others who may be competent, and against whom no sufficient cause of challenge appears, to act as jurors. Talesmen. R. § 5074.

SEC. 4680. If the officer by whom the venire is received do not return it as required, he may be punished by the justice as for contempt, and the justice shall issue a new venire for the summoning of the same jurors, upon which the same proceeding shall be had as upon the one first issued. Failure to return: new venire R § 5075.

SEC. 4681. When six jurors appear and are accepted, they shall constitute the jury. Six a jury. R. § 5076.

SEC. 4682. The justice 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 Oath. R. § 5077.

the issue between the state of Iowa and the defendant, and a true verdict give according to the evidence.

TRIAL AND JUDGMENT.

Proceedings of jury. R. § 5078.

SEC. 4683. 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 retire for consideration.

Retire with officer: oath. R. § 5079.

SEC. 4684. 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."

Verdict. R. § 5080.

SEC. 4685. When the jury have agreed upon their verdict, they must deliver it publicly to the justice, who shall enter it on his docket.

Kept together. R. § 5081.

SEC. 4686. The jury must be kept together after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless, for good cause, the justice sooner discharge them.

Discharged. R. § 5082.

SEC. 4687. If the jury be discharged as provided in the last section, the justice may proceed again to the trial in the same manner as upon the first trial; and so on till a verdict is rendered.

Judgment. R. § 5083.

SEC. 4688. When the defendant pleads guilty, or is convicted, either by the justice or by a jury, the justice shall render judgment thereon, or fine, or imprisonment, 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.

Same. R. § 5084.

SEC. 4689. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied.

Defendant discharged. R. § 5085.

SEC. 4690. When the defendant is acquitted, either by the justice, or by a jury, he must be immediately discharged.

Costs: appeal: notice: justice make statement: transcript: papers filed: court compel correction. R. § 5086.

SEC. 4691. When the defendant is acquitted, the justice shall, if he is satisfied that the prosecution is malicious or without probable cause, tax the costs against the prosecuting witness and render judgment therefor, from which he may appeal to the district court, by there giving notice to the justice that he claims such appeal, and the fact of the giving of such notice shall be entered on his record by the justice. If notice of appeal is given as herein contemplated, the justice shall, without delay, make out, sign, and file in the case a full and true statement of all the testimony admitted on the trial, and on which he basis his finding that the prosecution was malicious or without probable cause, and shall, without delay, make out a transcript of his docket entries, and shall file it, together with the statement of the testimony as aforesaid, and all other papers on file in the case, in the clerk's office of the district court of the county. And such appeal shall stand for hearing in said court at the term thereof commencing next after said papers are filed. And said court shall have full power to

compel the correction by said justice of any error made apparent in his transcript, said statement of testimony, or in any papers returned by him, or may itself make the necessary correction therein, and may, on the papers, in case they shall be submitted to it, either affirm or reverse the judgment of the justice, or render such judgment as the justice should have rendered in the case.

Certificate of conviction. R. § 5087.

SEC. 4692. Whenever a conviction is had upon a plea of guilty, or upon trial, the justice 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.

Judgment; how executed. R. § 5091.

SEC. 4693. The judgment shall be executed by a peace officer of the county where the conviction is had, by virtue of a warrant under the hand of the justice specifying the particulars of such judgment.

Fine. R. § 5091.

SEC. 4694. If a fine be imposed, and paid before commitment, it shall be received by the justice, and by him paid over to the county treasurer, within thirty days after the receipt thereof, for the use of the schools of the county, as provided by law.

Same. R. § 5092.

SEC. 4695. 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, for the use of the schools in the county, as provided by law.

Same. R. § 5093.

SEC. 4696. If the fine, or any part thereof, is paid to the justice or sheriff, he must execute duplicate receipts therefor, one of which he must file without delay, with the county auditor.

How taken. R. § 5095.

SEC. 4697. The justice rendering a judgment against the defendant, must inform him of his right to an appeal therefrom, and make an entry on the docket of the giving of such information, and the defendant may thereupon take an appeal, by giving notice orally to the justice, that he appeals, and the justice must make an entry on his docket of the giving of such notice.

Bail; form of bond. R. § 5096.

SEC. 4698. The justice must thereupon enter an order on his docket, fixing the amount in which bail may be given by the defendant, and the execution of the judgment against the defendant shall not be stayed, unless bail in that amount be put in, by an undertaking substantially in the following form:

County of .....

A. B. having been convicted before C. D., a justice of the peace of said county, of the crime of (here designate it generally as in the information,) by a judgment rendered on the .... day of ...., A. D. 18—, and having appealed from said judgment to the district court of said county:

We, A. B., and E. F., (or I, E. F.) or (we, E. F. and G. H.,) hereby undertake that the said A. B. will appear in the district court of said county, at the term thereof to which the appeal is returnable, and abide the judgment of said court, and not depart without leave of the same, or that we (or I, as the case may be)

will pay to the state of Iowa the sum of .... dollars, (the amount of bail fixed.)

A. B.
E. F.
(As the case may be.)

Acknowledged before, and accepted by me, at ...., in the township of ....., this .... day of ...., 18—.

C. D.,
Justice of the Peace.

Qualifications. R. § 5097.

SEC. 4699. The bail must possess the qualifications, must justify, and must be taken in the same manner prescribed in chapter thirty-eight of this title, and the same proceedings had in all respects, as nearly as applicable, except as in this chapter otherwise provided.

By whom taken. R. § 5098.

SEC. 4700. The bail may be taken by the justice who rendered the judgment, or by any magistrate in the county who has authority to admit to bail, or by the district court or the clerk thereof.

Witness bound over. R. § 5099.

SEC. 4701. When an appeal is taken, the justice must cause all material witnesses to enter into an undertaking, as in a case where a defendant is held to answer on a preliminary examination, to appear and testify on the trial of the appeal in the district court, at the term at which it is returnable, and shall, as soon as practicable, and at least ten days before the first day of such term of the district court of the 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 case.

TRIAL IN DISTRICT COURT.

Trial when appealed. R. § 5100.

SEC. 4702. The cause, when thus appealed, shall stand for trial anew in the district court, in the same manner that it should have been tried before the justice, and as nearly as practicable as an issue of fact upon an indictment, without regard to technical errors or defects which have not prejudiced the substantial rights of either party; and the court has full power over the case, the justice of the peace, his docket entries, and his return, to administer the justice of the case according to the law, and shall give judgment accordingly.

Appeal not dismissed. R. § 5101.

SEC. 4703. No appeal from the judgment of a justice of the peace in a criminal case shall be dismissed.

District court. R. § 5102.

SEC. 4704. If any proceedings be necessary to carry the judgment upon the appeal into effect, they shall be had in the district court.

Either party may appeal. R. § 5103.

SEC. 4705. Either party may appeal from the judgment of the district court, to the supreme court, in the same manner as from a judgment in a prosecution by indictment, and the defendant may be admitted to bail in like manner, and similar proceedings shall be had on the appeal in all respects, as nearly as applicable.

Judgment upon appeal. R. § 5104.

SEC. 4706. The same proceedings shall be had to carry into effect the judgment of the supreme court upon the appeal, as if it had been taken from a judgment prosecuted by indictment.

CHAPTER 53.

OF PROCEEDINGS BEFORE POLICE AND CITY COURTS IN INCORPORATED CITIES AND TOWNS.

SECTION 4707. The proceedings in police and city courts in incorporated cities and towns, in criminal cases within their jurisdiction, shall be regulated by the provisions of this code, when not otherwise regulated by law.

Proceedings in police courts. R. § 5105.

CHAPTER 54.

OF COMPROMISING CERTAIN OFFENSES BY LEAVE OF THE COURT.

SECTION 4708. When a defendant is prosecuted in a criminal action for a misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it was committed:

Offense may be compromised: exceptions. R. § 5106.

1. By, or upon an officer while in the execution of the duties of his office;
2. Riotously; or,
3. With an intent to commit a felony.

SEC. 4709. If the party injured in such a case, appear before the court to which the papers on a preliminary examination are required to be returned, at any time before trial, on an indictment for the offense, or the trial of an appeal in the district court, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom. But in that case the reasons for the order must be set forth therein, and entered upon the minutes.

Same: court may stay proceedings. R. § 5107.

SEC. 4710. The order authorized by the last section is a bar to another prosecution for the same offense.

Order: bar. R. § 5108.

SEC. 4711. No public offense can be compromised, nor can any proceedings for the prosecution or punishment thereof, upon a compromise, be stayed, except as provided in this chapter.

Public offense not compromised. R. § 5109.

CHAPTER 55.

OF PARDONS AND THE REMISSION OF FINES AND FORFEITURES.

Governor may remit fines and forfeitures. R. § 5116.

SECTION 4712. The governor shall have power to remit fines and forfeitures upon such conditions and with such restrictions and limitations as he may think proper. After conviction of murder in the first degree no pardon shall be granted by the governor until he shall have presented the matter to, and obtained the advice of, the general assembly thereon. Before presenting the matter to the general assembly for their action, he shall cause a notice containing the reasons assigned for granting the pardon to be published in two newspapers of general circulation, one of which shall be published at the capital and the other in the county where the conviction was had, and if there be no such paper in such county, then in some adjoining county, for four successive weeks, the last publication to be at least twenty days prior to the commencement of the session of the general assembly to which the matter shall be presented.

No pardon for murder in the first degree without advice of general assembly. Notice published.

Application for pardon. R. § 5120. C. 195. 14 G.A.

SEC. 4713. When an application is made to the governor for a pardon, reprieve, or commutation, or for the remission of a fine or forfeiture, he may require the judge of the court, or the district attorney, or attorney general, by whom the action was prosecuted, or the clerk of such court, to furnish him without delay a copy of the minutes of the evidence taken on the trial, and of any other facts having reference to the propriety of his exercise of his powers in the premises. He may also take the testimony of such persons bearing upon such application as he may deem advisable, and for this purpose is authorized to administer the necessary oath. Any person who, in giving such testimony, shall swear falsely, and any person who shall knowingly and corruptly make any false statements in an affidavit intended to be used in connection with an application for pardon, or for remission of fine or forfeiture, shall be deemed guilty of perjury, and shall be punished therefor as provided by law.

When officer to make return to secretary of state. R. § 5121.

SEC. 4714. Whenever any convict is pardoned, or reprieved, or his sentence commuted, or any fine or forfeiture is remitted, it is the duty of the officer to whom the warrant is directed, as soon as may be after executing the same, to make a return in writing thereon to the secretary of state, of his doings under the same, and sign the same with his name of office, and must also file in the office of the clerk of the court in which the conviction was had, or in which it was to have been enforced, a certified copy of the warrant and return, the proper entries in relation to which shall be made by such clerk.

CHAPTER 56.

OF ILLEGITIMATE CHILDREN.

SECTION 4715. 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 district court of the county where she resides, stating that fact, and charging the proper person with being the father thereof. The proceeding shall be entitled in the name of the state against the accused as defendant. Complaint may be made. R. § 1416.

SEC. 4716. Upon the filing of the complaint, the clerk shall cause notice to be given to the person so charged as in an ordinary action. Filing; notice to be given. R. § 1417.

SEC. 4717. From the time of the filing of such complaint, a lien shall be created 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. Lien created. R. § 1418.

SEC. 4718. If the complaint is verified, the district judge may order an attachment to issue thereon without bond, which order shall specify the amount of property to be seized under the attachment, and may be revoked at any time by such judge or the district court, on a showing made to either for a revocation of the same, and on such terms as such court or judge may deem proper in the premises. When complaint verified district judge to issue attachment.

SEC. 4719. The district attorney, on being notified of the facts justifying a complaint as contemplated in section four thousand seven hundred and fifteen of this chapter, or of the filing of such complaint, shall prosecute the matter in behalf of the complainant. District attorney prosecute.

SEC. 4720. The issue on the trial shall be "guilty" or "not guilty," and shall be tried as an ordinary action. Issue: how tried. R. § § 1420, 1421.

SEC. 4721. If the accused be found guilty, he shall be charged with the maintenance of the child in such sum or sums, and in such manner as the court shall direct, and with the costs of the suit; and the clerk may issue execution for any sum ordered to be paid immediately, and afterwards, from time to time, as it shall be required to compel compliance with the order of the court. Judgment and execution. R. § § 1423, 1424.

SEC. 4722. The court may, at any time, enlarge, diminish or vacate any order or judgment rendered in the proceeding herein contemplated, on such notice to the defendant as the court or judge may prescribe. Court may enlarge, diminish, or vacate order.

TITLE XXVI.

OF THE DISCIPLINE AND GOVERNMENT OF PRISONS, AND OF THE PENITENTIARY, ITS GOVERNMENT AND DISCIPLINE.

CHAPTER 1.

OF IMPRISONMENT FOR PUBLIC OFFENSES, AND THE DISCIPLINE OF PRISONS.

Jails: for what used. R. § 5122.

SECTION 4723. 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 an offense, 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;

4. 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.

Keeper's duty. R. § 5123.

SEC. 4724. 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.

Sheriff's duty. R. § 5124.

SEC. 4725. 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.

Calender for district court. R. § 5125.

SEC. 4726. 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.

What furnished prisoners R. § 5127.

SEC. 4727. 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.

When jail takes fire R. § 5128.

SEC. 4728. 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.

INSPECTORS OF JAILS.

Who constitute. R. § 5129.

SEC. 4729. In each county of this state the judge of the circuit court and district 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.

Their duty. R. § 5130.

SEC. 4730. 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.

Report. R. § 5131.

SEC. 4731. Such report must state the number of persons confined in such prison, and for what cause respectively, the number of persons usually confined in one room, the distinction, if any, usually observed in the treatment of the prisoners, the evils, if any, found to exist in such prisons; and particularly whether any provisions of this chapter have been violated or neglected, and the cause of such violation or neglect.

Right to inspect: given fully. R. § 5132.

SEC. 4732. The keepers of such prisons shall admit the said inspectors, or any of them, into any 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.

May swear officers. R. § 5133.

SEC. 4733. For the purpose of obtaining the necessary information to enable them to make such reports 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.

Refractory prisoners. R. § 5134.

SEC. 4734. 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 may be fed with bread and water only, unless other food is necessary for the preservation of his health.

Expenses of jail. R. § 5135.

SEC. 4735. 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 board of supervisors; 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.

HARD LABOR.

Who by: and when labor must be performed. C. 69, § 1, 18 G. A.

SEC. 4736. Any able bodied male person over the age of sixteen years, and not over the age of fifty years, now or hereafter confined in any jail in this state, under the judgment of any court of record or of any other tribunal authorized to imprison for the violation of any law, ordinance, by-law, or police regulation, may be required to labor during the whole or part of the time of his sentence, as hereinafter provided, and such court or other tribunal, when passing final judgment of imprisonment, whether for nonpayment of fine or otherwise, shall have the power to determine, and shall determine, whether such imprisonment shall be at hard labor or not.

On highways, public grounds, and buildings. Same, § 2.

SEC. 4737. Such labor may be on the streets or public highways on or about public buildings or grounds, or at such other places in the county where confined, and during such reasonable time of the day as the person having charge of the prisoners may direct, and not exceeding eight hours per day.

When sheriff to superintend. Same, § 3.

SEC. 4738. In case the sentence be for the violation of any of the statutes of the state, the sheriff of the county where the imprisonment is, shall superintend the performance of the labor herein contemplated, and shall furnish the tools and materials, if necessary, to work with, at the expense of the county in which the convict is confined, and such county shall be entitled to his earnings.

When marshal shall. Same, § 4.

SEC. 4739. When the imprisonment is pursuant to the judgment of any court, police court, police magistrate, mayor, or other tribunal of any incorporated city or town, for the violation of any ordinance, by-law, or other regulation, the marshal shall superintend the performance of the labor herein contemplated, and shall furnish the tools and materials, if necessary, at the expense of the city or town requiring the labor, and such city or town shall be entitled to the earnings of its convicts.

Officer to prevent escapes. Same, § 5.

SEC. 4740. The officer having charge of any convicts for the purpose specified in this chapter, may use such means as, and no more than, are necessary to prevent escape, and if any convict attempt to escape, either while going from or returning to the jail, or while at labor, or at any time, or if he refuse to labor, the officer having him in charge, after due inquiry may, to secure such

person, or to cause him to labor, use the means authorized by section four thousand seven hundred and thirty-four of this chapter; *provided*, such punishment shall be inflicted within the jail or jail enclosure for refusal to work and shall not be considered as any part of the time for which the prisoner is sentenced.

Prisoners credited for labor. Same, § 6.

SEC. 4741. For every day's labor performed by any convict under the provisions hereof, there shall be credited on any judgment for fine and costs against him, the sum of one dollar and fifty cents, and no person shall be entitled to the benefits of the law providing for the liberation of poor convicts, if, in the opinion of the sheriff, the judgment may be satisfied by the labor of the person as herein authorized.

Cruel treatment of prisoners Same, § 7.

SEC. 4742. If any officer or other person treat any prisoner in a cruel or inhuman manner, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment.

Duty of officer in charge of prisoners. Same, § 8.

SEC. 4743. The officer having such prisoner in charge shall protect him from insult and annoyance, and communication with others while at labor, and going to and returning from the same, and he may use such means as are necessary and proper therefor; and any person persisting in insulting, and annoying, or communicating with any prisoner, after being commanded by such officer to desist, shall be punished by a fine not exceeding ten dollars, or by imprisonment not exceeding three days.

CHAPTER 2.

OF THE PENITENTIARY OF THE STATE, AND THE GOVERNMENT AND DISCIPLINE THEREOF.

At Fort Madison. R. § 5 36.

SECTION 4744. The penitentiary at Fort Madison, in the county of Lee, shall be maintained as the penitentiary of this state, in which convicts sentenced for life or any period of time shall be confined, employed, and governed, as hereinafter provided.

WARDEN.

Warden. R. § 5173.

SEC. 4745. It shall be governed by a warden, subject to the supervision of the governor of the state.

How chosen and term of office: duties. R. § 5174.

SEC. 4746. The warden shall be elected by joint ballot of the general assembly of the state of Iowa, and shall hold his office for two years from the date of his election, and until his successor is elected and qualified. He shall be the general financial and superintending agent of the state for said institution, and shall be held responsible for its government and disciplinary regulations, for the receipt and disbursement of all moneys that may be appropriated for building, construction, general support, the payment of indebtedness, or salaries of his under-officers, or for any other purpose whatever in connection with said institution.

To give bond and take oath: conditions of. R. § 5175.

SEC. 4747. Before entering upon the discharge of his duty, he shall execute a bond payable to the state of Iowa in the penal sum of fifty thousand dollars, with not less than five free-hold securities, to be approved by the governor, conditioned that he will faithfully discharge all of his duties as general superintendent and financial agent of the state for said institution, that he will faithfully apply any and all moneys that may come into his hands by virtue of his office, to the purpose for which they are appropriated, and none other; that he will cause to be kept a fair, intelligible, and business-like record of all the transactions of a monetary character connected with the institution; that he will impartially, and to the best of his ability, administer the disciplinary regulations of the institution so as to contribute to the health, safe-keeping, and profitable employment of the convicts; that he will appoint no one to the office of clerk, deputy warden, or guard, through favoritism or other personal consideration; and no one without due and proper regard to their qualifications for said stations; that he will render a faithful account of all the transactions of the institution to the governor, or his lawfully authorized agent, every thirty days, and as much oftener as he may be required; that he will not become directly or indirectly interested in any contract for supplying materials, labor, provisions, clothing, or any other thing for the use of said penitentiary, whereby any profit may inure to him privately, and that at the expiration of his official term he will surrender all books, papers, records, moneys, or other property or securities belonging to said institution to his successor in office. Said warden shall also take and subscribe an oath or affirmation, which shall be endorsed on the back of said bond, that he will support the constitution of the United States, and the constitution of the state of Iowa, and that he will scrupulously observe all the stipulations and conditions of said bond, and faithfully discharge all his duties agreeably to law, according to the best of his ability, which bond shall be filed with the secretary of state.

Resides in penitentiary: appoint clerk. R. § 5142.

SEC. 4748. 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 prison, and shall take charge of the penitentiary, and of all the interests of the state therewith connected, and shall appoint some suitable person as clerk, who shall also act as commissary under the direction of the warden, and one deputy, and as many guards as may be necessary to the safe keeping and government of the convicts, not exceeding one for every ten convicts under his charge, provided that at no time shall there be less than thirteen guards.

To make monthly report to governor. R. § 5177.

SEC. 4749. The warden shall render to the governor of state, between the first and tenth day of every month, and as nearly as practicable every thirty days, and as much oftener as the governor may require, a statement under oath, of all the transactions of the institution, including the receipts and disbursements of funds, for which disbursements he shall, in all cases, present the proper voucher, the entering into or discharging contracts, the reception and discharge of convicts, the construction, altering, or repairing the buildings, walls, etc., and of all his official acts and

doings for thirty days next preceding the presentation of said monthly report, which statement must contain an exact account of all moneys received, together with a copy of all proposals received by him and from what source, and on what account, and of all moneys paid out, and for what purpose the same were expended, and a succinct account of all his doings as warden during the said period, and a reference to his authority for such action.

Report preceding each meeting of general assembly. R. § 5178.

SEC. 4750. The warden shall, in addition to the monthly report provided for in the preceding section, on or before the twentieth day of December next preceding the commencement of any regular session of the general assembly, report to the governor, under oath, all his acts and doings for the preceding two years, and the general condition of the institution, financially and otherwise, together with the estimates necessary for the next succeeding two years, specifying distinctly the items for which those estimates and the basis upon which his calculations are made, and the governor may require a like or any other report before any special session of the general assembly.

Must inforce dicipline and see that officers perform their duties. R. § 5.7).

SEC. 4751. The warden shall see that the laws and disciplinary rules and regulations of the institution are faithfully executed by his under-officers, and obeyed by the convicts; and it shall be his duty, upon failure or refusal of any clerk, deputy warden, or guard, to discharge their respective duties agreeably to law, forthwith to discharge such delinquent, and fill the vacancy by the appointment of another person; and disobedience of the convicts shall be punished by the infliction of such penalties as are now provided for by law, and the rules which are now or may hereafter be prescribed for the government of said institution; *provided*, that it shall be the duty of the warden to keep a register of all punishments inflicted on any convict for disobedience, disorderly conduct, indolence, and of the cause for which they were inflicted.

CLERK.

Appointed by warden to give bond and take an oath: conditions of bond. R. § 5180.

SEC. 4752. The clerk of the penitentiary shall receive his appointment from and hold his office during the pleasure of the warden, and be in all things responsible to said warden. Before he enters upon the discharge of his duties he shall give bond to the state of Iowa in the penal sum of five thousand dollars, with two or more free-hold securities, to be approved by the governor, conditioned that he will keep a fair, honest, impartial, and faithful record of the affairs of the penitentiary, written in a fair round hand, with proper indices, upon a system of book-keeping which shall enable him at all times to present in a plain and intelligible style the financial condition of the institution, that he will discharge all his duties of clerk and commissary faithfully, and with direct reference to the best interests of the penitentiary, agreeably to law, and that he will not become interested directly or indirectly in any contract for furnishing supplies of any nature, kind, or description for the use of said institution, and that he will yield strict and implicit obedience to the laws, rules and regulations of the institution, and to all the legal orders of the warden.

He shall, also, take and subscribe an oath, which shall be endorsed on the back of said bond, that he will support the constitution of the United States, and the constitution of the state of Iowa, and that he will scrupulously observe all the conditions, stipulations, and requirements of his bond, and will faithfully discharge his duty as clerk and commissary during his continuance in office agreeably to law, according to the best of his judgment and ability; which bond shall be filed in the office of the secretary of state, and suit thereon may be brought for the violation of any of its conditions in the name of the state, for the use of the warden or any other person injured by such violation.

Accounts kept by clerk: mode of keeping books. R. § 5181.

SEC. 4753. Among other entries to be made in the books of the institution, the clerk shall open a separate account in said books with the state, and he also shall have a cash, prisoners' fund, construction, repairing, provision, bedding and lights, fuel, salaries, hospital, and miscellaneous accounts, and an account with the lessees of convict labor, and an account with each officer and guard; and all the entries belonging to any one of the classes, whether they are debits or credits, shall be made under the appropriate head; and, in order to enable the warden to render his statements herein provided for to the governor, the clerk shall, whenever required by the warden, make out a complete balance sheet and swear to the same.

DEPUTY WARDEN.

Appointed by warden: bond and oath of: duties defined. R. § § 5182, 5169.

SEC. 4754. The deputy warden shall receive his appointment from the warden, and shall hold his office during the pleasure of the warden; and he shall give bond and security for a like amount, and in the same manner; and take a like oath, and be in all respects subject to like responsibilities with the clerk, so far as the same are applicable. He shall keep a regular time table of the convict labor and record the same in a book to be kept for that purpose, and he shall, moreover, keep a record of all the business under his control, and return an account thereof, together with an account of the convict labor to the clerk at the close of each day. It shall also be the duty of the deputy warden to keep a book in which shall be entered a record of every infraction of published rules of discipline, with the name of the prisoner so guilty, and every prisoner who shall have been sentenced for a term of years, who shall, at the end of the month, have no infraction of discipline recorded against him, shall, for the first month, be entitled to a diminution of one day from the time he was sentenced to the penitentiary; and, if at the end of the second month, no infraction of the rules is recorded against him, two additional days of diminution from his sentence; and, if he shall continue to have no such record against him for the third month, his time shall be shortened three additional days; and, if he shall so continue for subsequent months, he shall be entitled to four days diminution of time from his sentence for each month he shall so continue his good behavior; and if any prisoner shall so pass the whole term of his service, or the remainder of his sentence, after this code takes effect, if he have one year yet to serve, he shall be entitled

to a certificate thereof from the warden, and upon the presentation thereof to the governor, he shall be entitled to a restoration of the rights of citizenship, which may have been forfeited by his conviction, and it shall be the duty of the warden to discharge such convict from the penitentiary, when he shall have served the time of his service less the number of days he may be entitled to have deducted therefrom, in the same manner as if no such deduction had been made.

GUARDS.

SEC. 4755. Each of the guards, when appointed, shall give bond to the warden, with security to be approved of by said warden, in the penal sum of one thousand dollars, conditioned that he will faithfully discharge his duty as such guard, agreeable to law and the rules and regulations of the prison, and the lawful orders of the warden; and shall also take and subscribe an oath, which shall be endorsed on the back of the bond, that he will support the constitution of the United States, and the constitution of the state of Iowa, and that he will scrupulously observe all the conditions and stipulations of his bond; which bond shall be filed in the office of the clerk of the penitentiary, and a note thereof made on the record as to the date, amount, and name of the principal and his securities. Appointed by warden; bond and oath. R. § 5183.

SEC. 4756. Guards thus appointed and qualified shall hold their offices during the pleasure of the warden. Term of office. R. § 5184.

CHAPLAIN.

SEC. 4757. The warden shall appoint some suitable, discreet, minister of the gospel chaplain of the penitentiary, who shall hold his office at the pleasure of the warden, and who shall give as much of his time as the condition and employment of the convicts will reasonably justify, in giving them moral and religious instruction, and who shall at all times, when, in the opinion of the warden, the necessary labor of the convicts or the safety of the prison do not forbid it, have access to the convicts for that purpose; and should any of the convicts be illiterate, the chaplain should so instruct them as that he may sustain the character among them of teacher as well as spiritual adviser and minister. Warden to appoint: duties. R. § 5185.

PHYSICIAN.

SEC. 4758. The physician of the penitentiary shall visit the prison once every day, and oftener if necessary; examine personally all sick or complaining prisoners reported to him, and prescribe such treatment as in his judgment their cases require. Duties. C. 48, § 1, 9 G. A.

SEC. 4759. He shall keep a book, to be called the hospital record, in which he shall accurately record the name of the patient, the age, occupation, symptoms, disease and treatment. Keep record. Same, § 2.

SEC. 4760. He shall examine every prisoner upon his reception, and make a record of his condition, as to age, constitution, habits, health, ability or disability. Examine prisoner on reception. Same, § 3.

Post mortem examination. Same, § 4.

SEC. 4761. When a prisoner dies, the physician may have the privilege of a post mortem examination, unless objection be made by the relatives of such patient, and shall record the result of it, making reference in the record of treatment.

Purchase medicines &c. Same, § 5.

SEC. 4762. He shall have power and authority to purchase by concurrence with and assent of the warden, such medicines and other things as, in his judgment, are necessary for the use of the hospital, and furnish the clerk immediately with the bills of purchase, who shall compare them with the articles received.

Must conform to rules. Same, § 6.

SEC. 4763. He shall, when visiting the prison, strictly conform to the rules and regulations thereof; he shall express no opinion of the ability or disability of a prisoner except in his record, which shall be authority.

Graduate of medical school. Same, § 7.

SEC. 4764. He shall be a graduate of some regularly established medical college, and must be possessed of surgical instruments sufficient to perform any surgical operation liable to be required.

Warden to appoint. Same, § 8.

SEC. 4765. He shall receive his appointment from the warden, with the concurrence of the governor of the state.

Steward: duties of. Same, § 9.

SEC. 4766. There shall be a steward nominated by him, who shall receive his appointment from the warden, and whose duty it shall be to dispense the medicine prescribed by the physician, and to do all other things necessary to carry out the treatment as directed. He shall act as guard or keeper of the prisoners in the hospital, and shall receive the same wages as other day guards or keepers, and be subject to the same rules and regulations.

PENALTIES.

Officers receiving perquisites. R. § 5168.

SEC. 4767. No officer or other person employed in or about the penitentiary shall be permitted to receive in any way, perquisites for themselves or families, except that the warden shall keep his office, and reside with his family in the penitentiary, and shall be furnished with a garden of a quarter of an acre, and with fuel, lights, provisions for his family and guests, and stationery, from the stock provided for the use of the prison. Nor shall they be permitted to receive any compensation or reward from any contractor, under penalty of dismissal from their office, and forfeiture of one month's pay; and if any officer procure the escape of any convict, or connive at, aid or assist in the escape of any convict from the penitentiary, whether such convict escape or not, he shall be guilty of felony, and shall, upon conviction thereof, be sentenced to hard labor in the penitentiary for any term not less than one nor more than three years.

Officers not interested in contracts. R. § 5170.

SEC. 4768. No officer of the Iowa penitentiary shall be interested directly or indirectly in contracts for furnishing such penitentiary with provisions, clothing, or other necessaries, to be used in any manner by the inmates of such penitentiary, or for the use of such penitentiary, nor shall any or either of such officers be concerned or interested in any manner in contracts for buildings of any kind connected with such penitentiary, or for materials to be used in any such buildings, or in any contract for the labor of any convict.

SEC. 4769. Should any officer, in the contemplation of the preceding section, be, or become, in any manner interested in contracts for furnishing provisions, clothing, or other necessaries for the use of such penitentiary, or be, or become, in any manner interested in contracts for buildings, or the construction of buildings of any kind, in any way connected with such penitentiary, or for furnishing material of any kind for the construction of such buildings, or in any contract for the labor of convicts, such officer so interested shall, on proof being made of his being so interested, be removed from office, and shall forfeit any interest he may have in any such contract, and on conviction of being so interested by a court of competent jurisdiction, shall be fined in any sum not more than two thousand dollars nor less than five hundred dollars. Punishment for R. § 5171.

SEC. 4770. 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. Hard labor. R. § 5137.

SEC. 4771. 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. Prisoners of U. S. R. § 5138.

SEC. 4772. 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 the deputy, is answerable. Process executed by warden or deputy. R. § 5144.

SUPPLIES FURNISHED ON CONTRACT.

SEC. 4773. 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 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. Estimates to be made by warden and sealed proposals advertised for. R. § 5145.

SEC. 4774. 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 Warden to take bills of supplies: duty of clerk. R. § 5148.

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.

Contractor to give security. R. § 5149.

SEC. 4775. No contract can be accepted by the warden unless the contractor give satisfactory security for the performance of it.

ESCAPE—DISCHARGE.

When prisoner escapes. R. § 5160.

SEC. 4776. When any convict escapes from the penitentiary, the warden shall 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.

No discharge until full term is served. R. § 5161.

SEC. 4777. 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.

Warden to take care of property of convict. R. § 5162.

SEC. 4778. The warden shall 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 taken and legally disposed of.

Clothing, money, and transportation, furnished on discharge. R. § 5163. C. 51, 14 G. A.

SEC. 4779. When any convict is discharged from the penitentiary, the warden shall furnish transportation to said convict to any point within this state that is nearest to his former home or friends. Said transportation shall be furnished by means of tickets for passage, an account of which shall be kept by the warden and paid by the state. The warden shall also furnish to said convict a suit of common clothing and a sum of money not less than three nor more than five dollars.

Visitors. R. § 5164.

SEC. 4780. The warden shall demand and receive of each person, not exempt by law, except relatives of a convict confined therein, who visits the prison for the purpose of viewing the interior or precincts, a sum of twenty-five cents, 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.

Who has a right to visit. R. § 5165.

SEC. 4781. 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 circuit courts, district attorneys of any of the districts 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.

SEC. 4782. The warden shall 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. Monthly report to auditor of state. R. § 5166.

APPROPRIATION—SUPPORT OF CONVICTS.

SEC. 4783. There is hereby appropriated out of any moneys in the treasury, not otherwise appropriated, so much as may be necessary to pay monthly to the persons herein named the following sums, viz: To the warden one hundred and twenty-five dollars, to the deputy-warden eighty-three and one-third dollars, to the clerk sixty-two dollars and fifty cents, to the chaplain fifty dollars, to the surgeon fifty dollars, to each night-guard fifty-five dollars, to each day-guard fifty dollars, to the hospital steward fifty dollars, to the turnkey fifty dollars. Salaries of officers. C. 69, § 1, 12 G. A.

SEC. 4784. The above sums shall be paid to the warden on his requisition, monthly, accompanied with a detailed statement, in such form as the auditor shall prescribe, of the number and kinds of guards employed; and each statement shall also exhibit the payments made by the money drawn on the previous requisition. How paid. Same, § 2.

SEC. 4785. For the general support of the convicts, there is hereby appropriated the monthly sum of eight and one-third dollars, or so much thereof as may be necessary to each convict in said prison, to be estimated by the average number for the preceding month, subject, however, to a deduction from the whole amount for the month of the sum charged to the contractors for convict labor for that month. Support of convicts. Same, § 3.

SEC. 4786. The sum appropriated by the last section shall be paid on the requisition of the warden, accompanied with a statement of the number of convicts in his charge, and the amount charged to the contractors for that month. How paid. Same, § 4.

SEC. 4787. If, for any reason, the amount charged to the contractors for any month cannot be collected in time to be available for such support, the governor may, by his order, direct the payment of the whole or any part of the eight and one-third dollars per month. When contractors fail to pay. Same, § 6.

MISCELLANEOUS PROVISIONS.

SEC. 4788. The state auditor is required to take immediate steps to cause to be collected and accounted for all those debts owing to the state on account of the penitentiary, or in any manner connected therewith, and all outstanding claims of any nature which the state may have on that account, and to that end he may, if he finds it necessary, place any claim in the hands of the attorney-general for prosecution. Auditor of state to collect debts due. Same, § 6.

SEC. 4789. In all cases where claims have accrued, or may hereafter accrue, in favor of the warden of the penitentiary of this state, which the warden shall deem it advisable to collect by law, the district attorney of the first judicial district shall bring suit upon and collect the same; and in case the governor of the state Warden to collect debts by suit. C. 154, § 2, 9 G. A.

shall so direct, the attorney-general of the state shall also give his personal attention to said suits.

Property sold under for such claims. Same, § 3.

SEC. 4790. Judgments now or hereafter rendered in favor of the warden of the penitentiary, shall be collected upon execution, and the attorney-general, or district attorney, shall have the same power to bid upon and purchase property upon such executions as is given where judgments are in favor of the state, and the property shall be held and disposed of for the use of the penitentiary by the governor, in the same manner.

Actions on contracts made with warden and for injuries to property. R. § 5150.

SEC. 4791. 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 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 obligations with regard to any contract or any debts due to or from the prison that his predecessor would have been if no change had taken place in the office.

When office of warden is vacant. R. § 5151.

SEC. 4792. 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.

Overseers. R. § 5151

SEC. 4793. Persons having suitable knowledge and skill in the branches of labor and manufacture carried on in the prison, 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.

Delinquency of officers. R. § 5151.

SEC. 4794. 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 may deduct from the pay of such officer a sum not exceeding his pay for one month.

Pestilence among convicts. R § 5150.

SEC. 4795. In case of any pestilence or contagious sickness breaking out among the convicts in the prison, the 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. 4796. 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 a fine not exceeding five hundred dollars. Negligence of officers. R. § 5157.

SEC. 4797. 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 wounded or killed by such officer or his assistants, they are justified and shall be held guiltless. Resistence to authority. R. § 5158.

SEC. 4798. It is the duty of all the officers and other citizens of the 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 convict 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. Insurrection. R. § 5159.

SEC. 4799. The governor shall visit said penitentiary personally, as often, at least, as once in three months, to inspect the books, papers and records of the clerk, and deputy warden, and strictly to inquire into the official conduct of the warden, to examine into the general, economical, sanitary, and disciplinary regulations of the prison; and to alter and amend the same in any manner which may be best calculated to promote economy in expenditure, and the health, safe keeping, and convenience of convicts, and all such alterations and amendments shall be reduced to writing, and signed by the governor, and filed by him with the clerk, who shall forthwith record the same. And in case it is impracticable at any time for the governor to make such visit and inspection personally, he may appoint some suitable person to perform that service and report to him; but such person so appointed shall not have the power to make any alteration in the government of the institution, but may report to the governor only; and it is hereby made the duty of the governor to perform the service personally, if practicable. Governor to visit penitentiary: duty of. R. § 5186.

SEC. 4800. In making the appointment of visitor, as provided for in the preceding section, the governor shall take care that no one is appointed who may be supposed to be under the influence surrounding said penitentiary, or any of its officers, nor shall any one be appointed who has hitherto been officially connected therewith, nor shall the same person be appointed twice in succession. Governor may appoint visitor. R. § 5187.

SEC. 4801. Should the governor at any time become satisfied that the warden is guilty of official negligence or malfeasance, in any particular, so that the safety or health of the convicts is endangered, or any funds appropriated for said institution, illegally Governor may remove warden and fill vacancy. R. § 5188.

invested or misapplied, or that said warden is in any manner conducting the affairs of the prison contrary to law and good faith, he shall forthwith remove said warden, notifying him of the specific causes for his removal, and also reporting to the next session of the general assembly, specifying his reasons therefor. He shall also appoint a warden to fill the vacancy thus occasioned, who shall qualify in the same manner as the regularly elected warden, but shall hold his office only until the next succeeding general assembly.

To fill vacancy in office of warden. R. § 5189.

SEC. 4802. The governor shall also fill all vacancies that may occur in the office of warden by death, resignation, or otherwise, between the sessions of the general assembly, but no appointment thus made shall last over a session of the general assembly.

Governor to be allowed traveling expenses. R. § 5194.

SEC. 4803. For the services herein required of the governor, he shall be allowed out of the state treasury his traveling expenses, and he shall present a bill therefor, under oath, to the auditor of state, which bill, thus sworn to, shall be a sufficient voucher for the auditor to issue his warrant on the treasury of the state for the amount so claimed.

Compensation of visitor. R. § 5195.

SEC. 4804. Should the governor be compelled to appoint any person, or persons, to visit the penitentiary, as herein provided, such person shall render to the governor an account of his traveling expenses and time employed under said appointment, which account shall be sworn to, and the governor shall determine the amount to which said person is entitled, not exceeding three dollars per day and expenses, and shall give him a certificate thereof, which certificate shall authorize the auditor to issue his warrant on the treasurer of state for said amount in favor of the person entitled thereto.

Penalty for failure of duty. R. § 5196.

SEC. 4805. Should any person required to perform any duty relative to the penitentiary, wilfully fail or refuse obedience thereto, he shall be deemed guilty of a misdemeanor, and shall be punished by fine in any sum not exceeding one thousand dollars, and shall forfeit his office, and should said wilful failure or refusal result in the escape of any of the convicts, or in loss of any of the funds appropriated to the use and benefit of the penitentiary, provided said sum so lost shall exceed the amount of twenty dollars, he shall be deemed guilty of a felony, and shall be punished by imprisonment in the penitentiary for a term not less than two or more than ten years.

Penitentiary at Anamosa.

SEC. 4806. Nothing in this chapter shall be construed to repeal or in any way affect chapters forty-three or one hundred and eight of the Fourteenth General Assembly providing for an additional penitentiary at or near Anamosa, in the county of Jones.

APPENDIX.

APPENDIX.

AN ACT to provide for the publication, indexing, and distributing the code, passed at the adjourned session of the fourteenth general assembly.

Be it enacted by the general assembly of the State of Iowa:

SECTION 1. That William H. Seevers is hereby appointed to edit the code and superintend its publication and to prepare a full and complete index and brief marginal notes thereto, and to arrange and properly number in a convenient and suitable manner the parts, titles, divisions, and subdivisions, and to examine and correct the proof-sheets and cause all clerical, typographical, and grammatical errors of punctuation to be corrected, and to change the number of chapters and all references made in the code from one section or subdivision thereof to another by number, so that the same shall conform to the numbering in the code as printed. W. H. Seevers appointed to prepare.

SEC. 2. The secretary of state is directed within ten days after the adjournment of this session, to have the enrolled bills bound in a sufficient number of volumes and deliver the same to the editor, who shall be responsible therefor and shall return the same to said secretary on or before the first day of September, A. D. 1873. Secretary of state to furnish enrolled bills.

SEC. 3. The chapters of each title shall be numbered separately, but the sections shall be numbered continuously, and an appendix shall accompany such code, which shall contain the declaration of independence, the constitution of this state, and of the United States, and the naturalization laws. Chapters and sections: how numbered.

SEC. 4. Said editor may employ a clerk who shall be sworn to the faithful performance of his duties, who shall also be proof-reader, at a compensation of not exceeding five dollars per day, to be paid from any funds in the state treasury not otherwise appropriated, the same to be paid monthly on the certificate of such editor. Clerk, proof reader: compensation.

SEC. 5. Said code shall be printed on paper of the same size and quality of the revision of 1860, and if there is no such paper belonging to the state, the secretary, auditor, and treasurer of state shall immediately procure a sufficient quantity for the edition of the code herein provided for. Size of.

SEC. 6. Said code shall be printed by the state printer with fresh new type of the same kind as that used in printing the revision of 1860, and the state binder shall bind it in the same manner and with the same kind and quality of binding; *provided*, that five hundred copies shall be bound in two volumes and interleaved, one copy of which shall be distributed to each member of How printed: who by.

this general assembly, and one copy to each officer thereof, the balance to be kept for the use of future general assemblies. These copies shall be the first bound by the state binder, and immediately upon their completion the secretary of state shall send them to those entitled thereto.

Compensation: how paid.

SEC. 7. When the state printer has delivered any portion of said printing to the state binder, and the same has been executed to the satisfaction of the secretary of state, he shall so certify, and upon such certificate there shall be paid such printer two-thirds the compensation allowed by law therefor, and when any portion of said edition has been bound and delivered to such secretary, and the same has been done to the satisfaction of said secretary, he shall so certify, and upon such certificate there shall be paid the state binder two-thirds of the compensation allowed by law therefor, and when said printing or binding is completed to the satisfaction of such secretary, the residue of said compensation shall be paid.

No. of copies published: and distribution thereof.

SEC 8. There shall be published fifteen thousand copies of said code, and the secretary of state shall immediately deliver or transmit to the governor two copies; to each judge of a court of record and to each district attorney and deputy officer, one copy each; to the state historical society, five copies, and shall retain in his own office one copy; deposit twenty copies in the state library, transmit to the law library of the state university twenty copies, to the library of each state or territory of the United States, one copy, and one copy to each governor thereof; and to each member of the fourteenth general assembly one copy, and to each secretary and clerk thereof one copy, and to each officer of the house and senate one copy; one copy each to the following named reporters of daily newspapers who have reported the proceedings of this session: Will. Porter, *Daily Leader;* Ambrose Lammey and Edgar M. Hungerford, *Daily Register;* T. P. Keator and E. T. Cressey, *Daily Republican*, and R. B. Baird, *Daily Journal.*

Copies sent county auditors: for sale.

SEC. 9. Of the remainder of the edition, the secretary shall divide five thousand copies among the counties of the state, in proportion to the population, but giving to no county less than ten copies, and, as soon as practicable, transmit to the auditor of each county the number of copies to which his county is entitled, which the auditor is required to sell at three dollars a copy, and pay to the treasurer of his county the amount received by him for them on or before the fifteenth day of November of each year, and the treasurer shall pay the same into the state treasury at the time of making his next return. Each county auditor shall, upon receipt of the copies transmitted to him, execute receipts therefor in duplicate, one of which he shall immediately transmit to the secretary of state, and the other to the state auditor.

Auditor to report to auditor of state.

SEC. 10. The said auditor shall also, on or before the fifteenth day of November of 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 auditor, and the state auditor shall charge such county auditor therewith, and subsequently credit him with such as may be sold or otherwise lawfully disposed of.

Deliver copies to successor.

SEC. 11. When the auditor goes out of office, having any such copies remaining, he shall deliver them to his successor, taking his receipt therefor in duplicate, one of which shall be sent to the state auditor, which shall be his sufficient discharge for the same; and every county officer receiving a copy, shall give his receipt therefor, and shall pass the copy to his successor, or deliver it to the auditor for the use of subsequent officers, and each shall be liable therefor on his official bond.

Compensation of editor.

SEC. 12. The editor hereby appointed shall receive for his services, to be paid when he has delivered the code, to be prepared by him as herein contemplated, to the state printer, the sum of two thousand dollars, including his services in the general assembly, and the secretary of state shall receive for the distribution of the code as aforesaid, the sum of twelve hundred dollars.

Printing, when to be completed.

SEC. 13. It shall be the duty of the state printer to complete the printing of the code ready for delivery to the state binder not later than the first day of May, and it shall be the duty of said state officers to furnish the paper in due time therefor, and the editor to furnish the copy as fast as possible.

SEC. 14. This act shall take effect from and after its publication in the Daily State Register and the Daily Republican, or any other two newspapers published in the state of Iowa.

Approved, February 20, 1873.

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 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 right 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 meantime, 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 governments 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 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 connexions 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 connexion 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, &c.—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.

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 Hayward, Jun., Thomas Lynch, Jun., Arthur Middleton.

Georgia.—Button Gwinnett, Lyman Hall, George Walton.

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.

Legislative powers.

ARTICLE 1. SECTION 1. 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.

Members of house of representatives: how chosen.

SEC. 2. 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.

Qualification of.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years 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.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective members, 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, 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.

Census.

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.

Senate.

SEC. 3. 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.

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-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. Senators classed.

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. Qualifications of senators.

The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided. Vice-president.

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. Senate to choose its officers.

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. To try impeachments.

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. Judgment on impeachment.

SEC. 4. 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. Election of members of congress.

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. Congress to meet annually.

SEC. 5. 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. Elections: how judged. Quorum.

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. Rules.

Each house shall keep a journal of its proceedings, and 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. Journals.

Neither house, during the session of congress, shall, without the Adjournment

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.

Compensation: privileges.

SEC. 6. 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 houses, 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.

Bills for revenue.

SEC. 7. 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 formalities 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 journals, 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 re-considered, and, if approved by two-thirds of that house, it shall become a law. But in all 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) a.ter 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.

Resolutions, &c., 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.

Powers of congress. Taxes.

SEC. 8. The congress shall have power:

To lay and collect taxes, duties, imposts, and excises, 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;

Borrowing.

To borrow money on the credit of the United States;

Commerce.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States; Naturalization

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures; Coinage.

To provide for the punishment of counterfeiting the securities, and current coin of the United States; Counterfeiting.

To establish post offices and post-roads; Post office.

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; Copyright.

To constitute tribunals inferior to the supreme court; Inferior courts.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; Piracy.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; War.

To raise and support armies; but no appropriation of money, to that use, shall be for a longer term than two years; Army

To provide and maintain a navy; Navy.

To make rules for the government and regulation of the land and naval forces; Rules for.

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions; Militia and its organization.

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;

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 Exclusive authority over district.

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. General authority.

SEC. 9. 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 of duty may be imposed on such importation, not exceeding ten dollars for each person. Limitation of powers. Importation of persons.

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. Habeas corpus.

No bill of attainder or *ex post facto* law, shall be passed. Attainder, &c.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken. Direct tax.

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 moneys 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.

Limitations on the state

SEC. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

Of commerce, war, &c.

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 proceeds 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 the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time 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.

The executive.

ART. 2. SEC. 1. 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 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.*

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.

Qualifications 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 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 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."

Powers of the president. Commander.

SEC. 2. The president shall be commander-in-chief of the 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.

Pardons

*By an amendment to the constitution, a substitute for this paragraph was adopted. Amendment, Art 12. SEC. 1 This amendment was proposed in October, 1803, and was ratified before September, 1804. See the amendment, *post*.

Treaties.

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; 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.

Appointment of officers.

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.

Give information to congress, &c.

SEC. 3. 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.

Impeachment.

SEC. 4. 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.

Judicial power.

ART. 3. SEC. 1. 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 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.

Tenure.

Extent of judicial power.

SEC. 2. 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, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all 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.

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.

SEC. 3. 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 in confession in open court. Treason.

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 attained. Attainder.

ART. 4. SEC. 1. 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. Acts, records, &c., of states.

SEC. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. Citizenship.

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. Fugitives from justice.

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 or labor, but shall be delivered up on claim of the party to whom such service or labor may be due. Fugitive slaves.

SEC. 3. 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. New states.

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. Territory of United States.

SEC. 4. The United States shall guaranty to every 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. Republican government.

ART. 5. 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 Amendments to the constitution.

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.

Former debts recognized.

ART. 6. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid 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.

Ratification.

ART. 7. 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, Governeur 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.

ARTICLE. 1. 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. Religion, speech, press, and petition.

ART. 2. 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. Bearing arms.

ART. 3. 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. Quartering of soldiers.

ART. 4. 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. Unreasonable searches and seizures.

ART. 5. 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; 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. Criminal proceedings. Private property taken, &c.

ART. 6. 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. Trial by jury in criminal proceedings.

ART. 7. 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 otherwise re-examined in any court of the United States, than according to the rules of the common law. Same, in suits at common law.

ART. 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Excessive bail.

Rights retained by the people.

ART. 9. The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Powers not delegated, reserved.

ART. 10. 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.

States not to be sued.

ART. 11. 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.

Manner of choosing president.

Electors.

ART. 12. SEC. 1. 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 the 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 majority 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.

House of representatives.

Vice president to act when no choice.

Senate to elect vice president.

SEC. 2. 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.

Eligibility.

SEC. 3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

Slavery, and involuntary servitude prohibited.

ART. 13. SEC. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist, within the United States, or any place subject to their jurisdiction.

SEC. 2. Congress shall have power to enforce this article by appropriate legislation. Legislation by congress.

ART. 14. SEC. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. Citizens of the United States, are citizens of the state where they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law. States prohibited from passing any law abridging the rights of citizens of the United States.

SEC. 2. Representatives shall be apportioned among the several states, according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state. Representatives apportioned among the several states. Basis of representation reduced.

SEC. 3. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability. Officers who have taken an oath to support the constitution of the United States, and who engage in rebellion or insurrection prohibited from holding office. Congress may remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void. The public debt of the United States shall not be questioned. The United States and any state prohibited from paying any debt incurred in aid of rebellion or insurrection.

SEC. 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article. Legislation by congress.

ART. 15. SEC. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude. The right to vote not abridged on account of race, color, or previous condition of servitude.

SEC. 2. The congress shall have power to enforce this article by appropriate legislation. Legislation by congress.

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. The thirteenth article was proposed by congress, by resolution, of the year 1865, and was ratified before December 18, 1865. The fourteenth article was proposed by congress, by resolution, of the year 1866, and was ratified before the 20th day of July, 1868. The fifteenth article was proposed by congress, by resolution, of the year 1869, and was ratified before the 30th day of March, 1870.

NATURALIZATION OF ALIENS.

SECTION 1. 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: Act of 14th April, 1802, as affected by subsequent acts.

1. 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, two 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. Previous declaration of aliens. Act of May 26, 1824, §§ 3, 4.

2. 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. Renunciation of allegiance.

3. 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. Residence, &c.

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, 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 Exceptions as to residents in U. S. before 29th Jan., 1795

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 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.

Act of March 26, 1804, § 1.

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 an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

Residents between 18th June, 1798, and 14th April, 1804.

Act of March 22, 1816, § 2.

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 intention 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.

Provision as to residents between 14th April, 1802, and 18th 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 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 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.

Act of May 24, 1828, § 2.

Minor.

Act of May 26, 1824, § 1.

Any alien, being a free white person and minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival to 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 [be] 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.

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.

What courts competent.

SEC. 2. 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 in any individual state having 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 passage of this act, the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.

Children of citizens and persons naturalized.

SEC. 3. 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 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 right 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 day of April, 1802, to be considered as citizens of the United States.

Widow and children of aliens.

Act of March 26, 1804, § 2.

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 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.

Continued residence of five years.

Act of March 3, 1813, § 12.

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.

Aliens, honorably discharged from military service, may become citizens without, &c.

Act of July 12, 1862 § 21.

SEC. 4. Any alien, of the age of twenty-one years and upwards, who has enlisted, or shall enlist in the armies of the United States, either the regular or the volunteer forces, and has been or shall be hereafter honorably discharged, may be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become a citizen of the United States, and that he shall not be required to prove more than one year's residence within the United States previous

to his application to become such citizen; and that the court admitting such alien shall, in addition to such proof of residence and good moral character as is now provided by law, be satisfied by competent proof of such person having been honorably discharged from the service of the United States as aforesaid.

Rights of American citizens in foreign states.

WHEREAS, The right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and, whereas, in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and, whereas, it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and, whereas, it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed; Therefore, be it enacted as follows:

Preamble. Act of July 27 1868.

Right of expatriation declared.

SEC. 5. Any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.

Protection to naturalized citizens in foreign states.

SEC. 6. All naturalized citizens of the United States, while in foreign states, shall be entitled to, and shall receive from this government, the same protection of persons and property that is accorded to native-born citizens in like situations and circumstances.

Release of citizens imprisoned by foreign governments to be demanded.

SEC. 7. Whenever it shall be made known to the president that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the president forthwith to demand of that government the reasons for such imprisonment, and if it appears to be wrongful and in violation of the rights of American citizenship, the president shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, it shall be the duty of the president to use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate such release, and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the president to congress.

Facts to be communicated to congress.

Knowingly taking, &c., a false oath, required in the naturalization of aliens, to be deemed perjury, and how punished. Act of July 14, 1870.

SEC. 8. In all cases where any oath, affirmation, or affidavit shall be made or taken under or by virtue of any act or law relating to the naturalization of aliens, or in any proceedings under such acts or laws, and any person or persons taking or making such oath, affirmation, or affidavit, [who] shall knowingly swear or affirm falsely, the same shall be deemed and taken to be perjury, and the person or persons guilty thereof, shall, upon conviction thereof, be sentenced to imprisonment for a term not exceeding five years, and not less than one year, and to a fine not exceeding one thousand dollars.

The doing of certain acts in connection with the naturalization of aliens declared felony, and penalty therefor.

SEC. 9. If any person applying to be admitted a citizen, or appearing as a witness for any such person, shall knowingly personate any other person than himself, or falsely appear in the name of a deceased person, or in an assumed or fictitious name, or if any person shall falsely make, forge, or counterfeit any oath,

affirmation, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law or act relating to or providing for the naturalization of aliens; or shall utter, sell, dispose of, or use as true or genuine, or for any unlawful purpose, any false, forged, ante-dated, or counterfeit oath, affirmation, notice, certificate, order, record, signature, instrument, paper, or proceeding as aforesaid; or sell or dispose of to any person other than the person for whom it was originally issued, any certificate of citizenship, or certificate showing any person to be admitted a citizen; or if any person shall in any manner use for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise, unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing such person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order or certificate, judgment, or exemplification has been unlawfully issued or made; or if any person shall unlawfully use, or attempt to use, any such order or certificate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person; or use, or attempt to use, or aid, or assist, or participate in the use of any certificate of citizenship, knowing the same to be forged, or counterfeit, or ante-dated, or knowing the same to have been procured by fraud, or otherwise unlawfully obtained; or if any person, and without lawful excuse, shall knowingly have or be possessed of any false, forged, ante-dated, or counterfeit certificate of citizenship, purporting to have been issued under the provisions of any law of the United States relating to naturalization, knowing such certificate to be false, forged, ante-dated, or counterfeited, with intent unlawfully to use the same; or if any person shall obtain, accept, or receive any certificate of citizenship known to such person to have been procured by fraud, or by the use of any false name, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or ante-dated; or if any person who has been or may be admitted to be a citizen shall, on oath or affirmation, or by affidavit, knowingly deny that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law, every person so offending shall be deemed and adjudged guilty of felony, and, on conviction thereof, shall be sentenced to be imprisoned and kept at hard labor for a period not less than one year nor more than five years, or be fined in a sum not less than three hundred dollars nor more than one thousand dollars, or both such punishments may be imposed, in the discretion of the court.

Penalty for knowingly and intentionally aiding, &c., the doing of such acts.

And every person who shall knowingly and intentionally aid or abet any person in the commission of any such felony, or attempt to do any act hereby made felony, or counsel, advise, or procure, or attempt to procure, the commission thereof, shall be liable to indictment and punishment in the same manner and to the same extent as the principal party guilty of such felony, and such person may be tried and convicted thereof without the previous conviction of such principal.

Trial, &c.

SEC. 10. Any person who shall knowingly use any certificate of naturalization heretofore granted by any court, or which shall hereafter be granted, which has been, or shall be, procured through fraud or by false evidence, or has been, or shall be, issued by the clerk, or any other officer of the court without any appearance and hearing of the applicant in court and without lawful authority; and any person who shall falsely represent himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be deemed guilty of a misdemeanor, and upon conviction thereof, in due course of law, shall be sentenced to pay a fine of not exceeding one thousand dollars, or be imprisoned not exceeding two years, either or both, in the discretion of the court taking cognizance of the same.

Penalty for knowingly using any fraudulent, &c., cetificate of naturalization.

For fraudulently falsely representing one's self to be a citizen.

SEC. 11. The provisions of this act shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization shall be commenced, had, or taken, or attempted to be commenced; and the courts of the United States shall have jurisdiction of all offenses under the provisions of this act, in or before whatsoever court or tribunal the same shall have been committed.

This act to apply to all proceedings for naturalization, before any court.

Courts of all the United States to have jurisdiction of offenses under this act.

SEC. 12. In any city having upwards of twenty thousand inhabitants, it shall be the duty of the judge of the circuit court of the United States for the circuit wherein said city shall be, upon the application of two citizens, to appoint in writing for each election district or voting precinct in said city, and to change or renew said appointment as occasion may require, from time to time, two citizens resident of the district or precinct, one from each political party, who, when so designated, shall be, and are hereby, authorized to attend at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for representative in congress, and at all times and places for holding elections of representatives in congress, and for counting the votes cast at said elections, and to challenge any name proposed to be registered, and any vote offered, and to be present and witness throughout the counting of all votes, and to remain where the ballot-boxes are kept at all times after the polls are open until the votes are finally counted; and said persons and either of them shall have the right to affix their signatures or his signature to said register for purposes of identification, and to attach thereto, or to the certificate of the number of votes cast, *and* [any] statement touching the truth or fairness thereof which they or he may ask to attach; and any one who shall prevent any person so designated from doing any of the acts authorized as aforesaid, or who shall hinder or molest any such person in doing any of the said acts, or shall aid or abet in preventing, hindering, or molesting any such person in respect of any such acts, shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment not less than one year.

In cities of more than 20,000 inhabitants, judge of circuit court, upon application, to appoint two citizens in each election district.

To supervise registration, voting, &c., in certain elections.

Authority of such persons.

Penalty for obstructing them.

SEC. 13. In any city having upwards of twenty thousand inhabitants, it shall be lawful for the marshal of the United States for the district wherein said city shall be, to appoint as many special deputies as may be necessary to preserve order at any election at

In cities of over 20,000 inhabitants the marshal may appoint special deputies at congressional elections, &c.

which representatives in congress are to be chosen; and said deputies are hereby authorized to preserve order at such elections, and to arrest for any offense or breach of the peace committed in their view.

Aliens of African nativity and decent may become citizens.

SEC. 14. The naturalization laws are hereby extended to aliens of African nativity and to persons of African descent.

Seamen, being foreigners, may become citizens by declaring intent and serving three years in, &c. Act of June 7, 1872.

When to be deemed citizens.

SEC. 15. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant ship or ships of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and shall have served three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant ship of the United States, anything to the contrary in any previous act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

Entitled to protection after filing declaration of intent.

CONSTITUTION.

WE, THE PEOPLE OF THE STATE 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: Preamble.

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 12th, 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 intersects 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 Nicollett's map; thence up the main channel of the said Big Sioux river, according to the 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 the said Mississippi river to the place of beginning. Boundaries.

ARTICLE 1.— BILL OF RIGHTS.

SECTION 1. All men are, by nature, free and equal, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness. Rights of persons.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it. Political power.

SEC. 3. 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. Religion.

Religious test.

SEC. 4. No religious test shall be required as a qualification for any office of 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; and any party to any judicial proceeding shall have the right to use as a witness, or take the testimony of, any other person, not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits may be witnesses, as provided by law.

Dueling.

SEC. 5. 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.

Laws uniform.

SEC. 6. All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen or class of citizens, privileges or immunities, which upon the same terms shall not equally belong to all citizens.

Liberty of speech and the press.

SEC. 7. 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.

Personal security.

SEC. 8. 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 persons and things to be seized.

Trial by jury.

SEC. 9. 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; but no person shall be deprived of life, liberty, or property, without due process of law.

Rights of persons accused.

SEC. 10. In all criminal prosecutions, and in cases involving the life or liberty of an individual, the accused shall have a right to a speedy and public trial by an impartial jury; to be informed of the accusation against him; to have a copy of the same when demanded; to be confronted with the witnesses against him; to have compulsory process for his witnesses; and to have the assistance of counsel.

Without indictment.

SEC. 11. All offenses less than felony, and in which the punishment does not exceed a fine of one hundred dollars, or imprisonment for thirty days, shall be tried summarily before a justice of the peace, or other officer authorized by law, on information under oath, without indictment, or the intervention of a grand jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher criminal offense, unless on

By indictment.

presentment or indictment by a grand jury, except in cases aris-

ing in the army or navy, or in the militia, when in actual service, in time of war or public danger.

SEC. 12. 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. Twice tried. Bail.

SEC. 13. The writ of habeas corpus shall not be suspended, or refused when application is made as required by law, unless in case of rebellion or invasion, the public safety may require it. Habeas corpus.

SEC. 14. 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. Military.

SEC. 15. 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. Quartering soldiers.

SEC. 16. 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. Treason.

SEC. 17. Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted. Bail. Punishments.

SEC. 18. Private property shall not be taken for public use without just compensation first being made, or secured to be made, to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken. Property.

SEC. 19. 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 military fine in time of peace. Imprisonment for debt.

SEC. 20. 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. Petition.

SEC. 21. No bill of attainder, *ex-post-facto* law, or law impairing the obligation of contracts, shall ever be passed. Attainder.

SEC. 22. Foreigners who are, or 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. Aliens hold property.

SEC. 23. There shall be no slavery in this state; nor shall there be involuntary servitude, unless for the punishment of crime. Slavery.

SEC. 24. No lease or grant of agricultural lands, reserving any rent or service of any kind, shall be valid for a longer period than twenty years. Reservation.

SEC. 25. The enumeration of rights shall not be construed to impair or deny others, retained by the people. Adjournments.

ARTICLE 2. — RIGHT OF SUFFRAGE.

Electors.

SECTION 1. Every male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this state six months next preceding the election, and of the county in which he claims his vote, sixty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law.

Privilege.

SEC. 2. 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 elections, going to and returning therefrom.

Same.

SEC. 3. No elector shall be obliged to perform military duty on the day of election, except in time of war or public danger.

"Resident."

SEC. 4. 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.

Exception.

SEC. 5. No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector.

Ballot.

SEC. 6. All elections by the people shall be by ballot.

ARTICLE 3. — OF THE DISTRIBUTION OF POWERS.

Departments of the government.

SECTION 1. 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.

Legislative authority.

SECTION 1. The legislative authority of this state shall be vested in a general assembly, which shall consist of a senate and house of representatives; and the style of every law shall be — "*Be it enacted by the General Assembly of the State of Iowa.*"

Sessions.

SEC. 2. The sessions of the general assembly shall be biennial, and shall commence on the second Monday in January next ensuing the election of its members; unless the governor of the state shall, in the meantime, convene the general assembly by proclamation.

Members of the house of representatives.

SEC. 3. The members of the house of representatives shall be chosen every second year, by the qualified electors of their respective districts, on the second Tuesday in October, except the years of the presidential election, when the election shall be on the Tuesday next after the first Monday in November; and their term of office shall commence on the first day of January next after their election, and continue two years, and until their successors are elected and qualified.

SEC. 4. 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 shall have been an inhabitant of this state one year next preceding his election, and at the time of his election shall have had an actual residence of sixty days in the county or district he may have been chosen to represent. Eligibility.

SEC. 5. 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. Senators.

SEC. 6. The number of senators shall not be less than one-third nor more than one-half the representative body; and shall be so classified by lot, that one class being as nearly one-half as possible, shall be elected every two years. When the number of senators is increased, they shall be annexed by lot to one or the other of the two classes, so as to keep them as nearly equal in numbers as practicable. Same, and classed.

SEC. 7. 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. Elections determined.

SEC. 8. A majority of each house shall constitute a quorum to transact 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. Quorum.

SEC. 9. 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. Authority of the houses.

SEC. 10. 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 house, on any question, shall, at the desire of any two members present, be entered on the journals. Protest.

SEC. 11. 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. Privilege.

SEC. 12. 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. Vacancies.

SEC. 13. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy. Doors open.

SEC. 14. 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.

Bills.

SEC. 15. Bills may originate in either house, 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.

To be approved, &c.

SEC. 16. 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 their 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, 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. Any bill submitted to the governor for his approval during the last three days of a session of the general assembly, shall be deposited by him in the office of the secretary of state within thirty days after the adjournment, with his approval if approved by him, and with his objections if he disapproves thereof.

Same.

SEC. 17. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the general assembly, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered upon the journal.

Receipts, &c.

SEC. 18. 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.

Impeachment.

SEC. 19. 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.

Who liable to, and judgment.

SEC. 20. The governor, judges of the supreme and district courts, and other state officers, shall be liable to impeachment for any misdemeanor or malfeasance in office; but judgment in such cases shall extend only to removal from office, 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 and malfeasance in office, in such manner as the general assembly may provide.

Members not appointed to office.

SEC. 21. 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.

Disqualification.

SEC. 22. No person holding any lucrative office under the United States, or this state, or any other power, shall be eligible to hold a seat in the general assembly. But offices in the militia, to which there is attached no annual salary, or the office of justice

of the peace, or postmaster, whose compensation does not exceed one hundred dollars per annum, or notary public, shall not be deemed lucrative.

SEC. 23. 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 hold any office of trust or profit in this state, until he shall have accounted for and paid into the treasury all sums for which he may be liable. Same.

SEC. 24. No money shall be drawn from the treasury but in consequence of appropriations made by law. Money drawn.

SEC. 25. Each member of the first general assembly under this constitution shall receive three dollars per diem while in session; and the further sum of three dollars for every twenty miles traveled in going to and returning from the place where such session is held, by the nearest traveled route; after which they shall receive such compensation as shall be fixed by law; but no general assembly shall have the power to increase the compensation of its members. And when convened in extra session they shall receive the same mileage and per diem compensation as fixed by law for the regular session, and none other. Compensation of members.

SEC. 26. No law of the general assembly, passed at a regular session, of a public nature, shall take effect until the fourth day of July next, after the passage thereof. Laws passed at a special session shall take effect ninety days after the adjournment of the general assembly, by which they were passed. If the general assembly shall deem any law of immediate importance, they may provide that the same shall take effect by publication in newspapers in the state. Laws. Publication.

SEC. 27. No divorce shall be granted by the general assembly. Divorce.

SEC. 28. No lottery shall be authorized by this state; nor shall the sale of lottery tickets be allowed. Lotteries.

SEC. 29. Every act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title. Acts.

SEC. 30. The general assembly shall not pass local or special laws in the following cases: Local or special laws.

For the assessment and collection of taxes for state, county, or road purposes;

For laying out, opening, and working roads or highways;

For changing the names of persons;

For the incorporation of cities and towns;

For vacating, roads, town plats, streets, alleys, or public squares;

For locating or changing county seats.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the state; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.

Extra Compensation.

SEC. 31. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor shall any money be paid on any claim, the subject matter of which shall not have been provided for by pre-existing laws, and no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation or claim, be allowed by two-thirds of the members elected to each branch of the general assembly.

Oath of members.

SEC. 32. 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.

Census.

SEC. 33. The general assembly shall, in the years one thousand eight hundred and fifty-nine, one thousand eight hundred and sixty-three, one thousand eight hundred and sixty-five, one thousand eight hundred and sixty-seven, one thousand eight hundred and sixty-nine, and one thousand eight hundred and seventy-five, and every ten years thereafter, cause an enumeration to be made of all the inhabitants of the state.

Apportionment.

SEC. 34. The number of senators shall, at the next session following each period of making such enumeration, and the next session following each United States census, be fixed by law, and apportioned among the several counties according to the number of inhabitants in each.

Districts.

SEC. 35. The senate shall not consist of more than fifty members, nor the house of representatives of more than one hundred; and they thall be apportioned among the several counties and representative districts of the state according to the number of inhabitants in each, upon ratios to be fixed by law; but no representative district shall contain more than four organized counties, and each district shall be entitled to at least one representative. Every county and district which shall have a number of inhabitants equal to one-half of the ratio fixed by law, shall be entitled to one representative; and any one county containing in addition to the ratio fixed by law one-half of that number, or more, shall be entitled to one additional representative. No floating district shall hereafter be formed.

Ratio of representation.

SEC. 36. At its first session under this constitution, and at every subsequent regular session, the general assembly shall fix the ratio of representation, and also form into representative districts those counties which will not be entitled singly to a representative.

Districts.

SEC. 37. 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.

SEC. 38. In all elections by the general assembly, the members thereof shall vote viva-voce; and the votes shall be entered on the journal. Elections by general assembly.

ARTICLE 4.—EXECUTIVE DEPARTMENT.

SECTION 1. 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. Governor.

SEC. 2. 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 two years, from the time of his installation, and until his successor is elected and qualified. Election and term.

SEC. 3. There shall be a lieutenant governor, who shall hold his office two years, and be elected at the same time as the governor. In voting for governor and lieutenant governor, the electors shall designate for whom they vote as governor, and for whom as lieutenant governor. The returns of every election for governor, and lieutenant governor, shall be sealed up and transmitted to the seat of government of the state, directed to the speaker of the house of representatives, who shall open and publish them in the presence of both houses of the general assembly. Eligibility.

SEC. 4. The persons respectively having the highest number of votes, for governor and lieutenant governor, shall be declared duly elected; but in case two or more persons shall have an equal, and the highest number of votes for either office, the general assembly shall, by joint vote, forthwith proceed to elect one of said persons governor, or lieutenant-governor, as the case may be. Returns of elections.

SEC. 5. Contested elections for governor, or lieutenant governor, shall be determined by the general assembly in such manner as may be prescribed by law. Contested elections.

SEC. 6. No person shall be eligible to the office of governor, or lieutenant governor, who shall not have 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. Eligibility.

SEC. 7. The governor shall be commander-in-chief of the militia, the army, and navy of this state. Commander.

SEC. 8. 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. Duties.

SEC. 9. He shall take care that the laws are faithfully executed. Same.

SEC. 10. 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. Vacancies.

SEC. 11. He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to both houses, Convening assembly.

when assembled, the purpose for which they shall have been convened.

Message. SEC. 12. He shall communicate, by message, to the general assembly, at every regular session, the condition of the state, and recommend such matters as he shall deem expedient.

Adjournment. SEC. 13. 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 may think proper; but no such adjournment shall be beyond the time fixed for the regular meeting of the next general assembly.

Disqualification. SEC. 14. No person shall, while holding any office under the authority of the United States, or this state, execute the office of governor, or lieutenant governor, except as hereinafter expressly provided.

Two years. SEC. 15. The official term of the governor, and lieutenant governor, shall commence on the second Monday of January next after their election, and continue for two years, and until their successors are elected and qualified. The lieutenant governor, while acting as governor, shall receive the same pay as provided for governor; and while presiding in the senate, shall receive as compensation therefor, the same mileage and double the per diem pay provided for a senator, and none other.

Pardons, &c. SEC. 16. The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the general assembly at its next meeting, when the general assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the general assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and the reason therefor; and also all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

Lieutenant act as governor. SEC. 17. In case of the death, impeachment, resignation, removal from office, or other disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant governor.

Further vacancies provided for. SEC. 18. The lieutenant governor shall be president of the senate, but shall only vote when the senate is equally divided; and in case of his absence, or impeachment, or when he shall exercise the office of governor, the senate shall choose a president pro tempore.

Same. SEC. 19. If the lieutenant governor, while acting as governor, shall be impeached, displaced, resign, or die, or otherwise become incapable of performing the duties of the office, the president pro tempore of the senate shall act as governor until the vacancy is filled, or the disability removed; and if the president of the senate, for any of the above causes, shall be rendered incapable of per-

forming the duties pertaining to the office of governor, the same shall devolve upon the speaker of the house of representatives.

SEC. 20. 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. Seal of state.

SEC. 21. 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 the state, signed by the governor, and countersigned by the secretary of state. Commissions, &c.

SEC. 22. A secretary of state, auditor of state, and treasurer of state, shall be elected by the qualified electors, who shall continue in office two years, and until their successors are elected and qualified; and perform such duties as may be required by law. Secretary, auditor and treasurer.

ARTICLE 5.—JUDICIAL DEPARTMENT.

SECTION 1. The judicial power shall be vested in a supreme court, district court, and such other courts, inferior to the supreme court, as the general assembly may, from time to time, establish. Courts.

SEC. 2. The supreme court shall consist of three judges, two of whom shall constitute a quorum to hold court. Supreme court.

SEC. 3. The judges of the supreme court shall be elected by the qualified electors of the state, and shall hold their court at such time and place as the general assembly may prescribe. The judges of the supreme court so elected, shall be classified so that one judge shall go out of office every two years; and the judge holding the shortest term of office under such classification, shall be chief justice of the court during his term, and so on in rotation. After the expiration of their terms of office, under such classification, the term of each judge of the supreme court shall be six years, and until his successor shall have been elected and qualified. The judges of the supreme court shall be ineligible to any other office in the state, during the term for which they have been elected. Judges elected.

SEC. 4. The supreme court shall have appellate jurisdiction only in 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; and shall have power to issue all writs and process necessary to secure justice to parties, and exercise a supervisory control over all inferior judicial tribunals throughout the state. Jurisdiction.

SEC. 5. The district court shall consist of a single judge, who shall be elected by the qualified electors of the district in which he resides. The judge of the district court shall hold his office for the term of four years, and until his successor shall have been elected and qualified; and shall be ineligible to any other office, except that of judge of the supreme court, during the term for which he was elected. District judge elected.

SEC. 6. The district court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters arising in their respective districts, in such manner as shall be prescribed by law. Jurisdiction.

Conservators of the peace.

SEC. 7. The judges of the supreme and district courts shall be conservators of the peace throughout the state.

Style of process.

SEC. 8. 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.

Salaries.

SEC. 9. The salary of each judge of the supreme court shall be two thousand dollars per annum; and that of each district judge one thousand six hundred dollars per annum, until the year eighteen hundred and sixty; after which time they shall severally receive such compensation as the general assembly may, by law, prescribe; which compensation shall not be increased or diminished during the term for which they shall have been elected.

Judicial districts.

SEC. 10. The state shall be divided into eleven judicial districts; and after the year eighteen hundred and sixty, the general assembly may re-organize the judicial districts, and increase or diminish the number of districts, or the number of judges of the said court, and may increase the number of judges of the supreme court; but such increase or diminution shall not be more than one district, or one judge of either court, at any one session; and no re-organization of the districts, or diminution of the judges, shall have the effect of removing a judge from office. Such re-organization of the districts, or any change in the boundaries thereof, or any increase or diminution of the number of judges, shall take place every four years thereafter, if necessary, and at no other time.

When chosen.

SEC. 11. The judges of the supreme and district courts shall be chosen at the general election; and the term of office of each judge shall commence on the first day of January next after his election.

Attorney general.

SEC. 12. The general assembly shall provide, by law, for the election of an attorney-general by the people, whose term of office shall be two years, and until his successor shall have been elected and qualified.

Elected. Qualifications.

SEC. 13. The qualified electors of each judicial district shall, at the time of the election of district judge, elect a district attorney, who shall be a resident of the district for which he is elected, and who shall hold his office for the term of four years, and until his successor shall have been elected and qualified.

Duty of general assembly.

SEC. 14. It shall be the duty of the general assembly to provide for the carrying into effect of this article, and to provide for a general system of practice in all the courts of this state.

ARTICLE 6.—MILITIA.

Who constitue.

SECTION 1. The militia of this state shall be composed of all able-bodied 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.

Qualification.

SEC. 2. No person or persons conscientiously scrupulous of bearing arms shall be compelled to do military 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.

SEC. 3. 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. Officers.

ARTICLE 7.—STATE DEBTS.

SECTION 1. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation; and the state shall never assume, or become responsible for, the debts or liabilities of any individual, association, or corporation, unless incurred in time of war for the benefit of the state. Limitation of state indebtedness.

SEC. 2. The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed the sum of two hundred and fifty thousand dollars; and the money arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever. Same.

SEC. 3. All losses to the permanent, school, or university fund of this state, which shall have been occasioned by the defalcation, mismanagement, or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state, in favor of the respective fund, sustaining the loss, upon which not less than six per cent. annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized by the second section of this article. Losses to school funds audited.

SEC. 4. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the debts so contracted shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever. For what other purposes state may contract debt.

SEC. 5. Except the debts hereinbefore specified in this article, no debt shall be hereafter contracted by, or on behalf of this state, unless such debt shall be authorized by some law for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax, sufficient to pay the interest on such debt, as it falls due, and also to pay and discharge the principal of such debt, within twenty years from the time of the contracting thereof; 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 created thereby; and such law shall be published in at least one newspaper in each Other debts to be authorized by specall law. Submitted to the people.

county, if one is published therein, throughout the state, for three months preceding the election at which it is submitted to the people.

Legislature may repeal.

SEC. 6. The legislature may, at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time forbid the contracting of any further debt, or liability, under such law; but the tax imposed by such law, in proportion to the debt or liability which may have been contracted in pursuance thereof, shall remain in force and be irrepealable, and be annually collected, until the principal and interest are fully paid.

Tax imposed, distinctly stated.

SEC. 7. Every law which imposes, continues, or revives a tax, shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

ARTICLE 8.—CORPORATIONS.

Corporations, how created.

SECTION 1. No corporation shall be created by special laws; but the general assembly shall provide by general laws, for the organization of all corporations hereafter to be created, except as hereinafter provided.

Property taxable.

SEC. 2. The property of all corporations for pecuniary profit, shall be subject to taxation the same as that of individuals.

State not to be a stockholder.

SEC. 3. The state shall not become a stockholder in any corporation, nor shall it assume or pay the debt or liability of any corporation, unless incurred in time of war for the benefit of the state.

Corporation not to be a stockholder.

SEC. 4. No political or municipal corporation shall become a stockholder in any banking corporation, directly or indirectly.

Act creating corporations submitted to the people.

SEC. 5. No act of the general assembly, authorizing or creating corporations or associations with banking powers, nor amendments thereto, shall take effect, or in any manner be in force, until the same shall have been submitted, separately, to the people, at a general or special election, as provided by law, to be held not less than three months after the passage of the act, and shall have been approved by a majority of all the electors voting for and against it at such election.

State bank.

SEC. 6. Subject to the provisions of the foregoing section, the general assembly may also provide for the establishment of a state bank with branches.

Founded on special basis.

SEC. 7. If a state bank be established, it shall be founded on an actual specie basis, and the branches shall be mutually responsible for each other's liabilities upon all notes, bills and other issues intended for circulation as money.

General banking law to provide for.

SEC. 8. If a general banking law shall be enacted, it shall provide for the registry and countersigning, by an officer of state, of all bills, or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the state treasurer, in United States stocks, or in interest paying stocks of states in good credit and standing, to be rated at ten per cent. below their average value in the city of New York, for

the thirty days next preceding their deposit; and in case of a depreciation of any portion of such stocks, to the amount of ten per cent. on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by depositing additional stocks; and said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of any transfer, and to whom.

Stockholders responsible.

SEC. 9. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him or her held, to an amount equal to his or her respective shares so held, for all its liabilities, accruing while he or she remains such stockholder.

Bill holders to have preference.

SEC. 10. In case of the insolvency of any banking institution, the bill holders shall have a preference over its other creditors.

Suspension of specie payments.

SEC. 11. The suspension of specie payments by banking institutions shall never be permitted or sanctioned.

General assembly may amend or repeal by two-thirds vote.

SEC. 12. Subject to the provisions of this article, the general assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two-thirds of each branch of the general assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.

ARTICLE 9.—EDUCATION AND SCHOOL LANDS.

1.—*Education.*

Board of education.

SECTION 1. The educational interest of the state, including common schools and other educational institutions, shall be under the management of a board of education, which shall consist of the lieutenant-governor, who shall be the presiding officer of the board, and have the casting vote in case of a tie, and one member to be elected from each judicial district in the state.

Who eligible.

SEC. 2. No person shall be eligible as a member of said board who shall not have attained the age of twenty-five years, and shall have been one year a citizen of the state.

How elected.

SEC. 3. One member of said board shall be chosen by the qualified electors of each district, and shall hold the office for the term of four years, and until his successor is elected and qualified. After the first election under this constitution, the board shall be divided, as nearly as practicable, into two equal classes, and the seats of the first class shall be vacated after the expiration of two years; and one-half of the board shall be chosen every two years thereafter.

How divided.

First session held.

SEC. 4. The first session of the board of education shall be held at the seat of government, on the first Monday of December, after their election; after which the general assembly may fix the time and place of meeting.

Limited to twenty days.

SEC. 5. The session of the board shall be limited to twenty days, and but one session shall be held in any one year, except upon extraordinary occasions, when, upon the recommendation of two-thirds of the board, the governor may order a special session.

Secretary.

SEC. 6. The board of education shall appoint a secretary, who shall be the executive officer of the board, and perform such duties as may be imposed upon him by the board, and the laws of the state. They shall keep a journal of their proceedings, which shall be published and distributed in the same manner as the journals of the general assembly.

Rules and regulations of board.

SEC. 7. All rules and regulations made by the board shall be published and distributed to the several counties, townships, and school districts, as may be provided for by the board, and when so made, published, and distributed, they shall have the force and effect of law.

Power to make, &c.

SEC. 8. The board of education shall have full power and authority to legislate and make all needful rules and regulations in relation to common schools, and other educational institutions, that are instituted, to receive aid from the school or university fund of this state; but all acts, rules, and regulations of said board may be altered, amended, or repealed by the general assembly; and when so altered, amended, or repealed, they shall not be re-enacted by the board of education.

General assembly may repeal, &c.

Governor ex-officio a member.

SEC. 9. The governor of the state, shall be, *ex-officio*, a member of said board.

Contingent.

SEC. 10. The board shall have no power to levy taxes, or make appropriations of money. Their contingent expenses shall be provided for by the general assembly.

State university.

SEC. 11. The state university shall be established at one place without branches at any other place, and the university fund shall be applied to that institution, and no other.

Board of education to provide for education of youths of the state.

SEC. 12. The board of education shall provide for the education of all the youths of the state, through a system of common schools, and such schools shall be organized and kept in each school district at least three months in each year. Any district failing, for two consecutive years, to organize and keep up a school, as aforesaid, may be deprived of their portion of the school fund.

Compensation.

SEC. 13. The members of the board of education shall each receive the same per diem during the time of their session, and mileage going to and returning therefrom, as members of the general assembly.

Quorum.

SEC. 14. A majority of the board shall constitute a quorum for the transaction of business; but no rule, regulation, or law, for the government of common schools or other educational institutions shall pass without the concurrence of a majority of all the members of the board, which shall be expressed by the yeas and nays on the final passage. The style of all acts of the board shall be, "Be it enacted by the board of education of the state of Iowa."

Style of acts.

When board may be abolished.

SEC. 15. At any time after the year one thousand eight hundred and sixty-three, the general assembly shall have power to abolish or reorganize said board of education, and provide for the educational interest of the state in any other manner that to them shall seem best and proper.

2.—School Funds and School Lands.

Section 1. The educational and school funds and lands, shall be under the control and management of the general assembly of this state. Under control of general assembly.

Sec. 2. The university lands, and the proceeds thereof, and all moneys belonging to said fund shall be a permanent fund for the sole use of the state university The interest arising from the same shall be annually appropriated for the support and benefit of said university. Permanent fund.

Sec. 3.. 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 may have been or 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 in the year of our Lord one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as has been or may hereafter 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 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. Lands appropriated to educational purposes.

Sec. 4. The money which may have been or shall be paid by persons as an equivalent from 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 proportion to the number of youths subject to enumeration in such districts, to the support of common schools, or the establishment of libraries, as the board of education shall from time to time provide. Fines, &c., how appropriated.

Sec. 5. 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 the 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, 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. Lands reserved, or granted, or funds accruing from sale thereof to be a permanent fund. Interest applied.

Who agents of school funds.

SEC. 6. The financial agents of the school funds shall be the same, that by law, receive and control the state and county revenue, for other civil purposes, under such regulations as may be provided by law.

Money to be distributed.

SEC. 7 The money subject to the support and maintenance of common schools shall be distributed to the districts in proportion to the number of youths, between the ages of five and twenty-one years, in such manner as may be provided by the general assembly.

ARTICLE X.—AMENDMENTS TO THE CONSTITUTION.

Amendments.

SECTION 1. Any amendment or amendments to this constitution may be proposed in either house of the general assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the general assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people in such manner, and at such time as the geneal assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the general assembly, voting thereon, such amendment or amendments shall become a part of the constitution of this state.

More than one.

SEC. 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Convention.

SEC. 3. At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such times as the general assembly may, by law, provide, the question, "Shall there be a convention to revise the constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the general assembly; and in case a majority of the electors so qualified, voting at such election for and against such proposition, shall decide in favor of a convention for such purpose, the general assembly, at its next session, shall provide by law for the election of delegates to such convention.

ARTICLE XI. — MISCELLANEOUS.

Jurisdiction of justice of the peace.

SECTION 1. 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 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 three hundred dollars.

Counties.

SEC. 2. No new county shall be hereafter created containing less than four hundred and thirty-two square miles; nor shall the territory of any organized county be reduced below that area; except the county of Worth, and the counties west of it along the northern boundary of this state, may be organized without additional territory.

To what amount county may become indebted.

SEC. 3. No county, or other political or municipal corporation, shall be allowed to become indebted in any manner, or for any purpose, to an amount in the aggregate, exceeding five per centum on the value of the taxable property within such county or corporation—to be ascertained by the last state and county tax lists, previous to the incurring of such indebtedness.

Boundaries.

SEC. 4. The boundaries of the state may be enlarged, with the consent of congress and the general assembly.

Oath of office

SEC. 5. Every person elected or appointed to any office, shall, before entering upon the duties thereof, take an oath or affirmation to support the constitution of the United States, and of this state, and also an oath of office.

How vacancies filled.

SEC. 6. In all cases of elections to fill vacancies in office occurring before the expiration of a full term, the person so elected shall hold for the residue of the unexpired term; and all persons appointed to fill vacancies in office, shall hold until the next general election, and until their successors are elected and qualified.

How lands granted may be located.

SEC. 7. 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 the 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.

Seat of government.

SEC. 8. The seat of government is hereby permanently established, as now fixed by law, at the city of Des Moines, in the county of Polk; and the state university at Iowa City, in the county of Johnson.

ARTICLE XII. — SCHEDULE.

Supreme court of the state.

SECTION 1. The constitution shall be the supreme law of the state, and any law inconsistent therewith, shall be void. The general assembly shall pass all laws necessary to carry this constitution into effect.

Laws in force.

SEC. 2. All laws now in force, and not inconsistent with this constitution, shall remain in force until they shall expire or be repealed.

Legal process not affected.

SEC. 3. All indictments, prosecutions, suits, pleas, plaints, process, and other proceedings pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, *certiorari*, and injunctions, shall be carried on in

the several courts, in the same manner as now provided by law, and all offenses, misdemeanors, and crimes that may have been committed before the taking effect of this constitution, shall be subject to indictment, trial, and punishment, in the same manner as they would have been had not this constitution been made.

Fines, &c., inure to the state.

SEC. 4. All fines, penalties, or forfeitures due, or to become due, or accruing to the state, or to any county therein, or to the school fund, shall inure to the state, county, or school fund, in the manner prescribed by law.

Bonds in force.

SEC. 5. All bonds executed to the state, or to any officer in his official capacity, shall remain in force and inure to the use of those concerned.

First election. Governor and lieutenant governor.

SEC. 6. The first election under this constitution shall be held on the second Tuesday in October, in the year one thousand eight hundred and fifty-seven, at which time the electors of the state shall elect the governor and lieutenant governor. There shall also be elected at such election, the successors of such state senators as were elected at the August election, in the year one thousand eight hundred and fifty-four, and members of the house of representatives, who shall be elected in accordance with the act of apportionment, enacted at the session of the general assembly which commenced on the first Monday of December, one thousand eight hundred and fifty-six.

Same. Secretary, auditor, &c.

SEC. 7. The first election for secretary, auditor, and treasurer of state, attorney general, district judges, members of the board of education, district attorneys, members of congress, and such state officers as shall be elected at the April election, in the year one thousand eight hundred and fifty-seven, (except the superintendent of public instruction,) and such county officers as were elected at the August election, in the year one thousand eight hundred and fifty-six, except prosecuting attorneys, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-eight; *provided*, that the time for which any district judge or other state or county officer elected at the April election in the year one thousand eight hundred and fifty-eight, shall not extend beyond the time fixed for filling like offices at the October election, in the year one thousand eight hundred and fifty-eight.

Same. Judges of supreme court.

SEC. 8. The first election for judges of the supreme court, and such county officers as shall be elected at the August election, in the year one thousand eight hundred and fifty-seven, shall be held on the second Tuesday of October, in the year one thousand eight hundred and fifty-nine.

First session general assembly.

SEC. 9. The first regular session of the general assembly shall be held in the year one thousand eight hundred and fifty-eight, commencing on the second Monday of January of said year.

Senators.

SEC. 10. Senators elected at the August election, in the year one thousand eight hundred and fifty-six, shall continue in office until the second Tuesday of October, in the year one thousand eight hundred and fifty-nine, at which time their successors shall be elected as may be prescribed by law.

SEC. 11. Every person elected by popular vote, by a vote of the general assembly, or who may hold office by executive appointment, which office is continued by this constitution, and every person who shall be so elected or appointed to any such office, before the taking effect of this constitution, (except as in this constitution otherwise provided) shall continue in office until the term for which such person has been or may be elected or appointed shall expire; but no such person shall continue in office after the taking effect of this constitution, for a longer period than the term of such office, in this constitution prescribed. Offices not vacated by new constitution

SEC. 12. The general assembly, at the first session under this constitution, shall district the state into eleven judicial districts, for district court purposes; and shall also provide for the apportionment of the members of the general assembly in accordance with the provisions of this constitution. State to be districted.

SEC. 13. This constitution shall be submitted to the electors of the state at the August election, in the year one thousand eight hundred and fifty-seven, in the several election districts in this state. The ballots at such election shall be written or printed as follows: those in favor of the constitution, "new constitution—yes." Those against the constitution, "new constitution—no." The election shall be conducted in the same manner as the general elections of the state, and the poll-books shall be returned and canvassed as provided in the twenty-fifth chapter of the code, and abstracts shall be forwarded to the secretary of state, which abstracts shall be canvassed in the manner provided for the canvass of state officers. And if it shall appear that a majority of all the votes cast at such election for and against this constitution are in favor of the same, the governor shall immediately issue his proclamation stating that fact, and such constitution shall be the constitution of the state of Iowa, and shall take effect from and after the publication of said proclamation. Constitution to be voted for, August, 1857.

SEC. 14. At the same election that this constitution is submitted to the people for its adoption or rejection, a proposition to amend the same by striking out the word "white," from the article on the "right of suffrage," shall be separately submitted to the electors of this state for adoption or rejection, in the manner following, viz: a separate ballot may be given by every person having a right to vote at said election, to be deposited in a separate box. And those given for the adoption of such proposition shall have the words, "shall the word 'white' be stricken out of the article on the 'right of suffrage?' yes." And those given against the proposition shall have the words, "shall the word 'white' be stricken out of the article on the 'right of suffrage?' no." And if at said election the number of ballots cast in favor of said proposition, shall be equal to a majority of those cast for and against this constitution, then said word "white" shall be stricken from said article and be no part thereof. Proposition to strike out the word "white."

SEC. 15. Until otherwise directed by law, the county of Mills shall be in and a part of the sixth judicial district of this state.

Done in convention at Iowa City, this fifth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America, the eighty-first.

In testimony whereof, we have hereunto subscribed our names:

TIMOTHY DAY,	M. W. ROBINSON,
S. G. WINCHESTER,	LEWIS TODHUNTER,
DAVID BUNKER,	JOHN EDWARDS,
D. P. PALMER,	J. C. TRAER,
GEO. W. ELLS,	JAMES F. WILSON,
J. C. HALL,	AMOS HARRIS,
JOHN H. PETERS,	JNO. T. CLARKE,
WM. H. WARREN,	S. AYRES,
H. W. GRAY,	HARVEY J. SKIFF,
ROBT. GOWER,	J. A. PARVIN,
H. D. GIBSON,	W. PENN CLARK,
THOMAS SEELEY,	JERE. HOLLINGSWORTH
A. H. MARVIN,	WM. PATTERSON,
J. H. EMERSON,	D. W. PRICE,
R. L. B. CLARKE,	ALPHEUS SCOTT,
JAMES A. YOUNG,	GEORGE GILLASPY,
D. H. SOLOMON,	EDWARD JOHNSTONE,

FRANCIS SPRINGER, *President*.

ATTEST:

TH. J. SAUNDERS, *Secretary*.

E. N. BATES, *Assistant Secretary*.

INDEX.

	Section.	Page.
ABANDONMENT—(See Poor.)		
of either husband or wife, the other may obtain authority to control or sell property	2207	397
proceedings to obtain authority	2208, 2209	397
ABATEMENT—		
causes of action do not abate by death of parties	2525	431
actions do not abate by transfer of interest	2561	435
matter of may be stated in answer	2732	458
judgment to distinguish between and matter in bar	2851	472
party suffering action to abate must pay costs of	2939	482
proceedings in supreme court do not abate on death of parties	3211	519
of nuisances by civil action	3331	532
ABDUCTION—		
defined and punished	3866	602
ABSCONDING DEBTOR—		
property of, exempt from execution in hands of wife or children	3078	501
ABSTRACTS—		
of elections by county canvassers	636–639	111
in relation to county officers to be recorded in the election book	640	111
sent to secretary of state by county auditor	645, 646	112
of elections by state canvassers	652, 653	113
to be recorded in election book	654	113
of election of electors of president and vice-president made and recorded	663	114
of title to be attached to pleading in actions to recover real property	3251	524
ACCESSORY—		
before the fact, indicted, etc., as principal	4314	670
after the fact, indicted, etc., though principal has not been.	4315	670
ACCOMPLICE—		
testimony of, not sufficient to convict unless corroborated	4559	700
ACCOUNT—		
may be assigned	2087	379
action on barred in five years	2531	432

Section. Page.

ACKNOWLEDGMENT—
of instruments in writing, who may take..... 277 45
of plats of land..... 560 99
of certificate of insurance company..... 1122 193
of written instruments conveying or incumbering personal property..... 1923 356
of conveyances affecting real property made in this state.. 1955 360
when out of, but in United States..... 1956 360
when out of the United States..... 1957 360
certificate of, endorsed on instrument..... 1958 360
execution and delivery, when and how proved..... 1959 360
certificate to be endorsed in such case..... 1960 361
how executed..... 1961 361
by attorney in fact, how made..... 1962 361
specific certificate to be endorsed on..... 1963 361
penalty for knowingly misstating fact in..... 1964 361
officer taking may compel attendance of witnesses..... 1965 361
of certificate of formation of limited partnership..... 2151 390
of instrument adopting children..... 2309 409

ACTION—
may be brought against stockholders for corporate debt... 1084 186
to try question of settlement of pauper, how brought..... 1359 248
trial of..... 1360 249
assignee may maintain against assignor..... 2083 379
causes of for divorce.....2223, 2224 399
for annulling marriages..... 2231 400
limitation of, to question validity of guardian's sale of real estate..... 2265 404
limitation of, to question validity of executor's sale of real estate..... 2401 418
on claims against estates, how brought.....2408, 2409 419
either husband or wife may maintain to recover property as if unmarried..... 2204 397
married women may maintain..... 2211 398
limitation of against estates of decedents..... 2421 420
civil, defined..... 2505 429
consist of ordinary and equitable..... 2507 429
causes that must be brought by equitable.....2508, 2510, 2511 429
by ordinary.....2509, 2512, 2513 429
effect of error in kind of..... 2514 430
plaintiff may correct error before answer as of course..... 2515 430
when defendant may have correction made..... 2516 430
either party may have issue in tried by equitable..... 2517 430
court may direct correction made..... 2518 430
errors waived unless correction asked..... 2519 430
provisions of code apply to all unless otherwise provided.. 2520 430
on judgments rendered in this state, when brought..... 2521 430
rendered in ordinary, when annulled by equitable..... 2522 431
to obtain discovery, when brought..... 2523 431
successive, maintained on same contract, when, etc..... 2524 431
all causes of, survive..... 2525 431

ACTION—CONTINUED.

	Section.	Page.
when wrongful act produces death	2526	431
how brought or continued	2527	431
limitation—period of prescribed	2529	432
when founded on fraud, mistake, etc	2530	432
open account	2531	432
none on bank bills	2538	433
must be brought in name of real party in interest	2543	433
exception in favor of executors, trustees, etc	2544	433
all persons having united interest may be joined	2545, 2548	433
by assignee, subject to defense existing before notice	2546	434
any person made defendant who has an adverse interest	2547	434
when interest is common, one may sue for all	2549	434
on joint and several obligations, who joined	2550	434
court may order other parties brought in	2551	434
on bond given for security of public, who may sue	2552	434
partnership—by or against, how brought	2553	434
foreign corporations—may sue in corporate name	2554	435
unmarried female—may sue for her own seduction	2555	435
father—may sue for injuries or death of minor child	2556	435
unknown defendant—described and sued	2557	435
written instrument—parties to, sued as described therein	2558	435
state—must prosecute and defend as persons	2560	435
transfer—of interest in, does not cause it to abate	2561	435
married women—may sue as if unmarried	2562	435
sued with husband may defend for herself	2563	435
deserted by may sue in his name	2564	435
minors—must sue by guardian or next friend	2565	435
defend by guardian	2566	435
cannot be appointed until service of notice on	2567	436
over fourteen may choose	2568	436
insane—must sue and defend by guardian	2569–2571	436
personal property—when third party claims interest in	2572	436
officer taking on process is sued	2573, 2574	437
taken on landlord's attachment, who sued	2575	437
in what cases to be brought in county where property is situate	2576	437
real property for injuries to, brought where defendant resides	2577	437
to enforce a charge on in county where situate	2578	437
to recover fines and, on official bonds, where cause of arose	2579	438
when aided by attachment, where brought	2580	438
on written contracts—at place of performance	2581	438
against common carriers—at any place where operating	2582	438
against corporations, etc., constructing railway, etc., where contract was made, etc	2583	438
insurance companies—at place of contract or business of	2584	438
on transaction growing out of office or agency, at place where agency is located	2585	438

Section. Page.

ACTION—CONTINUED.
at residence of defendant, unless otherwise provided..2586, 2587 438
change of, after commencement of does not affect..... 2588 439
effect of bringing in wrong county..... 2589 439
manner of commencing..... 2599 441
deemed discontinued when petition not filed..... 2600 442
when defendants not all served, how plaintiff may proceed. 2627 446
when real estate affected by, third persons charged with notice..... 2628 446
how, when situate in another county.... 2629 446
of same kind, prosecuted by same proceedings, may be joined..... 2630 447
plaintiff may strike causes of from petition..... 2631 447
so may the court on defendant's motion..... 2632 447
objections to misjoinder deemed waived, unless, etc.2633, 2634 447
all forms of abolished..... 2644 448
for injuries to goods, etc., kind and species must be alleged. 2725 457
real property, how it must be described..... 2726 457
may be consolidated..... 2734 458
tried at first term unless otherwise provided..... 2744 460
equitable not to be so tried except..... 2745 460
court may allow separate trials in..... 2746 460
may be referred by consent of parties..... 2815 467
by the court, when..... 2816 467
dismissed without prejudice, causes specified..... 2844 471
when on the merits..... 2845 471
defendant may proceed on counter claim..... 2846 471
may dismiss it before cause is submitted..... 2847 472
may be done in vacation..... 2848 472
clerk may compute amount due when default made..... 2872 475
judgment by default in equitable, rendered on proof..... 2874 475
party confessing defense which arose after commencement of, entitled to costs..... 2938 482
suffering to abate must pay costs..... 2939 482
dismissed for want of jurisdiction, costs to be adjudged... 2941 483
assignee of cause of, liable to costs..... 2943 483
attachment may be issued in..... 2949 484
causes for which it may issue..... 2951 484
on attachment bond damages recoverable in..... 2961 486
on bond to release attached property, defense to..... 2998 490
cause for attachment not a defense to..... 3017 493
equitable, brought to subject property to execution..... 3150 509
answers enforced or petition taken as true..... 3151 510
lien created on property by..... 3152 510
defendant may be committed to jail..... 3153 510
to recover specific personal property, how brought..... 3225 521
prosecuted by ordinary proceedings..... 3226 521
for recovery of real property..... 3245 524
who may recover in..... 3246 524
when brought by joint tenant or tenant in common..... 3248 524
to recover real property not prejudiced by alienation..... 3255 525
for quieting title to real property..... 3273 526

Section. Page.

ACTION—CONTINUED.
must be prosecuted by equitable proceedings..... 3276 527
for partition, must be by equitable proceedings..... 3277 527
for abatement of nuisance..... 3331 532
to test official and corporate rights..... 3345 534
no joinder of other cause in..... 3346 534
to be brought by district attorney..... 3347 534
on his refusal, how brought..... 3348 534
petition in, form of.....3349-3352 534
judgment in.....3353-3359 535
on bond of public officer for subsequent delinquency..... 3369 536
to recover fines and forfeitures, who may bring..... 3371 537
judgment by collusion in, does not prevent another action.. 3362 537
of mandamus, defined..... 3373 537
pleading and proceedings in, same as in ordinary actions.....3378, 3379 537
when brought by private person, injunction may be joined with..... 3380 538
controversies may be submitted to court with or without.....3408-3415 541
before justices of the peace, where brought.....3509-3514 552
how brought.....3516-3528 553
may be brought on award of arbitrators..... 3431 543
against owners of boats and rafts may be brought for, etc.. 3432 543

ADDITIONAL SECURITY AND DISCHARGE OF SURETIES, §§ 772-780—
governor may require state officers to give..... 772 127
whoever approves bond of officer may require same..... 773 128
old and new in force, office vacant..... 774 128
sureties relieved, proceedings.....775, 776 128
hearing, discharge of..... 777 128
office declared vacant, order entered in election book..... 778 128
when justice of peace removed, trustees to appoint..... 779 128
attendance of witnesses compelled..... 780 128

ADJUTANT-GENERAL—
to report number of military force to adjutant-general of United States..... 1043 179
duties of, enumerated.....1055, 1056 181
salary of..... 3761 579
to be paid monthly..... 3780 583

ADMINISTRATOR (SEE *Estates of Decedents*)—
who entitled to preference in appointment of..... 2354 413
persons belonging to different classes may be united..... 2355 414
time allowed each class to administer..... 2356 414
special may be appointed..... 2357 414
appeal from not to delay their proceedings..... 2358 414
foreign—upon qualifying may be appointed in this state, 2368, 2369 414
must give bond and take oath.....2362, 2363 414
additional bond required of..... 2364 414
clerk to issue letters to..... 2365 414

	Section.	Page.
ADMISTRATOR—CONTINUED.		
to publish notice of appointment	2366	414
cannot be appointed after five years from death	2367	414
ADMINISTRATION OF OATHS—		
who may administer	277	45
persons conscientiously opposed to swearing may affirm	278	45
ADMISSION—		
party may admit allegations deemed controverted	2712	456
written instrument attached to or referred to in pleading deemed admitted	2730	458
ADOPTION OF CHILDREN, §§ 2307-2311—		
any person competent to make a will may adopt	2307	408
consent of parents, etc., must be obtained in writing	2308	409
writing must be acknowledged and recorded	2309	409
rights and duties of parent and child	2310	409
maltreatment of child, proceedings to remedy or protect	2311	409
in orphan's homes, trustees must consent	1634	304
ADULTERY—		
whoever commits, punished	4008	624
ADULTERATION—		
of food and liquors, punished	4036	629
drugs and medicines	4037	629
milk, cheese, or butter	4042	630
ADVANCEMENT—		
made to heir, considered part of estate and to be taken by as part of his share	2459	423
ADVERSE POSSESSION—		
in real property does not prevent sale of interest	1933	357
alone, not sufficient to acquire easement in real estate	2031	371
foot-way cannot be acquired by	2033	371
may be terminated by notice	2034	371
deemed a disturbance of right	2035	371
ADVERTISEMENT—		
of sales for taxes to be published	873	148
letters and figures may be used in	880	149
form of certificate of publisher	881	149
compensation for posting up	3838	597
AFFIDAVIT—		
defective not to prejudice if corrected in a reasonable time	248	41
testimony in form of, introduced to sustain or resist motions	2913	480
filed on motion for security for costs	2927	481
evidence of notice, and sale of personal property sold on mortgage perpetuated by	3314	531
to be attached to bill of sale	3315	531
defined	3689	570
may be made within or without the state	3690	570
credibility of when taken out of the state	3691	570

Section. Page.

AFFIDAVIT—CONTINUED.
person may be compelled to make.....3692, 3693 570
notice of taking given..... 3694 570
cross-interrogatories propounded to maker of..... 3695 570
publications required by law proved by..... 3697 571
posting and service of notice proved by..... 3698 571
other facts required to be shown by..... 3699 571
when presumptive evidence of facts stated in..... 3700 571
master of boat making false, punished..... 4085 638

AFFIRMATION—
included in oath 45 8

AFFRAY—
defined and punished..... 4065 635

AGENT—
liable for taxes on property of principal..... 817 137
liable as principal for selling or manufacturing intoxicating liquors 1540 282
of agricultural college and farm to report monthly to treasurer 1618 302
may verify pleadings 2672 452

AGENCY—
actions growing out of, brought where located..... 2585 438
original notice in action growing out of business of, may be served on agent or clerk in..... 2613 443

AGREEMENT—
relating to walls in common, must be in writing..... 2030 370

AGRICULTURAL SOCIETIES, §§ 1103-1116—
meeting of directors of state societies..... 1103 190
officers of, and terms 1104 190
annual appropriation for 1105 190
premium list and rules published 1106 190
annual report of, what to embrace, publication of 1107 190
distribution of report..... 1108 191
premiums by county societies..... 1109 191
list of awards and account of treasurer published..... 1110 191
board of supervisors may aid 1111 191
state aid to county and district societies 1112 191
societies receiving aid to report to board of supervisors... 1113 192
prohibitions applicable to fairs..... 1114 192
permits granted to sell provisions at fairs..... 1115 192
powers conferred on presidents of societies..... 1116 192

AGRICULTURAL COLLEGE AND FARM, §§ 1604-1622.
to be managed and controlled by board of trustees..... 1604 299
trustees of to be elected by the general assembly... . 1605 299
powers of trustees enumerated..... .. 1606 299
majority of constitute board..... ..... 1607 300
compensation of trustees..... . 1608 300
annual meetings of trustees..... 1609 300

Section. Page.

AGRICULTURAL COLLEGE AND FARM—CONTINUED.
trustees of to report to governor..... 1610 300
president of, to manage farm under direction of trustees.. 1611 300
secretary of to keep record of meetings of trustees..... 1612 301
president and secretary of to audit bills..... 1613 301
treasurer of to give bond, powers and duties of..... 1614 301
oath of president and secretary..... 1615 302
trustees may lease lands of..... 1616 302
proceeds of sales from lands of paid to state treasurer.... 1617 302
trustees may appoint agents..... 1618 302
tuition free, number of pupils from each county..... 1619 302
sale of wine or beer and spirituous liquors prohibited..... 1620 303
branches of study in..... 1621 303
no diversion of money of from appropriate fund..... 1622 303

ALIENS, §§ 1908, 1909—
may acquire, hold, convey and devise property in like manner as citizens 1908 353
conveyances heretofore made by, legalized 1909 353
widow of non-resident not entitled to share in real estate of deceased husband sold by him..... 2442 422

ALLEGATIONS—
when unproved in general meaning, not deemed a case of variance 2688 454
not controverted, deemed true..... 2712 456

ALTERATION—
of brand, mark, or stamp punished 4078 637

AMENDMENTS—
court may permit without being verified 2680 453
when made without costs 2686, 2687 454
when allegation unproved, deemed a failure of proof..... 2688 454
made at any time on proper terms..... 2689 454
defects in pleadings to be disregarded..... 2690 454
do not entitle adverse party to continuance as of course.. 2691 454
not to be made by subtraction or interlineation 2692 454
any pleading, bond, etc., in attachment cases may be amended..... 3021 493

ANSWER—
to original petition, when to be filed..... 2635 447
when to subsequent pleadings..... 2636 448
the day court actually opens deemed first day of term.... 2637 448
court may extend time of filing..... 2638 448
what it must contain enumerated 2655 450
when by guardian, etc., must deny allegations of petition. 2656 450
each affirmative defense must be stated in distinct division of 2657 450
defense part of, need not contain prayer..... 2658 450
how counter-claim stated in..... 2659 450
equitable division must be separated into paragraphs..... 2660 451
court may strike out part of or direct new party to be made 2662 451
demurrer may be filed to..... 2664 451

Section. Page.

ANSWER—CONTINUED.
how denial of allegation of time, quantity or place to be stated in 2701 455
divisions of must be consecutively numbered 2705 456
sham and irrelevant may be stricken out 2707 456
inconsistent defenses may be stated in 2710 456
allegations of, not relating to counter-claim deemed controverted 2712 456
matter of abatement stated in 2732 458
matter not stated to be subsequent, deemed to have arisen before commencement of action 2733 458
form of in actions to recover real property 3251, 3252 524
of defendant in action for partition 3282 528
statements of in habeas corpus proceedings 3478–3480 548
demurrer may be filed to 3481 548

APOTHECARY—
failing to label poisons sold punished 4038 629

APPEAL—
from city council confirming appraisers' assessment 469 79
from court for trial of contested county elections to circuit court 716 121
judgment on 717 122
from boards of equalization to circuit court 831 140
assessment of damages on establishing highway 959, 960 165
transcript filed and trial of 961, 962 166
judgment on 963 166
from assessment made by sheriff's jury 1194 218
from assessment of damages caused by locating drains and ditches 1216 222
from assessment of damages of property taken for public use 1254 230
not to delay work when amount assessed is paid or deposited with sheriff 1255 230
acceptance of damages by owner a bar to right to 1256 230
trial of 1257–1259 230
from assessment of damages done by trespassing animals made by township trustees 1455 267
from assessment of appraisers for school house sites 1827 336
from decision of board of school directors 1829 337
affidavit alleging errors, filed with county superintendent 1830, 1831 337
county superintendent to notify parties 1832, 1833 337
to determine appeal 1834 338
from decision of county superintendent 1835 338
on trial of, no money judgment to be rendered 1836 338
from judgment rendered on trial between master and apprentice 2292, 2299 407
from justices' courts 3575 558
when and how taken 3576, 3580 558
circuit court may compel justices to allow 3585 559
correct omissions and mistakes in 3586 559

Section. Page.

APPEAL—CONTINUED.
notice of, when required 3588 559
brings up cause for trial on the merits..... 3590 559
when taken for delay, damages allowed..... 3595 559
new pleadings filed in when taken from default..... 3596 559
to district court—prosecuting witness may when costs taxed to 4691 718
defendant may..... 4697 719
form of bond to be given by..... 4698 719
qualifications of bail..... 4699 720
by whom taken..... 4700 720
trial of..... 4702 720
cannot be dismissed..... 4703 720
district court to carry judgment of justice into effect..... 4704 720
either party may take..... 4705 720
judgment on..... 4706 720

APPEAL TO THE SUPREME COURT, §§ 3163-3215—
from judgments of inferior courts of record..... 3163 513
orders made by..... 3164 513
when made by a judge..... 3165 513
also from such other orders as the court may prescribe.... 3166 513
mistake of clerk not ground of appeal..... 3167 513
cause not to be reversed if error could be corrected below.. 3168 513
not necessary that a motion for new trial should be made.. 3169 513
nor a finding of facts by court below..... 3170 513
party taking is appellant, the other the appellee..... 3171 514
power to issue necessary process given..... 3172 514
within what time taken, limitation on right of..... 3173 514
a part of several co-parties may..... 3174 514
co-parties refusing to join in, can have no advantage from. 3175 514
deemed to have joined..... 3176 514
from part of order or judgment does not affect part not appealed from..... 3177 514
notice of to be served on the adverse party..... 3178 514
when deemed perfected..... 3179 514
notice to be served thirty days before term..... 3180 514
failure to file transcript may be dismissed or affirmed..... 3181 515
appellee may file transcript and have an affirmance..... 3182 515
errors must be assigned and served on adverse party..... 3183 515
what transcript shall contain..... 3184 515
omitted portion certified up..... 3185 515
stay—of proceedings had upon filing bond 3186 516
supreme court or judge may approve bond..... 3187 516
additional obtained by appellee on motion..... 3188 517
order to stay proceedings when new bond given... 3189 517
penalty of bond..... 3190 517
had on part of judgment or order..... 3191 517
execution to be recalled..... 3192 517
property levied on surrendered..... 3193 517
trial—supreme court may reverse, affirm, or modify..... 3194 517
render judgment on stay bond. 3195 517
and award damages..... 3196 517
may issue process to carry judgment into effect.... 3197 518

	Section.	Page.
APPEAL TO THE SUPREME COURT—CONTINUED.		
restitution of property directed on reversal	3198	518
title to, acquired by purchaser not affected	3199	518
court has power to enforce mandates	3200	518
re-hearing—may be granted	3201	518
petition for to be filed, argument prescribed	3202	518
causes to be docketed, and notice of given	3203	518
party to make oral argument if desired	3204	518
none decided until opinion is filed	3205	518
decision certified to court below	3206	518
errors need not be assigned in any stated form	3207	519
all motions to be entered in motion book	3208	519
original papers may be certified up	3209	519
security for costs to be given by appellant	3210	519
death of party does not abate proceedings	3211	519
when right to lost, appeal may be dismissed	3212	519
testimony may be heard in such cases	3213	519
service of notices, how made and returned	3214	519
executions issued by, form and return of	3215	519
in criminal actions—reviewed by	4520	696
defendant or state may	4521	696
must be taken within one year after judgment	4522	696
manner of taking	4523	696
when deemed perfected	4524	696
clerk to make out and transmit transcript	4525	697
one or more defendants jointly tried may	4526	697
taken by state cannot stay judgment	4527	697
defendant may stay proceedings on	4528–4530	697
party taking is known as appellant, the other as appellee	4531	697
how docketed; precedence taken by over other cases	4532	697
attorney may, when license is revoked	223	38
from police court	546	97
no evidence to go except what is necessary to explain exceptions	2741	459
bill of costs sent to with record	2945	483
in cases of garnishment	2993	490
when attached property is discharged	3019, 3020	493
judgment on cannot be stayed	3061	499
none taken after stay of execution	3062	499
person taking not entitled to redeem	3102	504
what constitutes record in arbitrations	3429	543
effect of in actions against boats and rafts	3442	544
does not lie from order punishing a contempt	3499	551
bail to be given on taking, fixed in judgment	4511	695
bail on, how given	4587–4588	704
trial—personal appearance of defendant unnecessary	4533	698
appeal cannot be dismissed	4534	698
no assignment of error necessary	4535	698
defendant entitled to close argument	4536	698
opinion of supreme court to be in writing	4537	698
must examine record	4538	698
on appeal taken by state the punishment cannot be increased	4539	698

Section. Page

APPEAL TO THE SUPREME COURT—CONTINUED.
defendant discharged by supreme court 4540 698
on affirmance, original judgment to be executed..... 4541 698
copy of judgment of supreme court certified to court below..... .....4542–4544 698
effect of imprisonment during, if defendant is again convicted..... 4545 699

APPEARANCE—
to actions, how made 2626 445
execution of bond to release attached property deemed.... 2994 490
possession of boat or raft obtained under bond deemed.... 3448 545
of parties in justices's courts 3524, 3525 554

APPEARANCE DOCKET—
memorandum of filing of pleadings in, equivalent to filing in open court 2643 448

APPELLANT—
in supreme court, who termed..... 3171 514
effect of failure to file transcript by.....3181, 3182 515
to serve appellee with notice of assignment of errors..... 3183 515
may obtain stay of proceedings by giving bond..... 3186 516
may be required to give security for costs 3210 519

APPELLEE—
in supreme court, who deemed 3171 514
may have judgment or order appealed from, affirmed or dismissed 3181–3183 515
may move to have defective stay-bond discharged 3188 517
supreme court may award damages to..... 3196 517
may move to have appeal dismissed, where appellant has no right to prosecute 3212 519
may plead facts which render the taking of the appeal improper 3213 519

APPLES—
standard weight of bushel of..... 2049 373

APPOINTMENT—
to fill vacancy in office, how made 785 130
qualification of appointee..... 786 130
removal of appointee..... 787 130
or suspension of county officers 753 125
state officers 763 126

APPORTIONMENT—
of costs, court to make.....2933, 2934 482

APPRAISERS—
to assess damages caused by change of grade in streets.... 469 79
to assess damages caused by establishing highways..... 940 163
notice to and meeting of 942 164
must be sworn, vacancies filled..... 943 164
when report is not in time..... 944 164

Section. Page.

APPRAISERS—CONTINUED.
to appraise attached property.....2973, 2997 487
compensation of..... 3813 593

APPRAISEMENT—
of property taken for public use..... 1249 229
of sixteenth section before sale..... 1846 340
of lands offered in security of loans from school fund..... 1862 343
of lands sold on execution in favor of state or county..... 1912 354
of property belonging to estates of decedents..... 2373 415
of partnership property when attached..... 2973 487
attached property..... 2997 490
of partnership property levied on for private debt of a partner..... 3053 497
personal property cannot be sold on execution without... 3100 504

APPRENTICE, §§ 2280–2306—
minors may be bound as until they attain majority..... 2280 406
indenture must be in writing..... 2281 406
written consent of parents or guardians endorsed on..... 2282 406
paupers—may be apprenticed without their consent..... 2283 406
indenture signed by master and clerk..... 2284 406
must be in three parts..... 2285 406
powers, duties and liabilities of master..... 2286 406
interest of, to be watched over by person binding out.... 2287 406
ill treatment of, inquired into..... 2288 407
complaint served on master..... 2289 407
answer of master must be under oath..... 2290 407
trial, judgment..... 2291 407
appeal from..... 2292 407
no bar to suit for damages..... 2293 407
master may file complaint against..... 2294 407
answer to by..... 2295 407
issues joined, trial..... 2296 407
judgment..... 2297 407
master may be relieved from indenture.....2298, 2299 407
death or removal of master from state dissolves indenture, 2300 408
when natural guardian intemperate, minor may be apprenticed.....2301, 2302 408
complaint under oath must be filed..... 2303 408
issues joined and tried as in ordinary actions..... 2304 408
to have preference over other business in court..... 2305 408
master must send apprentice to school..... 2306 408
inmates of house of refuge may be apprenticed..... 540 96

APPROPRIATION—
for Iowa state agricultural society..... 1105 190
for district and county societies..... 1112 191
for Iowa state horticultural society..... 1121 193
for teachers' institutes..... 1584 295
for soldiers' orphans' homes..... 1630 304
for the college for the blind.....1675, 1676 311
drawn quarterly on order of trustees..... 1679 311

Section. Page.

APPROPRIATION—CONTINUED.
for institution for the deaf and dumb.....1692, 1693 313
to be drawn quarterly on order of trustees..... 1696 314
to state library..... 1899 351
for officers of penitentiary at Fort Madison..... 4783 735
to be paid monthly..... 4784 735
support of convicts..... 4785 735
to be paid monthly..... 4786 735

ARRAIGNMENT—
of defendant when indicted..... 4327 672
when presence of required..... 4328 672
when in custody, brought before court for..... 4329 673
bail forfeited on failure to appear for..... 4330 673
bench warrant may issue for arrest of defendant..... 4331 673
defendant has a right to have counsel on..... 4332 673
how made..... 4333 673
defendant cannot afterward object that he is not rightly named..... 4334 673
name declared on, to be entered of record..... 4335 673
time given on to plead to indictment..... 4336 673

ARBITRATIONS, §§ 3416–3431—
controversies may be submitted to arbitrators..... 3416 542
agreement of submission must be signed and acknowledged..... 3417 542
agreement may be of particular matters or all demands.. 3418 542
court may submit subject matter of action to arbitrators.. 3419 542
rules governing referees applicable to arbitrators..... 3420 542
submission cannot be revoked except by consent..... 3421 542
arbitrators to hear and determine cause..... 3422 542
award after time fixed for, void..... 3423 543
when no time fixed, must be made in one year..... 3424 543
must be in writing and filed in the designated court, 3425 543
to be docketed as a cause pending in court..... 3426 543
may be rejected or re-committed..... 3427 543
to have the force and effect of a verdict..... 3428 543
what constitutes record on appeal to supreme court..... 3429 542
costs, disposition of..... 3430 543
rights of parties saved in..... 3431 543

ARBITRATORS—
compensation of..... 3834 597
bribery of, punished..... 3944 614
acceptance of bribe by, punished..... 3945 614
attempt to improperly influence..... 3946 614

ARREST OF JUDGMENT—
granted when facts stated in petition do not entitle the plaintiff to any relief..... 2650 449
by reason of non-averment of some material fact.....2842, 2843 471
motion in, not entertained in justice's court..... 3550 556
in criminal actions—may be granted on application of defendant..... 4491 693

Section. Page

ARREST OF JUDGMENT—CONTINUED.
court may on its own motion..... 4492 693
defendant held to answer another offense..... 4493 693
motion for, made at any time before judgment..... 4494 693

ARREST—
judgment debtor may be arrested, when, etc..... 3148 509
discharged from on giving bond..... 3149 509
of defendant on writ of habeas corpus..... 3463 547
power of officer in making..... 3464 547
of plaintiff in habeas corpus proceeding..... 3469 547
of defendant " " " 3470 548
definition of..... 4197 655
who may make..... 4198 655
by what authority made.....4199, 4200 655
when made by private person..... 4201 655
upon oral order of magistrate..... 4202 655
time for making..... 4203 655
how made.....4204, 4209 655
means used for making.....4205–4207 656
penalty for refusing to aid in making..... 4208 656
no unnecessary force to be used in making.....4210, 4211 656
person escaping from, re-taking of..... 4213 656
duty of private person making.....4214–4216 656
officer making without warrant.....4217, 4218 656
bail may have defendant arrested..... 4594 705

ARSON. *See* BURNING—
committed by married woman..... 3887 604

ARTICLES OF INCORPORATION—
to be recorded in recorder's office of county and in office of secretary of state..... 1060 183
must show highest amount of indebtedness..... 1061 183
changes made in, must be recorded..... 1065 184
effect of non-compliance with articles..... 1071 185

ASSAULT—
with intent to commit murder punished..... 3872 602
rape " 3873 602
maim, rob, steal, etc., " 3874 602
inflict great bodily injury..... 3875 603
commit any felony or crime punishable by imprisonment 3876 603
and battery punished..... 3878 603

ASSESSMENT OF TAXES, §§ 796–853—
board of supervisors to levy..... 796 132
exemption from.....797–800 132
enumeration of taxable property..... 801 134
definition of term "credit"..... 802 134
listing of property..... 803 135
who deemed owners of property..... 804 135
in whose name listed..... 805 135

	Section.	Page.
ASSESSMENT OF TAXES—CONTINUED.		
partnership property, where listed and taxed	806	135
foreign insurance companies, taxation of	807	135
railway property not used in operation of roads, how taxed	808	135
road-beds and highways not assessed to owners of adjacent property	809	135
railway property to be assessed by executive council	810	136
property of telegraph and express companies, how listed and taxed	811	136
in whose name listed and assessed	812	136
moneys and credits, how listed	813, 814	136
definition of "merchant," property of, how listed	815	137
" "manufacturer," property of, how listed	816	137
agent, when held personally liable	817	137
national banks, how taxed	818–820	137
board of supervisors to classify property	821	138
ASSESSOR.		
to list and assess property	822, 823	138
administer oath to person assessed	824	139
to deliver assessment books to township clerk and county auditor	825	139
when owner unknown, property how assessed	826	139
penalty for failure of duty	827	139
revenue laws furnished to	828	140
TOWNSHIP BOARD OF EQUALIZATION.		
who constitutes	829	140
meeting and duties of	830	140
appeals from	831	140
COUNTY BOARD OF EQUALIZATION.		
board of supervisors to constitute, duties of	832	140
county auditor to transmit to auditor of state abstract of assessments	833	140
STATE BOARD OF EQUALIZATION.		
executive council to constitute, and duties of	834	141
to determine the rate of state tax	835	141
when duties must be completed	836	141
county auditor to transcribe assessments	837	141
uniform taxes to be consolidated	838	142
county auditor to complete tax list	839	142
levy of taxes to pay bonded indebtedness	840	142
county auditor may correct error, in assessment or tax book	841	142
to designate in tax book each parcel of land sold for taxes	842	142
tax book sufficient authority to collect taxes	843	142
county auditor to make statement to auditor of state	844	143

Section. Page.

ASSESSMENT OF TAXES—CONTINUED.

TREASURER.

to enter on tax book any taxes unpaid for previous years.. 845 143
to collect taxes, list to be his justification..... 846 143
to notify person offering to pay that land has been sold... 847 143
when requested to certify amount of taxes due; compensation 848 143
effect of certificate..... 849 143
liable on bond for error in..... 850 144
may assess property omitted..... 851 144
owner to have property omitted assessed, no irregularity to affect sales..... 852 144
lien of taxes between vendor and vendee..... 853 144

ASSESSMENTS—
by cities, how enforced.....478, 479, 481 82
on railway property.....1317, 1318 241
manner of assessing.....1319, 1321, 1322 242

ASSESSOR. *See* TOWNSHIP ASSESSOR—

ASSETS—
property belonging to estates, exempt from execution not. 2371 415
avails of life insurance to pay debts, not..... 2372 415
courts may compel discovery of, belonging to estates...2379–2381 416

ASSIGNMENTS FOR BENEFIT OF CREDITORS, §§ 2115–2128—
not valid unless made for benefit of all..... 2115 383
assent of creditors presumed..... 2116 383
inventory to be annexed by debtor..... 2117 383
assignee to file inventory and take oath..... 2118 383
to give notice of assignment..... 2119 384
to file under oath with clerk list of creditors..... 2120 384
objections may be made to claim of creditor..... 2121 384
dividends ordered and paid by assignee..... 2122 384
assignee subject to order and supervision of court or judge..... 2123 384
examination of debtor..... 2124 384
additional inventory and security given by assignee..... 2125 385
abatement of interest on claims not due..... 2126 385
assignee to sell property and collect debts..... 2127 385
court may appoint another assignee..... 2128 385

ASSIGNMENT—
of written instruments without words of negotiability..... 2084 379
of instruments payable in labor or property..... 2085 379
of open account..... 2087 379
of thing in action to be without prejudice to counter-claim or defense before notice of..... 2546 434
fraudulent, of judgment set aside..... 2868 474
junior lien-holder entitled to, of all interest of holder of mortgage by, etc..... 3323 531

Section. Page

ASSIGNMENT OF ERROR—
in criminal actions—not necessary on appeal..... 4535 698
in supreme court—to be served on adverse party..... 3183 515
need follow no stated form..... 3207 519

ASSIGNOR—
liable to action of assignee without notice..... 2088 379

ASSISTANT PHYSICIANS—
of hospital for the insane, qualifications of..... 1394 254

ATTACHMENT—
landlord may have for rent accrued..... 2018 369
may issue in actions for divorce..... 2227 400
cannot control place of bringing action..... 2580 438
earnings of debtor for personal service exempt from..... 3074 501
not allowed in justice's courts where sum is less than five dollars..... 3606 560
notice, how served when defendant not found.....3609, 3610 560
may be issued in bastardy cases..... 4718 723

ATTACHMENT AND GARNISHMENT, §§ 2949-3024—
property of defendant may be attached..... 2949 484
proceedings deemed auxiliary to action..... 2950 484
petition asking must be sworn to, and state..... 2951 484
may be issued and served on Sunday..... 2952 485
founded on contract, must be for over five dollars..... 2953 485
amount of property to be attached..... 2954 485
when not founded on contract must be allowed by a judge. 2955 485
for debts not due..... 2956 485
defendant not to file pleading, until debt due..... 2957 485
perishable property taken on, sold..... 2958 485
bond given before issuance of..... 2959 485
additional may be required..... 2960 486
damages recoverable on..... 2961 486
clerk to issue..... 2962 486
several, may issue at same time..... 2963 486
amount and kind of property attached..... 2964 486
several executed in order received by sheriff..... 2965 486
sheriff may pursue property in, another county..... 2966 486
mode of attaching property..... 2967 486
defendant required to give information touching his property..... 2968 487
property bound from service of..... 2969 487
receiver appointed to collect, etc., property..... 2970 487
money attached paid to clerk..... 2971 487
property subject to order of court..... 2972 487
manner of attaching partnership property..... 2973 487
lien on enforced by equitable action..... 2974 487
garnishment—attachment by, how effected..... 2975 488
sheriff or constable may be garnished..... 2976 488
so may a fund in court.....2976, 2977 488

Section. Page

ATTACHMENT AND GARNISHMENT—CONTINUED—
garnishee—effect of death of..... 2978 488
required to appear..... 2979 488
sheriff may take answer of..... 2980 488
effect of failure to answer..... 2981 489
examination of in court..... 2982 489
entitled to same compensation as witnesses..... 2983 489
presumption arising from failure to attend..... 2984 489
may show cause against issuing execution..... 2985 489
may relieve himself by paying sheriff..... 2986 489
plaintiff may controvert answers of..... 2987 489
judgment rendered against..... 2988 489
when not due execution suspended..... 2989 489
not liable on negotiable paper, unless, etc..... 2990 490
judgment conclusive between garnishee and defendant..... 2991 490
original case and judgment, how docketed..... 2992 490
appeal lies in..... 2993 490
property attached—may be released by bond..... 2994 490
bond and judgment thereon..... 2995 490
any person having interest in may give bond.... 2996 490
to be appraised..... 2997 490
defense to action on bond..... 2998 491
sale of perishable..... 2999 491
specific—attachment on, how enforced..... 3000 491
by vendor of property fraudulently purchased.... 3001 491
to be granted by court or judge..... 3002 491
property to be described in..... 3003 491
court to determine terms and conditions of bond to release property..... 3004 492
state entitled to sue out..... 3005 492
how obtainable by..... 3006 492
no bond required of..... 3007 492
property taken on, how released..... 3008 492
sheriff indemnified for levying..... 3009 492
sheriff's return on, what to set forth..... 3010 492
disposition of property and proceeds of..... 3011 493
court may make and enforce orders relating to..... 3012 493
expenses of keeping property taxed as costs..... 3013 493
surplus of property or proceeds returned to defendant.... 3014 493
judgment for defendant discharges property..... 3015 493
intervention by any person claiming property..... 3016 493
defendant's only remedy is by action on bond..... 3017 493
may be discharged for insufficiency in statement of cause. 3018 493
appeal from, if perfected in two days preserves lien..... 3019 493
so will appeal from judgment by plaintiff..... 3020 493
provisions liberally construed..... 3021 493
levy of on real estate entered in encumbrance book..... 3022 494
sheriff as used applies to constables..... 3023 494
justice regarded as clerk..... 3024 494

ATTORNEYS AND COUNSELORS, §§ 208–226—
who may be admitted as: oath of..... 208 35

Section. Page.

ATTORNEYS AND COUNSELORS—CONTINUED.
graduates of law department of state university..... 209 36
of another state may practice in this state..... 210 36
duties of enumerated 211 36
penalty when guilty of deceit or collusion..... 212 36
powers of enumerated..... 213 36
may, on motion, be compelled to prove his authority..... 214 36
lien of and how claimed..... 215 37
release of: by whom and when..... 216 37
court may suspend or revoke license of..... 217 37
causes enumerated 218 37
proceedings, how commenced..... 219 37
action of court, order requiring accused to appear..... 220 38
trial 221 38
judgment 222 38
appeal 223 38
penalty for refusing to pay money received as attorney.224–226 38

ATTORNEY—
fee of in school fund cases taxed as part of the costs..... 1873 347
may verify pleadings 2672 452
judgment obtained against on motion..... 2906 479
not to be received as security in proceeding in court 2931 481
fees of allowed in action on attachment bond..... 2961 486
not to give as testimony confidential communications..... 3643 565
appointed to defend criminal, fee of.....3829–3831 596
stirring up quarrels by, punished..... 3964 617

ATTORNEY IN FACT—
instruments affecting real estate, how executed by..... 1962 361
certificate of, acknowledgment to be endorsed on instrument..... 1963 361
revocation of power of..... 1969 562

ATTORNEY-GENERAL, §§ 150–153—
duties of, enumerated.....150, 151 26
to pay money received in his official capacity to state treasurer..... 152 27
to keep record of official opinions and proceedings..... 153 27
stationery, books, fuel, etc., furnished.....120–122 21
to receive copy of supreme court reports..... 159 28
bond not to be less than ten thousand dollars..... 678 117
to prosecute state treasurer for loaning or using public money..... 912 158
to approve certificate of insurance company.....1122, 1123 193
to commence proceedings against, insurance companies.... 1149 204
to commence proceedings against defaulting life insurance companies.....1171, 1172 212
to bid off property sold by state on execution..... 1911 354
to demand security for debt due state..... 3005 492
sue out attachment in favor of state..... 3006 492
salary of..... 3770 582
to be paid monthly..... 3780 583

	Section.	Page.
ATTORNMENT—		
of tenant to stranger, void	2013	368
AUCTIONEERS—		
cities may license and regulate	462	78
AUCTION—		
cities may regulate or prohibit in streets	463	78
AUDITOR OF STATE, §§ 66–74—		
general accountant of the state, duty of as to accounts	66	11
to divide warrants into sums of not less than ten dollars	67	12
may require persons receiving public money, accounts of which are kept in his office, to render statements of,	68	12
may examine persons presenting claims, on oath	69	12
to state an account against officers who fail to account	70–72	13
to require officers seeking to obtain credit to take an oath,	73	13
may issue requisition to officers to render an account	74	13
to charge secretary of state with proceeds of statutes sold,	41	6
to charge county treasurer with proceeds of statutes paid him by county auditor	42	7
to issue warrant to state printer, and to order suit commenced for any deficiency in work	99	18
to issue warrant for work done by state binder, and order suit for deficiency in work	110	19
stationery, books, fuel, etc., furnished	120–122	21
not to draw warrant until oath filed in his office	128	23
when to draw warrant for supreme court reports	157	27
to register in his office unpaid county bonds	293	49
to be elected in each even-numbered year	581	104
bond of, not to be less than ten thousand dollars	678	116
secretary of state to be filed in office of	682	117
may be clerk of court for trial of contested state elections	720, 721	122
duty of	723	122
may issue subpœnas	724	122
may appoint deputy	766	127
power and duty of deputy	767	127
cannot appoint secretary or treasurer of state as deputy	768	127
to cause revenue laws to be published for assessors	828	140
to be clerk of state board of equalization	834	141
interest on warrants not allowed by, unless receipted by holder	910	158
may direct county treasurer how to pay state revenue	915	159
transmit statement of treasurer's account to county auditor	916	159
to submit certificate of insurance company to attorney-general	1122	193
to approve certificate	1123	194
to examine investments and authorize commencement of business	1131	196
may call for information from insurance companies	1142	202
to examine into the condition of insurance companies	1149	204
to require impaired capital of to be made good	1150, 1151	205

	Section.	Page.
AUDITOR OF STATE—CONTINUED.		
may revoke certificate of insurance companies	1152	206
to furnish printed forms to insurance companies	1157	207
to arrange in tabular form and publish statements of	1158	207
to issue certificate to life insurance companies	1163, 1170	208
to agents of	1166	209
to propose additional inquiries to	1168	211
to ascertain the cash value of each policy	1169	211
to notify attorney-general of failure of company to make deposit and file statement	1171	212
to examine into condition of and report to attorney-general	1172	213
may permit companies to collect interest on securities deposited	1175	214
to report condition of to general assembly	1176	214
to issue warrant for private property taken for use of the state	1272	232
to draw warrant for expenses of hospital for the insane	1390	253
to charge counties with amount due from, for care of insane	1428	262
to cause banks organized under laws of this state to be examined	1571	293
if found insolvent, to direct legal proceedings against	1572	293
to issue warrant for educational journal	1581	295
to audit claims of regents of state university	1602	299
to audit losses to school fund	1842	339
to issue bonds of state payable to fund therefor	1843	339
to keep separate books for school fund	1844	339
to charge and credit county when lands are sold	1881	348
to charge counties with eight per cent. on school fund	1882	348
may transfer funds from one county to another	1883	348
salary of	3757	579
to render verified account of fees monthly to state treasurer	3778	583
salary to be paid monthly	3780	583
AUTHENTICATION—		
of judicial records of this state and of the federal courts	3712	572
of another state	3713	572
of a justice of the peace of	3714	573
of foreign countries	3715	573
AWARD—		
of arbitrators after time fixed for, void	3423	543
when time not fixed, to be filed within one year	3424	543
must be in writing and filed in the designated court	3425	543
to be docketed as a cause pending in court	3426	543
may be rejected or re-committed	3427	543
judgment entered on	3428	543
BAGGAGE—		
carriers and agents liable for damages to	2183	394
BAIL—		
mitigated or increased in habeas corpus proceedings	5486	549
person guilty of treason not admitted to	3845	599

Section Page.

BAIL—CONTINUED.
all offenses are bailable except..... 4107 642
for misdemeanor on preliminary information.....4189, 4192 653
of person arrested without warrant, and by whom may be taken.....4222–4225 658
how taken on preliminary examination.....4243–4246 661
court or judge to endorse amount of, on indictment..... 4319 671
mode of giving, on indictment..... 4325 672
to be exonerated on acquittal of defendant..... 4450 688
defendant on, may be committed into custody..... 4451 688
forfeited when defendant fails to appear for judgment.... 4498 694
cannot be taken on appeal when conviction is for murder in first degree..... 4511 695
before indictment who may admit defendant to..... 4573 701
how given, form of undertaking..... 4574 701
qualifications of..... 4575 702
justification of.....4576–4579 702
upon given, defendant to be discharged..... 4580 702
disallowance of, to be detained in custody..... 4581 702
after indictment for misdemeanor..... 4582 703
felony 4583 703
by whom taken..... 4584 703
form of undertaking..... 4586 703
examination and justification of..... 4586 703
upon appeal to supreme court..... 4587 704
qualification and justification of..... 4588 704
defendant may deposit money as.....4589, 4590 704
may be given after deposit of money..... 4591 705
application of money when judgment is against defendant, 4592 705
surrender of defendant by..... 4593 705
arrest of by..... 4594 705
defendant surrendering himself money returned to..... 4595 705
forfeiture of..... 4596 706
when set aside..... 4598 706
suit brought on..... 4599 706
effect of surrender of defendant before judgment on..... 4600 706
defendant may be recommitted after giving..... 4601 707
order for to recite facts..... 4602 707
arrest pursuant to.....4603 707
order defendant committed according to 4604 707
undertakings of, when liens 4606–4068 707
to be exonerated on dismissal of prosecution..... 4616 709

BALLOTS—
to designate the office voted for..... 616 108
by whom deposited in ballot box..... 617 108
rejection of by canvassers.....623–625 109
effect of excess of 627 190
disposition of 630 110
for president and vice-president, what to contain..... 660 114

BALLOT-BOXES—
to be provided by board of supervisors..... 614 108

Section. Page.

BANKS—
organized under corporation laws of this state to make quarterly statements to auditor of state 1570 292
examination of by auditor 1571 293
auditor may direct attorney-general to have receiver appointed 1572 293
failure of officer of to report, works a forfeiture 1573 293
of, criminally liable 1574 293
four statements only required each year 1575 293
amount of capital required 1576 293

BANK BILLS—
depreciated, assessed at cash value for purposes of taxation 814 136
statute of limitations does not apply to 2538 433
circulation of foreign punished 4047 631

BAR—
what deemed to criminal action 4164 650
setting aside indictment is not to further prosecution 4344 675
former conviction or acquittal in criminal actions creates.. 4364, 4365 677
judgment on demurrer in criminal actions is not 4366 677
dismissal of criminal action, when 4619 709

BARLEY—
standard weight of bushel of 2049 373

BARREL—
standard quantity contained in 2045 373

BASTARDY. *See* ILLEGITIMATE CHILDREN—
proceedings in cases of 4715–4722 723

BEANS—
standard weight of bushel of 2049 373

BENCH WARRANT—
proper process on indictment 4318 671
court or judge to order 4319 671
clerk to issue 4320 671
form of in case of felony 4321 671
misdemeanor 4322 672
may be served in any county of the state 4323 672
form of when defendant fails to appear for judgment 4500 694
service of 4501 694

BIBLE—
not to be excluded from schools 1764 325

BIGAMY—
defined and punished 4009–4011 624
jurisdiction of 4163 649

BILLS OF EXCEPTION. *See* EXCEPTIONS—

BILL OF PARTICULARS—
limits proof, and may be made more specific, etc 2713 456

	Section.	Page.
BILLS OF LADING—		
falsely making of, punished	4084	638
BIRDS—		
killing of, punished	4063	634
BLACKBERRIES—		
standard weight of bushel of	2049	373
BLIND. *See* COLLEGE FOR—		
BLUE GRASS SEED—		
standard weight of bushel of	2049	373
BOOKS—		
to be kept by clerk of district and circuit court	197	33
county auditor	308	54
of history, science, or art admissible as evidence	3653	566
production of may be compelled by district or circuit court	3685–3688	570
of account may be admitted as evidence	3658	566
BOND. *See* QUALIFICATION FOR OFFICE—		
when given as security	246	41
defective, not to vitiate if corrected in a reasonable time	248	41
surety on must reside in state	249	41
officer approving may require surety to justify	250	41
of township collector	401	65
of municipal corporations for stock in railways or banks, void	553, 554	98
former recovery on no bar to same defense in another action	555	98
official—form of, what officers to give	674	116
to whom given	677	116
penalty of	678	116
number of sureties and qualifications of	679	117
by whom approved	680, 681	117
where filed and recorded	682, 683	117
deemed to cover duties required subsequent to giving	688	118
not void for want of compliance with statute	689	118
not to be approved until public funds are accounted for	690	118
additional may be required	772–774	128
effect of failure to give	778	128
independent school districts may issue bonds	1821	335
question of issuing to be submitted to the electors	1822	335
intended to secure the public, action on, how brought	2652	436
facts constituting breaches relied on to be stated in pleading	2728	458
to be given in attachment cases	2959	485
additional, may be required in	2960	486
action on, damages recoverable	2961	486
attached property released on	2994	490
judgment on rendered against sureties	2995	490
defense in action on	2998	490
in cases of specific attachment	3004	492

Section. Page.

BOND—CONTINUED.
to stay proceedings on appeal to supreme court.....3186–3188 516
to obtain writ of certiorari..... 3218 520
in action to recover specific personal property..... 3229 521
construction given to official.....3368, 3369 536

BOARD—
approving official bond may require additional security.... 773 128

BOARD OF AUDIT—
of agricultural college and farm, powers and duties of..... 1613 301

BOARD OF EQUALIZATION. *See* TOWNSHIP BOARD OF—
COUNTY BOARD OF—
EXECUTIVE COUNCIL.

BOARD OF REGISTRY—
who constitute..... 595 105
meeting and duties of.....597, 598 105
how composed in cities and towns, and duties of..... 599 106

BOARD OF HEALTH. *See* TOWNSHIP TRUSTEES—
regulations of, as to nuisances..... 415 68
notice of, to be published 416 69
may order owner to remove nuisance at his own expense.. 417 69
power of to carry regulations into effect 418 69
penalty for violating regulations of..... 419 69
expenses of, borne by township..... 420 69
city council may establish..... 525 92

BOARD OF SUPERVISORS, §§ 294–319. *See* COUNTY—
number and term of office of..... 294 50
when elected..... 295 50
meetings of..... 296 50
quorum 297 50
absence from county for six months deemed a resignation. 298 50
number of, how increased or diminished..... 299 50
organization of, chairman selected..... 300 50
special meetings of, how called..... 301 51
penalty for neglect or refusal to perform duties..... 302 51
powers of fully enumerated..... 303 51
proceedings of, published in a newspaper and posted up... 304 53
when majority of whole board must concur..... 305 53
designate newspaper in which certain county notices to be published 306 53
select newspapers in which proceedings to be published... 307 53
books to be kept by 308 54
to submit certain questions to vote of people..... 309 54
mode of..... 310 54
when the question is to borrow money, it must be accompanied with a proposition to levy a tax..... 311 55
rate of tax..... 312 55
same to be continued from year to year. 313 55
proposition and result to be entered of record, when it takes effect 314 55

Section. Page.

BOARD OF SUPERVISORS—CONTINUED.
same may be rescinded how, contracts and taxes not affected 315 55
questions must be submitted when petitioned by one fourth of voters 316 55
record of, presumptive evidence of regularity 317 55
when tax is in excess of amount required 318 55
money thus raised constitutes a special fund 319 55
to provide place of holding court when there is no court-house 173 30
county seat—may order vote on relocation of 285 47
removal of, when 286 47
bonds—to levy tax to pay those issued by county 291 49
to furnish county surveyor with a record book 373 63
townships—to divide county into, and establish boundaries thereof 379–381 63
may divide 382–384 63
designate place for holding first election in 385 64
may order election of township collectors 400 65
to approve bond of 401 65
to levy taxes to pay expenses of board of health 420 69
to assess expense of platting lands, collection of. 568 101
may divide townships into election precincts 603 106
precincts numbered, recorded, and published by 604 107
to provide ballot boxes 614 108
to fix compensation for deputy county officers 771 127
may require officers to give additional security 773 128
resignation of members made to county auditor 782 129
taxes—to levy at September meeting 796 132
may exempt property from taxation 799, 800 132
to classify property for purposes of taxation 821 138
may direct treasurer to refund illegal taxes 870 147
not to allow interest on warrants, unless 910 158
to settle with county treasurer 913, 917 158
may establish, vacate, or alter highways 920, 921 161
manner of proceeding 946, 947 164
order of entered of record 948 164
when highway is in two or more counties 955, 956 165
power in relation to consent highways 957, 958 165
proceedings after determination of appeal 962 166
may order re-survey of. 964 166
proceedings when same is made 965, 966 166
bridges—may grant license for erection of toll 1003 174
when extremities lie in different counties 1006 175
for what period granted 1007 175
may be exclusive 1008 175
may revoke 1009 175
ferries—may license and prescribe rates of ferriage 1011, 1012 175
terms and conditions 1013, 1014 175
when stream is in different counties 1015 176
only one shore in state 1016 176
must require bond, conditions of 1017 176
license entered of record 1019 176

Section. Page.

BOARD OF SUPERVISORS—CONTINUED.
to cause to be entered of record, statement of railroad property 1321 242
power as to railway bridges over certain streams 1031 178
plan of, to be approved by 1032 178
with consent of, may be constructed to pass persons and teams 1033 178
to correct list of persons subject to military duty 1042 179
drains—may locate and have constructed 1207 219
to view premises and cause survey made 1209 220
to divide work to be done into sections 1211 221
to make apportionment of expenses, and levy same on land benefited 1214 221
pauper—may order removal of to county of settlement 1357 248
order binding unless notice of contest given 1359 249
may limit township trustees in relief furnished to 1363 249
order relief furnished by, paid for out of county treasury 1366 250
make annual allowance to 1367 250
grant relief to when trustees have refused 1368 250
let support of by contract to lowest bidder 1369 250
to appoint person to examine and report upon condition of. 1370 250
may establish poor-house when people approve 1372 250
to make contracts and prescribe rules in relation to 1373 250
appoint steward 1374 251
poor-house—may bind out children in 1378 251
discharge persons from 1379 251
to cause one of their body to visit monthly 1380 251
may levy tax for support of poor 1381 251
to let poor-house and farm and support of the poor 1382 251
intoxicating liquors—may grant permit to sell 1530 280
insane—to levy a tax for support of 1428 262
may relieve relatives from support of 1433 263
stock—may submit to people the question whether stock shall be restrained 1457 267
whether restrained in night time submitted ..1461, 1462 260
to provide book for each township to record marks and brands 1479 271
coal mines—to appoint inspector of 1567 291
soldiers' orphans—to revise list made by assessor of children of 1636 305
control county orphans' fund 1638 305
levy taxes for support of 1639 305
appoint some person to take care of 1640 305
high schools—to appoint temporary trustees of county high school 1699 315
to levy tax for county high school 1703 315
to fill vacancy in office of trustees 1711 317
school tax—to levy for school purposes 1777–1780 326
school land—to authorize sale of sixteenth section 1845 340
terms and conditions of sales by, of school lands 1846 340
when lands fail to bring minimum price 1849 341

Section. Page

BOARD OF SUPERVISORS—CONTINUED.
may require cash or collateral security on sale..... 1853 342
may have school lands surveyed..... 1859 343
school fund—to manage and control..... 1860 343
to approve or disapprove loans made by county auditor.... 1866 344
may remove prior incumbrance..... 1867 344
may extend time for payments to..... 1879 347
have sole con rol of loans and mortgages made from..... 1881 348
to sell and manage property purchased by county..... 1917 355
manner of selling and conveying by..... 1918 355
may cause records to be transcribed and indexed.....1971, 1972 363
to fix compensation for..... 1973 363
may appoint sealer of weights and measures..... 2057 374
to appoint inspector of shingles and lumber..... 2069 376
unliquidated demands against county must be presented to before action can be brought..... 2610 443
to furnish justices with docket..... 3635 563
compensation of members of..... 3791 587
to furnish books, fuel, lights, etc., to county..... 3844 598
to direct disposal of unclaimed stolen property..... 4658 714

BOARD OF TRUSTEES—
of agricultural college and farm—election of..... 1605 299
powers of enumerated..... 1606 299
majority of constitutes quorum..... 1607 300
compensation of..... 1608 300
meetings of..... 1609 300
to report to governor..... 1610 300
may lease lands of college farm..... 1616 302
appoint agents..... 1618 302
of soldiers' orphans' homes—election of..... 1623 303
powers and duties of enumerated..... 1624 303
member of general assembly ineligible..... 1625 304
oath and compensation of.....1626, 1627 304
to require superintendents of to give bond..... 1628 304
have powers of a corporation and must elect president, etc. 1629 304
to report to general assembly..... 1633 304
may discharge children who are able to provide for themselves..... 1634 304

BOATS AND RAFTS, §§ 3432–3448—
actions against owners of boats..... 3432 543
warrant may issue for seizure of boat..... 3433 544
may be issued on Sunday, when..... 3434 544
original notice and warrant, how served..... 3435 544
by whom served..... 3436 544
any one interested in may appear for..... 3437 544
may be discharged on bond given..... 3438 544
execution, how to issue..... 3439 544
method of sale.....3440, 3441 544
effect of appeal..... 3442 544
rights of plaintiff saved..... 3443 545
petition may allege contract made with..... 3444 545

	Section.	Page.
BOATS AND RAFTS—CONTINUED.		
rafts—liable for debts contracted for	3445	545
debts on made liens	3446	545
action may be brought against, and same proceedings govern as are applicable to owners of boats	3447	545
possession of boat or raft obtained by bond deemed appearance to action	3448	545
sinking or destroying of, with intent to defraud, punished	4082	638
equipping, with intent to sink or destroy, punished	4083	638
jurisdiction of crimes committed on	4161	649
BOUNDARIES—		
of state	1	1
of townships established by board of supervisors	379	63
of wards fixed by city council	520	90
BOUNTY—		
paid by county for certain wild animals	1487	272
proceedings to obtain	1488	272
BRAN—		
standard weight of bushel of	2049	373
BRIBERY—		
by executive and judicial officers, defined and punished	3939	613
acceptance of bribes by, punished	3940, 3941	613
corrupt solicitation of places of trust deemed	3942	614
acceptance of rewards for use of influence, punished	3943	614
of jurors, arbitrators and referees, etc., punished	3944	614
acceptance of bribes by, punished,	3945	614
attempt to bribe jurors, punished	3946	614
jurors accepting, punished	3947	614
sheriff, constable, etc., receiving bribes, punished	3948	614
of an elector, punished	3993	622
of judges and clerks of election	4001	623
BRIDGES—		
constructed and kept in repair by county	527	92
city council may aid in construction of, when	527	92
erected and maintained by the public are highways, width of	1001	174
penalty for fast riding or driving over	1002	174
toll—board of supervisors may grant licenses for erection of	1003	174
person or corporation erecting, may condemn private property	1004	174
how assessed	1005	175
when extremities of, lie in different counties	1006	175
for what time granted, rate of toll fixed	1007	175
license made exclusive	1008	175
revocation of	1009	175
regulation as to toll in night time, kept open during	1010	175
license entered on records of board of supervisors	1019	176
rates of toll posted on	1020	176
penalty for failure	1021	176
notice of application for license to be given	1022	176

Section. Page.

BRIDGES—CONTINUED.
penalty for taking illegal toll..... 1023 177
forfeiture of license..... 1024 177
penalty for evading or refusing to pay toll..... 1025 177
proprietor may establish rules and fix penalty..... 1026 177
franchise may be sold on execution as personalty..... 1027 177
what passes by the sale..... 1028 177
mill-owners may cross customers free of charge..... 1030 178

BROOM CORN SEED—
standard weight of bushel of..... 2049 373

BUCKWHEAT—
standard weight of bushel of..... 2049 373

BUILDING ASSOCIATIONS, §§ 1184–1187—
how incorporated..... 1184 215
powers enumerated..... 1185 215
acts of heretofore organized legalized..... 1186 216
earnings how disposed of..... 1187 216

BURDEN OF PROOF—
on county ordering removal of pauper..... 1360 249

BURIAL OF THE DEAD—
cities may regulate..... 458 77

BURGLARY—
defined and punished.....3891–3894 605

BULL—
found at large may be taken up and sold..... 1447 266

BURNING—
of buildings, boats, rafts, vessels, etc., punished.....3880–3886 603
to injure insurers..... 3888 604
prairie or timber land.....3889, 3890 604

BY-LAWS—
corporations may adopt..... 1059 183
kept posted up..... 1076 185

CALENDAR—
actions entered in, how distinguished..... 2747 460

CANADA THISTLES—
allowing to blossom and mature, punished..... 4062 634

CARNAL KNOWLEDGE—
of female by means of producing stupor, punished..... 3863 601

CASTOR BEANS—
standard weight of bushel of..... 2049 373

CATTLE GUARDS—
to be made by railway corporations..... 1268 232
" " " " " 1288 236

Section. Page.

CEMETERIES—
township trustees have charge of, when..... 393 65
cities may purchase or condemn ground for..... 470 79

CENSUS—
when, by whom taken, and what embraced therein.....113, 114 21
secretary of state to preserve abstracts of..... 116 21

CERTIFICATE OF ELECTION—
form of for county officers..... 641 111
state officers..... 655 113
representative in congress..... 658 114
of electors of president and vice-president..... 665 115

CERTIFICATE—
of insurance company—to be acknowledged, approved and recorded.....1122, 1123 193
of life insurance company—to be recorded..... 1170 212
highway—of work done on, receivable for taxes..... 854 144
partnership—of formation of limited, must be recorded..... 2152 390
of warehousemen—evidence of title to holder of property... 2171 391
of purchase—sheriff to give when the right to redeem exists. 3101 504
redemptioner entitled to assignment of..... 3120 506
at tax sale holder of may maintain action for waste or trespass..... 3343 533
damages recovered by, to whom paid..... 3344 534
of public officer—effect of as to ineffectual search for paper. 3708 572
of receiver of land office—is proof of title..... 3709 572
of register—presumptive evidence of title..... 3710 572
signature of officer to, deemed genuine..... 3711 572

CERTIORARI, §§ 3216–3224—
when granted..... 3216 520
by whom granted..... 3217 520
when stay of proceedings is sought..... 3218 520
petition for must state facts and be verified..... 3219 520
service and return of writ of..... 3220 520
court may compel obedience to..... 3221 520
proceedings below affirmed or annulled..... 3222 520
to be prosecuted by ordinary proceedings..... 3223 520
limitation on time for granting writ of..... 3224 520
proceedings for contempt reversed by..... 3500 551

CHALLENGE—
of juror, who has served as such in court of record within one year..... 239 40
of person offering to vote and effect of.....619, 620 108
definition of, when made to trial jurors..... 2762 461
parties not allowed to sever in..... 2763 461
when to the panel, causes of..... 2764 461
must be in writing..... 2765 461
how tried..... 2766 462
proceedings when sustained..... 2767 462
to juror is either peremptory or for cause..... 2768 462

Section. Page.

CHALLENGE—CONTINUED.
when to be made..... 2769 462
no reason given for peremptory..... 2770 462
number of allowed..... 2771 462
causes of enumerated..... 2772 462
trial of.....2773, 2774 462
before justice of the peace—number of peremptory allowed.. 3548 556
in criminal actions—may be to panel or any juror..... 4398 681
defendants cannot sever in..... 4399 681
causes of when made to panel..... 4400 681
when taken..... 4401 681
either party may..... 4402 681
effect of sustaining..... 4403 681
to juror is either peremptory or for cause..... 4404 681
for cause may be made by either party..... 4405 681
exemption from service not a cause of..... 4406 682
mode of trial of.....4407–4409 682
the state must first exercise the right of..... 4410 682
peremptory no cause given for.....4411, 4412 682
number of, allowed..... 4413 683
order of..... 4414 683
how taken..... 4415 683
vacancy filled after such is allowed..... 4416 683
bias by juror against one party, no cause of by the other.. 4418 683

CHAIRMAN OF BOARD OF SUPERVISORS—
to bring suit against officer for acting without having bond recorded..... 684 118
to preside at trials of contested county elections..... 695 119
fix day for trial..... 699 120

CHANGING PLACE OF TRIAL, §§ 2590–2598—
causes for, enumerated..... 2590 439
application for, made to court or judge..... 2591 440
to what county sent..... 2592 440
notice to be given of application in vacation..... 2593 440
when deemed perfected consequences of failure..... 2594 440
transcript filed without payment of docket fee..... 2595 441
costs of change to be paid by applicant..... 2596 441
of trial to be paid by county whence it came....2597, 2598 441
in justices' court—causes for.....3533, 3534 554

CHANGE OF VENUE IN CRIMINAL ACTIONS—
pending in district court defendant may petition for..... 4368 678
statements to be contained in petition..... 4369 678
to be verified by three persons..... 4370 678
facts need not be stated..... 4371 678
court may receive additional testimony..... 4372 678
petition and affidavits to be filed with clerk..... 4373 678
court to exercise discretion as to granting..... 4374 678
proceedings when sustained by.....4375–4379 678
to which sent to take cognizance of..... 4380 679

Section. Page.

CHANGE OF VENUE IN CRIMINAL ACTIONS—CONTINUED.
county from which taken to pay expenses of.....4381, 4382 679
when judge may order transfer of.....4383, 4384 679
effect of.....4385, 4386 679
no appeal taken from..... 4387 680
in justices' court—allowed on preliminary examinations..... 4228 659
in trials before causes of..... 4670 716
manner of obtaining proceedings when granted..... 4671 716

CHANGING NAME—
of railway corporations, how done.....1273, 1274 232

CHANGING NAMES, §§ 3502–3506—
district or circuit court may change names of persons..... 3502 551
verified petition to be filed, statements of..... 3503 551
order of court..... 3504 551
publication made in newspapers..... 3505 551
proof of, to be filed with clerk..... 3506 551

CHANGING WATER-COURSE. *See* DRAINS AND DITCHES—

CHERRIES—
standard weight of bushel of..... 2049 373

CHILDREN. *See* ADOPTION OF—
of poor person, compelled to support 1330 245
proceedings 1333–1339 245
of drunken parents, may be apprenticed 2301, 2302 408
complaint must be verified 2303 408
issues, how joined and tried 2304 408

CHURCH ORGANIZATIONS—
may lease property granted to them by the territory or state of Iowa..... 1921 355

CIRCUIT COURT. *See* DISTRICT AND—
jurisdiction of..... 162 28
has original and exclusive jurisdiction in all matters connected with settlement of estates of decedents.... 2312 410
matters requiring notice can only be heard during term... 2313 410
causes may be transferred to and tried by district court... 2317 410
when matter is within jurisdiction of more than one county 2318 410
court, where will is probated, has jurisdiction over the state 2319 411

CITIES AND INCORPORATED TOWNS, §§ 421–510. *See* CITIES—
petition for incorporation to be presented to circuit court. 421 69
commissioners appointed, election held..... 422 70
result of election published..... 423 70
when incorporation deemed complete..... 424 70
first election of officers, notice of to be given 425 70
contiguous territory—annexation of, by inhabitants of county 426 71
proceedings applicable to..... 427 71
council or trustees may consent, or submit proposition to vote of people..... 428 71

Section. Page

CITIES AND INCORPORATED TOWNS—CONTINUED.
when annexation deemed complete..... 429 71
corporation—desiring to annex contiguous territory.....430, 431 71
when any corporation desires to be annexed to another..... 432 72
when deemed complete..... 433 73
special charters—when cities acting under, desire to incorporate under the general law..... 434 73
on petition of fifty voters, question must be submitted to vote..... 435 73
proclamation for election, notice of given 436 73
form of ballots, votes canvassed, result declared..... 437 73
when special charter abandoned, question how often submitted..... 438 74
vested rights not affected by..... 439 74
severance—when part of inhabitants of desire territory severed from..... 440 74
notice of application given..... 441 74
hearing of petition for..... 442 74
terms of separation adjusted..... 443 75
commissioners to take oath, report of may be set aside..... 444 75
transcript of decree to be filed in office of recorder and secretary of state..... 445 75
when so filed, severance deemed complete..... 446 75
discontinuance—of corporation by vote of electors..... 447 75
form of ballot..... 448 75
two-thirds must vote in favor of; provision must be made for debts..... 449 75
vote canvassed, expenses of election, by whom paid..... 450 76
disposition of records, seal, and court records of discontinued city or town... 451 76
auditor to publish fact of discontinuance.. 452 76
provision made for payment of indebtedness..... 453 76

POWERS.

may sue and be sued, contract and be contracted with...454, 455 76
prevent nuisances and establish markets..... 456 76
make regulations against fire..... 457 77
in relation to burial of the dead..... 458 77
restraining animals from running at large..... 459 77
prohibiting theatrical exhibitions... 460 77
may establish free public library, but no money can be appropriated therefor except on vote of people..... 461 77
to regulate and license auctioneers and transient merchants 462 78
sales of animals, and tax wagons, carts, etc.... 463 78
to lay off, widen, straighten, or vacate streets and public grounds..... 464 78

	Section.	Page.
CITIES AND INCORPORATED TOWNS—CONTINUED.		
grade streets and alleys, and construct sewers	465	78
construct sidewalks, etc., and levy special tax for	466	78
repair same and charge expense to property	467	78
temporary sidewalks, cost of limited	468	78
to pay damages caused by changing grade of streets, etc.	469	79
purchase or condemn land for public use	470	79
erect water-works	471–473	80
condemn private property for use of	474	80
assess water-tax and provide for collection thereof	475	80
proceedings to be had when private property is condemned	476, 477	81
to provide mode for charging property with assessments	478	82
how determined and enforced	479	82
drain off stagnant water, and fill lots, lien for	480	83
delinquent charges and assessments certified to county auditor	481	83
ORDINANCES—FINES—SUITS.		
power to make and publish ordinances	482	83
fines, how recovered	483	83
when unpaid, offender imprisoned	484	83
may use county jail	485	83
suits to recover fines or penalties barred in one year	486	83
labor on highways, how enforced	487	84
may aid in construction of, outside city limits	488	84
pre-requisites to passage of ordinance	489	84
when councilman cannot be appointed to an office	490	85
when emoluments have been increased during term	491	85
ordinances recorded and published	492	85
yeas and nays called on adoption of	493	85
when two-thirds vote required to pass	494	85
taxes, how certified and collected	495	86
limitation on amount of	496	86
sinking fund created by taxation	497	86
county treasurer to pay over funds to city treasurer	498	86
may levy tax on dogs and other animals	499	87
may negotiate loans in anticipation of revenues	500	87
ELECTION AND QUALIFICATION OF OFFICERS.		
time of annual election in	501	87
judges of, canvass, and result	502	87
canvass of, where divided into wards	503	87
oath of office, bond, vacancy	504	88
compensation of council or trustees	505	88
jurisdiction of mayor	506	88
CLASSES OF.		
how divided	507	88
according to population	508	88
governor, auditor, and secretary of state to determine classes	509	88
what steps taken to perfect organization	510	89

CITIES AND INCORPORATED TOWNS—CONTINUED.

	Section.	Page.
INCORPORATED TOWNS.		
officers of and terms	511	89
who to preside at meetings of trustees	512	89
vacancies in trustees, how filled	513	89
trustees may elect subordinate officers	514	89
appoint a marshal	515	89
remove officers or trustees	516	89
cannot take stock in banks or railways	553	98
officers of prohibited from purchasing warrants at less than par	556, 557	99
who constitutes board of registry in	599	106
with less than six thousand no registration required	602	106
may condemn private property for streets, etc	1270	232
may appoint sealer of weights and measures	2059	375
original notice, how served on	2612	443
public property of exempt from execution	3048	497
tax levied to pay corporate debts	3049	497
ordinances of, how proved	3720	573
CITIES, §§ 517–530. *See* CITIES AND TOWNS—		
corporate authority, in whom vested	517	90
power and duty of mayor	518, 519	90
vacancy in office of mayor, how filled	519	90
divided into wards	520	90
councilmen chosen from wards	521	91
organization of city council	522	91
council to procure seal	523	91
legislative authority vested in council	524	91
council may establish city watch or police	525	92
regulate markets	526	92
have care of highways, streets, and public grounds	527	92
control wharves, docks, and piers, and fix rates of wharfage, landing, and dockage	528	93
establish, regulate, and license ferries	529	93
removal of councilmen and officers from office	530	93
town may include	45	8
OF THE SECOND CLASS.		
mayor of to be elected annually	518	90
to preside at meetings of council and give casting vote	531	93
treasurer and solicitor elected by electors; marshal, deputy and police by council	532	93
power and duties of marshal enumerated	533	94
OF THE FIRST CLASS.		
mayor to be elected every two years	518	90
to send message to council, appoint police and watchmen	534	94
election of officers of	535	94

Section. Page.

CITIES—CONTINUED.
power, duties, and compensation of marshal..... 536 94
council by ordinance to direct number of police and watchmen 537 95
council of may establish infirmary and provide for relief of the poor..... 538 95
and house of refuge, correction, or workhouse, and provide for control and management thereof..... 539 95
inmates of may be apprenticed..... 540 96
may be recommitted to, when..... 541 96
council to provide a city prison, watch or station houses, and for election of police judge and clerk..... 542 96
power and jurisdiction of judge, and compensation.....543, 544 96
court always open; qualifications of jurors in.. 545 97
appeal from..... 546 97
mayor to act until a judge is elected..... 547 97
special charters, how amended.....548–551 97

CITY AUDITOR—
to be elected in cities of the first-class..... 535 94

CITY CLERK—
appointed by council, duties of..... 522 91
compensation of..... 523 91

CITY COUNCILMEN—
not appointed to office, the salary of which has been increased during term..... 490 85

CITY ENGINEER—
to be elected in cities of first-class..... 535 94

CITY SOLICITOR—
to be elected in cities of the second class..... 532 93
to be elected in cities of the first class..... 535 94

CITY TREASURER—
to be elected in cities of the second class..... 532 93
to be elected in cities of the first class..... 535 94

CITY PRISON—
council of cities of the first class may erect and maintain.. 542 96

CITY COURT. *See* POLICE JUDGE—
judge of to be elected..... 535 94
power and jurisdiction of..... 543 96
fees and compensation of..... 544 96
to be always open; qualifications of jurors in..... 545 97
appeal from; ordinances taken notice of..... 546 97
mayor may act as judge..... 547 97
jurisdiction of in criminal actions..... 4707 721

CITIES INCORPORATED BY SPECIAL CHARTERS—
powers conferred on by general law..... 479 82
may amend charter; manner of.....548–550 97
repeal of laws applicable to..... 551 97

Section. Page.

CIVIL INJURIES—
married women responsible for..... 2205 397

CIVIL PROCEDURE, §§ 4504–4948—

PRELIMINARY PROVISIONS.

remedies classified..... 2504 429
definition of civil action..... 2505 429
special proceeding..... 2506 429
all forms of action abolished..... 2507 429
in what cases plaintiff may prosecute by equitable proceedings..... 2508 429
action on note, mortgage, or deed of trust..... 2509 429
for mechanic's lien, how prosecuted..... 2510 430
for divorce..... 2511 430
by sureties, and occupying claimants..... 2512 430
what cases prosecuted by ordinary proceedings..... 2513 430
an error of proceedings no cause for abatement or dismissal of action..... 2514 430
error may be corrected by plaintiff without motion..... 2515 430
defendant may correct by motion..... 2516 430
right of parties to change proceedings..... 2517 430
court may order proceedings changed..... 2518 430
error as to kind of proceedings waived, when..... 2519 430
provisions of code apply to both kinds of proceedings..... 2520 430
actions on judgments, time for bringing limited..... 2521 430
judgment by ordinary, cannot be annulled by equitable proceedings..... 2522 431
action for discovery, when brought..... 2523 431
successive actions may be maintained, when..... 2524 431
causes of action survive, notwithstanding death of person.. 2525 431
right of civil remedy not merged in a public offense..... 2526 431
court may allow continuance of action..... 2527 431
provisions of code to be liberally construed..... 2528 431

OF LIMITATION OF ACTIONS.

actions and period of limit..... 2529 432
for relief, or trespass when deemed to have accrued 2530 432
on current open account..... 2531 432
what deemed commencement of action..... 2532 432
non-residence, not computed in limitation.....2533, 2534 432
time extended in favor of minors and persons insane..... 2535 432
when to apply in case of death..... 2536 433
when new suit brought within six months..... 2537 433
not applicable to evidences intended to circulate as money 2538 433
revival of actions founded on contract..... 2539 433
counter-claim may be plead as defense..... 2540 433
time of injunction or prohibition not deemed part of limitation..... 2541 433
not applicable to any action brought for part of school fund..... 2542 433

CIVIL PROCEDURE—CONTINUED.

Section. Page.

OF PARTIES TO AN ACTION.

actions, how prosecuted.....2543, 2544 433
who may be joined as plaintiffs..... 2545 433
assignment of thing in action..... 2546 434
who may be made defendants..... 2547 434
persons having united interest, must be joined..... 2548 434
when parties are numerous, one or more may sue or defend 2549 434
joint and several obligations, how sued..... 2550 434
when court may determine controversy between parties... 2551 434
suit may be brought on bond or instrument given to state or county, etc..... 2552 434
suits against partnership, how brought..... 2553 434
foreign corporations may bring suit in this state..... 2554 435
unmarried woman may prosecute for her own seduction... 2555 435
parents may sue for injury to minor child..... 2556 435
when name of defendant cannot be ascertained, how described 2557 435
action is founded on written instrument, how suit may be brought..... 2558 435
judgment against prisoner in penitentiary, how rendered.. 2559 435
state to prosecute suits as in cases between individuals.... 2560 435
no abatement of action on account of transfer of interest.. 2561 435
married woman—may sue and be sued without joining husband..... 2562 435
when sued together wife may defend for her own right.... 2563 435
upon desertion of either husband or wife the other may prosecute or defend..... 2564 435
minors—action of must be brought by guardian..... 2565 435
defense of must be by guardian..... 2566 435
guardian may be appointed by court or judge..... 2567 436
appointment may be made on application of minor, when.. 2568 436
insane—action of, how brought..... 2569 436
defense of, how made..... 2570 436
guardian may be joined with in action..... 2571 436
for recovery of personal property—when third party makes claim to subject of action..... 2572 436
same rule applicable to sheriff or other officer..... 2573, 2574 437
action in case of landlord's attachment..... 2575 437

OF PLACE OF BRINGING SUIT.

where actions must be brought in certain cases..... 2576 437
action for injuries to real property, where brought..... 2577 437
for foreclosure of mortgage..... 2578 437
actions that must be brought in county where cause of arose. 2579 438
aided by attachment, where brought..... 2580 438
for breach of written contract, where brought..... 2581 438
against common carriers..... 2582 438
corporation, company, or person engaged in constructing railway, etc..... 2583 438
insurance companies..... 2584 438

Section. Page.

CIVIL PROCEDURE—CONTINUED.
corporation may be sued in county where office is located. 2585 438
personal actions, where brought..... 2586, 2587 438
when, after commencement of action, defendant removes from county..... 2588 439
effect of bringing suit in wrong county..... 2589 439

OF CHANGE IN PLACE OF TRIAL.

cases in which change may be granted..... 2590 439
application for, to whom and when made..... 2591 440
to what county change must be made..... 2592 440
how made during vacation..... 2593 440
when to be perfected..... 2594 440
cause to be docketed on filing transcript..... 2595 441
costs of, by whom paid..... 2596 441
jury to be paid by county in which case commenced..... 2597 441
expenses of special term, how paid..... 2598 441

OF THE MANNER OF COMMENCING ACTIONS.

actions in court of record, how commenced..... 2599 441
when deemed discontinued..... 2600 442
service of notice—who may serve..... 2601 442
when defendant held to appear..... 2602 442
manner of service..... 2603 442
what to be stated in return..... 2604 442
sheriff to note date of receipt of notice..... 2605 442
penalty for making defective return..... 2606 442
when served on Sunday..... 2607 442
what may be set forth in notice by plaintiff..... 2608 443
how return of service is proven..... 2609 443
how served when county is defendant..... 2610 443
corporations—how served with notice..... 2611 443
how served on municipal corporation..... 2612 443
service may be made on any agent or clerk..... 2613 443
minors—insane—prisoners—how served with notice...2614–2617 443
service by publication—when may be made and in what cases 2618 444
how made and for what period..... 2619 445
defendant required to appear as if personally served..... 2620 445
actual service supersedes necessity of publication..... 2621 445
unknown defendants—petition to be sworn to, and requirements of..... 2622 445
notice to be approved by the court, and contents of..... 2623 445
court to order publication of notice..... 2624 445
notice to be filed and published..... 2625 445
appearance—mode of, defined..... 2626 445
mode of procedure when all defendants are not served.... 2627 446
real estate—during pendency of action affecting no interest acquired by third persons..... 2628 446
when property is situated in another county, plaintiff must file notice with clerk of such county..... 2629 446

CIVIL PROCEDURE—CONTINUED.

Section. Page

OF JOINDER OF ACTIONS.

causes of action may be joined, when 3630 447
plaintiff may strike cause from petition, when 2631 447
court may strike out cause on motion of defendant 2632 447
objections to misjoinder of causes waived unless, etc 2633 447
proceedings, when motion is sustained on ground of misjoinder 2634 447

OF PLEADING.

time for defendant to demur or answer 2635 447
time for each party to demur or answer to subsequent pleadings 2636 448
day on which judge opens court deemed first of term 2637 448
court may extend the time of filing pleading 2638 448
motions assailing pleading to be in writing and filed 2639 448
demurrer on motion assailing pleading suspends necessity of filing any other 2640 448
time for arguing and submitting motions 2641 448
motion or demurrer when filed cannot be withdrawn without consent of adverse party 2642 448
when filing of pleading, or motion in clerks' office is equivalent to filing in court 2643 448
technical forms of action, etc., abolished 2644 448
definition of pleadings 2645 448
petition—what to contain 2646 448
may be amended by plaintiff before answer 2647 449
demurrer—causes for which defendant may demur 2648 449
what to specify 2649 449
objection may be taken by answer, when 2650 449
defendant may demur to part of causes, and answer residue 2651 450
when opposite party deemed to have joined 2652 450
on demurrer being overruled, party may answer or reply 2653 450
consequences of unsuccessful party failing to amend or plead after decision of demurrer 2654 450
answer—what to contain 2655 450
guardian of minor or insane person must deny material allegations 2656 450
each affirmative defense to be stated in a distinct division 2657 450
prayer of judgment not necessary in defense part of 2658 450
counter-claim—manner of stating 2659 450
equitable division must be separated into paragraphs and numbered 2660 451
co-maker or surety may avail himself of 2661 451
when new party is necessary to final decision upon 2662 451
defendant may file cross-petition against co-defendant 2663 451
adverse party may demur when facts not sufficient 2664 451
reply—when necessary 2665 451
of what to consist 2666 451
any number of defenses pleadable 2667 452

Section. Page.

CIVIL PROCEDURE—CONTINUED.
when facts stated in, not sufficient defendant may demur.. 2668 452
verification—pleading must be subscribed to by party or attorney 2669 452
where corporation is a party affidavit may be made by officer of..... 2670 452
how made when several parties are united in interest..... 2671 452
when pleading is founded on written instrument. 2672 452
person other than the party knowing the statements may make affidavit..... 2673 452
how petition may be verified when not already done..... 2674 452
not required to any pleading of guardian..... 2675 452
when not necessary..... 2676 452
pleading not verified may be struck out on motion..... 2677 453
does not apply to amount claimed..... 2678 453
not to make proof greater on adverse party..... 2679 453
when courts may permit amendments to be made without being verified..... 2680 453
slander—libel—statement of petition in actions for..... 2681 453
when action is brought to recover damages for injury to person..... 2682 453
intervention—persons having interest in subject matter of litigation may intervene..... 2683 453
when court to decide upon..... 2684 453
to be by petition..... 2685 453
amendments—when variance is to be deemed material. 2686, 2687 454
when allegation is unproved, not deemed cause of variance. 2688 454
court may, on motion, permit pleadings to be amended.... 2689 454
error which does not affect substantial rights disregarded.. 2690 454
case not continued in consequence of amended pleading... 2691 454
manner of making..... 2692 454
interrogatories—either party may annex to his petition, answer, or reply..... 2693 454
party answering may state any new matter touching cause of action..... 2694 455
time of answering..... 2695 455
trial of action not postponed on account of failure to answer. 2696 455
party answering to distinguish between known from personal knowledge and what from information..... 2697 455
answer to be verified by affidavit..... 2698 455
party filing shall also file affidavit..... 2699 455
court may compel answers to..... 2700 455
general principles of evidence—denial concerning time, sum, etc., how made..... 2701 455
when time material and not material, how stated..... 2702 456
when place must be alleged..... 2703 456
under denial no evidence introduced which does not tend to negative some fact..... 2704 456
counts of petition to be consecutively numbered..... 2705 456
court may order correction of pleading..... 2706 456
sham and irrelevant answers may be stricken out..... 2707 456
what sufficient in pleading a statute..... 2708 456

Section. Page.

CIVIL PROCEDURE—CONTINUED.
court must take judicial notice of rules of other courts.... 2709 456
inconsistent defenses may be stated in same answer or reply. 2710 456
when right derogatory is claimed it must be particularly stated..... 2711 456
material allegation not controverted deemed true..... 2712 456
when pleading is founded on account, bill of particulars to be attached..... 2713 456
manner of pleading a judgment or determination of court. 2714 456
the performance of conditions precedent. 2715 457
suing in representative capacity..... 2716, 2717 457
defenses which must be specially pleaded..... 2718 457
court may cause irrelevant matter to be stricken from pleading 2719 457
require pleading to be made more definite.... 2720 457
title of cause not changed..... 2721 457
matters not required to be stated in pleading..... 2722 457
when party claims by conveyance, how stated..... 2723 457
not necessary to allege commencement of particular estate. 2724 457
in actions for injuries to goods and chattels, kind to be alleged..... 2725 457
real property, how described.... 2726 457
to prove malice, it must be averred..... 2727 458
in action for breach of conditions of bond, facts to be stated 2728 458
party not compelled to prove more than necessary..... 2729 458
when signature to written instrument deemed genuine.... 2730 458
either party may be allowed to make a supplemental petition..... 2731 458
matter of abatement may be stated, and how..... 2732 458
defense arising after commencement of action, how stated. 2733 458
actions may be consolidated 2734 458
court may order copy of last pleading to be substitnted.... 2735 458
no record amended or impaired without order of court.... 2736 458

OF TRIAL AND JUDGMENT.

issues—are of two kinds..... 2737 459
how issue of fact arises..... 2738 459
how tried—issues of law tried first..... 2739 459
fact to be tried by jury..... 2740 459
on oral evidence..... 2741 459
in certain equitable actions, court may order evidence to be taken in writing..... 2742 459
decision of court in trials of fact by..... 2743 459
causes to be tried at first term after timely notice..... 2744 460
appearance term not trial term for equitable actions..... 2745 460
court may allow separate trial between plaintiff and any defendant 2746 460
calendar to be kept by clerk, and how..... 2747 460
continuances—when time is asked for making application for 2748 460
not granted for any cause growing out of fault of party applying for 2749 460
statements in motions for, on account of absence of evidence 2750 460

Section. Page.

CIVIL PROCEDURE—CONTINUED.
if application is insufficient, it shall be overruled 2751 460
when motion for must be filed..... 2752 461
application for may be amended but once 2753 461
adverse party may file written objections to motion for.... 2754 461
motion and objections to be part of the record 2755 461
no copy of motion for need be served..... 2756 461
granted at cost of party applying for..... 2757 461
when court shall grant..... 2758 461
for what purposes case continued remains 2759 461
one of several defendants may continue as to himself 2760 461
jury—to be selected by lot..... 2761 461
challenge—is of two kinds..... 2762 461
several plaintiffs or defendants not allowed to sever..... 2763 461
to the panel, on what founded..... 2764 461
must be taken before a juror is sworn 2765 461
may be taken by either party 2766 462
when facts of allowed, jury to be discharged..... 2767 462
to individual juror..... 2768 462
time for taking..... 2769 462
definition of peremptory..... 2770 462
number of peremptory allowed 2771 462
for cause defined 2772 462
upon trial of, juror challenged may be examined as witness 2773 462
court to determine law and fact in..... 2774 463
when requisite number of jurors cannot be obtained, talesmen to be selected..... 2775 463
persons who keep the seventh day of the week as sabbath. 2776 463
exemption from service on jury not cause of 2777 463
parties may agree to take verdict of majority..... 2778 463
trial—order of..... 2779 463
parties may either submit or argue case to the jury..... 2780 463
when party in affirmative waives opening..... 2781 464
plaintiff or defendant allowed to appear by attorney..... 2782 464
when court may restrict argument of attorney..... 2783 464
instructions—either party may request instructions to be given to jury..... 2784 464
when court refuses to give written, it may modify..... 2785 464
court must read over all it intends to give..... 2786 464
no stated reason need be given for excepting to the giving or refusal..... 2787 464
after argument court may charge the jury..... 2788 464
either party may take and file exceptions to..... 2789 464
rules regarding juries—court may permit jury to view real property 2790 464
jury may decide in court or retire for deliberation..... 2791 465
when permitted to retire must be advised by court... 2792 465
juror becomes sick jury to be discharged..... 2793 465
jury may be discharged by the court on account of accident 2794 465
when discharged during trial cause to be re-tried..... 2795 465
after commencement of trial court may order adjournment. 2796 465
what jury may take with them on retiring for deliberation. 2797 465
during absence of jury court may adjourn..... 2798 465

Section. Page.

CIVIL PROCEDURE—CONTINUED.
before final submission of cause further evidence may be permitted 2799 466
information given jury after retirement 2800 466
to be in writing 2801 466
when food and lodging required, how provided 2802 466
verdict—how signed and rendered 2803 466
either party may require jury to be polled 2804 466
effect of when sealed 2805 466
may be general or special, general defined 2806 466
when special, what it must present 2807 466
jury required to find specially upon any particular question. 2808 466
when inconsistent special controls general 2809 467
in finding for money recovery, jury must assess amount ... 2810 467
how rendered where there are several plaintiffs or defendants 2811 467
when sufficient in form 2812 467
to be filed with clerk and entered upon the record 2813 467
in what cases trial by jury may be waived 2814 467
reference—issues either of fact or of law may be transferred. 2815 467
when court may direct 2816 467
referees to meet, hear proofs and arguments 2817 467
when appointed by the court, judge may fill vacancy 2818 468
to have same power as court 2819 468
manner of conducting trial by 2820 468
what to be stated in report of 2821 468
effect of report of 2822 468
to sign bill of exceptions taken to ruling ... 2823 468
parties may agree upon suitable persons for. 2824 468
in case pending, judge may order in vacation 2825 468
referee to be sworn to faithful performance of duty 2826 468
time for hearing case unless otherwise ordered by court ... 2827 468
referee to be under control of the court 2828 469
may issue and sign subpœnas and other process ... 2829 469
to be regulated by same form of procedure as obtains in court 2830 469
exceptions—what is, and how taken 2831 469
no stated form of required 2832 469
when decision objected to is entered on record, how taken. 2833 469
when presented for signature, need not include writing filed in court 2834 469
how taken when decision is not entered on record 2835 469
none regarded in supreme court unless on material point .. 2836 470
new trials—defined, and for what causes granted 2837 470
application for, when to be made 2838 470
not granted on account of smallness of damages 2839 470
costs of, how paid 2840 470
court may grant conditionally 2841 470
when granted on motion in arrest of judgment 2842, 2843 471
dismissal of action—for what causes dismissed without prejudice 2844 471
in all other cases decision to be upon merits 2845 471

Section. Page.

CIVIL PROCEDURE—CONTINUED.
when counter claim is filed..... 2846 471
defendant may dismiss counter claim without prejudice... 2847 472
party to any claim may dismiss the same in vacation..... 2848 472
judgment—is a final adjudication of the rights of parties in an action..... 2849 472
where party succeeds in part of cause and fails in part.... 2850 472
how rendered on matter of abatement..... 2851 472
where other than a general execution is required..... 2852 472
against several defendants..... 2853, 2854 472
relief granted plaintiff, not to exceed that demanded in petition..... 2855 472
how rendered when only part of claim is controverted..... 2856 472
rendered according to verdict in trial by jury..... 2857 473
when verdict is special..... 2858 473
rendered in favor of party, notwithstanding verdict against. 2859 473
how rendered when counter claim exceeds plaintiff's claim. 2860 473
may be entered by agreement..... 2861 473
when plaintiff recovers a sum of money..... 2862 473
provisions applicable to court when acting as jury..... 2863 473
clerk—to enter judgments and orders of court on record..... 2864 473
memorandum of judgment set aside or satisfied 2865 473
to make complete record of whole cause, where title to land is involved..... 2866 473
discharge of judgment—may be had by defendant, how.... 2867 473
when inequitable or fraudulent..... 2868 474
default—when judgment by may be rendered..... 2869 474
how had where no appearance is made..... 2870 474
may be set aside by the court..... 2871 474
clerk to compute amount of judgment..... 2872 474
party in, may cross examine witness..... 2873 474
judgment by, to be according to rules of equity..... 2874 474
defendant served by publication alone, allowed time..... 2875 474
service by publication—when defendant not personally served, court may require plaintiff to give security before enforcing judgment..... 2876, 2877 474
title to property not affected by new trial..... 2878 475
certified copy of judgment to be served on defendant..... 2879 475
service of to be actual and personal..... 2880 475
no personal judgment rendered against defendant served by publication..... 2881 475
liens—when judgments are upon real estate..... 2882 475
when to attach, if lands lie in county where judgment was rendered..... 2883 475
another county..... 2884 475
on filing of transcript, clerk to docket and index the same. 2885 476
conveyance by commissioner—when real property may be conveyed by..... 2886 476
deed of..... 2887 476
what passes with conveyance..... 2888, 2889 476
does not pass any right until approved by court..... 2890 476
how signed..... 2891 476

Section. Page.

CIVIL PROCEDURE—CONTINUED.
to be recorded, where..... 2892 476
may be confirmed or approved in vacation..... 2893 476

OF JUDGMENT BY CONFESSION.

without action—may be entered by clerk..... 2894 476
can only be for money due, or to become due..... 2895 476
statement to be verified and filed with the clerk..... 2896 477
clerk to make entry of judgment for amount confessed.... 2897 477
effect of offer to confess before judgment..... 2898 477
after action brought..... 2899 477

OF AN OFFER TO COMPROMISE.

defendant may, by allowing judgment to be taken..... 2900 477
serve upon plaintiff an offer in writing.... 2901 477
making offer, not a cause for continuance..... 2902 477

OF RECEIVER.

on petition of either party, court may appoint..... 2903 478
to take oath before entering on duty..... 2904 479
power of..... 2905 479

OF SUMMARY PROCEEDINGS.

judgment—may be obtained on motion, and by whom..... 2906 479
notice—to be served on party against whom judgment is sought..... 2907 479
what it must state..... 2908 479
when considered abandoned..... 2909 479
motion—how heard and determined..... 2910 479

OF MOTIONS AND ORDERS.

motion—definition of..... 2911 479
several objects may be included in..... 2912 480
testimony to sustain or resist, how taken..... 2913 480
notice of to be taken, by whom, and when..... 2914 480
when required to be served, what to state..... 2915 480
service—notices, and copies of motions, who may serve..... 2916 480
shall be on each of the parties adverse to the motion..... 2917 480
may be personal or on attorney..... 2918 480
when to be made..... 2919 480
return must state manner of service..... 2920 480
court or judge may direct mode of, when..... 2921 480
order—definition of..... 2922 480
may issue in vacation..... 2923 481
time to be in force..... 2924 481
judge granting, may require filing of bond..... 2925 481
when made out of court, when to be filed..... 2926 481

OF SECURITY FOR COSTS.

costs—when plaintiff required to file bond for..... 2927 481
bond not given for, action dismissed..... 2928 481

Section. Page.

CIVIL PROCEDURE—CONTINUED.
plaintiff becomes non-resident, security required..... 2929 481
defendant may require additional security for..... 2930 481
no attorney or officer received as security..... 2931 481
court may issue judgment summarily for..... 2932 482

OF COSTS.

recoverable by successful party..... 2933 482
how apportioned where there are several plaintiffs or defendants 2934 482
costs which cannot be collected, how recovered..... 2935 482
fees paid by successful party to be taxed as costs..... 2936 482
postage paid by officers of court, to be taxed in bill of costs. 2937 482
when party confesses matter which arose after commencement of action..... 2938 482
judgment for issued against plaintiff, when..... 2939 482
costs of witnesses as to co-parties..... 2940 483
against whom adjudged, when action is dismissed for want of jurisdiction..... 2941 483
party recovering costs to be allowed witnesses fees, etc.... 2942 483
who liable for costs, when cause of action is assigned..... 2943 483
person aggrieved by taxation, may have costs re-taxed.... 2944 483
bill of costs made by clerk, in cases of appeal from district or circuit court..... 2945 483
costs accruing in supreme court, how paid..... 2946 483
duty of clerk in court below in regard to..... 2947 483
when judgment is for recovery of money, interest computed by clerk..... 2948 483

CIVIL REMEDY—
not merged in public offense..... 2526 431

CLAIMS—
against the state must be presented for settlement within two years..... 69 13
against estates may be admitted by executor.....2408, 2410 419
action on, how brought..... 2409 419
court may allow or submit to jury..... 2411 419
not yet due to be proved as in other cases..... 2413 419
contingent must be proved 2414 419
may be referred to referees..... 2415 419
suits pending at decease prosecuted to judgment..... 2416 419
manner of paying.....2418–2426 419

CLASSIFICATION—
of property for purposes of taxation..... 821 140

CLERK—
process issued by must be attested by him and bear date the day issued..... 188 32
liable as principal for selling intoxicating liquors..... 1540 282
of court of record, may acknowledge instruments affecting real estate..... 1955 360

Section. Page.

CLERK—CONTINUED.
to file and enter of record orders made by a judge..... 2926 481
of grand jury, to keep minutes of the proceedings..... 4275 665

CLERK OF THE CIRCUIT COURT—
to issue order for seizure of property of absconding father, etc..... 1343 246
to issue marriage license..... 2187 395
not without consent of parent or guardian in case of minor 2188 395
may require proof, and take testimony as to..... 2189 395
to make entry of applications for license..... 2190 395
liable to penalty for issuing contrary to law..... 2192 395
to keep register of marriages..... 2197 396
may bind out minor paupers..... 2283 406
indenture must be signed by..... 2284 406
must be in three parts, and one copy filed with.. 2285 406
must watch over interests of apprentice..... 2287 406
may consent to adoption of children when parents of dead 2308 409
powers of, in probate matters..... 2315 410
bonds to be filed and approved by..... 2321 411
upon death of testator to open and read will of..... 2338 412
to fix a day for proving..... 2340 412
to give notice of day thus fixed..... 2341 412
to keep probate records..... 2490 426
may require executor to furnish names of heirs 2491 427
to make complete record..... 2492 427
to record bonds of executors and guardians..... 2493 427
to enter memorandum of transcript of justice in docket.... 3568 557

CLERK OF DISTRICT OR CIRCUIT COURT—
may enter judgment by confession.....2894–2897 476
to approve bond of receiver..... 2904 479
to make bill of costs in appeals to supreme court..... 2945 483
when received to pay same to persons entitled to..... 2947 483
to issue attachments..... 2962 486
compensation of.....3781, 3787 583
not to exceed two thousand dollars a year... 3784 585
to render verified statement of fees received to board of supervisors..... 3785 585
to pay unclaimed witness fees into county treasury..... 3786 585
to be furnished with office, stationery, etc..... 3844 598
to collect jury fee and pay into county treasury 3812 592

CLERK OF THE DISTRICT COURT—
to make report to secretary of state of criminal convictions 203 34
to give attested copies of records of notaries public deposited in his office..... 266 43
to compare ballots prepared by auditor with jury lists...240, 241 40
to designate papers in which notices pertaining to his office to be published..... 306 53
may issue subpœnas in trials of contested county elections 704 121
duty of, in relation to mechanics' liens..... 2138 387
to docket and index transcripts of judgments from other counties..... 2885 476

Section. Page.

CLERK OF THE DISTRICT COURT—CONTINUED.
to make entry of proceedings in habeas corpus cases..... 3490 549
to issue bench warrant..... 4320 671
to issue subpœnas for grand jury..... 4279 665
to mark indictments "filed"..... 4294 667

CLERK OF THE DISTRICT AND CIRCUIT COURTS, §§ 193-204—
of district, is clerk of circuit court..... 193 32
attend terms of court and keep records, papers and seals... 194 32
how must designate himself when signing..... 195 33
books to be kept by enumerated..... 197 33
to enter suits as brought in appearance docket..... 198 34
return on original notice in..... 199 34
date of filing pleadings in..... 200 34
other matters occurring during trial to be entered in 201 34
judges of may by order direct minutes of both courts to be kept in same books—exception..... 202 34
prohibited from acting as justice of the peace or as attorney 204 36
to file and enter of record order of judges fixing terms.... 165 29
to be elected in each even-numbered year..... 589 104
penalty of bond to be fixed by board of supervisors, but not less than five thousand dollars..... 678 117
county auditor to file bonds of justices in office of..... 682 117
effect of removal or suspension of..... 751 125
may be suspended by judge of either court..... 756 126
direct petition to be filed against..... 757 126
order certified to county auditor..... 758 126
may appoint deputy..... 766 127
power and duty..... 767 127
who cannot be deputy..... 768 127
to keep calendar, enter causes in, and apportion same..... 2747 460
to select jury by lot from regular panel..... 2761 461
when judgment is set aside to note fact in docket..... 2865 473
to make complete record when title to land is settled..... 2866 473
must enter judgment in conformity with verdict..... 2857 473
to compute amount due on default, can charge no fee for.. 2872 475
to tax costs in favor of successful party..... 2942 483
may be retaxed, and clerk made to pay expense of..... 2944 483
to tax as costs interest accruing between verdict and judgment..... 2948 483
entries of, when execution issued by..... 3029 494
penalty for failure of duty relating to executions..... 3030 495
entries made by, when transcript of judgment received.... 3031 495
execution issued by to recite order of liability on judgment 3041 496
approve, record, and index stay-bonds..... 3064 500
to notify sheriff when stay is taken..... 3065 500
to approve bond in action to recover specific personal property..... 3229 521
to issue order and counterparts of.....3230, 3231 522
to approve bond given by defendant..... 3225 522
compensation of, for acknowledging satisfaction of mortgage 3328 532
to issue order of injunction..... 3394 540
to file cross-interrogatories on taking of depositions..... 3728 574

Section. Page

CLERK OF THE DISTRICT AND CIRCUIT COURTS—CONTINUED.
stirring up quarrels by, punished 3964 617
failing to pay over fees and fines 3970 617
making false entries relating to 3971 618
appropriating fees or fines to his own use 3972 618
failure to report fines and fees annually 3973, 3974 618

CLERKS OF ELECTION—
who constitute 606 107
when absent, who chosen 608 107
oath of 609 107
may swear judges and each other 610 107
to keep tally-list 626 109
making false entries relating to, punished 4003 623
doing or omitting any act which renders election void 4005 623
not returning poll-books 4006 624

CLERK OF THE SUPREME COURT—
stationery, books, fuel, etc., furnished 120, 122 21
to keep record of proceedings of court 146 26
must not allow opinions of court to be taken from his office 147 26
to announce decision of court by letter to attorneys 148 26
to record opinions of court 149 26
to receive copy of supreme court reports 159 28
when to be elected 583 104
bond not to be less than ten thousand dollars 678 117
when clerk of court for trial of contested state elections... 720 122
duty of in such case 722 122
may issue subpœnas 723 122
or execution on judgment.... 727 123
vacancy in office of to be filled by judges of 783 129
to pay costs to clerk of court below 2946 483
to docket and arrange causes, and publish list of 3203 518
compensation of 3771–3773 582

CLOVER-SEED—
standard weight of bushel of 2049 373

COAL LAND—
drainage of 1228 224

COAL MINES—
inspector appointed, power and duties 1567 291
penalty for refusing to comply with directions of 1568 291
compensation of, and how paid 1569 292

CODE, §§ 46–54, *See* STATUTES—
citation of 46 9
previous public statutes repealed by 47 9
local statutes not, unless repugnant to 48 9
takes effect 49 9
repeal of existing statutes by, does not affect an act done or right accruing 50 9
no offense committed before taking effect of, affected by.. 51 9

	Section	Page.
CODE—CONTINUED.		
no suit or prosecution affected by	52	9
meaning of terms "heretofore" and "hereafter"	53	9
prevails over general statutes passed at same session	54	9
statutes in amendment of, how prepared and published	38	6
provisions of, apply to ordinary and equitable proceedings,	2520	430
to be liberally construed	2528	431
COHABITATION—		
as husband and wife renders illegal marriages valid	2201	396
COLLECTION OF TAXES, §§ 854–907—		
warrants and highway certificates received in payment	854	144
and treasury and national bank notes	855	144
treasurer of state to receive same	856	145
distress and sale of property	857	145
notice of, property released on bond	858	145
may appoint deputies, to aid in collecting delinquent taxes,	859	145
when impeded may require any person to assist	860	146
taxes certified to treasurer of another county	861	146
force and effect of	862	146
penalty to be collected	863	146
return made to treasurer sending	864	146
when become delinquent, made a lien and draw interest	865	146
rate of interest	866	147
treasurer to give receipt and make entries on books	867	147
to apportion consolidated tax monthly	868	147
account to be kept with each fund	869	147
when erroneously levied, may be refunded	870	147
tax sale—when made and for what	871	148
notice what to contain	872	148
publication and proof of	873	148
treasurer to collect cost of publication	874	148
each tract sold separately	875	149
who deemed the purchaser	876	149
to be continued from day to day	877	149
purchaser refusing to pay bid, again offered	878	149
may pay taxes after advertisement	879	149
letters and figures in, no informality to affect sale	880	149
certificate of publication filed in auditor's office, form of	881	149
treasurer to keep a book of sales; entries in	882	150
adjournment of	883	150
penalty on treasurer for failure to attend	884	150
for purchasing land at	885	150
when sale not made in October, may be thereafter	886	151
certificate of purchase—treasurer to give purchaser	887	151
assignable by endorsement	888	151
receipt given purchaser for taxes paid	889	151
redemption—how effected and terms	890	152
certificate of, who to sign	891	152
by minors and lunatics	892	152
by action in court	893	153
deed—notice of right to given by publication or otherwise	894	153
ninety days after service treasurer to make	895	153

Section. Page.

COLLECTION OF TAXES—CONTINUED.
form of 896 154
effect of, presumptions that attach 897 155
code not to affect sales made before taking effect of 898 156
illegal sales—county to hold purchaser harmless 899 156
of school or university land; interest acquired in 900 156
when not subject to, or taxes have been paid 901 157
no action brought—after five years from time deed is recorded 902 157
acts of officers in fact deemed as valid as those in law 903 157
sales not invalid because not listed in name of owner 904 157
books of treasurer and auditor, or copies, sufficient to prove sale 905 157
peddlers—tax for state purposes levied on, amount of 906 157
license how obtained, penalty for selling without 907 158

COLLECTOR. *See* TOWNSHIP COLLECTOR—

COLLEGE FOR THE BLIND, §§ 1664–1684—
where located; election of trustees 1664 310
member of general assembly ineligible 1665 310
trustees to have general supervision 1666 310
three to constitute a quorum 1667 310
compensation 1668 310
to fix compensation of officers 1669 310
to appoint assistant officers on nomination of principal 1670, 1671 310
non-residents may attend 1672 311
trustees to elect one of their number president and another treasurer 1673 311
not to create indebtedness exceeding appropriation. 1674 311
appropriation for 1675, 1676 311
principal to make detailed report to governor 1677 311
to procure clothing for pupils 1678 311
appropriation to be drawn quarterly on order of trustees ... 1679 311
residents of state entitled to education free 1680 312
industrial home established in connection with 1681 312
trustees to regulate admission to 1682 312
principal to keep account with each pupil 1683 312
vacancy in trustees to be filled by governor 1684 312

COLLEGE—
laws given to by state librarian 1898 351

COLOR OF TITLE—
what deemed in favor of occupying claimants 1982–1984 364

CO-MAKER—
may when sued plead counter-claim due his co-maker 2661 451

COMMANDER-IN-CHIEF. *See* GOVERNOR—

COMMENCEMENT OF ACTIONS, §§ 2599–2629—
by serving on defendant an original notice 2599 441
when action deemed discontinued 2600 442

Section. Page.

COMMENCEMENT OF ACTIONS—CONTINUED.
notice—may be served by any person not a party..... 2601 442
when defendant held to appear..... 2602 442
how served..... 2603 442
return on what to state..... 2604 442
sheriff to note on when received..... 2605 442
defective return amended..... 2606 442
may be served on Sunday, when..... 2607 442
may contain notice of no personal claim..... 2608 443
truth of return, how proven..... 2609 443
when county defendant, how served..... 2610 443
corporations other than municipal.....2611, 2612 443
municipal..... 2612 443
minors, how served on..... 2614 443
insane, how served on.....2615, 2616 444
prisoner in penitentiary, how served on..... 2617 444
by publication, when and how made.....2618, 2619 444
when defendant held to appear..... 2620 445
actual service of supersedes publication..... 2621 445
unknown defendants, how served.....2622–2625 445
appearance to actions, how made..... 2626 445
when all are not served, how plaintiff may proceed..... 2627 446
third persons charged with notice of..... 2628 446
how, when property is in another county..... 2629 446

COMMISSIONERS IN OTHER STATES, §§ 267-276—
governor to appoint and commission for term of three years. 267 43
seal of..... 268 44
signature and seal of to be equally credible with those of notaries public..... 269 44
fees same as for similar services in state where appointed.. 270 44
oaths, affidavits, and depositions taken by to be as effectual as if taken by clerk district court..... 271 44
before acting, must qualify; form of..... 272 44
when secretary of state to forward certificate of appointment..... 273 44
list of to be published with session laws..... 274 44
power of commissioners of other states appointed in this.. 275 45
secretary of state to keep record of appointments..... 276 45

COMMISSIONER—
to examine and report on expediency of establishing highway..... 924 161
not confined to matter of petition..... 925 161
convenience both public and private considered..... 926 162
when his report is against, no further proceedings had.... 927 162
to lay out highway.....928, 929 162
to be sworn..... 930 162
appointed to fix rates between disagreeing railway corporations.....1293–1295 237
to appraise damages, compensation of..... 3813 593
appointed by court may convey real property..... 2886 476
deed of to refer to judgment and proceedings..... 2887 476

Section. Page.

COMMISSIONER—CONTINUED.
passes title of person ordered to convey.....2888, 2889 476
not until approved by court or judge.....2890, 2893 476
form of conveyance..... 2891 476
must be recorded..... 2892 476

COMMISSIONERS OF INSANITY. *See* HOSPITAL FOR THE INSANE—
compensation of..... 3825 595

COMMISSIONS—
issued by governor to be countersigned by secretary of state..... 62 11

COMMISSION—
governor to appoint to examine accounts of state officers.. 759 126
report of..... 760 126
compensation of..... 764 126
power of..... 765 127

COMMISSION MERCHANTS. *See* WAREHOUSEMEN—
deemed owners of property consigned for taxation purposes. 804 135
lien of on property stored with..... 2177 392
proceedings to enforce.....2178–2180 392

COMMON CARRIERS. *See* WAREHOUSEMEN—
prohibited from bringing intoxicating liquors into the state. 1553 288
have lien on property transported..... 2177 392
proceedings to enforce.....2178–2180 392
liable for injuries to baggage from careless handling..... 2183 394
of persons cannot limit liability by contract or will..... 2184 394
actions against when brought..... 2582 438

COMMON COUNTS—
are abolished..... 2644 448

COMMON SCHOOLS. *See* SCHOOLS—

COMPENSATION OF OFFICERS, §§ 3755–3844—
of state—of governor, and private secretary to 3755 579
of secretary of and deputy.....3756, 3778 579
of auditor of and deputy.....3757, 3778 579
of treasurer of and deputy..... 3758 579
of register of state land office and deputy.....3759, 3778 579
of superintendent of public instruction and deputy..... 3760 579
of adjutant-general..... 3761 579
of state librarian 3762 580
of superintendent of weights and measures 3763 580
of state printer.....3764–3766 580
of state binder 3767, 3768 581
judges of the supreme court 3769, 3779 582
attorney-general..... 3770 582
clerk of supreme court 3771–3773 582
district—of judges of district and circuit court.....3774, 3779 582
of district attorneys.....3775, 3776 583
of short-hand reporters 3777 583

Section. Page.

COMPENSATION OF OFFICERS—CONTINUED.
salaries to be paid monthly 3780 583
county—clerk of district and circuit court 3781–3787 583
sheriff 3788–3790 585
members of board of supervisors 3791 587
recorder 3792 587
treasurer 3793–3796 587
auditor 3797, 3798 588
coroner 3799 589
surveyor 3800 589
notaries public 3801 589
sealer of weights and measures 3802 590
inspector of lumber and shingles 3803 590
township—justices of the peace 3804–3806 590
constables 3805–3807 590
trustees 3008 591
clerk 3809 592
assessor 3810 592

OF WITNESSES, JURORS, AND SPECIAL CASES.

of jurors 3811 592
fees of taxed as part of costs 3812 592
of appraisers or commissioners 3813 593
of witnesses 3814 593
disposition of uncalled-for witness fees 3815–3817 593
fees of witnesses for defense in criminal cases, how paid .. 3818 593
where no fees are fixed 3819 594
allowed for carriage-hire when conveying prisoner to jail .. 3820 594
for taking up any estray or trespassing animals 3821, 3822 594
of public printer for publishing estray notice 3823 595
of persons for laying out and changing highways 3824 595
of commissioners of insanity 3825 595
of visiting committee to hospital for insane 3826 596
of messenger sent for election returns 3827 596
for solemnizing marriage 3828 596
of attorney appointed to defend criminals 3829–3831 596
for publication of legal notices 3832 596
for printing delinquent tax-list 3833 597
of arbitrators 3834 597
for taking depositions 3835 597
person charging fees to give receipt therefor if demanded. 3836 597
fees paid for services when rendered 3837 597
for posting up advertisement 3838 597
officers to keep list of fees posted up in office 3839 597
penalty for taking higher fees than allowed by law 3840 597
county in which offense committed to pay costs 3841 597
when fees may be required to be paid in advance 3842 598*
fees as distinguished from salary, how paid 3843 598
county officers furnished with offices, fuel, lights, etc 3844 598
of members and officers of the general assembly 12 2
for publication of statutes in newspapers 44 7
of surgeons giving evidence before coroner 368 62

	Section.	Page.
COMPENSATION OF OFFICERS—CONTINUED.		
of township collector	407	67
of councilmen or trustees of cities or towns	505	88
of marshal of incorporated town	515	89
of mayor	519	90
of city clerk	523	91
of officers of cities	524	91
of marshal of cities of the second class	533	94
first class	536	94
of police judge	544	96
of electors of president and vice-president	669	114
of officers and witnesses in trials of contested county elections	706	121
judges of	710	121
judges in, of state officers	726	123
of commissioners to examine accounts of state officers	764	126
of deputy county officer, board of supervisors to allow	771	127
of county treasurer, for certificate of taxes due	848	143
of trustees of hospital for the insane	1384, 1386	252
of superintendent of public instruction, for distributing school laws	1580	294
of trustees of agricultural college and farm	1608	300
of trustees of soldiers'orphans' homes	1626	304
of trustees of state reform school	1646	306
of trustees of college for the blind	1668	310
of county superintendent	1776	326
of attorney collecting school fund taxed as costs	1873	346
for transcribing records	1973	363
of guardians, to be allowed by court	2256	403
of executors	2494, 2495	427
of clerk for acknowledging satisfaction of mortgage	3328	532
of officers and employes of penitentiary at Fort Madison	4783	735
to be paid monthly	4784	735
of visitors to penitentiary appointed by governor	4804	738
COMPLAINT—		
by apprentice or other person against master	2288	407
service of	2289	407
answer to must be under oath	2290	407
judgment	2291	407
by master against apprentice	2294, 2298	407
answer thereto	2295	407
issues joined and tried as in ordinary actions	2296, 2299	407
that natural guardians are unsuitable to have care of minor	2301, 2302	408
must be verified and answered	2303	408
issues joined and tried in ordinary manner	2304	408
preference given over causes	2305	408
in criminal actions—defined	4111	643
COMPLETE RECORD—		
to be made of sales of real estate by executors, etc.	2492	427

	Section	Page.
COMPELLING TO MARRY—		
any woman against her will, punished	3862	601
COMPROMISE—		
offer to by defendant, effect of	2900	477
conditional offer, effect of	2901	478
not a cause of continuance	2902	478
COMPROMISING CRIMINAL ACTIONS—		
certain misdemeanors may be	4708	721
party injured to acknowledge satisfaction in writing	4709	721
when done constitutes a bar	4710	721
cannot be except as provided by law	4711	721
COMPOUNDER—		
of public offense indicted, etc., though principal has not been	4316	670
COMPOUNDING FELONIES—		
defined and punished	3951, 3952	615
CONDEMNATION OF PRIVATE PROPERTY, §§ 1241–1272—		
extent of for railway track	1241	227
additional for reservoirs	1242, 1243	227
manner of—sheriff to summon jury to assess damages	1244, 1245	228
where owner of property is a minor or insane	1246	228
notice to non-resident owner, form of	1247	228
publication of	1248	229
appraisement, how made and returned	1249	229
where dwelling house, garden, or orchard is affected	1250	229
vacancy in jury, how filled	1251	229
costs, by whom paid	1252	229
report of jury recorded	1253	229
appeal—from assessment of damages, how taken	1254	230
not to delay work if amount is deposited with sheriff	1255	230
acceptance of damages bars an appeal	1256	230
trial of and judgment	1257–1259	230
railways—abandoned may be condemned	1260, 1261	230
highways—may be raised and lowered, repairs of	1262	231
further repairs required by trustees or city council	1263	231
suitable temporary ways to be provided	1264	231
crossings constructed so as not to impede travel or transportation	1265	231
maintained and kept in repair to cross highway	1266	231
liable for damages caused by neglect	1267	231
cattle guards—to be made and kept in repair	1268	232
any corporation—constructing works of internal improvement may condemn	1269	232
state—may condemn private property	1271	232
damages, how paid	1272	232
cities—may condemn for streets and market houses	1270	232
for public use	464	78
proceedings by cities when private property is to be taken	476, 477	81
for bridges—manner of	1004, 1005	174

Section. Page.

CONFESSION—
of defendant in criminal actions not sufficient to convict unless corroborated 4427 685

CONFESSION OF JUDGMENT—
may be entered by clerk of district or circuit court.. 2894, 2897 476
can only be for money or to secure contingent liability.... 2895 476
verified statement in writing to be filed 2896 477
execution issued on 2897 477
offer to confess before action, effect of 2898 477
after action brought 2899 477
may be entered by a justice of the peace 3566 557

CONSTABLE—
not to act as attorney of any party 342 59
purchase of property by, at sale made by him, void 343 59
to execute and return warrant of coroner 354, 362 60
number and election of 389 64
to serve notices directed to them by trustees or township clerk 398 65
is ministerial officer of justices of the peace 399 65
to be elected in each even-numbered year 590 104
additional constables, when to be elected 592 104
when considered county officers 593 104
to attend election and preserve order when required 612 107
to arrest disturbers of election 613 108
bond of to be fixed by board of supervisors, but not less than five hundred dollars 678 117
vacancy in office of, when filled by appointment 794 131
township trustees to make, and clerk to record 794 131
judgment obtained against on motion 2906 479
to take answers of garnishee in justice's court 3607 560
is executive officer of justice's court 3632 563
special may be appointed, who must give bond 3630 564
compensation of 3805–3807 591
fees of in cases of estrays and trespassing animals 3822 594
for receiving consideration for neglecting, etc., to perform duty, punished 3948 615
falsely assuming to be, punished 3962 616
stirring up quarrels by, punished 3964 617
oppression by, punished 3969 617

CONSIDERATION—
contracts in writing import 2113 383
failure of may be shown as defense except to negotiable instruments transferred before maturity 2114 383

CONSOLIDATED—
actions may be 2734 458

CONSPIRACY—
defined and punished 4086, 4087 638
evidence necessary to convict for 4425 684

Section. Page.

CONSTRUCTION, *See* STATUTES—
of statutes—rules to be observed in..... 45 7
of language used in indictment..... 4303 669

CONTEMPTS, §§ 3491–3501—
what are deemed, and punishable by any judicial officer.. 3491 549
courts of record..... 3492 550
punishment for may be by fine and imprisonment..... 3493 550
imprisonment may extend until act is performed..... 3494 550
may be shown by affidavit..... 3495 550
notice given offender to show cause..... 3496 550
testimony to be preserved..... 3497 550
warrant of commitment, what it must state..... 3498 551
no appeal lies from, may be revised by certiorari 3499 551
punishment no bar to indictment for same offense..... 3500 551
court defined..... 3501 551
of general assembly, how punished.....14–16 3
court may punish as a failure to answer interrogatories... 2700 445
judgments and orders enforced by attachment for..... 3026 494
judgment debtor guilty of, imprisoned..... 3145 509
refusing to answer, guilty of..... 3151 510
violation of order of injunction is..... 3403 541
how excused or purged..... 3404 541
when not excused, bond for appearance required..... 3405 541
on failure to give may be committed to jail..... 3406 541
court to punish at next term..... 3407 541
wilful failure to comply with law relating to habeas corpus deemed..... 3476, 3489 548

CONTESTANT—
of county election to file statement..... 697 119
to nominate a judge..... 700 120
liable for costs when..... 711 121

CONTESTING ELECTIONS, §§ 692–745—
of county officers—by whom and for what..... 692–694 119
court, how constituted..... 695 119
county auditor to be clerk except when a party..... 696 119
contestant to file written statement in auditor's office..... 697 119
when names of voters to be set forth therein..... 698 120
day of trial to be fixed, by whom..... 699 120
contestant and incumbent each to name a judge..... 700 120
trial, manner of; powers of court..... 701, 702 120
testimony may be oral or in shape of depositions..... 703 120
subpœnas issued by auditor, or clerk of district court.... 704 120
statement amended, dismissal of..... 705 121
form and service of process, fees of officers..... 706 121
to take place at county seat..... 707 121
sheriff to attend when necessary..... 708 121
witness compelled to answer..... 709 121
compensation of judges..... 710 121
costs, who liable for; judgment..... 711 121
transcript filed in office of clerk of circuit court..... 712 121
certificate of election withheld..... 713 121

	Section.	Page.
CONTESTING ELECTIONS—CONTINUED.		
judgment declaring who is elected	714	121
order putting successful party into possession	715	121
appeal and effect of	716	121
judgment on the appeal	717	122
of certain state officers—who may contest	718	122
court, of whom constituted	719	122
secretary of state to be clerk; if he is a party, the clerk of the supreme court or auditor of state	720	122
statement filed with clerk	721	122
court, how constituted	722	122
testimony, how procured	723	122
process and papers served by sheriff	724	122
trial to take place at seat of government	725	122
compensation of judges and how paid	726	123
judgment, how carried into effect	727	123
presiding judge to carry any order of court into effect	728	123
provisions as to contesting county elections to apply	729	123
of members of the general assembly—who may contest	730	123
contestant to serve statement on incumbent	731	123
testimony, how procured	732, 733	123
notice of taking depositions	734	123
depositions delivered to presiding officer of the proper house	735	123
power of either branch of the general assembly	736	123
of governor—by any eligible person voted for	737	124
notice of contest given	738, 739	124
duty of presiding officer of each house	740	124
court, how chosen; powers of	741–743	124
judgment	744	124
provisions as to other contests to apply where applicable	745	124
CONTINGENT FUND—		
for any office, account therewith to be kept	123	22
report of, to be made to auditor of state, funds not properly accounted for to be recovered by state	124	22
CONDITIONS PRECEDENT—		
performance of, may be averred generally	2715	457
allegations relating to, how denied	2717	457
CONTINUANCE—		
not granted as of course on amendment of pleading	2691	454
granted when agreed to by adverse party	2748	460
when substantial justice will be obtained thereby	2749	460
when applied for because of absence of witnesses	2750	460
party may admit, that witness if present would swear to facts stated	2751	460
when motion for must be filed	2752	461
application can be amended but once	2753	461
objections filed to, by averse party	2754	461
motion and objections become part of record	2755	461
no copy of motion need be served	2756	461

Section. Page

CONTINUANCE—CONTINUED.
party applying for to pay costs, unless court, etc..... 2757 461
parties may agree to, and stipulate as to costs..... 2758 461
cause remains on docket for all purposes, except trial..... 2759 461
one of several defendants may obtain for himself..... 2760 461
offer to compromise not cause for..... 2902 478

CONTRACT—
payable in labor or property, how converted into money demand..... 2097 380
tender when place of payment is not fixed 2098 381
of ponderous property..... 2099 381
when contract has been assigned.. 2100 381
effect of tender..... 2101 381
of perishable property..... 2102 381
how made when holder is absent from the state..... 2103 381
in writing imports consideration..... 2113 383
failure of consideration may be shown as defense, except.. 2114 383
husband or wife not liable for those of the other..... 2203 397
may be made by married woman as if unmarried..... 2213 398
of minors, how disaffirmed.....2238, 2239 401
payment to minor under, for personal services, valid..... 2240 401
pleading failing to state whether in writing or not made more specific..... 2720 457
to be proved by written evidence 3663–3667 567
gambling void..... 4029 628

CONTRACTOR—
for support of paupers, may require them to labor..... 1371 251

CONTROVERSIES—
may be submitted to a court with or without action...3408–3413 541
the subject of civil action may be submitted to arbitration 3416 542

CONVEYANCE OF REAL PROPERTY, §§ 1941–1975—
of no validity against purchasers unless recorded..... 1941 358
cannot be recorded until acknowledged or proved..... 1942 358
index and entry books kept for..... 1943 358
must be filed with and endorsed by recorder..... 1944 358
what entry or index book must show..... 1945 358
must be recorded as soon as practicable.....1946, 1947 358
transfer books—kept by county auditor..... 1948 358
form of, and entries in.....1949, 1950 359
entries to be made by auditor..... 1951 359
endorsement on conveyance..... 1952 359
no instrument recorded until endorsed..... 1953 359
correction of..... 1954 359
acknowledgment—before whom in this state..... 1955 360
when out of, but in United States..... 1956 360
when out of United States..... 1957 360
officer taking, to endorse certificate on..... 1958 360
how proved, and in what cases 1959 360
certificate to be endorsed in such case..... 1960 361

Section. Page.

CONVEYANCE OF REAL PROPERTY—CONTINUED.
how given or executed..... 1961 361
when executed by attorney in fact..... 1962 361
what must be stated in certificate..... 1963 361
penalty for misstating a material fact in..... 1964 361
officer taking may compel attendance of witnesses..... 1965 361
heretofore made and recorded, legalized.....1966–1968 361
revocation of powers of attorney, how 1969 362
forms of..... 1970 362
records of—may be transcribed..... 1971 363
upon formation of a new county..... 1972 363
compensation to be fixed..... 1973 363
to be certified by county auditor..... 1974 363
to have same force and effect as original..... 1975 364
by aliens heretofore made, legalized..... 1909 353

CONVEYANCE—
plats—acknowledgment and recording of, deemed..... 561 100
deemed to warrant that sufficient plat has been filed..... 559 99
that the land is sufficiently described for purposes of taxation..... 570 101
of homestead—invalid, unless signed by husband and wife.. 1990 365
made by either husband or wife to the other valid..... 2206 397
by executor—passes interest of deceased in real estate..... 2399 418
approval of, to be entered of record..... 2400 418
may be stated in pleading by its legal effect or name..... 2723 457
by commissioner—appointed by court..... 2886 476
form and approval of.....2887, 2891, 2893 476
passes title of person ordered to convey.....2888, 2889 476
must be recorded in recorder's office 2892 476
by guardian—or executor may be approved by a judge..... 2893 476
sheriff—must execute for property sold on execution..... 3101 504
person entitled to when right to redeem expires..... 3124 506
when to be recorded..... 3125 506
is presumptive evidence of regularity..... 3126 506

CO-PARTIES—
one or more of may appeal to supreme court..... 3174 514
those who refuse to join deprived of benefit of appeal..... 3175 514
deemed to have joined, unless they appear and decline.... 3176 514

CO-PROPRIETOR—
may build wall against one held in common..... 2023 370
may increase hight of wall at his own expense..... 2024 370
may rebuild, if necessary, to make wall higher..... 2025 370
by paying expense, may make wall one in common...2026, 2027 370

COPYRIGHT—
of supreme court reports, when property of state..... 158 28

CORN—
standard weight of bushel of..... 2049 373

CORONER, §§ 349–368—
not to act as attorney for any party..... 342 58

Section. Page.

CORONER—CONTINUED.
purchase of property by, at sale made by him, void..... 343 58
to perform duties of sheriff, when.....349–351 59
to hold inquest..... 352 60
form of warrant..... 353 60
to summon a jury, oath of..... 355 60
issue subpœnas, disobedience of, a contempt..... 356 60
swear witnesses, form of oath..... 357 60
testimony of, reduced to writing..... 358 60
verdict of jury..... 359 60
in what case kept secret..... 360 61
to order arrest of person charged with crime..... 361 62
issue warrant for..... 362 61
authority of, to equal that of a justice of the peace..... 363 61
to return inquisition to district court.....364, 365 61
to deliver body to friends, or bury at expense of county 366 61
justices of the peace may act as, when no coroner..... 367 62
may summon surgeons, compensation of..... 368 62
to be elected in each odd-numbered year..... 589 104
bond to be fixed by board of supervisors..... 678 117
receiving consideration for neglecting, etc., to perform duty, punished..... 3948 615
falsely assuming to be, punished..... 3962 616
stirring up quarrels by, punished..... 3964 617
oppression by, punished..... 3969 617
compensation of..... 3799 589

CORPORATIONS FOR PECUNIARY PROFIT, §§ 1058–1102.
See BANKS—
any number of persons may incorporate themselves..... 1058 183
powers of..... 1059 183
articles of, to be recorded..... 1060 183
must fix the highest amount of indebtedness... 1061 183
notice to be published..... 1062 184
what to contain..... 1063 184
may commence business, when..... 1064 184
no change of articles valid unless recorded and published. 1065 184
dissolution of..... 1066 184
notice of dissolution to be given by publication..... 1067 184
individual property made liable..... 1068 184
duration and renewal of.....1069, 1070 184
penalty for intentional fraud..... 1071 185
diversion of funds deemed fraud..... 1072 185
not applicable to insurance companies in certain cases.... 1073 185
fraud may cause a forfeiture..... 1074 185
penalty for keeping false books and accounts..... 1075 185
by-laws and names of officers subject to public inspection.. 1076 185
amount of capital and indebtedness kept posted up..... 1077 185
transfer of shares, how made, and when valid..... 1078 186
franchise forfeited by non-user..... 1079 186
expiration of charter..... 1080 186
may create sinking-fund..... 1081 186
for non-paid stock, individual members liable..... 1082 186

Section. Page.

CORPORATIONS FOR PECUNIARY PROFIT—CONTINUED.
stockholders liable for corporate debts in certain cases.... 1083 186
liability, how enforced 1084 186
stockholder may maintain action against corporation..... 1085 187
franchise may be sold on execution..... 1086 187
production of books compelled..... 1087 187
single individual may incorporate himself 1088 187
want of legal organization cannot be set up as a defense .. 1089 187
subject to legislative control..... 1090 187

OTHER THAN FOR PECUNIARY PROFIT.

how created 1091 188
articles recorded 1092 188
no dividend declared until dissolution of corporation 1093 188
academical, may confer degrees 1094 188
charitable, scientific, and religious associations, how formed 1095 188
certificate recorded, powers..... 1096 188
trustees or managers, how elected 1097 189
academical meetings of, where held..... 1098 189
not dissolved on account of failure to elect trustees or managers 1099 189
cannot adopt name of any other society in county 1100 189
devise or bequest to 1101 190
re-incorporation of existing societies 1102 191

CORPORATIONS—
may be included in word "person"..... 45 8
original notice, how served on, in actions against....2611–2613 443
suing or being sued, facts constituting need not be plead.. 2716 457
how allegations as to denied..... 2717 457
officer of may verify pleadings 2670 452
compelled to give security for costs in actions by 2927 481
judgment of ouster against..... 3356 535
trustees appointed for..... 3360 536
to give bond..... 3361 536
to collect debts and pay liabilities 3363 536
books and papers delivered to..... 3364 536
to make and file inventory..... 3365 536
power and responsibilities of..... 3366 536
service on when indicted..... 4326 672
arraignment of not required 4327 672

COSTS, §§ 2933–2948—
recoverable by the successful party 2933 482
to be apportioned between several plaintiffs or defendants. 2934 482
uncollected, recovered of party making, on motion..... 2935 482
amount paid for copies of records, etc., included in 2936 485
and postage paid 2937 482
party entitled to when pleading confessed by 2938 482
on dismissal or abatement of action..... 3939 482
coparties entitled between themselves to a taxation of 2940 483
on dismissal of action, for want of jurisdiction 2941 483
clerk to tax costs..... 2942 483

Section. Page.

COSTS—CONTINUED.
on assignment of cause of action, after action brought 2943 483
court may retax, or appoint referee 2944 483
bill of sent to supreme court on appeal 2945 483
disposition of when paid clerk supreme court 2946, 2947 483
interest from verdict to judgment computed as 2948 483
security for to be given, when..... 2927 481
of changing place of trial, paid by applicant 2593 441
when county in such case liable for jury fees, etc.....2597, 2598 441
by whom paid in action for partition..... 3297 529
in actions to test official and corporate rights ...3350, 3358, 3359 535
how disposed of in arbitrations..... 3430 543
when taxed against complainant on preliminary examinations..... 4254 662
prosecuting witness in criminal actions 4292 667

COUNCIL BLUFFS—
provisions relating to railways terminating at or near.1310–1316 240
institution for the deaf and dumb located at..... 1685 312

COUNTY. *See* BOARD OF SUPERVISORS—
each to receive copy of supreme court reports..... 159 28
body corporate, may have a seal, acquire property, and make contracts..... 279 46
jurisdiction, when bounded by water..... 280 46
county-seat—may be re-located..... 281 46
petition for re-location 281, 282 46
remonstrances against re-location..... 283 46
notice of presentation of petition to be given..... 284 46
election, board of supervisors to order..... 285 47
how conducted..... 286 47
board of supervisors to order removal of..... 287 47
cannot be voted for oftener than once in three years..... 288 47
indebtedness—of, when and how funded..... 289 47
disposition of bonds by county treasurer..... 290 48
board of supervisors to levy tax to pay bonds..... 291 49
when and how bonds may be redeemed..... 292 49
when executive council may levy tax..... 293 49
bridges—constructed and repaired by..... 427 92
banks—cannot take stock in, or in railways..... 553 98
taxes—responsible to the state for state..... 908 158
when caused by defalcation of treasurer to be made up by. 909 158
pauper—has action against relative for support of..... 1350 247
removed from, to county of settlement..... 1357 248
of settlement liable for expenses of, and for relief extended to pauper..... 1358 248
order of removal binding unless contested, unless notice of given 1359 248
of settlement liable for expenses of patients in hospital for insane 1417 260
question of may be contested 1418 260
stock—prohibited from running at large.....1457, 1461, 1462 267
provisions of law as to partition fences, applicable to..... 1508 275

Section. Page.

COUNTY—CONTINUED.
entitled to send three pupils to state agricultural college and farm 1619 302
school fund—liable for losses to 1881, 1882 348
rate of interest charged to on 1882 348
real property—may purchase to secure debts 1910 353
who may bid off on sale by execution 1911 354
property must be appraised 1912 354
costs and expenses paid by 1913 354
may be leased and controlled 1914 354
buildings to be kept insured 1915 354
control of vested in board of supervisors 1917 355
sale and conveyance of, how effected 1918 355
owner of unclaimed property sold to pay charges, may recover proceeds paid county treasurer 2182 394
to pay expenses of trial when changed 2597, 2598 441
no action against can be brought on unliquidated demand, until presented to board of supervisors 2610 443
public property of exempt from execution 3048 497
tax levied to pay corporate debt 3049 497
to pay fees of defendant's witnesses in criminal cases 3818 593
in which offense committed, to pay costs of trial 3841 597
liable for expenses of imprisoning criminal in another county 4510 695

COUNTY AUDITOR—
to distribute statutes 40 6
to sell same and report to auditor of state 41 6
to report annually to auditor of state 42 7
to deliver copies remaining on hand to successor in office. 43 7
to forward returns of census to secretary of state 113 20
upon failure of assessor to take census to appoint some one so to do 117 21
to apportion number of jurors to each election precinct 236 39
to write names of persons to be selected as jurors on separate ballots 240 40
to give notice of special meetings of board of supervisors 301 51
to control publication of notices pertaining to his office 306 53
duties of enumerated 320 56
must sign no warrant except on recorded vote of board; exceptions 321 56
duty as to apportionment of school fund made by auditor of state 322 56
to have control of court-house, subject to direction of board. 323 56
to report name, office, and term of every county officer to secretary of state 324 56
clerk of district court, and recorder may be auditor 325 56
cannot be county treasurer, nor act as attorney before board 226 56
to certify under seal, plats of county surveyor 374 63
to issue warrant for first election in new township 386 64
to make duplicate list in counties where there are township collectors 402 65

	Section.	Page.
COUNTY AUDITOR—CONTINUED.		
to notify owners and have lands platted, when	568	100
when description not sufficient for purposes of taxation	569	101
to be elected in each odd-numbered year	589	104
to prepare and furnish poll-books	615	108
duty of as to tie vote for any county office	643, 644	112
to forward abstract of votes to secretary of state	645, 646	112
send messenger for returns of election	634	110
bond to be fixed by board of supervisors, but not to be less than five thousand dollars	678	117
of county officers, to be filed and recorded in office of	682, 683	117
is clerk of court for trial of contested county elections	696	119
may issue subpœnas for witnesses in	704	120
to enter order of removal or suspension of officer in election book	754, 758	125
may appoint deputy	766	127
duty and power	767	127
who cannot be deputy	768	127
to notify township trustees of removal of justice	779	128
to notify township clerk of vacancy in office of justice or constable	794	131
to approve bond of justices or constables appointed to fill vacancies	795	131
to forward abstract of assessment to auditor of state	833	140
to make tax-list agree with assessment of state board	836	141
to transcribe assessments into a suitable book	837–839	141
to correct error in assessment book	841	142
to designate each parcel of land sold for taxes	842	142
to deliver tax-list to county treasurer and take his receipt	843	142
to certify to auditor of state the aggregate valuation of property	844	143
to keep account of each separate fund with the treasurer	869	147
to attend tax-sales and make record thereof	882	150
penalty for failure of duty	884	150
purchasing land at tax-sale	885	151
to issue certificate of redemption	891	152
books to prove sale	905	157
highway—to appoint day for final hearing as to establishment of	934, 935	162
to give notice to owners of land affected by	936	163
when no objections filed or damages claimed, may establish	937	163
when notice not served, to appoint another day	938	163
to appoint appraisers to assess damages	939	163
to notify them of their appointment and place of meeting	942	164
may fill vacancies in	942	164
may postpone time for final action and appoint other	944	164
to record plat and field-notes, and direct supervisor to open	949	164
to make transcript of record when appeal is taken	961	166
when re-survey has been made, to give notice	965	167
to make highway plat-book	967	167
furnish copy to township clerks	968	167
to keep militia register, penalty for failure of duty	1042	179
to transmit statement of railway property to taxing districts	1321	242

Section. Page.

COUNTY AUDITOR—CONTINUED.
to issue warrant for expenses of taking insane person to hospital for..... 1410 250
collect expenses of keeping insane from relatives of..... 1433 263
to cause return of justice in relation to strays published ... 1468 269
subscribe for one copy of paper in which stray notices are published..... 1469 269
to enter in estray-book, affidavit of taker-up of lost goods 1510, 1512, 1514 275
to fix day and publish notice of application to sell intoxicating liquors..... 1529 280
to apportion county school tax and interest on permanent fund..... 1781 327
to issue warrant for amount due each district..... 1782 328
to report to auditor of state amount of interest in hands of county treasurer..... 1783 328
school fund—to report delinquencies in, to district attorney 1854 342
to loan permanent school fund.....1864, 1865 344
responsible when securities for loans prove insufficient.... 1866 344
to certify to debtors to school fund, amount due..... 1867 345
to publish notice of time when debts to school fund become due..... 1872 346
to keep account of school fund with county treasurer..... 1877 347
penalty for failure of duty..... 1878 347
to report annually to auditor of state, sales of school lands 1881 348
to report to auditor of state when school fund cannot be loaned..... 1883 348
to report to auditor of state semi-annually amount of interest collected..... 1884 349
penalty for failure to perform duties required by school law 1878 347
transfer books—to keep transfer, index, and plat books 1948 358
form of transfer book and entries in..... 1949 358
of plat book and entries in..... 1950 359
to make entries in index book, form of..... 1951 359
to endorse conveyance, form of..... 1952 359
to correct transfer book..... 1954 359
to certify transcribed records..... 1974 363
compensation of..... 3797 588
to render verified statement of fees received to board of supervisors..... 3798 589
to be furnished with office, fuel, lights, etc..... 3844 598

COUNTY AGRICULTURAL SOCIETIES. *See* AGRICULTURAL SOCIETIES—

COUNTY BOARD OF EQUALIZATION—
to equalize assessments between townships..... 832 140

COUNTY CANVASS—
of special elections..... 792 131
abstract of special elections..... 792 131

COUNTERFEITING—
bank bill or other evidence of debt punished..... 3920 610
having in possession with intent to defraud..... 3921 610

Section. Page.

COUNTERFEITING—CONTINUED.
uttering as true..... 3922, 3923 610
making tools adapted to..... 3924 611
coin, or having possession of..... 3925, 3931 611
uttering..... 3926 611
by connecting parts of genuine bills together..... 3927 611
fixing fictitious signatures..... 3928 611
coin of foreign country..... 3932 612
seals..... 3933 612
corporate existence unnecessary to be proven by charter on trial for..... 3934 612
brands or stamps..... 3935 612
of mark, stamp, or brand, punished..... 4079 637

COUNTER CLAIM—
plead as a defense, notwithstanding it is barred..... 2540 433
definition of..... 2659 450
co-maker or surety may plead, when due principal..... 2661 451
new party made when necessary to adjudication of..... 2662 451
may be verified apart from defense part of answer..... 2674 452
judgment rendered for excess of..... 2860 473
defendant may proceed on, notwithstanding dismissal of action..... 2846 471
may be dismissed before cause is submitted..... 2847 472
may be done in vacation..... 2848 472
not allowed in actions to recover personal property..... 3226 521
none in actions to recover real property..... 3245 524
of any other kind not allowed in action for partition..... 3277 527
not allowed in actions to test official and corporate rights. 3356 534

COUNTY HIGH SCHOOLS, §§ 1697–1712—
counties having population of two thousand may establish. 1697 314
question of establishing to be submitted to electors..... 1698 314
trustees of appointed by board of supervisors..... 1699 315
classification of trustees..... 1700 315
trustees to appoint secretary and treasurer of..... 1701 315
funds needed for, how estimated and certified..... 1702 315
tax for levied and collected..... 1702, 1703 315
duties of treasurer and secretary of..... 1704 316
trustees to select site for school..... 1705 316
to make rules and regulations for, and employ teachers..... 1706, 1707 316
tuition in free to residents of county..... 1707 316
trustees may admit pupils from other counties..... 1708 316
principal of may make rules subject to approval of trustees 1709 316
trustees to report annually to board of supervisors..... 1710 317
vacancies in trustees, how filled..... 1711 317
compensation of trustees of..... 1712 317

COUNTY OFFICERS—
resignation made to board of supervisors..... 782 129
vacancy in, how filled..... 783 129

Section. Page

COUNTY RECORDER—
to control publication of notices pertaining to his own office 306 53
duties enumerated 335 58
when he may be county treasurer 336 58
duty when plats are vacated 566 100
to be elected in each even-numbered year 589 104
penalty of bond to be fixed by board of supervisors 678 117
may appoint deputy 766 127
power and duty of deputy 767 127
who cannot be deputy 768 127
to keep entry or index book for instruments affecting personal property 1924, 1925 356
to record any instrument affecting real property 1926 356
to keep entry book for conveyances of real property 1943 358
to endorse instrument and make entries in book 1944 358
entries must be alphabetical and names of grantors and grantees 1945 358
must record instruments 1946 358
instruments affecting lots in cities recorded in separate books 1947 358
must not file any conveyance for record until transfer is made 1953 359
to procure book of original entries 3703, 3705 571
compensation of 3792 587
to be furnished with office, stationery, etc 3844 598

COUNTY SEAT—RE-LOCATION OF. *See* COUNTY.

COUNTY SUPERINTENDENT—
to be elected in each odd-numbered year 589 104
penalty of bond to be fixed by board of supervisors 678 117
to report to principal of college for the blind the names of blind persons 1680 312
to be president of board of trustees of county high school. 1701 315
not to be director, nor member of board of supervisors 1765 325
to meet and examine teachers once in each month 1766 325
to give certificates of qualification to teachers 1767 325
examination of teachers to be public 1768, 1769 325
may appoint deputy 1770 325
may revoke teacher's certificate 1771 325
to report to superintendent of public instruction and county auditor 1772 326
penalty for failure to make report 1773 326
to conform to instructions of superintendent of public instruction 1774 326
to report name, age, and residence of blind, and deaf, and dumb 1775 326
compensation of 1776 326
to appoint appraisers to condemn property for school-house sites 1827 336
to notify parties of appeals 1832, 1833 337
to try and determine the same 1834 338
cannot render money judgment 1836 338
to be furnished with office, books, fuel, lights, etc 3844 598

	Section.	Page.
COUNTY SURVEYOR, §§ 369–378—		
duties enumerated	369–371	62
when establishing corners	372	62
to follow instructions of secretary of interior	373	62
copy of plat and field notes presumptive evidence	374	62
supervisors to furnish book to	375	62
plat and record to show at whose request survey was made	376	62
chainmen must be sworn by	377	63
may issue subpœnas and swear witnesses	378	63
to be elected in each odd-numbered year	589	104
penalty of bond to be fixed by board of supervisors	678	117
may appoint deputy	766	127
power and duty of deputy	767	127
compensation of	3800	589
COUNTY TREASURER—		
must make oath that he has not improperly used public money before credit for payments given	73	13
to sell and dispose of bonds issued by county	290	48
to keep separate account with bond fund	291	49
to pay interest on and redeem bonds	292	49
to control publication of notices pertaining to his office	306	53
cannot be county auditor	324	56
duties of enumerated	327	57
when no funds, to so endorse on warrant	328	57
warrants may be divided, when and how	329	57
to keep warrant-book; make entries therein	330	57
to keep separate accounts with the different funds	331	57
warrants to be cancelled, how	332	57
to make weekly returns of warrants paid, to auditor	333	57
to keep separate accounts for each term of office	334	57
may be recorder when	336	58
to deliver township collector duplicate tax-list	403	66
to collect taxes uncollected by township collector	408, 409	67
to collect taxes levied for expenses of board of health	420	69
to pay taxes of cities or towns to treasurer thereof	498	86
to be elected in each odd-numbered year	589	104
penalty of bond to be fixed by board of supervisors, but not to be less than five thousand dollars	678	117
bond of county auditor, to be filed in office of	682	117
may appoint deputy	766	127
duty and power of deputy	767	127
who cannot be deputy	768	127
to enter delinquent taxes on tax-book	845	143
collect taxes	846	143
notify owners of lands sold for taxes	847	143
certify amount of taxes due, and compensation for	848	143
effect of certificate	849	143
liable on bond for error in certificate	850	144
may assess property omitted	851	144
taxes—to collect by sale of personal property	857	145
give notice of	858	145
may appoint deputies to aid, compensation	859	145

	Section.	Page.
COUNTY TREASURER—CONTINUED.		
may require any person to assist when resisted	860	146
certify taxes to treasurer of another county	861	146
force and effect of	862	146
penalty in addition to taxes collected	863	146
return made to officer sending abstract	864	146
to collect delinquent taxes by sale or otherwise	865	146
penalty on delinquent taxes collected	866	147
to give tax-payer receipt	867	147
apportion consolidated tax monthly	868	147
keep account with each fund	869	147
refund taxes illegally paid, as directed by supervisors	870	147
sale—of real property for unpaid taxes	871	148
to give notice of	872	148
publication	873	148
cost of publication collected	874	148
to offer each tract or parcel separately	875	149
who deemed purchaser	876	149
continued from day to day	877	149
on failure of purchaser to pay, property again offered for	878	149
owner may pay after the property is advertised	879	149
informality in advertising does not affect legality of sale	880	149
certificate of publisher filed in auditor's office	881	149
to keep book of sales	882	150
may adjourn sale	883	150
penalty for failure of duty	884	150
purchasing property at sale	885	151
at other than regular time	886	151
to give purchaser certificate of purchase	887	151
certificate assignable by endorsement	888	151
to give purchaser receipts for subsequent taxes	889	151
to countersign certificates of redemption	891	152
to make deed	895	153
form of deed	896	154
effect of deed	897	155
liable on official bond for error in sale	899	156
in case of land sold erroneously, duty of	901	157
acts of treasurer in fact, held valid	903	157
books of treasurer sufficient to prove sale	905	157
liable to county on official bond for state taxes	909	158
penalty for discounting warrants	911	158
loaning or using public money	912	158
to settle with board of supervisors	913	158
to pay funds to state treasurer	914	159
or as may be required by state auditor	915	159
to deliver to successor all public money, books and papers	917	159
to account with such persons as the board of supervisors may direct	918	160
penalty for failure of duty	919	160
to pay taxes collected on railway property to persons entitled thereto	1321	242
to collect account of clothing furnished pupils in college for the blind	1678	311

COUNTY TREASURER—CONTINUED. Section Page.
to collect account of clothing furnished pupils in institution for deaf and dumb 1695 314
to pay money collected to district treasurer 1784 328
to notify quarterly, each president of district of amount collected 1785 328
when to pay school fund loaned by auditor 1864 344
to make entries relating to school fund in books 1876 347
penalty for failure to comply with school law 1878 347
to account to county for proceeds of unclaimed property .. 2182 394
compensation of 3793 587
to answer inquiries by letter in relation to taxes 3794 588
penalty for failure to do so 3795 588
to render verified statement of fees received to board of supervisors 3796 588
to be furnished with office, stationery, etc 3844 598

COUNTY WARRANTS—
warrant book, how kept 308 54
when depreciated, question of higher rate of tax to be submitted to people 309 54
auditor to issue 320, 321 56
treasurer to pay when signed by auditor and sealed 327 57
to endorse, when not paid for want of funds 328 57
may be divided 329 57
treasurer to enter list of warrants in a book 330 57
compared with warrant book and cancelled 332 57
officers of county cannot purchase at a discount 556 99
treasurer must endorse when received 557 99
penalty for violation of law relating to 558 99
receivable for taxes 854 144

COURT. *See* SUPREME COURT.

COURT. *See* DISTRICT AND CIRCUIT COURT.

COURT. *See* DISTRICT COURT.

COURT. *See* CIRCUIT COURT.
cannot be opened or transact any judicial business on Sunday, except, etc 191 32
must be held at place provided by law, unless the parties agree otherwise 192 32
proceedings in must be public, unless otherwise provided, or agreed upon by the parties 189 32
how constituted for trial of contested county elections 695 119
state elections 719–722 122
powers of 702 120
may send boy or girl convicted of crime to reform school. 1653 308
acknowledgment of instsument affecting real estate made before 1955 360

COURT HOUSE—
county auditor to have custody of 323 56

	Section.	Page.
CREDIT—		
meaning of term for taxation purposes	802	134
what deducted in making up amount of	814	136
CRIMINAL—		
governor may offer reward for escaped, or persons charged with crime	58	10
CRIMINAL ACTIONS. *See* CRIMINAL PROCEDURE.		
CRIMES AND PUNISHMENTS, §§ 3845–4102—		
treason, how punished	3845	599
misprision of, how punished	3846	599
evidence necessary to convict	3847	599
OFFENSES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.		
murder—whoever kills any human being with malice aforethought, guilty of	3848	600
first degree of, defined and punished	3849	600
second degree of, " "	3850	600
degree of, how determined	3851	600
duelist inflicting mortal wound, guilty of	3852	600
dueling—aiding and abetting in, punished	3853	600
accepting challenge, or promoting, punished	3854	600
posting for not accepting challenge, punished	3855	600
manslaughter—punished	3856	600
maiming—or disfiguring, defined and punished	3857	600
robbery—defined and punished	3858–3860	609
rape—of any female of ten years or over, punished	3861	600
compelling to marry, punished	3862	600
carnal knowledge—of female, by producing stupor	3863	601
pregnant woman—producing miscarriage of	3864	601
abduction—of unmarried female, for purposes of prostitution	3865, 3866	601
seduction—of any unmarried woman of previously chaste character	3867	602
marriage a bar to prosecution	3868	602
kidnapping—defined and punished	3869	602
exposure of child, punished	3870	602
malicious threats to extort, punished	3871	602
assault—with intent to commit murder, punished	3872	602
to commit rape	3873	602
to maim, rob, steal, etc	3874	602
to inflict a great bodily injury	3875	603
to commit any felony or crime	3876	603
mingling poison with any food, drink, etc	3877	603
assault—with or without battery	3878	603
weapons—carrying concealed, punished	3879	603
OFFENSES AGAINST PROPERTY.		
burning—inhabited dwelling, boat or vessel in night time	3880	603
in day time, or setting fire to	3881	603

Section. Page.

CRIMES AND PUNISHMENTS—CONTINUED.
uninhabited dwelling, etc., in day or night time.....3882, 3883 604
warehouse, store, etc., in day or night time..... 3884 604
setting fire to..... 3885 604
or injuring, or destroying any boards, timber, etc..... 3886 604
by married woman..... 3887 604
to injure insurers..... 3888 604
prairie or timbered land.....3889, 3890 604
burglary—by breaking dwelling house in night time..... 3891 605
when armed with dangerous weapon..... 3892 605
when not armed..... 3893 605
by breaking dwelling house, railway car, etc., in day time. 3894 605
mortgaged property—mortgagor of, destroying, selling, concealing, etc., punished..... 3895 605
stock—driving away of..... 3896 605
fruit—entering enclosure of another to pick off, destroy, etc.....3897, 3898 605
trees, etc., injuring of..... 3899 606
fire arms—discharging near where stock is being fed..... 3900 606
oils—mixing illuminating with naptha, etc..... 3901 606

LARCENY AND RECEIVING STOLEN GOODS.

larceny—defined and punished..... 3902 606
in dwelling house, store, etc., in night time..... 3903 607
in day time..... 3904 607
from building on fire..... 3905 607
by false impersonation..... 3906 607
by unlawfully appropriating found goods..... 3907 607
by embezzlement of public money by officers..... 3908 607
by agents, clerks, or servants..... 3909 608
by carriers, etc..... 3910 608
stolen goods—receiving, or aiding in concealing.....3911, 3912 608
receiver of, convicted without proof that principal has been. 3913 608
value of, how determined..... 3914 609
larceny—removing goods from custody of officer deemed. 3915, 3916 609

FORGERY AND COUNTERFEITING.

forgery—of records and instruments of writing..... 3917 609
uttering and publishing as true..... 3918 610
of public securities..... 3919 610
any bank bill, note, etc..... 3920 610
having possession of with intent to defraud 3921 610
uttering as true..... 3922, 3923 610
counterfeiting—making tools, etc., adapted for..... 3924 611
gold or silver coin..... 3925 611
uttering or attempting to pass..... 3926 611
connecting parts of genuine bills, etc., with intent to defraud, deemed..... 3927 611
fixing fictitious signature to instrument of writing, deemed. 3928 611
erasure or obliteration of instrument of writing.....3929, 3930 612
making or having in possession instruments adapted to... 3931 612

Section. Page.

CRIMES AND PUNISHMENTS—CONTINUED.
of gold or silver coin of foreign country..... 3932 612
seals..... 3933 612
on trial for, not necessary to prove incorporation of company..... 3934 612
brands or stamps..... 3935 612

OFFENSES AGAINST PUBLIC JUSTICE.

perjury—defined and punished..... 3936 613
subornation of, punished..... 3937 613
attempt to suborn..... 3938 613
bribery—of public officers defined and punished..... 3939 613
acceptance of bribes by.....3940, 3941 613
of persons other than..... 3942 613
acceptance by..... 3943 614
of jurors, referees, etc..... 3944 614
acceptance of, by..... 3945 614
attempt to improperly influence..... 3946 614
acting corruptly..... 3947 614
sheriff, constable, or coroner, receiving bribe from defendant..... 3948 615
process—officer refusing or failing to execute..... 3949 615
extortion—defined and punished..... 3950 615
felony—compounding of, punished.....3951, 3952 615
prisoner—jailor or other officer suffering to escape.....3953–3955 615
aiding and assisting to escape.....3956–3958 616
breaking or escaping from jail..... 3959 616
process—resistance to officer serving..... 3960 616
refusing to assist officer..... 3961 616
judge, etc.—falsely assuming to be.....3962, 3963 616
stirring up quarrels by..... 3964 617
misdemeanor—neglect of duty of officer deemed..... 3965 617
doing of prohibited act deemed..... 3966 617
punishment for, when none other prescribed..... 3967 617
public officer—making false entries, etc., punished..... 3968 617
oppression by..... 3969 617
failing to pay over fees, fines, etc., guilty of misdemeanor. 3970 617
falsifying account of..... 3971 618
appropriation of, by..... 3972 618
fines, etc.—failure to report annually, deemed a misdemeanor 3974 618
notary public—acting as, after expiration of commission guilty of misdemeanor..... 3975 619
oath of office—refusal to take before entering on duties.... 3976 619

MALICIOUS MISCHIEF AND TRESPASS ON PROPERTY.

malicious—maiming, killing, etc., of domestic beasts..... 3977 619
injury to any dam, mill, etc..... 3978 619
bridges, railways, etc..... 3979 619
boat, raft, vessel, etc..... 3980 620
fruit trees, hedge, fence, etc..... 3981 620
monuments, mile-stones, guide-boards, etc..... 3982 620

Section. Page.

CRIMES AND PUNISHMENTS—CONTINUED.

trespass—by cutting down timber, wood, or digging ore, etc. 3983 620
on garden, orchard, land, etc. 3984 620
maliciously—injuring any building, fixture, etc. 3985 621
defacing public buildings 3986 621
proclamations, advertisements, etc. 3987 621
taking property from boat, vessel, or raft 3988 621
injuring monuments forming state boundary 3989 621
placing obstruction on railway tracks 3990 621
breaking levees 3991 621
obstructing public ditches or drains 3992 622

OFFENSES AGAINST THE RIGHT OF SUFFRAGE.

bribery—of electors, and receiving bribes by 3993 622
elector—voting more than once at one election 3994 622
when knowing himself not to be qualified 3995 622
not resident of county 3996 622
state 3997 622
counseling to vote when not qualified 3998 622
furnishing false ballot to 3999 622
preventing from voting by force or threats 4000 623
bribery—of judge, clerk, etc., of election 4001 623
elector—procuring elector to vote by influence or threats 4002 623
judges—or clerks of election, making false entries in poll books 4003 623
refusing legal, and permitting illegal vote 4004 623
doing or omitting acts that render election void 4005 623
not returning poll books 4006 624
registration—unqualified person causing himself to be registered 4007 624

OFFENSES AGAINST CHASTITY, MORALITY, AND DECENCY.

adultery—defined and punished 4008, 4010 624
bigamy—defined and punished 4009, 4010 624
knowingly marrying husband or wife of another 4011 624
lewdness—defined and punished 4012 625
ill-fame—keeping house of 4013 625
lease of house of, void 4014 625
leasing house for purpose of, punished 4015 625
enticing virtuous females to 4016 625
sepulchre—violation of 4017 625
medical schools—dead bodies delivered to 4018–4020 625
memorial of the dead—injuring or defacing 4021 626
obscene books—selling or publishing of 4022 626
worshiping congregations—disturbing 4023–4025 626
gambling houses—keeping of 4026, 4027 627
and betting punished 4028 627
contracts void 4029 627
incest—defined 4030 628
animals—cruelty to, defined and punished 4031–4034 628

CRIMES AND PUNISHMENTS—CONTINUED.

	Section.	Page.
OFFENSES AGAINST PUBLIC HEALTH.		
unwholesome provisions—selling of	4035	629
adulteration—of food and liquor	4036	629
of drugs or medicines	4037	629
poison—person selling failing to label	4038	629
small pox—inoculation with intent to spread	4039	630
liquors—selling or keeping for sale, drugged	4040	630
dead animals—throwing of, into springs, streams, etc	4041	630
milk, cheese, butter—adulteration of, punished	4042	630
OFFENSES AGAINST PUBLIC POLICY.		
lotteries—establishing, selling, and buying tickets in	4043	630
intoxicating liquors—selling to indians or drunken persons	4044	630
paupers—bringing into the state	4045	631
license—transacting business without	4046	631
bank notes—circulation of foreign	4047	631
game—killing at certain seasons	4048	631
common carriers punished for carrying	4049	632
hunting or killing on premises of another	4050	632
prosecution for, where brought	4051	632
fish—netting, trapping, etc., punished	4052–4054	632
animals—bringing diseased into state	4055, 4056	633
running at large may be killed	4057	633
Texas cattle—bringing into state	4058	633
having in possession	4059	634
hops—cultivating, etc., of diseased roots of	4060	634
seizure and destruction of	4061	634
Canada thistles—permitting to blossom or mature	4062	634
birds—killing, trapping, etc., of, punished	4063	634
threshing machines—failure to box tumbling rods	4064	635
OFFENSES AGAINST THE PUBLIC PEACE.		
affray—defined and punished	4065	635
unlawful assembly—defined and punished	4066, 4068, 4070	635
riot—defined and punished	4067, 4068–4070	635
disturbance—exciting where persons are lawfully assembled	4069	635
highway—racing, or fast driving on	4071	636
Sabbath—breach of, defined	4072	636
CHEATING BY FALSE PRETENSES, GROSS FRAUDS AND CONSPIRACY.		
false pretenses—defined and punished	4073	636
fraudulent conveyances—making of, or being privy to, punished	4074	637
last will—secretion, suppression, defacing, or destruction of	4075	637
fraud—by using false weights or measures	4076, 4077	637
altering stamp, brand, or mark	4078	637
counterfeiting of	4079	637
using stamp or brand of another	4080	637

Section. Page.

CRIMES AND PUNISHMENTS—CONTINUED.
by gross, and cheating at common law punished 4081 638
destruction of raft, boat, or vessel 4082 638
casting away, burning, or sinking boats or vessels. 4083 638
false bill of lading 4084 638
false affidavits, or protests relating to boats or vessels 4085 638
conspiracy—defined and punished 4086, 4087 638
warehousemen—rendering false receipt or voucher by 4088 639

NUISANCES AND ABATEMENT THEREOF.

nuisances—defined 4089–4091 639
punishment and abatement of 4092–4094 640
may be stayed by execution of a bond 4095 640
expenses of abating, how collected 4096 640

OF LIBEL.

libel—defined 4097 641
punishment for 4098 641
proof given in evidence on trial of 4099 641
publication of, defined 4100, 4101 641
jury to determine law and fact 4102 641

CRIMINAL PROCEDURE, §§ 4103–4722—

PUBLIC OFFENSES.

divided into felonies and misdemeanors 4103 642
definition of ..4104, 4105 642
no person punished for public offense except upon legal conviction 4106 642
defendants bailable, exceptions to 4107 642

MAGISTRATES, PEACE OFFICERS AND COMPLAINTS.

magistrate, defined 4108, 4110 642
peace officers, defined 4109, 4110 643
complaint, or preliminary information, defined 4111 643

PREVENTION OF PUBLIC OFFENSES BY RESISTANCE.

lawful resistance may be made to the commission of a public offense 4112–4114 643

SECURITY TO KEEP THE PEACE.

magistrate to issue warrant on complaint 4115 643
proceedings, when party brought before him 4116, 4117 643
discharge of, and complainant ordered to pay costs 4118 644
undertaking to appear, required 4119 644
committed in default of giving 4120, 4121 644
complaint and undertaking returned to district court 4122 645
assault in presence of court or magistrate 4123 645

Section. Page.

CRIMINAL PROCEDURE—CONTINUED.
district court—may require the defendant to enter into undertaking 4124 645
undertaking forfeited by 4125 645
to hear proof and render judgment 4126 645
undertaking—when deemed broken 4127 645
district attorney to commence action on 4128 645
record, conclusive evidence of breach 4129 645

VAGRANTS.

who deemed 4130 646
complaint against and arrest of 4131 646
to be arrested by peace officers 4132, 4133 646
undertaking for good behavior required of 4134 646
committed in default of 4135 646
breach of 4136–4138 646
district court—trial of vagrant in 4139 647
judgment 4140–4144 647

RESISTANCE TO PROCESS AND SUPPRESSION OF RIOTS.

process—officer resisted in serving, may call for aid 4145 647
to certify names of resisters to court 4146 648
person refusing to aid, guilty of misdemeanor 4147 648
when governor may call out military 4148 648
rioters—dispersion of, commanded by peace officer 4149 648
may be arrested 4150 648
persons refusing to aid in arresting, guilty of misdemeanor 4151 648
officer guilty of misdemeanor for failure of duty 4152 648
power of, on refusal of rioters to disperse 4153 648
military, subject to orders of civil officers 4154 648

LOCAL JURISDICTION OF PUBLIC OFFENSES.

extent of 4155 649
of district court 4156 649
when offense is committed without, but consummated within the state 4157 649
fighting duel without the state 4158 649
when offense is committed part in one county and part in another 4159 649
within five hundred yards of boundary line 4160 649
on boats, rafts, etc 4161 649
in cases of kidnapping, etc 4162 649
of bigamy 4163 650
conviction or acquittal in one county a bar to prosecution in another 4164 650

TIME OF COMMENCING CRIMINAL ACTION.

for murder 4165 650
when to be commenced within eighteen months 4166 650
three years 4167 650
one year 4168 650

Section. Page.

CRIMINAL PROCEDURE—CONTINUED.
absence from state not included in time..... 4169 650
indictment deemed found, when filed in court..... 4170 650

FUGITIVES FROM JUSTICE.

governor may appoint agents to apprehend.....4171-4173 651
when to issue warrant for arrest or surrender of.....4174, 4175 651
magistrate may issue warrant for arrest of..... 4176 651
require bail..... 4177 652
on failure to give, may be committed..... 4178 652
forfeiture of..... 4179 652
may discharge fugitive..... 4180 652
governor may order re-arrest of..... 4181 652
complainant answerable for costs..... 4182 652
governor may order warrant to be served without expense to the state..... 4183 652
when expense paid by state, how audited..... 4184 652

WARRANT OF ARREST ON PRELIMINARY INFORMATION.

may be issued on complaint made..... 4185 653
form of, and to whom directed.....4186-4188 653
endorsement of, when for misdemeanor..... 4189 653
how, and where served..... 4190 653
when felony charged, defendant taken before magistrate.. 4191 653
bail taken in case of misdemeanor..... 4192 654
upon giving, defendant to be discharged..... 4193 654
upon not giving, taken before magistrate..... 4194 654
proceedings after arrest.....4195, 4196 655

OF ARREST, BY WHOM, AND HOW MADE.

arrest—definition of..... 4197 655
by whom may be made.....4198-4201 655
magistrate may orally order..... 4202 655
how made.....4203, 4204 655
power of officer in making.....4205-4207 656
person refusing to aid in making, guilty of misdemeanor.. 4208 656
unnecessary force not to be used in making.....4209-4211 656
offensive weapons taken from person arrested..... 4212 656
re-arrest in case of escape..... 4213 656
persons arrested to be taken before magistrate.....4214-4218 656
magistrate—may order information to be filed..... 4219 657
hearing to take place before another magistrate..... 4220 657
send defendant to another county for trial.. 4221 657
commit, discharge, or take bail.....4222-4224 658
return of officer on warrant of arrest..... 4225 658

PRELIMINARY EXAMINATION.

defendant entitled to aid of counsel in.....4226, 4227 659
may have change of venue..... 4228 659

Section. Page

CRIMINAL PROCEDURE—CONTINUED.
may be adjourned....4229, 4230 659
defendant to be committed or give security during adjournment....4231, 4232 659
magistrate to issue subpœnas.... 4233 659
depositions may be taken by defendant....4234–4236 659
defendant, competent witness on his own behalf.....4237, 4238 660
trial—magistrate may exclude witnesses or other persons during.... 4239, 4240 660
testimony on, reduced to writing....4241, 4242 660
judgment....4243, 4244 661
bail—order on taking.... 4245 661
when not given.... 4246 661
on failure of defendant to give, to be committed.... 4247 661
witnesses—on part of state to give bail for appearing...4248–4250 661
on failure to give, must be committed.... 4251 662
magistrate must return papers to district court.... 4252 662
proceedings when offense not triable by indictment.... 4253 662
on discharge of defendant, costs taxed to complainant.... 4254 662

SUMMONING AND EMPANELING GRAND JURY.

selecting, drawing, and summoning of.... 4255 663
names of, to be entered on the record.... 4256 663
vacancies in, filled.... 4257 663
challenges to....4258–4261 663
to be decided by court.... 4262 664
effect of allowance of....4263–4265 664
no severance in challenge by defendants.... 4266 664
foreman of, appointed by court.... 4267 664
oath of.... 4268 664
of jury.... 4269 664
court to charge.... 4270 664
discharge of.... 4271 664

POWERS AND DUTIES OF THE GRAND JURY.

to inquire into indictable offenses.... 4272 665
evidence to be produced before.... 4273 665
foreman of, may administer oaths.... 4274 665
must appoint clerk, who must take minutes of proceedings 4275 665
not bound to hear evidence produced by defendant.... 4276 665
member of, to be sworn as a witness.... 4277 665
special duties of, enumerated.... 4278 665
clerk to issue subpœnas for witnesses.... 4279 665
to have free access to jails and public records.... 4280 665
may ask advice of court or district attorney.... 4281 665
district attorney may appear before.... 4282 665
evidence necessary to find indictment by.... 4283 666
proceedings of, to be kept secret, except, etc....4284, 4285 666
juror not to be questioned as to how he voted.... 4286 666
proceedings where witness refuses to testify or obey subpœna....4287, 4288 666
papers on preliminary examination laid before....4289, 4290 666

Section. Page.

CRIMINAL PROCEDURE—CONTINUED.

FINDING AND PRESENTMENT OF INDICTMENT.

how endorsed by foreman of grand jury..... 4291 667
when found at instance of private prosecutor 4292 667
names of witnesses to be endorsed on..... 4293 667
presented to court and filed by clerk..... 4294 667

INDICTMENT, ITS FORMS AND REQUISITES.

indictment—definition of..... 4295 667
form of, and what to contain.....4296–4299 668
must charge but one offense..... 4300 668
precise time of offense need not be stated in..... 4301 668
erroneous allegation not material in..... 4302 669
construction of language in.....4303, 4304 669
when deemed sufficient..... 4305 669
insufficient..... 4306 669
presumptions of law need not be stated in..... 4307 669
judicial proceedings, how stated in..... 4308 670
what sufficient in pleading private statute..... 4309 670
allegations in, when for libel..... 4310 670
misdescription of lost or withheld instrument immaterial in 4311 670
indictment—allegations in, when for perjury..... 4312 670
necessary in, when for forgery with intent to defraud..... 4313 670
distinction between principal and accessory abrogated 4314 670
of accessory after fact..... 4315 670
of compounder of offense 4316 670
allegations necessary in, when for embezzlement of money. 4317 671

PROCESS UPON AN INDICTMENT.

is a bench-warrant..... 4318 671
judge to order issuance of..... 4319 671
clerk to issue on application of district attorney..... 4320 671
form of..... 4321 671
when for misdemeanor 4322 672
endorsement of by clerk when offense is bailable 4323 672
may be served in any county..... 4324 672
proceedings when defendant brought before magistrate to give bail..... 4325 672
how served on corporations and proceedings thereon..... 4326 672

ARRAIGNMENT OF THE DEFENDANT.

when to be arraigned 4327 672
how arraigned for felony, for misdemeanor 4328 672
when defendant is in custody 4329 673
when defendant on bail fails to appear for..... 4330 673
clerk to issue bench-warrant for arrest of 4331 673
defendant entitled to counsel on..... 4332 673
how made..... 4333 673

Section Page.

CRIMINAL PROCEDURE—CONTINUED.
effect of, as to name of defendant 4334, 4335 673
defendant may move to set aside, demur, or plead 4336 673

SETTING ASIDE THE INDICTMENT.

grounds for 4337, 4338 674
when not allowed 4339 674
motion for, to be heard when made 4340 674
upon denial of, defendant to demur or plead 4341 674
when sustained, defendant discharged 4342 674
case may be resubmitted to grand jury 4343 675
setting aside indictment no bar 4344 675
pleading—by defendant is a demurrer or plea 4345 675
put in open court and may be oral 4346 675

MODE OF TRIAL.

issues of law by the court, issues of fact by jury 4347 675
arise upon demurrer to indictment 4348 675
issues of fact arise on a plea 4349 675
must be tried by a jury of the county 4350 675
for misdemeanor, for felony 4351 675

DEMURRER.

grounds for 4352 676
form of entry on record of 4353 676
time for hearing 4354 676
proceedings when sustained 4355–4357 676
overruled 4358 676

PLEAS TO THE INDICTMENT.

number and form of 4359, 4360 677
of "guilty," put in only by defendant in open court 4361 677
may be withdrawn any time before judgment 4362 677
of "not guilty," is a denial of every material allegation 4363 677
judgment on verdict a bar 4364 677
or for an offense necessarily included in indictment 4365 677
judgment on demurrer, or for variance, not a bar 4366 677
of "not guilty," entered for defendant standing mute 4367 677

CHANGE OF VENUE.

defendant may petition for 4368 678
petition for change of venue, what it must state 4369 678
when to be verified by three persons 4370 678
need not state grounds of belief 4371 678
court may receive additional affidavits 4372 678
petition and affidavits are parts of record 4373 678
change awarded by court 4374–4376 678
clerk to make certified transcript 4377, 4378 678
prisoner delivered to sheriff of proper county 4379 679
power of court to which taken 4380 679
costs paid by county from which taken 4381 679

Section. Page.

CRIMINAL PROCEDURE—CONTINUED.
sheriff's fees for delivering prisoners..... 4382 679
transfer of prosecutions by judge, when and how.....
made.....4383–4388 679

FORMATION OF TRIAL JURY.

selecting, drawing, and summoning of..... 4389 680
clerk to prepare ballots of..... 4390 680
call of panel may be demanded..... 4391 680
manner of drawing.....4392–4395 680
talesmen summoned by sheriff..... 4396 680
to consist of twelve men..... 4397 681

CHALLENGING THE JURY.

challenges, how made..... 4398 681
defendants cannot sever in..... 4399 681
when made to the panel.....4400–4403 681
causes of, to individual juror.....4404, 4405 681
exemption from service not a cause of..... 4406 682
trial of.....4407–4409 682
to be completed first by state, for cause..... 4410 682
peremptory, number of.....4411–4413 682
order of.....4414–4416 683
no juror sworn until twelve accepted 4417 683
bias against one party no cause of challenge by
the other..... 4418 683

TRIAL OF ISSUE OF FACT IN INDICTMENT.

continuances of, governed by code of civil practice..... 4419 683
order of..... 4420 683
only witnesses examined by grand jury introduced by state,
unless..... 4421 684
order of introduction of evidence reversed, when..... 4422 684
counsel not to be restricted as to time in argument..... 4423 684
separate, granted in cases of felony..... 4424 684
evidence necessary to convict for conspiracy..... 4425 684
rules of evidence in civil, applicable in criminal cases.... 4426 684
conviction of defendant not warranted by confession, unless 4427 685
defendant acquitted on reasonable doubt.....4428, 4429 685
jury discharged when offense of a higher nature proved.4430, 4431 685
may be directed by court to view premises..... 4432 685
juror may be sworn as witness..... 4433 685
court may permit jury to separate before cause is submitted 4434 685
to admonish jury before separation..... 4435 685
minutes of testimony to be kept on request..... 4436 686
one or more of several defendants may be convicted or ac-
quitted 4437 686
jury to determine law and fact in case of libel..... 4438 686
in other cases, to receive the law as laid down by the court 4439 686
court to instruct the jury in writing..... 4440, 4441 686
when jury retire, officer sworn to take charge of..... 4442 687

CRIMINAL PROCEDURE—CONTINUED. Section. Page
discharge of, when juror becomes sick..... 4443 687
when court has no jurisdiction of offense.4444–4449 687
discharge of defendant and exoneration of bail..... 4450 688
court may commit defendant on bail, into custody..... 4451 688

CONDUCT OF JURY AFTER CAUSE IS SUBMITTED.

may take all papers used as evidence, except depositions.. 4452 688
also notes of testimony taken by themselves.... 4453 688
may require further information..... 4454 688
juror becoming sick, jury to be discharged..... 4455 688
may be discharged upon failure to agree..... 4456 688
cause retried..... 4457 689
court deemed open until verdict or discharge of jury..... 4458 689
final adjournment of, discharges jury..... 4459 689

VERDICT.

how rendered.....4460, 4462 689
when presence of defendant required..... 4461 689
may be general or special, except for libel..... 4463 689
what a general verdict imports.....4464–4466 689
may be rendered against part of defendants..... 4467 690
proceedings on informal.....4468, 4469 690
jury may be polled..... 4470 690
when complete..... 4471 690
in case of insanity..... 4472 690
of acquittal, defendant to be discharged..... 4473 690
special verdict, definition of.....4474–4476 690
judgment on..... 4477 691
when informal..... 4478 691

BILLS OF EXCEPTION.

grounds of.....4479, 4480 691
office of..... 4481 691
what deemed part of record..... 4482 691
to be signed by judge or bystanders..... 4483 692
time allowed for signing..... 4484 692
modification of..... 4485 692
time given to prepare..... 4486 692

NEW TRIAL.

definition of..... 4487 692
effect of..... 4488 692
causes for..... 4489 692
application for, can only be made by defendant..... 4490 693

ARREST OF JUDGMENT.

application for and grounds of..... 4491 693
may be by court on its own motion.....4492, 4493 693
motion for must be made before judgment..... 4494 693

CRIMINAL PROCEDURE—CONTINUED.

Section. Page.

JUDGMENT.

of acquittal to be rendered immediately..... 4495 693
conviction, time given to announce..... 4496 693
for felony, defendant must be personally present..... 4497 693
when defendant on bail does not appear for, bench warrant may issue.....4498, 4499 694
form of warrant..... 4500 694
service of.....4501, 4502 694
defendant may show legal cause against..... 4503 694
definition of..... 4504 684
when insanity a cause, question of to be determined..... 4505 694
motion for arrest in, or new trial, determined.....4506, 4507 694
where conviction is for two or more offenses.....4508 695
for fine, may direct imprisonment until paid.....4509 695
may direct imprisonment in another county.....4510 695
bail to be fixed by, in cases of appeal.....4511 695

EXECUTION.

in cases of imprisonment, certified copy of judgment constitutes..... 4512 695
defendant to be committed until judgment is complied with. 4513 695
judgment, how executed.....4514–4516 695
officer to make written return of..... 4517 696
judgment for fine executed as in civil cases..... 4518 696
when judgment is for abatement of nuisance..... 4519 696

APPEALS.

criminal actions reversed by..... 4520 696
either party may take..... 4521 696
within what time..... 4522 696
manner of taking..... 4523 696
when deemed perfected..... 4524 696
clerk to make out transcript..... 4525 697
either defendant jointly tried may..... 4526 697
taken by state does not stay judgment..... 4527 697
defendant may stay proceedings.....4528–4530 697
party taking known as appellant..... 4531 697
takes precedence over causes..... 4532 697
appearance of defendant at hearing not required..... 4533 698
cannot be dismissed..... 4534 698
no assignment of error required..... 4535 698
defendant entitled to closing argument..... 4536 698
opinion of supreme court to be in writing..... 4537 698
must examine record..... 4538 698
when taken by state, punishment not to be increased..... 4539 698
when defendant discharged..... 4540 698
on affirmance, original judgment to be executed..... 4541 698
judgment of court to be certified to court below.....4542–4544 698
effect of imprisonment of defendant pending trial of, when judgment is reversed..... 4545 698

CRIMINAL PROCEDURE—CONTINUED.

Section. Page.

IMPEACHMENT.

definition of..... 4546 699
majority of all the members of the house of representatives elected must concur in..... 4547 699
must specify causes as in an indictment..... 4548 699
different acts to be separately stated..... 4549 699
person accused brought before the senate..... 4550 699
process to be issued by secretary of senate..... 4551 699
copy of to be furnished the accused..... 4552 699
oath to be administered to members of court..... 4553 699
accused suspended until acquittal..... 4554 699
proceedings when the president of the senate is the accused 4555 699

EVIDENCE.

rules prescribed in civil cases made applicable..... 4556 700
presumption when highway is unsafe at point where crossed by railway..... 4557 700
necessary to sustain indictment for rape..... 4558 700
of accomplice must be corroborated..... 4559 700
so must female in prosecution for seduction..... 4560 700
subpœnas, by whom issued.....4561, 4562 700
service of.....4563–4565 700
penalty for disobeying.....4566, 4567 701
undertakings of witnesses forfeited and enforced..... 4568 701
subpœna runs to any part of the state..... 4569 701
by whom issued in impeachment..... 4570 701
defendant may examine witnesses conditionally, or on commission, as in civil actions..... 4571 701
testimony must be perpetuated by defendant..... 4572 701

BAIL BEFORE INDICTMENT.

who may take..... 4573 701
form of undertaking of..... 4574 701
qualifications of..... 4575 702
justification of.....4576–4578 702
order allowing or disallowing..... 4579 702
discharge of defendant on.....4580, 4581 702

BAIL ON INDICTMENT BEFORE CONVICTION.

how taken when offense is misdemeanor..... 4582 703
is a felony..... 4583 703
by whom taken..... 4584 703
form of, undertaking of..... 4585 703
justification and qualification of..... 4586 703

BAIL ON APPEAL TO SUPREME COURT.

when admitted to, and conditions of undertaking..... 4587 704
justification and qualification of..... 4588 704

CRIMINAL PROCEDURE—CONTINUED.

	Section.	Page.
DEPOSIT OF MONEY INSTEAD OF BAIL.		
with whom deposited and effect of	4589	704
may be deposited after giving bail, and effect of	4590	704
may give bail after depositing money	4591	704
application of, money deposited	4592	705
SURRENDER OF THE DEFENDANT.		
bail may, in their exoneration	4593	705
arrest	4594	705
money deposited to be returned on surrender of	4595	705
FORFEITURE OF BAIL.		
how incurred	4596	706
set aside on satisfactory excuse given	4597	706
action on	4598, 4599	706
effect of, surrender before judgment	4600	706
RECOMMITMENT OF DEFENDANT AFTER GIVING BAIL.		
district court may recommit, and grounds of	4601	707
order of, to state facts on which founded	4602	707
arrest and committal of defendant	4603, 4604	707
new bail given	4605	707
UNDERTAKING OF BAIL, WHEN LIENS.		
made leins with like effect as in civil actions	4606	707
filed and docketed by clerk	4607	708
copies of, may be filed in another county	4608	708
JUDGMENTS FOR FINES, WHEN LIENS.		
become liens in same manner as judgments in civil actions	4609	708
execution on, stayed in same manner	4610	708
LIBERATION OF POOR CONVICTS.		
when, and on what conditions liberated	4611	708
effect of false schedule by	4612	708
DISMISSAL OF CRIMINAL ACTIONS.		
when indictment not found at first term	4613	709
when not tried at first term after indictment	4614	709
discharge of defendant on his own undertaking	4615	709
exoneration of bail	4616	709
court or district attorney may dismiss action for cause	4617	709
nolle prosequi abolished	4618	709
a bar to misdemeanor, but not to felony	4619	709
INSANITY OF DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.		
jury empanelled to determine insanity	4620	710

CRIMINAL PROCEDURE—CONTINUED. Section. Page
proceedings suspended until question determined..... 4621 710
order of trial..... 4622 710
if defendant found sane, proceedings resumed..... 4623 710
proceedings if found insane..... 4624 710
effect of on bail..... 4625 710
may be detained in hospital until sane..... 4626 710
expenses of conveyance to, how paid.....4627, 4628 711

SEARCH WARRANTS, AND PROCEEDINGS THEREON.

definition of, and by whom issued..... 4629 711
grounds for issuing.....4630, 4631 711
to issue on probable cause shown.....4632–4635 711
form of..... 4636 712
by whom and how served.....4637–4640 712
time for execution and return of..... 4641 713
officer executing to give receipt for property taken..... 4642 713
inventory to be returned with warrant and verified..... 4643 713
magistrate to deliver copy of inventory, when required.... 4644 713
when grounds of issuing warrant are controverted..... 4645 713
testimony to be reduced to writing..... 4646 713
disposition of property taken on.....4647, 4648 713
papers returned to the district court..... 4649 713
maliciously suing out deemed misdemeanor..... 4650 714
officer exceeding authority guilty of..... 4651 714
person charged with felony may be searched..... 4652 714
officer to retain property until trial of offender..... 4653 714

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

officer taking, to hold until disposed of according to law.. 4654 714
when delivered to owner.....4655–4657 714
when unclaimed, delivered to county auditor..... 4658 715
officer taking to give duplicate receipts for..... 4659 715

PROCEEDINGS AND TRIALS BEFORE JUSTICES OF THE PEACE.

jurisdiction of justices of the peace..... 4660 715
commenced by information..... 4661 715
what to contain..... 4662 715
form of..... 4663 715
justice to file information..... 4664 716
may issue warrant for arrest of defendant..... 4665 716
how served..... 4666 716
must read charge to defendant..... 4667 716
pleas of defendant to be oral.....4668, 4669 716
justice may grant change of venue.....4670, 4671 716
defendant may demand trial by jury..... 4672 716
how obtained....4673, 4674 717
jurors summoned..... 4675 717
selection of jury.....4676, 4677 717
challenges to..... 4678 717
vacancies in, how filled..... 4679 717
failure of officer to return venire, punished as a contempt.. 4680 717

Section. Page.

CRIMINAL PROCEDURE—CONTINUED.
six jurors to constitute jury..... 4681 717
oath to be administered to by justice..... 4682 717
jury to hear proofs and allegations of parties..... 4683 718
on retirement of, officer in charge to be sworn..... 4684 718
to deliver verdict publicly..... 4685 718
to be kept together until verdict rendered, or are discharged..... 4686 718
when discharged, justice may proceed again to trial... 4687 718
judgment rendered on conviction, or plea of guilty....4688, 4689 718
defendant to be immediately discharged on acquittal..... 4690 718
costs, when taxed against prosecuting witness, appeal from. 4691 718
judgment on plea of guilty..... 4692 719
execution of by officer..... 4693 719
disposition of fine when paid to justice..... 4694 719
when to be paid to sheriff.....4695, 4696 719
justice to inform defendant of his right to appeal..... 4697 719
bail fixed, and form of bond..... 4698 719
qualifications of, and how taken..... 4699 720
by whom may be taken..... 4700 720
on appeal, undertaking required of witnesses..... 4701 720
trial of in district court..... 4702 720
appeal from judgment of justice in criminal cases not dismissed..... 4703 720
proceedings to carry judgment into effect, where had..... 4704 720
appeal may be taken from district to supreme court..... 4705 720
proceedings to carry judgment of supreme court into effect. 4706 720
police courts—proceedings in, in criminal cases..... 4707 721

COMPROMISING CERTAIN OFFENSES BY LEAVE OF THE COURT.

offenses that may be compromised, and how.....4708, 4711 721

PARDONS AND REMISSION OF FINES AND FORFEITURES.

governor has power to, except for murder in the first degree..... 4712 722
application for and proceedings thereon..... 4713 722
officer to whom warrant of pardon is directed, to make return thereon..... 4714 722

ILLEGITIMATE CHILDREN.

complaint may be made to district court on birth of..... 4715 723
upon filing of, notice to be served on defendant. 4716 723
lien created upon property of accused..... 4717 723
on verification of complaint, attachment may issue..... 4718 723
district-attorney to prosecute the matter..... 4719 723
issue on trial, and how tried..... 4720 723
judgment..... 4721 723
may be enlarged, diminished, or vacated, by court..... 4722 723

CROSS-INTERROGATORIES—
to be filed by clerk, when..... 3728 574

	Section.	Page.
CROSS-PETITION—		
may be filed in actions for divorce	2225	400
when filed, notice of given	2663	451
CRUELTY TO ANIMALS—		
defined and punished	4031–4034	628
CURATORS—		
of state historical society appointed	1901	351
to choose officers	1904, 1905	352
to keep record of their acts	1906	352
CURRANTS—		
standard weight of bushel of	2049	373
DAMAGES—		
caused by establishment of highway, how and when claimed	934	162
appraisers appointed to assess	940	163
claims for must be in writing	941	163
appraisers notified of appointment and place of meeting	942	164
to be sworn; vacancies in filled	943	164
report of; other commissioners appointed	944	164
when no damages awarded, applicant to pay costs	945	164
may be increased or diminished by board of supervisors	946	164
recovered by owner or occupier of mills for injuring works	1205	219
caused by erection of telegraphs, how assessed	1326	243
for non-acceptance or non-payment of bills of exchange	2096	380
recoverable of warehousemen for issuing false receipt	2176	392
failure to controvert allegation of, not deemed admission	2712	456
new trial not granted on account of smallness of	2839	470
no distinction made between debt and	2862	473
amount recoverable on attachment bond	2961	486
purchaser of real property may recover for injuries to, after sale and before period of redemption expires	3127	507
on affirmance of judgment by court, when rendered	3162	512
supreme court may award on appeal	3196	517
recoverable in action for waste	3332	533
wilful trespass	3335	533
DEAF AND DUMB. *See* INSTITUTION FOR.		
DEATH—		
causes of action do not abate by	2425	431
action may be maintained for causing	2526	431
when deemed to have accrued	2527	431
of parties, no cause for abatement of proceedings in supreme court	3211	519
of plaintiff, does not prevent execution from issuing	3130–3133	507
of part of defendants, execution may issue against survivors	3134	507
DEED—		
before tax deed can be executed, notice given	894	153
when and by whom executed	895	153
form of	896	154
effect of	897	155

Section. Page.

DEEDS OF TRUST—
of real or personal property may be executed as securities, and treated like mortgages 3318 531
of real estate, manner of foreclosure of 3319 531

DEFAULT—
judgment by, rendered when party fails to plead 2869 474
when no appearance, court must inspect notice 2870 474
may be set aside on terms 2871 474
amount computed by clerk, when 2872 474
party in, may cross-examine witnesses 2873 474
judgment in equitable action rendered according to proof.. 2874 474
party served by publication may defend any time before judgment 2875 474
when rendered on service by publication, bond may be required 2876 474
cause may be retried on application 2877 475
title of purchaser not affected by 2878 475
defendant served by copy; effect of 2879 475
service must be personal 2880 475
personal judgment not rendered on service by publication. 2881 475
in justices' courts—when rendered 3540, 3541 555
may be set aside and new trial granted 3543, 3544 555
on appeal from, new pleadings may be filed 3596 559

DEFENSE—
admitting and seeking to avoid, adverse pleading must be specially plead 2718 457
arising after commencement of action, how stated 2733 458

DEFENDANT—
definition of 2505 429
may have proceedings corrected 2516 430
any person who has interest adverse to plaintiff, may be... 2547 434
when name not known may be described 2557 435
sued by name signed to written instrument 2558 435
insane, must defend by guardian 2570 436
when sued for recovery of personal property, may have any person claiming made defendant 2572 436
when held to appear after service of notice 2602 442
service of original notice on, when a minor 2614 443
insane 2615, 2616 444
prisoner in penitentiary 2617 444
when served by publication 2618 444
action against, when unknown, how brought 2622, 2623 445
mode of appearance to action by 2626 445
manner of proceeding against, when all not served 2627 446
may have any cause not properly joined stricken out 2632 447
must plead to original petition, when 2635 447
subsequent pleadings 2636 448
pleadings by, specified 2645 448
may demur to petition, when 2648 449
when advantage of, taken by answer 2650 449

Section. Page.

DEFENDANT—CONTINUED.
may demur to part of causes, and answer residue..... 2651 450
answer of, what it must contain..... 2655 450
may file cross-petition..... 2663 451
demur to reply..... 2668 452
state matter in abatement in answer..... 2732 458
judgment rendered for excess of counter-claim..... 2860 473
may have retrial when served by publication..... 2877 475
no personal judgment rendered against, when so served... 2881 475
judgment may be confessed by.....2894, 2896 476
may offer to confess before action..... 2898 477
after action..... 2899 477
may make offer to compromise, effect of..... 2900 477
offer may be conditional..... 2901 478
required to give information touching property in attachment cases..... 2968 487
stock or interests of, in corporations levied on..... 3050 497
may have stay of execution..... 3061 499
notified of sale of real estate on execution..... 3087 502
may divide land into parcels, sale to be accordingly..... 3088 503
entitled to redeem real property sold on execution..... 3102 504
for first six months, right is exclusive..... 3103 504
may redeem at any time within one year..... 3112 505
mode of redemption by..... 3118 506
right of, transferrable..... 3123 506
term "defendant" defined..... 3128 507
death of a part of defendants, does not prevent execution from issuing against survivors..... 3133 507
may quash execution because heirs of deceased plaintiff are not properly endorsed on 3134 507
in action to recover personal property may have claimant of, substitued in his place..... 3228 521
may prevent delivery of property by execution of a bond.. 3235 522
must permit plaintiff and sheriff to inspect property..... 3236 523
may be examined under oath when property is concealed.. 3233 522
form of answer of, in actions to recover real property..... 3252 525
defendant making defense, need not prove possession of premises 3254 525
in criminal actions—name corrected when erroneously stated 4299 668
how arraigned.....4327–4336 673
pleading by.....4345, 4346 675
demurrer by.....4352–4358 676
pleas by, defined.....4359–4367 677

DEMAND—
for taxes not necessary..... 857 145
when necessary on contract, payable in property before it can be converted into a money demand..... 2097 380

DEMURRER—
to original petition, when to be filed..... 2635 447
to subsequent pleadings, when to be filed..... 2636 448
the day court opens to be deemed first day of term..... 2637 448

Section Page.

DEMURRER—CONTINUED.
further time to file may be given by court..... 2638 448
suspends necessity of filing any other pleading..... 2640 448
must be submitted when filed unless adverse party asks delay..... 2641 448
cannot be withdrawn without leave of adverse party..... 2642 448
causes of, enumerated..... 2648 449
must specify and number grounds of..... 2649 449
when causes of do not appear on face of petition..... 2650 449
may be filed as to part of causes, and others answered..... 2651 450
adverse party deemed to have joined in upon failure to amend..... 2652 450
upon being overruled, an answer or reply may be filed.... 2653 450
consequences of failure to amend after decision of..... 2654 450
may be filed to answer and to reply.....2664, 2668 451
may be filed to answer in habeas corpus proceedings..... 3481 548
in criminal actions—may be oral..... 4346 675
no joinder in, necessary..... 4348 675
grounds of, when to indictment..... 4352 676
form of..... 4353 676
determination of..... 4354 676
proceedings when sustained.....4355–4357 676
overruled..... 4358 676
judgment on, does not bar another prosecution..... 4366 677

DEPOSITIONS—
taken in trials of contested elections.....703, 723, 733 120
answers to interrogatories attached to pleadings may be read as.....2693, 2694 454
when, and in what actions taken..... 3721 574
notice of taking to be given..... 3722 574
when taken on written interrogatories.....3723–3726 574
notice, and copy of interrogatories served on adverse party 3727 574
clerk to file cross-interrogatories, when..... 3728 574
service of notice, how made.....3730, 3733 575
how taken.....3734, 3735 575
exhibits, appended to..... 3736 576
how authenticated..... 3737 576
neither party to be present on taking..... 3738 576
opened and filed by clerk..... 3739 576
may be returned by mail.....3737, 3740 576
not to be excluded on unimportant deviations..... 3741 576
how authenticated when taken by judge or justice by name of office..... 3742 576
cannot be read if witness is produced in court..... 3743 576
to be used in justices' court transferred on appeal..... 3744 576
testimony may be perpetuated by.....3745, 3750 576
exceptions to, when and how taken..... 3751 577
to be decided before trial..... 3752 578
error in decision of court waived, unless excepted to..... 3753 578
costs of taking, how paid..... 3754 578

Section. Page.

DEPUTIES, §§ 766–771—
what officers may appoint, how made, bonds required..... 766 127
may perform duties of principal..... 767 127
who cannot be deputy secretary, auditor, or treasurer of state..... 768 127
sheriff may appoint any number of..... 769 127
oath of, endorsed on, and filed with appointment..... 770 127
of county officer, board of supervisors to allow compensation..... 771 127
of clerk of district or circuit court, duty of..... 195 33
prohibited from acting as justice or attorney..... 204 34
of sheriff, not to act as attorney for any party..... 342 59
purchase of property at sale by, void..... 343 59
marshal to be appointed in cities of second class..... 532 93
elected in cities of first class..... 535 94
of state officers—inspector of shingles and lumber may appoint..... 2069 376
of secretary of state, salary of..... 3756 579
of auditor of state, salary of..... 3757 579
of treasurer of state, salary of..... 3758 579
of register of state land office, salary of..... 3759 579
of superintendent of public instruction, salary of..... 3760 579
salaries of to be paid monthly..... 3780 583
warden of penitentiary at Fort Madison, appointment of.. 4754 730
salary of, and how paid.....4783, 4784 735
to perform duties of warden..... 4792 736

DESCENT. *See* ESTATES OF DECEDENTS—
personalty to be distributed as real estate.....2436, 2437 421
may be distributed in kind..... 2438 421
court may order partial distribution to family..... 2439 421
one-third of real property to be set apart to widow..... 2440 421
residue in equal shares to children..... 2453 423
heirs of any deceased child to inherit share of..... 2454 423
when no issue, estate to be divided between parents and wife.....2455, 2456 423
when parents are dead, share of to go to their heirs..... 2457 423
where no heirs of, the whole to go to wife and her heirs.. 2458 423

DEVISE—
to corporations, to what extent valid..... 1101 189
by aliens, valid to same extent as by citizens..... 1908 353
by or to married women, valid to same extent as where made by or to husband..... 2202 396

DEVISEE—
embraces legatees..... 2336 412
dying before testator, heirs of to inherit..... 2337 412
judgment against, how rendered..... 2485 426
any one may tender amount due from him..... 2486 426

DISCHARGE—
matter of must be specially plead..... 2718 457

Section. Page.

DISCHARGE OF SURETIES. *See* SURETIES.

DISCONTINUANCE—
of action, when petition is not filed by time stated in notice 2600 442

DISCOVERY—
of assets of estates compelled.....2379–2381 416
action for, when maintainable 2523 431

DISEASED ANIMALS—
persons importing into this state, punished..... 4056 632
may be killed..... 4057 633

DISMISSAL OF ACTION—
causes for specified..... 2844 471
when on the merits..... 2845 471
defendant may proceed on counter claim, notwithstanding. 2846 471
may dismiss before cause is submitted to jury.. 2847 472
may be done in vacation..... 2848 472
in justice's court—when plaintiff fails to appear..... 3538 555
may be set aside and new trial granted.....3543, 3544 555
in criminal actions—unless defendant is indicted at first term after being held to answer..... 4613 709
if not brought to trial at next regular term..... ..... 4614 709
when reason shown against, defendant held on his own bond..... 4615 709
defendant discharged and bail exonerated..... 4616 709
court or district attorney may dismiss action for reasons stated..... 4617 709
entry of a *nolle prosequi* abrogated..... 4618 709
when a bar to further prosecution..... 4619 709

DISTILLER. *See* INTOXICATING LIQUORS.

DISTRIBUTIVE SHARE—
setting off, deemed waiver of homestead; survivor may elect otherwise 2008 367

DISTRESS AND SALE—
of personal property, for non-payment of taxes..... 857 145
notice of sale; disposition of surplus..... 858 145
treasurer may appoint deputy, compensation of..... 859 145
penalty for resisting treasurer..... 860 146

DISTRICT AGRICULTURAL SOCIETY. *See* AGRICULTURAL SOCIETIES.

DISTRICT ATTORNEY—
duties of enumerated..... 205 35
to give written opinion to county officers, and prepare contracts for..... 206 35
to pay public money to the officer entitled to custody thereof. 207 35
when to be elected.....584, 585 104
bond not to be less than ten thousand dollars..... ..... 678 117
to file petition for removal of officer, when directed by judge..... 757 126
resignation of made to governor..... 782 129

Section Page.

DISTRICT ATTORNEY—CONTINUED.
may cause arrest of criminal committed to hospital for insane, on his discharge as cured 1413 260
to bring suit on bond given to obtain permit to sell intoxicating liquors 1532 281
appear for state in prosecutions before a justice, for selling intoxicating liquors 1551 288
bid off land sold by state or county on execution 1911 354
demand security for debt due state 3005 492
file affidavit for attachment in favor of state 3006 492
bring action to test official and corporate rights 3347 534
salary of 3775, 3776 583
to be paid monthly 3780 583
to bring suit on forfeited undertakings 4128 645
give advice to grand jury 4281 665
may appear before 4282 665
commence action on forfeited undertaking of bail. 4598, 4599 706
may dismiss prosecution, for reasons stated in order of 4617 709
to prosecute cases of bastardy 4719 723
made inspector of jails 4729 725

DISTRICT AND CIRCUIT COURTS, AND JUDGES, §§ 161–186—
jurisdiction of district court, both civil and criminal 161 28
of circuit court, civil only 162 28
judicial districts and circuits, and terms, where there are two county seats 163 29
terms in counties having two county seats, for probate business 164 29
judges to fix terms of courts 165 29
special term ordered at a regular term of court 166 29
when judge fails to appear, court stands adjourned 167, 168 29
judge may, by a written order, adjourn court to a particular day 169 29
no proceeding held invalid by reason of the failure of the term 170 29
persons bound to appear, held to appear at the next term 171 29
upon final adjournment, all business to stand continued 172 29
when there is no court house, court to be held at the place supervisors provide 173 29
on failure to provide suitable place, sheriff to procure one. 174 29
district judges may interchange, and so may circuit judges. 175 29
records to be read in open court and signed by the judge. 176 29
record of must be read and signed at next term 177 30
record amended before signed by judge 178 30
entries can be altered, only to correct evident mistake 179 30
judges may establish rules 180 30
appoint short hand reporter 181 31
removal of 182 31
take and decide matters in vacation, effect of 183 31
circuit court is a court of record, and to have a seal 184 31
judgment rendered on verdict received after court opened in another county 185 31
may be rendered at next term 186 31

Section. Page.

DISTRICT AND CIRCUIT COURTS—
what constitutes records of 196, 197 33
judges of may direct minutes of both courts kept in same books 202 34
may suspend or revoke license of attorney 217 37
causes for 218 37
proceedings 219, 220 37
trial 221 38
judgment 222 38
appeal 223 38
to find facts and state conclusions of law when requested .. 2743 459
may refer certain causes to referees 2816 467
permit jury to view premises in controversy 2790 464
discharge jury 2793, 2794 465
adjourn trial after jury is sworn 2796 465
remains open after jury has retired 2798 465
may admit testimony to correct oversight 2799 466
give information to jury after they have retired 2800 466
how given 2801 466
causes may be referred by 2816 467
finding of must distinguish between matter in abatement and bar 2851 472
provisions relating to juries apply to courts when acting as a jury 2863 473
may ascertain amount due on default 2872–2874 475
must approve deed of commissioner appointed by 2890 476
may appoint receivers 2903 478
to fix penalty of bond of 2904 479
has control of 2905 479

DISTRICT COURT. *See* DISTRICT AND CIRCUIT COURTS—
jurisdiction of 161 28
of defendant bound to keep the peace 4119 644
security required of 4124–4128 645
in cases of vagrancy 4139–4143 647
local jurisdiction of 4156 649
appeal from justices of the peace to 4698 719
trial of appeal 4702, 4703 720
criminal actions compromised with consent of 4708, 4711 721
jurisdiction of in bastardy cases 4715–4722 723

DISTRICT TOWNSHIP. *See* SCHOOLS—
public property of, exempt from corporate debts 3048 497
tax levied to pay corporate debts 3049 497

DIVORCE AND ALIMONY, §§ 2220–2236.
district or circuit court has jurisdiction of 2220 399
statements of petition for 2221, 2222 399
not to be granted on testimony of plaintiff alone 2222 399
causes for divorce 2223, 2224 399
cross-petition may be filed 2225 400
court may decree alimony pending litigation 2226–2228 400
attachment may issue when ordered by court or judge 2227 400

Section. Page.

DIVORCE AND ALIMONY—CONTINUED.
order by court in relation to property and children 2229 400
guilty party forfeits all rights acquired by the marriage ... 2230 400
illegal marriages—causes for annulling 2231 400
petition for filed as for divorce 2232 400
where validity of marriage is doubted 2233 400
when issue is legitimate or illegitimate 2234, 2235 400
compensation may be decreed as in cases of divorce 2236 401
prosecuted by equitable action, nor can there be any joinder 2511 430
action for to be tried on oral evidence 2742 459
may be tried at appearance term 2744, 2745 460
judgment cannot be rendered by agreement 2861 473

DOCKET—
of justices, and entries therein 3515 552

DOGS—
cities may prevent from running at large 459 77
may tax 499 87
when killed, and owner liable for damages 1485 271

DOMESTIC AND OTHER ANIMALS, §§ 1446–1488—
owner of swine or sheep to restrain same from running at large 1446 265
animals running at large taken possession of 1447 266
persons injured by may recover damages against owner ... 1448 266
owner of land liable for neglect to maintain partition fence 1449 266
owners of horses, cattle, mules and jennies liable for damages done by them 1450 266
a lien had on trespassing animals 1451 266
owner of trespassing stock to pay damages sustained by.. 1452 266
trespassing animals may be distrained and retained 1453 266
owner of trespassing stock to be notified of distraint of same 1454 267
trustees to assess damages in writing and file the same.... 1455 267
trespassing stock to be treated as estrays where owners are not known 1456 267
board of supervisors to determine whether question of restraining stock be submitted to voters 1457 267
townships may adopt the provisions relating to restraining stock 1458 268
when petitioned to submit vote, trustees to publish notice.. 1459 268
manner of submitting question, and result of vote 1460 268
board of supervisors to submit question of restraining when petitioned so to do 1461 268
form of ballot, and result of vote 1462 268
definition of word "stock" 1463 268
unbroken animals not to be taken up between May and December, unless 1464 269
when strays may be taken up by persons other than owners of premises 1465 269
taker-up to post up written notices 1466 269
justice of the peace to appoint appraisers by notice 1467 269
to send certified copy of description to county auditor 1468 269

Section. Page.

DOMESTIC AND OTHER ANIMALS—CONTINUED.
secretary of state to contract with printer to publish notice of estrays 1469 269
printer to issue paper once a week in which shall be two insertions of all estrays 1470 270
proceedings when appraised value of estray does not exceed five dollars 1471 270
when property vests in finder of estray 1472 270
person legally taking up estray may use or work the same. 1473 270
time within which owner may prove ownership 1474 270
when title to stray vests in the finder 1475 270
if any estray escape or die, finder not liable 1476 271
penalty for selling, trading, or taking out of the state any estray 1477 271
penalty for failure of printer, auditor, or justice to perform their duties 1478 271
board of supervisors to provide books in which to enter marks and brands of animals 1479 271
persons wishing to brand animals may adopt their own mark 1480 271
not to adopt mark or brand previously recorded ... 1481 271
any person may take charge of any abandoned animal 1482 271
impounded animals may be taken care of by persons other than the owner 1483 271
diseased animals may be destroyed 1484 271
when dogs may be killed 1485 271
animals distrained or property held, may be released by the owner 1486 272
bounty allowed for scalp of wolf, lynx, swift, or wild-cat .. 1487 272
person claiming bounty, to produce statement, with scalp of animal 1488 272
cities may prevent from running at large 459 77
cities may tax 499 87

DRAINAGE, §§ 1207–1235—
board of supervisors may locate drains and ditches 1207 219
petition, bond, survey, notice 1208 220
located and established, damages, assessment of 1209 220
claim for damages, how made; waiver of 1210 221
work of constructing divided 1211 221
letting of work paid for out of county treasury 1212 221
costs and fees, how paid 1213 221
equitable apportionment made and levied on land benefited 1214 222
of swamps—application to be made to township trustees ... 1217 222
land-owners notified when trustees will meet 1218 222
hearing before 1219 222
course and depth of ditch determined, and record made... 1220 222
costs, trustees may require bond 1221 223
damages to land-owners assessed 1222 223
appeal from assessment of 1223 223
trial of and proceedings of circuit court 1224 223
drain bridged when it crosses highway 1225 223
may be repaired 1226 223
penalty for obstructing 1227 223

Section. Page.

DRAINAGE—CONTINUED.
of coal land—may be done through land of another, damages assessed 1228 224
of lead mines—compensation for 1229 224
party entitled to, has right to examine mines 1230 224
penalty for refusal to permit examination 1231 224
to have lien on ore in hands of smelters upon service of notice 1232 224
right of way over lands of others given 1233 224
damages for, how assessed 1234 225
rights of owners of mineral protected 1235 225

DRAWBACK—
railway corporations may allow 1298 238

DRIED APPLES AND PEACHES—
standard weight of bushel of 2049 373

DRUNKARD. *See* GUARDIANSHIP—
guardian may be appointed for 2272 405
may have trial by jury 2273 405
provisions relating to guardianship of minors applicable to 2274 405
power, authority, and duty of guardian of 2275 405
real estate of, may be sold 2276 405
guardian may complete contracts of 2277 405
when estate of insolvent, how settled 2278 406
priority of claim to person of 2279 406

DRUGS AND MEDICINES—
adulteration of punished 4037 629
punishment for failure to label poisonous 4038 629

DUEL—
killing antagonist in, deemed murder in first degree 3852 600
fighting, aiding, or abetting, punished 3853 600
accepting challenge to fight " 3854 600
posting for not accepting challenge " 3855 600

EASEMENTS IN REAL ESTATE—
adverse possession not sufficient, unless party had express notice 2031 371
to light and air, not acquired by mere continuance 2032 371
right of foot-way cannot be acquired by use 2033 371
use of way, or any privilege, terminated by notice 2034 371
notice considered as a disturbance of right 2035 371
provisions not applicable to acquired easements 2036 371

ELDORA—
state reform school located at 1643 306

ELECTION. *See* GENERAL ELECTION—
of officers in cities and towns 501–503 87
to fill vacancies 789 130
governor to order special election 790 130

Section. Page.

ELECTION—CONTINUED.
for the establishment of county high schools, how canvassed 1699 315
of trustees of county high school 1700 315

ELECTION PRECINCTS—
townships divided into 603, 604 106
only residents to vote in 605 107

ELECTION OF OFFICERS AND THEIR TERMS, §§ 573-593—
general election, when held 573 103
special " " " 574 103
vacancies, when filled by election 575 103
term of office, when to commence 576 103
governor to issue proclamation preceding each election ..577, 579 103
sheriff to cause proclamation to be published 578 103
state officers, when to be elected 580, 581 103
judges of the supreme court, when elected 582 104
clerk and reporter of 583 104
district and circuit judges, and district attorneys 584-586 104
senators and members of house of representatives 587, 588 104
county officers 589, 590, 592, 593 104
township officers 591 104

ELECTOR—
receiving bribe, punished 3993 622
voting more than once at same election, punished 3994 622
when not qualified 3995 622
a resident of the county 3996 622
state, etc 3997 622
counseling disqualified to vote 3999 622
preventing from voting by force or threats 4000 623
influencing to vote 4002 623
refusing to accept vote of 4004 623

ELECTORS OF PRESIDENT AND VICE-PRESIDENT, §§ 659-669—
election of, when held 659 114
ballots for, what to contain 660 114
election of, how conducted and returns made 661 114
duty of county canvassers and auditor 662 114
time of state canvass and record thereof 663 114
who declared elected 664 114
governor to notify persons elected 665 115
meeting of; vacancies to be filled by electors 666 115
person elected to be notified 667 115
to proceed to the election 668 115
compensation of 669 115

EMBEZZLEMENT—
of money, how charged in indictment 4317 670
property embezzled restored to owner 4648 713
retained by officer as evidence 4653 714
disposition of property embezzled 4654-4659 714

Section. Page

EMINENT DOMAIN. *See* CONDEMNATION OF PRIVATE PROPERTY.

ENCUMBRANCE—
of homestead invalid, unless signed by husband and wife.. 1990 365

ENCUMBRANCE BOOK—
order affecting real property of absconding father, etc., entered in..... 1345 246
levy of attachment on real estate entered in..... 3022 494

EQUITABLE ACTIONS—
when plaintiff may or must bring.....2508–2511 429
petition in must be divided into paragraphs..... 2646 448
may be amended as of course before answer..... 2647 449
answer to petition must be separated into paragraphs 2660 451
to be tried on oral evidence, unless, etc.....2741, 2742 459
not to be tried at appearance term, except, etc..... 2745 459
judgment on default in, rendered on proof..... 2874 475
to enforce lien on partnership property for debt of a partner. 2994 487
lien on partnership property for debt of partner enforced by. 3054 498
brought to subject property to execution..... 3150 509
answers enforced, judgment..... 3151 510
lien created by..... 3152 510
surrender of property enforced..... 3153 510
record of appeal in, what to contain..... 3184 515
actions to quiet title to real property, prosecuted by..... 3276 527
action for partition must be by..... 3277 527
foreclosure of mortgage by, and proceedings thereunder.. 3321 531
injunction obtained in..... 3386 538

ERRORS—
assignment of, in supreme court..... 3183 515
proceedings to obtain writ of.....3597, 3604 560

ESCAPE—
jailor or officer suffering prisoner to, punished.....3953–3955 615
aiding prisoner to, punished.....3956–3958 616
prisoner escaping from county jail, punished..... 3959 616

ESCHEAT—
property uninherited, escheated to the state..... 2460 424
duty of judge or clerk..... 2461 424
proceeds paid to school fund..... 2463 424
person entitled to, may receive within ten years..... 2464 424

ESCROW—
defense alleging, must be specially plead..... 2718 457

ESTATES OF DECEDENTS, §§ 2312–2503—
probate jurisdiction, circuit court has original and exclusive 2312 410
court always open, except in matters requiring notice..... 2313 410
judge to determine notice to be given..... 2314 410
clerk has power in vacation to appoint executors, etc..... 2315 410
orders of, binding until set aside..... 2316 410
causes may be transferred to and tried by district court... 2317 410

Section Page.

ESTATES OF DECEDENTS—CONTINUED.
court that first takes cognizance of cause, retains it..... 2318 410
has jurisdiction throughout the state..... 2319 411
process of, may be revoked..... 2320 411
bonds relating to, must be approved by clerk..... 2321 411
wills—what may be disposed of by..... 2322 411
property subsequent to, devised by..... 2323 411
personal may be bequeathed by verbal..... 2324 411
soldier or mariner may so bequeath..... 2325 411
all other must be in writing and witnessed..... 2326 411
no subscribing witness can derive benefit from..... 2327 411
exception to rule..... 2328 411
revoked only by cancellation or subsequent will..... 2329 411
cancellation must be witnessed as in making..... 2330 411
may be sealed up and deposited with clerk..... 2331 411
executors appointed, if none named in.....2332, 2333 412
posthumous child—to inherit as though no will..... 2334 412
allowance to be made ratable..... 2335 412
"*devise*" *and* "*devised*"—definition of..... 2336 412
devisee—dying before testator, his heirs to inherit..... 2337 412
to be filed with and opened by clerk..... 2338 412
any person failing to produce, committed to jail..... 2339 412
day fixed for proving..... 2340 412
notice of, given and published by clerk..... 2341 412
when proved and so endorsed, receivable in evidence..... 2342 412
to be recorded in a book kept for that purpose..... 2343 412
authenticated copy given executor..... 2344 413
executor—married woman may be..... 2345 413
so may minor over eighteen..... 2346 413
refusing to accept or removing from state, creates vacancy 2347 413
vacancy filled..... 2348 413
to cause no delay in administration..... 2349 413
trustees—appointed by, must qualify as executors..... 2350 413
foreign—how admitted to probate..... 2351 413
provisions relating to domestic apply to..... 2352 413
shall not be carried into effect until probated..... 2353 413
administration—granted, classes of..... 2354 413
different classes may be created..... 2355 414
time allowed each..... 2356 414
special may be granted..... 2357 414
appeal from order not to delay..... 2358 414
to file inventory..... 2359 414
not to allow claims..... 2360 414
when they cease to act..... 2361 414
executors and administrators—must give bond..... 2362 414
must take oath..... 2363 414
additional bond required..... 2364 414
letters testamentary issued to..... 2365 414
to give notice of their appointment..... 2366 414
not granted after five years from death..... 2367 414
non-resident, may qualify in this state..... 2368 414
letters of, to be filed with clerk..... 2369 415

Section. Page.

ESTATES OF DECEDENTS—CONTINUED.
must file inventory.....2370, 2376 415
assets—when deceased leaves a widow, property exempt from execution is not..... 2371 415
nor is avails of life insurance..... 2372 415
property inventoried must be appraised..... 2373 415
value of each item to be ascertained 2374 415
widow and children—allowance made for support of..... 2375 415
court may increase or diminish..... 2377 416
how appraised when situate in another county..... 2378 416
examination of person supposed to have assets of..... 2379 416
for failure to comply with order, committed to jail..... 2380 416
of person having title to real estate belonging to..... 2381 416
executor may compound with debtors..... 2382 416
interest of deceased mortgagee deemed assets..... 2383 416
when will affects creditors, it may be sustained upon giving security..... 2384 416
funds collected and debts paid..... 2385 416
personal property sold as court may direct..... 2386 417
real property—may be sold, when personal insufficient.... 2387 417
application for must show condition of estate..... .... 2388 417
before order made, notice must be given..... 2389 417
when convenient, must be divided into parcels and appraised 2390 417
when part cannot be sold without prejudice, whole may be 2391 417
property—may be sold at private sale, when court so orders. 2392 417
in all other cases must be at public auction..... 2393 417
not to be sold at private sale for less than appraisement... 2394 417
sale may be on partial credit..... 2395 417
sale prevented by giving bond to pay demands..... 2396 417
when conditions of broken, property may be sold..... 2397 417
when complied with, property passes by devise or descent. 2398 417
conveyances of real, by executor, must be approved by court 2399 418
how approved, and presumption that follows..... 2400 418
limitation of action to recover..... 2401 418
real property—when executor may receive rents of.... ... 2402 418
how to be applied by..... 2403 418
must account to heirs for.... 2404 418
when there are minors without guardian 2405 418
testator may exempt executor from giving bond..... 2406 418
court may authorize executor to continue business of testator 2407 418
claims—must be sworn to and allowed by executor and clerk 2408 419
to be entitled in name of claimant against executor..... 2409 419
not admitted in writing, considered denied..... 2410 419
court may allow, or submit to jury..... 2411 419
may appoint referees in matters of executor's accounts 2412 419
not due, may be allowed as other claims..... 2413 419
contingent liabilities must be proved up..... 2414 419
counter claims may be proved before referees..... 2415 419
suits pending, prosecuted to judgment on substitution of executor 2416 419
temporary executor appointed, when executor interested in 2417 419

Section. Page.

ESTATES OF DECEDENTS—CONTINUED.

payments—expenses of last sickness and funeral must be first 2418 419
next, allowance made widow and children 2419 419
other claims in specified order 2420 419
fourth class barred, if not presented in twelve months 2421 420
after time for filing third class, payments made in order of. 2422 420
of fourth class, at any time after six months 2423 420
not to any class until previous classes are satisfied 2424 420
demands not due, may be paid on rebate of interest 2425 420
classes paid in order of filing 2426 420
court to make dividend when all of a class cannot be paid. 2427 420
of encumbrances on land, and land contracted for by deceased 2428 420
specific legacies—turned over at any time, upon execution of bond 2429 420
payable in money, paid when no prejudice to claims filed .. 2430 420
after twelve months, paid without giving bond 2431 420
paid in order named in will 2432 421
when court may direct to be paid ratably 2433 421
when that mode must be pursued 2434 421
executors failing to pay as ordered by court, judgment rendered against 2435 421
distribution—of personalty, to be as though it were real property 2436 421
to be paid as fast as it can be properly 2437 421
to be in kind, when it can be satisfactorily 2438 421
court may direct partial, any time after filing inventory, etc. 2439 421
widow—one-third in value of real estate set off to 2440 421
must include homestead, unless she elects differently 2441 422
exception as to widow of non-resident alien 2442 422
may be done by consent, or referees 2443 422
application for, when made 2444 422
notice given to parties interested 2445 442
referees may employ surveyor, and must make report 2446 422
upon failure to make, court may discharge them 2447 422
confirmation or setting aside of report 2448 422
confirmation, unless appealed from in thirty days, binding. 2449 422
right of, may be afterward contested 2450 422
when share of cannot be equitably set apart, sale may be ordered 2451 422
share of not effected by will 2452 423
descent—remaining estate to descend in equal shares to children 2453 423
when any are dead, grand children to inherit share of 2454 423
when no issue, one-half shall go to parents, the other to his wife 2455 423
when one parent is dead, the share of both goes to survivor 2456 423
when both parents are dead, their share to be disposed of as though they had outlived intestate 2457 423
when no heirs are thus found, the whole shall go to his wife, or, if dead, to her heirs 2458 423
advancements to heirs are part of estate, and shall be taken as part of share of 2459 423

Section. Page.

ESTATES OF DECEDENTS—CONTINUED.
escheat—property uninherited, shall to state..... 2460 424
judge or clerk to inform auditor of state in such case..... 2461 424
administrator to give such notice as judge or clerk directs. 2462 424
proceeds to be paid school fund..... 2463 424
paid to person entitled to, at any time within ten years... 2464 424
illegitimate children—inherit from mother, and mother from 2465 424
from father, when recognized by him..... 2466 424
when recognition mutual, father from children..... 2467 424
mother and her heirs have preference over father..... 2468 424
account by executor—when he must render..... 2469 424
may be examined under oath in relation to..... 2470 425
inventory price to govern 2471, 2472 425
not to derive a profit, or be charged with loss..... 2473 425
mistakes in settlements of may be corrected..... 2474 425
settlements of may be contested..... 2475 425
upon final settlement, executor discharged..... 2476 425
on judgment against execution, how awarded..... 2477 425
one of several may give receipts, co-executor not liable for. 2478 425
order of court affecting, may be served by publication.2479, 2480 425
effect of, same as if personally served..... 2481 426
penalty for failing to account..... 2482 426
cannot act where principal was executor or trustee..... 2483 426
in their own wrong, liable to rightful executor..... 2484 426
heirs or devisees—judgment against, costs, how awarded.... 2485 426
in such case one may tender amount due from 2486 426
specific performance—enforced against executor on contract of testator..... 2487 426
who made parties..... 2488 426
several executors—considered one person in action against.. 2489 426
records—required to be kept by clerk, specified.....2490, 2493 426
clerk may require executor to furnish names of heirs 2491 427
to make complete in every sale of real estate 2492 427
to record bonds of executors, guardians, etc 2493 427
compensation—of executors..... 2494 427
court may make further allowance to 2495 427
removal of executor—causes for, specified 2496 427
petition for, filed in court appointing..... 2497 428
to be verified and specify ground of complaint..... 2498 428
citation issued requiring him to appear..... 2499 428
service of notice..... 2500 428
upon removal, to deliver property to person entitled to.... 2501 428
penalty for failure to comply with any proper order..... 2502 428
acts of, after removal absolutely void..... 2503 428

ESTRAYS. *See* STRAYS—
fees allowed for taking up.....3821–3823 594

EVASIONS—
courts and juries to so construe law relating to intoxicating liquors as to prevent 1554 288

EVIDENCE, §§ 3636–3654—
who competent to give.....3636–3640 564

Section. Page.

EVIDENCE—CONTINUED.
of husband and wife, when admissible against each other. 3641 565
communications between, not competent..... 3642 565
professional confidence not to be disclosed in..... 3643 565
official confidence not to be disclosed in..... 3644 565
judge of the court competent to give..... 3645 565
civil liability no ground of excuse for not giving..... 3646 565
criminal liability ground of excuse for not giving 3647 565
witness interrogated as to previous conviction for felony.. 3648 565
moral character admissible as a test of credibility..... 3649 565
when part of an act or writing is produced as..... 3650 565
written and printed, when inconsistent..... 3651 565
understanding of parties, how construed..... 3652 566
historical works, and books of science and art admissible as 3653 566
when subscribing witness denies execution of instrument.. 3654 566
of handwriting, may be proved by comparison..... 3655 566
private writing admissible as, when acknowledged 3656 566
entries and writings of a deceased person admissible as ... 3657 566
books of account admissible as..... 3658 566
instruments affecting real estate admissible as, when 3659 566
record of, or copy, when admissible.....3660, 3661 567
neither instrument, record, or copy, conclusive as 3662 567
of contracts that must be in writing 3663–3667 567
protest of notary-public is presumptive..... 3668 568
proceedings of officers and courts of inferior jurisdiction presumed regular..... 3669 568
records and papers filed in district or circuit court admissible in either 3670 568
subpœnas—clerks to issue, and service of 3671 568
to be directed to witness 3672 568
how far attendance of witnesses compelled by..... 3673 568
may demand fees in advance..... 3674 568
penalty for failure to obey or testify 3675 568
not liable to, unless personally served..... 3676 569
how served when witness conceals himself 3677 569
of persons confined in prison, how procured 3678 569
to remain in custody while deposition is taken..... 3679 569
persons authorized to take depositions may issue..... 3680 569
validity and service of.....3681, 3682 569
effect of party failing to appear when served with....3683, 3684 569
books and papers—produced under rule of court 3685 570
what petition for must state 3686 570
consequences of failure to produce 3687 570
party not obliged to use as 3688 570
affidavit—is a written declaration under oath..... 3689 570
may be made within or without the state..... 3690 570
credibility of, when taken out of the state 3691 570
how compelled to be made 3692 570
subpœna issued for maker of..... 3693 570
notice may be given to adverse party 3694 570
party making may be cross-examined 3695 570
signature and seal of officers deemed genuine..... 3696 571

	Section.	Page.
EVIDENCE—CONTINUED.		
publications may be proved by affidavit	3697	571
posting and service of notices may be so proved	3698	571
other matters may be proved by	3699	571
proof perpetuated by filing papers in office of clerk	3700	571
copies of plats and field notes admissible as	3701	571
records and entries of any public office admissible as	3702	571
original entries, book of to be procured	3703	571
copies of admissible as	3704	571
additional entries in such book	3705	572
officers having custody of records to give copy of	3706	572
copies of papers in office of surveyor-general, presumptive	3707	572
effect of certificate by officer of loss of paper	3708	572
duplicate receipt of receiver of land office, equivalent to patent	3709	572
register and receiver presumptive, when	3710	572
signature of officer presumed genuine	3711	572
judicial record—of this state or federal courts, how authenticated	3712	572
another state, how authenticated	3713	572
justice of the peace of another state	3714	572
courts of foreign countries, how proved	3715	573
executive acts and public documents, how proved	3716	573
legislative proceedings, how proved	3717	573
statute laws of this or any other state of the United States	3718	573
unwritten laws of any other state or country	3719	573
ordinance of any municipal corporation	3720	573
depositions—causes for, and in what actions taken	3721	574
notice of served on adverse party	3722	574
when taken before commissioner	3723	574
who may be commissioner, and how selected	3724, 3725	574
jurisdiction of commissioner	3726	574
notice and interrogatories served on adverse party	3727	574
cross-interrogatories filed	3728	574
court may establish rules for taking	3729	575
service of notice	3730	575
on whom served	3731, 3732	575
when filing interrogatories with clerk deemed, etc	3733	575
commission to take, how issued	3734	575
how to be taken	3735	575
exhibits must be attached to	3736	576
certificate to be attached to	3737	576
neither party to be present at taking	3738	576
opened and filed by clerk	3739	576
may be returned by mail	3740	576
unimportant deviations not to affect	3741	576
when taken by justice, how authenticated	3742	576
must show reason for taking	3743	576

Section. Page.

EVIDENCE—CONTINUED.
used in justice's court, transferred on appeal..... 3744 576
testimony perpetuated by.....3745, 3746 576
court or judge to make order for examination for taking... 3747 577
may appoint attorney to cross-examine..... 3748 577
before whom to be taken..... 3749 577
court or judge to approve and order filed..... 3750 577
exceptions to, how taken..... 3751 577
court or judge to hear..... 3752 578
error in decision of court waived, unless excepted to..... 3753 578
cost of taking, how paid 3754 578
copies of field notes and plats made by county surveyor, are 374 63
copies of examination and surveys of port wardens are.... 528 93
relating to walls in common must be in writing..... 2030 370
limited by allegations of answer in slander or libel..... 2682 453
what can be admitted under a mere denial 2704 456
answer of garnishee is competent 2987 489
limited by abstract in actions to recover real property....., 3251 524
for partition..... 3280 527
in criminal actions—necessary to convict for treason 3847 599
necessary to convict on trial for conspiracy..... 4425 684
rules of in civil cases, applicable to criminal..... 4426 684
confession of defendant must be corroborated..... 4427 685
defendant cannot be compelled to give for or against himself..... 4556 700
in prosecution against railway companies for obstructing highway 4557 700
for a rape, or enticing female, etc.....4558, 4560 700
testimony of an accomplice not sufficient to convict 4559 700
subpœnas—magistrates may issue..... 4561 700
clerk may issue 4562 700
who may serve..... 4563 700
how served.....4564, 4565 700
disobedience to, punished.....4566, 4567 701
undertakings of witness may be forfeited..... 4568 701
subpœna runs into any part of the state..... 4569 701
in impeachment, who issues 4570 701
defendant may examine witnesses conditionally..... 4571 701
perpetuate testimony..... 4572 701

EXCEPTIONS—
no reason need be given for..... 2788 464
three days given to file 2789 464
referees to sign..... 2823 468
definition of 2831 469
no stated form required 2832 469
noted on decision, when it appears of record..... 2833 469
may refer to writing by unmistakable reference 2834 469
bystanders may sign when judge refuses..... 2835 469
none regarded, unless on a material point 2836 470
to depositions—when and how taken 3751 577
to be decided by court..... 3752 578

Section. Page.

EXCEPTIONS—CONTINUED.
error in decision waived, unless excepted to 3753 578
in criminal actions—either party may except.....4479, 4480 691
office of 4481 691
not necessary to except to any decision appearing of record..... 4482 691
to be signed by judge or bystanders 4483 692
time allowed judge to examine..... 4484 692
may be modified 4485 692
time given to prepare..... 4486 692

EXCUSE—
matter of, must be specially plead..... 2718 457

EXECUTIVE—
acts of, how proved 3716 573

EXECUTIVE COUNCIL—
composed of governor, secretary, auditor, and treasurer of state..... 111 20
to prepare blanks and forms for taking census 112 20
require matters not specified by law, to be returned..... 115 20
may require county auditor to send up returns at expense of county..... 118 21
journal of to be kept by secretary of state 119 21
to have general supervision of property of state, and procure and furnish state officers with stationery, etc 120 21
to procure paper and stationery for use of state 121 21
to furnish attorney-general with an office..... 153 27
to levy tax to pay bonds issued by counties, when supervisors fail 293 49
constitutes board of state canvassers..... 651 113
constitutes state board of equalization..... 834 141
to assess railway property.....1317, 1319, 1320 241
to approve bond of treasurer of state reform school..... 1647 306
to approve bond of treasurer of college for the blind..... 1673 311
may approve sales of school land sold under minimum price..... 1849 341
to audit cost and expense of selling lands on execution by state..... 1913 354
to control, manage, and sell such property..... 1915 354

EXECUTOR. *See* ESTATES OF DECEDENTS—
of deceased surety, may require creditor to sue..... 2111 382
married woman may act as..... 2345 413
so may minor over eighteen..... 2346 413
refusal to accept, or removal from state creates vacancy... 2347 413
may be filled by appointment of another person..... 2348 413
not to cause any delay in administration..... 2349 413
to give bond and take oath.....2362, 2363 414
additional bond may be required..... 2364 414
letters issued to..... 2365 414
to file inventory and appraisement.....2370, 2373 415
when other property is discovered to file additional..... 2376 415

Section. Page.

EXECUTOR—CONTINUED.
may with leave of court compound with debtor..... 2382 416
one to be appointed, when none named in will.....2332, 2333 411
may receive rents of real property, when..... 2402 418
application of..... 2403 418
accounting by, for rents..... 2404 418
when no guardian for minor, heirs to pay taxes, etc..... 2405 418
court may authorize business of testator continued by..... 2407 418
may approve claims filed against estate.....2408–2410 419
may be substituted in pending actions..... 2416 419
when interested in claim, temporary executor to be appointed..... 2417 419
to first pay expenses of last sickness and funeral..... 2418 419
second, any allowance made widow..... 2419 419
order of paying other claims 2420, 2427 419
with leave of court, may pay off encumbrances, etc..... 2428 420
failing to comply with order of court liable on bond..... 2435 421
to render an account..... 2469 424
may be examined under oath touching..... 2470 425
with what chargeable.....2471–2473 425
mistakes in settlement of, corrected..... 2474 425
any person interested may contest settlement..... 2475 425
upon final settlement, must be discharged..... 2476 425
when compelled to pay costs as his own debt..... 2477 425
liability where there is more than one..... 2478 425
order affecting, how served 2479–2481 425
penalty for failure to account..... 2482 426
has no authority to act when principal was trustee, etc.... 2483 426
acting in his own wrong, liable to rightful..... 2484 426
judgment against, how rendered..... 2489 426
compensation of.....2494, 2495 427
may be removed, causes for..... 2496 427
proceedings to remove.....2497–2501 428
for failing to comply with order of court, may be committed, etc..... 2502 428
proceedings of after removal, void..... 2503 428
verification of pleadings by, not required..... 2675 452
suing or being sued, facts constituting need not be plead.. 2716 457
how allegations to, controverted..... 2717 457
conveyances made by, approved by a judge..... 2893 476

EXECUTIONS, §§ 3025–3149—
issued until barred by statute of limitations..... 3025 494
judgments enforced by..... 3026 494
from courts of record issued to any county..... 3027 494
may be issued and served on Sunday..... 3028 494
to be issued on demand of party entitled to..... 3029 494
penalty for clerk failing to perform duties..... 3030 495
when issued to another, transcript of judgment sent to.... 3031 495
return made by mail..... 3032 495
form of, and statements in..... 3033 495
against real property in hands of heirs, etc..... 3034 495
when for the delivery of personal property..... 3035 495

	Section.	Page
EXECUTIONS—CONTINUED.		
may consist of certified copy of judgment	3036	495
officer—to receipt for and make return of	3037	495
endorse on, the time received, and any act done under	3038	495
to sell property of principal before sureties	3039	496
"surety," meaning of term	3040	496
to exhaust property in order of liability	3041	496
all equally liable, unless order of stated in execution	3042	496
levy of, by	3043, 3044	496
not lien on personal property until levy	3045	496
judgments, money, etc, levied on, sold or appropriated	3046	496
any person indebted to defendant may pay sheriff	3047	496
public property exempt from	3048	497
tax levied to pay debt of municipal corporation	3049	497
stock or interest in corporation levied on	3050	497
garnishment—proceedings in, same as in case of attachment	3051	497
not affected by expiration or return of	3052	497
partnership property—levied on to pay debt of a partner	3053	497
manner of enforcing lien on	3054	498
officer may require indemnifying bond before levying	3055	498
terms and conditions of	3056	498
when not given, levy discharged	3057	498
officer protected by	3058	498
surplus arising from sale paid into court	3059	498
provisions apply to justices	3060	498
stay—who may, and for what time	3061	499
signers of bond to own real estate	3062	499
no appeal allowed after stay	3063	499
bond to have force of a judgment confessed	3064	500
execution to be recalled	3065	500
property levied on relinquished	3066	500
at expiration of, execution to issue	3067	500
surety may prevent	3068	500
require execution to issue	3069	500
unless other surety is given	3070	500
lien of judgment not released by	3071	500
exemption—of property from, enumerated	3072	500
family, defined	3073	501
personal earnings exempt	3074	501
what exempt to non-residents and unmarried persons	3075	501
persons who have started to leave the state	3076	501
provisions not applicable to purchase money	3077	501
absconding debtor, wife entitled to exemptions of	3078	501
sale—sheriff must give notice of	3079	502
notice how given and published	3080	502
validity of sale not affected, if none given	3081	502
time of, to be fixed in notice	3082	502
officer may postpone for three days	3083	502
overplus produced by, paid defendants	3084	502
when there is a deficiency	3085	502
when unsold for want of bidders levy holds goods	3086	502
occupying defendant to be served with notice of sale	3087	502

Section. Page.

EXECUTIONS—CONTINUED.
officer to sell according to plan of 3088 502
property again offered if purchaser fails to pay 3089 503
vacated, when execution not a lien 3090 503
money, etc., appropriated without sale 3091 503
lien—of judgment against executor or decedent, how enforced 3092 503
person interested to be notified 3093 503
notice, how served 3094 503
court to award execution 3095 503
minority of heirs, etc., effect of 3096 503
mutual judgments may be set off 3097 503
sale of leasehold of less than two years absolute 3098 504
when estate is larger, it is redeemable 3099 504
personal property must be appraised 3100 504
redemption—real property may be redeemed 3101 504
not where appeal or stay has been taken 3102 504
creditors may redeem 3103 504
definition of "creditor" 3104 504
creditors may redeem from each other 3105 505
terms of 3106 505
a senior redeeming from a junior 3107 505
junior creditor may prevent, how 3108 505
junior creditor may redeem from a senior 3109, 3111 505
certificate given to redemptioner 3110 505
when right of creditors expires 3112 505
last redemptioner holds the property 3113 505
lien of creditor held to be extinguished 3114, 3115 505
farther redemptions made 3116, 3117 506
mode of redeeming 3118 506
fact of redemption entered of record 3119 506
redemptioner entitled to certificate of purchase 3120 506
when sold in parcels, any one may be redeemed 3121 506
undivided portion of tenants in common 3122 506
rights of defendant transferable 3123 506
deed executed to person entitled to 3124 506
publicity of proceedings, constructive notice 3125 506
deeds imply regularity 3126 506
damages recoverable by owner of estate 3127 507
"plaintiff" and "defendant" defined 3128 507
justices' proceedings, so far as applicable, included 3129 507
death of plaintiff does not prevent executor from issuing 3130 507
sheriff to proceed as though plaintiff were living 3131 507
affidavit of death to be filed 3132 507
may issue against surviving defendants 3133 507
defendant may move to quash 3134 507
examination of defendant, after execution returned "no property" 3135 507
or when he conceals property 3136 508
order for, granted by court or judge 3137 508
defendant to answer interrogatories 3138 508
witnesses may be examined 3139 508
property discovered, levied on 3140 508

Section Page.

EXECUTIONS—CONTINUED.
receiver may be appointed.....3141, 3143 508
proceedings, if equitable interest discovered..... 3142 508
to be continued until completed..... 3144 509
defendant guilty of contempt for refusing to answer, etc... 3145 509
order, how served..... 3146 509
compensation of officers..... 3147 509
defendant may be arrested..... 3148 509
discharged from, on giving bond..... 3149 509
proceedings to subject property to..... 3150 509
manner of proceeding in such cases..... 3151 510
lien created by..... 3152 510
enforcement of..... 3153 510
on judgment of court for trial of contested county elections 712 121
clerk of supreme court to issue on judgment of court, trying contested state elections..... 727 123
when special required, pleading must state facts entitling party to..... 2852 472
from supreme court, how issued and returned..... 3215 519
in actions to recover specific personal property, requirements of..... 3240 523
justice of the peace—cannot issue, after transcript filed in circuit court..... 3568 557
how, and when issued by.....3569–3573 557
may be issued by successor..... 3627 562
may be renewed by..... 3634 563
in criminal actions—stay of, allowed as in civil cases..... 4610 708
form of, where judgment is imprisonment..... 4512 695
defendant committed to custody of officer..... 4513 695
to be executed by sheriff of proper county.....4514, 4515 695
authority of..... 4516 696
return of..... 4517 696
on judgment for a fine to be as in civil cases..... 4518 696
for abatement of nuisance, form of..... 4519 696

EXEMPTION—
of property from taxation enumerated.....797, 798 132
board of supervisors may exempt property.....799, 800 132
public property exempt from corporate debts..... 3068 497
property of heads of families exempt from execution..... 3072 500
"family" defined..... 3073 501
earnings arising from personal labor exempt..... 3074 501
ordinary wearing apparel, etc., of non-residents only exempt 3075 501
exception when family has started to leave the state..... 3076 501
not allowed for purchase-money of property..... 3077 501
property of absconding debtor exempt to wife..... 3078 501
money judgment in lieu of property exempt..... 3244 524

EXPERTS—
compensation of as witnesses, how fixed..... 3814 593

EXPOSURE—
of child by parent or guardian..... 3870 602

Section. Page.

EXPRESS COMPANIES. *See* WAREHOUSEMEN—
property of, listed and taxed as that of individuals..... 813 136
lien of on property transported..... 2177 392
proceedings to enforce.....2178–2180 392
actions against, brought in county where operated..... 2582 438

EXTORTION—
defined and punished 3950, 3951 615

FALSE PRETENSES—
defined and punished..... 4073 636

FAMILY—
property of both husband and wife liable for expenses of.. 2214 398

FARM CROSSINGS—
to be made by railway corporations..... 1268 232

FATHER—
of poor person compelled to support..... 1330 245
includes putative of illegitimate child..... 1332 245
proceedings..... 1333–1339 245
seizure of property of absconding, whose children may become a public charge.....1343, 1344 246
minor child of drunken or vicious, etc., may be apprenticed 2301 408
inherits from illegitimate children, when, etc..... 2466 424
may sue for injury to, or death of minor child..... 2556 435

FEES. *See* COMPENSATION OF OFFICERS—
to be paid by insurance companies..... 1153 206
to be paid by life insurance companies..... 1183 215
officers—failing to pay over as required by law, punished... 3970 617
making false entries relating to, punished..... 3971 618
appropriation of to officer's use, punished..... 3972 618
officers failing to make annual report of, punished..... 3974 618

FEE BILL—
may be issued and have force and effect of execution..... 3842 598

FELONY. *See* CRIMES AND PUNISHMENTS—
any person violating certain provisions of law relating to the insane, guilty of..... 1440 264
person injuring fire apparatus, guilty of..... 1564 290
officer of state agricultural college and farm diverting funds, guilty of..... 1622 303
any person aiding boy or girl to escape from reform school, guilty of..... 1663 310
obstructing, etc., service, etc., of writ of habeas corpus.... 3467 547
what constitutes.....4103, 4104 642
punishment for, inflicted after legal conviction..... 4106 642
defendant must be present at trial for..... 4351 675
when judgment pronounced..... 4497 693
dismissed for want of prosecution, not a bar..... 4619 709

	Section.	Page
FENCES, §§ 1489–1508—		
respective owners of land must maintain partition	1489	272
owners compelled to build or repair, how	1490	272
fence viewers to certify value of	1491	272
determine controversies relating to	1492	273
penalty for failure to comply with order of	1493	273
partition to be kept in good repair	1494	273
person not wishing to enclose land cannot be compelled to contribute to building of	1495	273
when lands are owned in severalty have been enclosed in common	1496	273
owner must give notice before throwing open enclosed land	1497	273
proceedings, when owner desires to enclose land	1498	273
partition fence may be recorded	1499	273
terms "owner," and "fence viewers" defined	1500	274
may be removed when erected by mistake	1501, 1502	274
fence viewers to determine disputes relating to	1503	274
how erected when built on line dividing land	1504, 1505	274
title to land determined by other proceedings	1506	274
definition of a lawful fence	1507	274
provisions relating to, apply to counties restraining stock from running at large	1508	275
FENCE VIEWERS—		
when complaint is made, to examine as to sufficiency of partition fences	1490	272
penalty for failure to comply with order of	1491	272
to settle controversies relating to erection of partition fences	1492, 1493	273
determine which part, and how much, each owner must maintain	1496	273
definition of	1500	274
to determine disputes concerning fences	1503	274
FERRIES—		
city council to establish and regulate within city limits	529	93
board of supervisors may license	1011	175
rates of ferriage prescribed	1012	175
to what extent privilege made exclusive	1013	175
preference, to whom given	1014	176
when stream is in different counties	1015	176
only one shore in the state	1016	176
not to issue until bond is given, conditions of	1017	176
must transport mails and public expresses both day and night	1018	176
license must be recorded	1019	176
rates of toll to be posted up	1020	176
penalty for failure to post	1021	176
notice of application for, given	1022	176
penalty for taking illegal toll	1023	177
forfeiture of license	1024	177
penalty for evading or refusing to pay toll	1025	177

Section. Page.

FERRIES—CONTINUED.
proprietor may establish rules and fix penalty..... 1026 177
franchise sold on execution as personalty..... 1027 177
what passes by sale of 1028 177
free ferry may be established 1029 177
mill-owners may cross themselves and customers..... 1030 177

FICTIONS—
in pleading are abolished..... 2644 448

FIDUCIARY CAPACITY—
judgments recovered for money received in, cannot be stayed 3061 499

FIELD NOTES—
copies of made by surveyor, admissible as evidence..... 3701 571

FINDING OF FACTS—
when court must find..... 2743 459
must distinguish between matter in abatement and bar.... 2851 472
in court below, not necessary to have cause reviewed in supreme court 3170 513

FINES—
cities may impose 482 83
how recovered.....483, 484 83
action to recover brought where cause of arose..... 2579 438
not otherwise disposed of, appropriated to school fund.... 3370 537
who may prosecute actions for 3371 537
judgments for, made liens..... 4609 708
stay of execution on 4610 708

FIRE—
cities make regulations against danger from..... 457 77
establish fire districts..... 457 77
giving false alarm of, punished 1566 291
railway corporations liable for damages caused by..... 1289 236

FIRE-ARMS—
discharging of, near where stock is being fed, punished... 3900 606

FIRE COMPANIES—
city council may organize..... 525 92
members of, exempted from military duty, etc.....1560–1562 290
penalty for misrepresentation 1563 290
injuring fire apparatus punished..... 1564 290
removal, except in case of fire, punished 1565 291
false alarm of, punished.... 1566 291

FISCAL TERM—
of officers and institutions required to report to governor.. 129 23
governor to cause reports of to be published..... 130 23

FISH—
catching of, regulated and punished.....4052, 4054 632

Section. Page.

FLAX SEED—
standard weight of bushel of 2049 373

FORCIBLE ENTRY OR DETENTION OF REAL PROPERTY—
when and how action for may be brought, and proceedings in 3611, 3624 561

FOREIGN COUNTRIES—
instruments affecting real estate, how proved and acknowledged in 1957 360
judicial records of, how authenticated 3715 573

FOREIGN CORPORATIONS—
may sue in corporate name 2554 435

FOREIGN INSURANCE COMPANIES. *See* INSURANCE COMPANIES.

FOREIGN LIFE INSURANCE COMPANIES. *See* LIFE INSURANCE COMPANIES.

FOREIGN GUARDIANS. *See* GUARDIANSHIP.

FOREIGN WILLS—
probated in another state, admitted to probate in this 2351 413
provisions relating to domestic, applicable to 2352 413
cannot be carried into effect until probated 2353 413

FORECLOSURE OF MORTGAGES, §§ 3307–3330—
of personal property—may be by notice and sale, or action in court 3307 530
notice to describe property and time and place of sale 3308 530
on whom to be served 3309 530
service and return of, how made 3310 530
must be published 3311 530
purchaser to take title and interest of mortgagee 3312 531
sheriff to execute bill of sale to purchaser 3313 531
evidence of service of notice perpetuated by affidavits 3314 531
affidavits to be attached to bill of sale 3315 531
equities between mortgagor and mortgagee not to affect purchaser 3316 531
right to foreclose and amount due may be contested 3317 531
deeds of trust to be treated as mortgages 3318 531
of real property—effected only by action in equitable proceedings 3319 531
when separate suits are brought on bond, note, or mortgage 3320 531
judgment must direct sale of mortgaged property 3321 531
when proceeds of sale do not satisfy judgment, general execution may issue 3322 531
junior lien-holder entitled to assignment of mortgage 3323 531
disposition of overplus, after satisfying mortgage 3324 532
other liens to be paid off in their order 3325 532
sufficient property to pay mortgage only sold 3326 532
satisfaction of mortgage to be acknowledged by mortgagee 3327 532
in cases of foreclosure, clerk to acknowledge satisfaction .. 3328 532

Section. Page.

FORECLOSURE OF MORTGAGES—CONTINUED.
bond given to convey, to be treated as a mortgage..... 3329 532
vendee in such case to be treated as mortgagor..... 3330 532

FORFEITURE—
action to recover brought where cause of arose..... 2579 438
not otherwise appropriated, go to school fund..... 3370 537
who may prosecute action for..... 3371 537
judgment by collusion in does not prevent another action. 3372 537
defendant failing to appear, bail forfeited..... 4596 706
may be excused..... 4597 706
not discharged, district attorney may bring action on. 4598, 4599 706
court may remit upon surrender of defendant before judgment..... 4600 706

FORGERY—
counterfeiting brand of inspector of shingles and lumber, deemed..... 2073 377
defined and punished..... 3917 609
uttering forged instrument as true..... 3918 610
of public securities..... 3919 610
erasure or obliteration of written instruments, deemed. 3929, 3930 612
allegations in indictment for..... 4313 670

FORMER ACQUITTAL—
form of plea of..... 4359, 4360 677
on defective indictment, bars another prosecution..... 4364 677
effect of when offense consists of different degrees..... 4365 677
on plea of, defendant to first offer his evidence..... 4422 684

FORMER CONVICTION—
form of plea of..... 4359, 4360 677
on defective indictment, bars another prosecution..... 4364 677
effect of when offense consists of different degrees..... 4365 677
on plea of, defendant to offer evidence first..... 4422 684

FORMER RECOVERY—
no estopal in another action on bonds of municipal corporation, given for stock in railway..... 355 98

FOURTH OF JULY—
depositions not to be taken on..... 3722 574

FRANCHISES—
of bridge or ferry sold on execution..... 1027 177
what passes by sale..... 1028 177
of corporations forfeited for fraud..... 1074 185
forfeited by non-user..... 1079 186
may be sold on execution..... 1086 187

FRAUD—
intentional, penalty for by corporations..... 1071 185
diversion of funds, deemed..... 1072 185
actions for, barred in five years from discovery..... 2529, 2530 432
cheating at common law, punished..... 4081 638

Section. Page.

FRAUDULENT CONVEYANCE—
defined and punished..... 4074 637

FRAUDULENT CONVERSION—
of money, how charged in indictment..... 4317 670

FRUIT—
entering premises with intent to destroy..... 3897 605
destruction of..... 3898 606
trees..... 3899 606

FUGITIVES FROM JUSTICE—
apprehended on executive warrant.....4171–4175 651
magistrate may cause arrest of on complaint..... 4176 651
take bail or commit.....4177–4180 652
may be re-arrested on governor's warrant..... 4181 652
expenses relating to, how paid.....4182–4184 652

GAMBLING—
keeping houses for, punished..... 4026 627
defined and punished..... 4028 627
contracts void..... 4029 628

GAME—
killing of, regulated and punished.....4048–4051 631

GARNISHMENT. *See* ATTACHMENT AND GARNISHMENT—
how effected..... 2975 488
sheriff, judgment debtor, and executor may be garnished.. 2976 488
a fund in court may also be..... 2977 488
garnishee—dying, proceedings revived..... 2978 488
notified to appear at court..... 2979 488
sheriff may take answers of..... 2980 488
entitled to pay and mileage of a witness..... 2983 489
failing to appear, presumed indebted..... 2984 489
may show cause against issuing execution..... 2985 489
may be exonerated by paying, etc..... 2986 489
plaintiff may controvert answers of..... 2987 489
judgment rendered against..... 2988 489
execution suspended on debt not due..... 2989 489
not liable for debt due by negotiable paper..... 2990 490
judgment against, when conclusive..... 2991 490
how case against to be docketed..... 2992 490
appeal by..... 2993 490
proceedings in under execution, to conform to those under attachments..... 3051 497
not affected by return of execution..... 3052 497
when garnishees to appear and answer in justice's court.. 3608 560

GARNISHEE. *See* GARNISHMENT.

GENDER—
words importing the masculine or feminine, how construed. 45 7

	Section.	Page
GENERAL ASSEMBLY, §§ 5–27—		
sessions of, where held	5	2
temporary organization of	6, 8	2
certificates of election filed	7	2
permanent organization of	9	2
member of may administer oaths	10	2
member of shall not be questioned for speech or debate	11	2
compensation of members and officers	12	2
term of office of speaker and other officers	13	3
may punish for contempt	14–16	3
may compel the attendance of witnesses	17	3
compensation of witnesses	18	4
joint conventions of	19	4
appointment of tellers	20	4
secretary of to make record	21	4
vote of, how taken	22, 23	4
may adjourn	24	4
certificates of election issued	25	4
electing senator of United States, and canvassing votes for governor and lieutenant governor	26	4
rules for government of	27	4
members of, when to be elected	587, 588	104
to qualify by taking the prescribed oath	672	115
not required to give bonds	674	116
election of members to, may be contested	730	123
contestant to file statement	731	123
testimony how procured	732, 733	123
copy of statement and depositions returned to secretary of state	734	123
to be delivered to presiding officer of house	735	123
right of general assembly to examine witnesses not abridged	736	123
resignation of members made to presiding officer, or governor	782	129
members of, ineligible as regents of state university	1603	299
ineligible as trustees of orphans' home	1625	304
to elect trustees of state reform school	1643	306
members of, ineligible as trustees	1644	306
to elect trustees of college for the blind	1664	310
members of, ineligible to office of trustee	1665	310
ineligible to office of trustee of institution for the deaf and dumb	1685	312
bribery of members of, punished	3939	613
acceptance of bribes by	3940, 3941	613
GENERAL ELECTIONS, §§ 603–658—		
to be held annually	573	103
poll to be opened in each precinct	603	106
boundaries of precincts, how established	604	107
electors must vote in precinct of residence	605	107
judges and clerks of	606	107
when absent, others chosen	607, 608	107
oath of judges and clerks	609	107
who may administer	610	107

	Section.	Page.
GENERAL ELECTIONS—CONTINUED.		
time of opening and closing polls	611	107
preservation of order at	612	107
disturbers of, may be arrested	613	108
ballot boxes provided	614	108
poll books to be furnished	615	108
form of ballot	616	108
how deposited	617	108
how conducted where registry law is in force	618	108
voter may be challenged	619	108
oath to be administered to person challenged	620	108
double list of voters kept	621	109
CANVASS BY JUDGES OF ELECTION.		
result of, ascertained	622	109
method of canvassing	623	109
rejection of ballots	623–625	109
tally list kept by clerk	626	109
effect of excessive ballots	627	109
return, and form of	628	109
disposition of poll books	629	110
of ballots and tally lists	630	110
result as to township officers, how certified	631	110
tie between township officers, how determined	632	110
township officers elected to be notified	633	110
COUNTY CANVASS.		
messengers sent for absent returns	634	110
board of supervisors to make	635	111
abstracts, how made	636, 637, 639	111
who declared elected	638	111
abstracts recorded in election book	640	111
form of certificate of election	641	111
certificates of members of general assembly	642	112
tie vote decided by lot	643, 644	112
abstract of votes for governor and state officers, to whom sent	645	112
senator or representive elected by district	646	112
canvassed by state canvassers	647, 648	112
STATE CANVASS.		
messengers sent for missing abstracts	649	113
abstracts opened in presence of board	650	113
executive council constitutes	651	113
time for canvassing	652	113
form of abstract	653	113
to be recorded in election book	654	113
form of certificate of election	655	113
delivered to person elected	656	114
notice to person elected	657	114

Section Page

GENERAL ELECTIONS—CONTINUED.
certificate of representative in congress, how signed..... 658 114
depositions cannot be taken on days of general election... 3722 574

GENERAL ISSUE—
in pleading abolished..... 2644 448

GLANDERS—
horses having, to be destroyed..... 1484 271

GOODS AND CHATTELS—
kind and species must be alleged in action for injuries.... 2725 457

GOOSEBERRIES—
standard weight of bushel of..... 2049 373

GOVERNOR—
to keep office at seat of government..... 55 10
to cause a journal of all official acts to be kept..... 56 10
military record to be kept..... 57 10
may offer reward for persons charged with crime..... 58 10
may employ counsel to protect interests of state..... 59 10
expenses for, and for causing laws to be executed..... 60 10
may convene general assembly..... 5 2
approve acts of general assembly..... 28 5
to sign patents for lands..... 87 15
may release title of state to lands, when..... 91 15
to correct errors by making quit-claim deeds..... 92 16
stationery, books, fuel, etc., furnished.....120, 122 21
to cause reports of state officers and institutions to be published 130 23
may inspect books, vouchers, accounts, and funds kept in any state office or institution. 132 24
to appoint and commission notaries public..... 258 42
appoint and commission commissioners in other states.. 267 43
issue proclamation calling election.....577–579 103
be elected in each odd-numbered year..... 580 103
cause persons elected to be notified..... 657 114
issue certificate to electors of president and vice-president 665 115
notify person elected to fill vacancy in..... 667 115
qualify by taking the prescribed oath..... 671 115
when 685 118
commission judges when appointed 673 115
not required to give bonds..... 674 116
to approve bonds of state officers..... 680 117
election of may be contested..... 737 124
contestant to file statement and give notice..... 738 124
notice to incumbent 739 124
presiding officer to notify each house 740 124
selection of committee for trial of 741 124
powers and duties of committee..... 742 124
testimony and judgment 743, 744 124
to appoint commission to examine accounts of state officers 759 126

Section. Page.

GOVERNOR—CONTINUED.
when defalcation reported, to suspend officer..... 760 126
consequences of..... 761 126
to make temporary appointment..... 762 126
to take steps to indemnify state from loss..... 763 126
may require state officers to give additional security..... 772 127
on failure to comply, office declared vacant... 774 128
resignation of, made to general assembly or secretary of state..... 782 129
to cause militia to be organized into companies..... 1044 180
may order companies to form into battalions or regiments. 1047 180
may call militia into active service..... 1051 181
staff of..... 1054 181
to direct condemnation of private property for use of the state..... 1271 232
to direct payment of damages awarded..... 1272 232
is member and president of board of regents of state university..... 1587 296
may call special meetings of the board..... 1590 296
to cause report of trustees of agricultural college and farm to be printed and distributed..... 1610 300
to fill vacancies in office of trustees of state reform school . 1644 306
to fill vacancies in office of trustees of college for the blind 1684 312
to appoint state librarian..... 1890 350
to appoint curators of state historical society..... 1901 351
to appoint superintendent of weights and measures..... 2052 374
compensation of..... 3755 579
to be paid monthly..... 3780 583
may call out military to aid in execution of process..... 4148 648
may issue warrant for arrest of fugitives from justice.....4171, 4174, 4175, 4181 651
may grant pardons, and remit fines and forfeitures ...4712–4714 722
to visit penitentiary at Fort Madison quarterly..... 4799 737
visitors to, appointed by.....4799, 4800 737
may remove warden..... 4801 737
to fill vacancy in office of..... 4802 738
travelling expenses allowed..... 4803 738
to give visitors to penitentiary, certificate..... 4804 738

GRACE—
allowed on negotiable notes or bills..... 2092 380
demand on any day of, sufficient to charge endorser..... 2093 380

GRADUATES OF LAW DEPARTMENT OF STATE UNIVERSITY—
may be admitted to practice as attorneys and counselors.. 209 36

GRAND CHILDREN—
compelled to support poor relative, when..... 1331 245
proceedings.....1333–1339 245

GRAND PARENTS—
of ability, compelled to support poor relative, when..... 1331 245
proceedings.....1333–1339 245

Section Page.

GRAND JURY—
how selected, drawn, and summoned..... 4255 663
panel called and vacancies filled.....4256, 4257 663
challenge to, by state and defendant..... 4258 663
causes of, when made by state to juror..... 4259 663
panel 4260 663
by defendant to juror.... 4261 663
effect of challenge when allowed.....4262–4265 664
challenges must be made before jury is sworn..... 4266 664
court must appoint foreman of..... 4267 664
oath of 4268, 4269 664
court to charge..... 4270 664
discharge of..... 4271 664
power and duty of 4272 665
indictment by, how found..... 4273 665
foreman of to administer oath to witnesses..... 4274 665
minutes of to be kept by clerk..... 4275 665
not bound to hear evidence for the defendant..... 4276 665
member of to be sworn as witness..... 4277 665
special duty of..... 4278 665
clerk of court to issue subpœnas for..... .... 4279 665
entitled to free access to county jails and public records.. 4280 665
may ask advice of district attorney or court..... 4281 665
may appear before.... 4282 665
evidence necessary to find indictment by..... 4283 666
proceedings of kept secret.....4284, 4285 666
not to be questioned for any vote given..... 4286 666
to report to court refusal of witness to testify..... 4287 666
attendance of witness may be coerced..... 4288 666
papers relating to preliminary examinations laid before... 4289 666
court may resubmit charge dismissed by..... 4290 667
action of in finding indictment in habeas corpus proceedings not to be questioned..... 3483 549

GRAND JURORS. *See* JURORS.

GRAPES—
standard weight of bushel of..... 2049 373

GUARDIAN. *See* GUARDIANSHIP—
answer of must deny allegations of petition..... 2656 450
verifications of pleadings by, not required..... 2675 452
suing or being sued, facts constituting need not be plead. 2716 457
allegations as to how denied..... 2717 457
conveyances made by, approved by a judge..... 2893 476
committing waste, liable to treble damages..... 3332 533

GUARDIANSHIP, §§ 2241–2279—
of minors—parents are natural guardians of.....2241, 2242 401
circuit court may appoint guardian of..... 2242 402
guardian of property appointed..... 2243 402
when over fourteen years, may choose guardian..... 2244 402
power of court and guardian over property of..... 2245 402

	Section.	Page.
GUARDIANSHIP—CONTINUED.		
guardian—to give bond and take oath	2246	402
may be removed by court	2247	402
to make inventory	2248	402
control person of	2249	402
prosecute and defend for	2250	402
failure to comply with order of court, is breach of bond	2251	402
to deliver assets to successor	2252	403
for non-resident minor, appointed	2253	403
all guardians required to render account once a year	2254	403
penalty for failure to account	2255	403
compensation of	2256	403
property may be sold for support of minor	2257	403
verified petition to be filed, and notice served on	2258	403
court may order publication of notice in newspapers	2259	403
reference	2260	403
to give additional security before sale	2261	403
costs may be awarded to prevailing party	2262	404
deeds made by guardian, to be approved by court	2263, 2264	404
sale cannot be questioned after five years	2265	404
foreign guardians—of non-resident, may be appointed in this state	2266	404
how appointed	2267, 2268	404
court may authorize to receive property	2269–2271	404
of drunkards, spendthrifts, and lunatics—guardians of may be appointed	2272	405
proceedings on application for appointment of guardian for	2273	405
provisions in relation to guardianship of minors made applicable to	2274	405
power, authority, and duty of guardian of	2275	405
may sell real estate of	2276	405
complete contracts of	2277	405
when estate of is insolvent, how settled	2278	406
priority of claim to custody of	2279	406
GUARANTOR—		
blank endorser of one not a party to the instrument, deemed	2089	379
liable without notice, if no detriment shown	2090	379
when due diligence has been exercised to recover of maker	2091	380
GUILTY—		
plea of, denies every material allegation in indictment	4363	677
HABEAS CORPUS, §§ 3449–3490—		
petition for writ of, must be verified, etc	3449	545
who may verify	3450	546
writ—allowed by any court of record or judge	3451	546
application for made to court or judge most convenient	3452	546
may be refused by " "	3453	546
reasons for endorsed on petition	3454	546
form of	3455	546
to be issued by clerk or judge	3456	546
penalty for wrongfully refusing to grant	3457	546

Section. Page.

HABEAS CORPUS—CONTINUED.
when court or judge may issue on his own motion..... 3458 546
court or judge granting, to notify district attorney..... 3459 546
who may serve..... 3460 547
manner of service..... 3461 547
may be served on any one having custody of plaintiff..... 3462 547
when officer is authorized to arrest defendant..... 3463 547
power of in making 3464 547
when officer takes custody of plaintiff 3465 547
not to be disobeyed for want of form..... 3466 547
penalty for eluding service of..... 3467 547
penalty for refusal to give copy of process, by which plaintiff is detained 3468 547
court or judge—may have plaintiff forthwith brought before him..... 3469 548
also order arrest of defendant..... 3470 548
precept for, how served 3471 548
may commit or discharge defendant .. 3472 548
any one served with writ presumed to be the proper person..... 3473 548
defendant—must appear and answer 3474 548
and bring body of plaintiff 3475 548
on failure may be attached for contempt 3476 548
attachment, how served..... 3477 548
answer, what it must state.....3478-3480 548
plaintiff—may demur or reply thereto 3481 548
replication may deny sufficiency of testimony.... 3482 549
not permissible to question action of grand jury.. 3483 549
may be discharged 3484 549
or re-committed 3485 549
or bail increased or diminished..... 3486 549
to be retained in custody until..... 3487 549
defendant may waive right to be present at trial 3488 549
disobedience to any order punished..... 3489 549
papers to be filed with clerk of the district court 3490 549
persons confined as insane entitled to benefit of..... 1444 265

HANDWRITING—
may be proved by comparison 3655 556

HARBOR-MASTER—
city council may appoint, or provide for election of..... 528 93

HEAD OF FAMILY—
homestead of, exempt from judicial sale..... 1988 365
widow or widower without children deemed..... 1989 365
property of, exempt from execution..... 3072 500
definition of 3073 501
exception, when defendant has started to leave the state... 3076 501
cannot claim for purchase money..... 3078 501

HEDGES—
may be planted in highway..... 999 173

	Section.	Page.
HEIRS—		
judgment against, how rendered	2485	426
any one may tender amount due from	2486	426
may maintain action for waste or trespass	3338	533
HEMP SEED—		
standard weight of bushel of	2049	373
HIGHWAYS, §§ 920–968—		
who has power to establish	920	161
width of	921	161
petition for	922	161
bond	923	161
commissioner—appointed by county auditor	924	161
how to proceed	925	161
to consider both public and private convenience	926	162
report of, when not in favor of establishing	927	162
to lay out, if deemed expedient	928	162
line of, to be surveyed and marked	929	162
commissioner and assistants to be sworn	930	162
mile posts and stakes set up and trees blazed	931	162
bearing trees and monuments established	932	162
plat and field notes filed	933	162
time for filing report, and subsequent proceedings	934, 935	162
auditor—to cause notice to be served on owner of land	936	163
when auditor may establish	937	163
new notice served, when	938	163
when objections are made, or claims for damages filed	939	163
damages—appraisers appointed to assess	940	163
claims must be in writing	941	163
auditor to notify appraisers	942	164
oath of appraisers, and vacancies filled	943	164
other appraisers appointed	944	164
when applicant for, to pay costs	945	164
final action—time for, highway established or refused	946, 947	164
order of board entered of record	948	164
plat and field notes recorded and highway opened	949	164
removal of fences when crops are planted	950	164
rights of minors or persons insane controlled by guardian	951	164
streets a part of highways	952	165
to conform to direction and grade of streets	953	165
not established on lands reserved by the state	954	165
how established, when in two or more counties	955	165
discontinuance of	956	165
may be established by consent	957	165
survey of	958	165
appeal—applicant for damages may	959	165
so may petitioner for highway	960	166
transcript of proceedings filed	961	166
trial of the appeal	962	166
judgment for costs	963	166
plats—re-survey—board of supervisors may order re-survey	964	166
plat and field notes filed, notice to be given	965	167

Section. Page.

HIGHWAYS—CONTINUED.
board may approve survey and order same to be recorded. 966 167
plats of all highways made by auditor 967 167
copy of furnished township clerks..... 968 167
includes roads and bridges 45 7
cities and towns may aid in construction of, when..... 488 84
not assessed or taxed to adjacent owner..... 811 136
certificates for work on, receivable in payment of taxes..... 854 144
persons meeting on, how to pass 1000 174
bridges erected and maintained by the public, width of... 1001 174
may be raised or lowered for works of internal improvement.....1262, 1288 231
crossings of, to be kept in repair by corporation..... 1263 231
temporary ways erected over..... 1264 231
travel over, not to be impeded 1265 231
sign-board erected at crossings of, by railway corporation. 1288 236
telegraphs may be erected along 1324, 1325 243
compensation of persons engaged in laying out 3824 595
racing or fast driving on, punished 4071 636
proof that it is impassable at place of intersection with railway, presumptive evidence of obstruction by 4557 700

HIGHWAY DISTRICTS—
township trustees to divide township into 969 167

HIGHWAY SUPERVISOR. *See* WORKING HIGHWAYS.
who competent and liable to serve 977 169
to give bond..... 978 170
penalty for refusing to serve..... 979 170
to post notices of highway tax 980 170
how to expend same.....981, 982 170
to require persons to perform labor..... 983 170
notice to 984 170
penalty for failure to attend 985–992 171
supervisor to labor; how paid..... 986 171
to report to township clerk; items embraced in 987 171
to certify to auditor amount labor due 988 172
may take timber and material..... 989 172
responsible for damages, when..... 990 172
extraordinary repairs by..... 991 172
to remove obstructions..... 993 172
keep highway in good condition, erect guide-boards..... 994 173
remove Canada thistles 995 173
settle with trustees 996, 997 173
penalty for failure of duty..... 998 173

HIGH SCHOOLS. *See* COUNTY HIGH SCHOOLS—

HOGSHEAD—
standard quantity contained in..... 2045 373

HOLIDAYS—
notes and bills deemed due on the day previous to 2094 380

Section. Page

HOMESTEAD, §§ 1988–2210—
of head of family exempt from judicial sale..... 1988 365
widow or widower deemed 1989 365
conveyance of invalid, unless signed by husband and wife. 1990 365
liable for taxes and mechanics' liens..... 1991 366
for debts contracted prior to purchase..... 1992 366
and when it is so stipulated in writing 1993 366
embrace house used as a home..... 1994 366
may contain one or more tracts of land 1995 366
extent of.....1996, 1997 366
husband or wife may select and have platted 1998 366
and recorded 1999 366
limits of may be changed 2000 366
new, exempt to same extent as the old..... 2001 367
extent of may be contested 2002, 2003 367
action and decision of the court.....2004, 2005 367
may be again called in question..... 2006 367
upon death of husband or wife, survivor to possess and occupy..... 2007 367
selling of distributive share, deemed disposal of..... 2008 367
when no survivor or issue, may be sold to pay debts..... 2009 367
subject to rights of survivor, may be devised..... 2010 368
when listed separately, liable only for taxes thereon 876 149
neither husband nor wife can remove the other or children from..... 2215 398
to be included in share of widow..... 2441 422

HOPS—
standard size of boxes for packing 2051 374
cultivating or transplanting diseased roots punished ..4060, 4061 634

HORTICULTURAL SOCIETY, §§ 1117–1121—
meeting of state society..... 1117 192
district and county societies encouraged..... 1118 193
annual report of..... 1119 193
printing and distribution of..... 1120 193
appropriation for 1121 193

HOSPITAL FOR THE INSANE, §§ 1383–1445—
established, and election of trustees provided for 1383 252
meetings of trustees and their compensation..... 1384 252
trustees to visit hospitals, make record of proceedings, and report..... 1385 252
to manage and appoint superintendents, physicians, and officers..... 1386 252
to hold in trust, property conveyed or devised to.. 1387 253
cannot be interested in the purchase of building material, etc..... 1388 253
cannot be superintendent or steward..... 1389 253
treasurer of, to give bond, his compensation and duties... 1390 253
superintendent to be chief executive officer of, duties and powers 1391 253
steward to make purchases for, keep accounts, and take vouchers 1392 254

Section. Page.

HOSPITAL FOR THE INSANE—CONTINUED.
superintendent to provide seal..... 1393 254
assistant physicians, qualifications of, duties..... 1394 254
commissioners of insanity—board of appointed..... 1395 254
organization of..... 1396 254
clerk of, to keep minutes of proceedings, sign notices, warrants, etc..... 1397 255
application for admission to hospital made to.....1398, 1399 255
may investigate application and hear testimony thereon... 1400 255
may discharge from, or admit to hospital..... 1401 256
notify auditor of county of settlement..... 1402 257
may appoint special custodian for insane person..... 1403 257
may direct insane person to be cared for outside of hospital 1404 257
to provide for suffering insane persons..... 1405 257
may order public or private patients to be transferred to hospital..... 1406 257
interrogatories to be answered..... 1407 258
may order discharge of patients from hospital..... 1408 258
may discharge from custody when cared for in county.... 1409 259
to estimate expense of conveying patient to hospital..... 1410 259
warrant of, a bar to prosecution..... 1411 259
to inquire into sanity of person charged with crime..... 1412 259
insane person—in prison, charged with a crime..... 1412 259
superintendent to notify district attorney of restoration to reason of patient..... 1413 260
convicted of crime, may be sent to hospital by governor... 1414 260
officers of, punished for abusing insane persons..... 1415 260
county of settlement responsible for expenses of insane patients.....1417, 1418 260
patients having no settlement, supported by the state..... 1419 261
special care given patients..... 1420 261
relatives may pay expenses of patients..... 1421 261
manner of selection of patients, when necessary..... 1422 261
superintendent of, to notify commissioners on escape of patients..... 1423 261
discharge of patient from..... 1424 261
trustees of may order removal of incurable and harmless patients..... 1425 262
on discharge of patient without application, notice sent to commissioners..... 1426 262
trustees of, to fix compensation for boarding patients..... 1427 262
superintendent of, to certify quarterly the amount due from each county..... 1428 262
compensation of superintendent when attending court as witness..... 1429 262
superintendent to fix seal to any notice or order of discharge 1430 262
trustees to furnish commissioners with blanks and by-laws 1431 262
superintendents of, and governor, to adopt regulations for 1432 263
estates of patients and relatives bound for their support.... 1433 263
meaning of terms "insane" and "idiot"..... 1434 263
visiting committee—powers and duties of..... 1435 263
names posted in every ward, and patients allowed to write.1436, 1441 264

Section. Page.

HOSPITAL FOR THE INSANE—CONTINUED.
superintendent to furnish patients with writing material... 1437 264
to stamp and deposit letter in post office... 1438 264
coroner's inquest to be held, on sudden death of patient... 1439 264
persons confined in hospital may be discharged by judge. 1442, 1443 264
persons confined in, entitled to writ of habeas corpus..... 1444 265
penalty for wilfully refusing or neglecting to perform duty 1445 265
insane person charged with crime, sent to..... 4624 710
bail of, released..... 4625 710
superintendent to notify sheriff, etc., when defendant becomes sane..... 4626 710
expenses, by whom borne.....4627, 4628 711

HOUSEHOLDER—
may take up stray animals..... 1464 269

HOUSE OF CORRECTION—
council of cities of first class may establish and maintain.. 539 95

HOUSE OF REFUGE—
council of cities of first class may establish and maintain. 539 95
directors may apprentice inmates of..... 540 96
unreformed apprentice may be recommitted to..... 541 96

HUNGARIAN GRASS SEED—
standard weight of bushel of..... 2049 373

HUSBAND—
property of absconding, whose family may become a public charge, seized.....1343, 1344 246
may have homestead platted and recorded.....1998, 1999 366
when responsible for return of marriage certificate..... 2199 396

HUSBAND AND WIFE, §§ 2202–2219—
wife may acquire and sell property in same manner as husband..... 2202 396
property of either not liable for debts or contracts of the other..... 2203 397
either may maintain action to recover property, as if unmarried..... 2204 397
husband not liable for civil injuries committed by wife.... 2205 397
conveyance by either to the other, is valid..... 2206 397
court may authorize either when abandoned, to manage or sell property..... 2207 397
contracts and sales by, binding on both..... 2208 397
decree of court may be set aside..... 2209 397
either may constitute the other attorney in fact..... 2210 397
wife may hold and sue for her personal wages..... 2211 398
neither liable for debts of the other contracted before marriage..... 2212 398
contracts of wife enforced as if she were unmarried..... 2213 398
property of both liable for support of the family..... 2214 398
neither can remove the other, or the children, from the homestead..... 2215 398

Section. Page.

HUSBAND AND WIFE—CONTINUED.
insanity—of either, the other empowered to execute conveyance 2216 398
petition to be filed 2217 398
court to make decree 2218 398
conveyances executed, to convey interest of both 2219 399
conveyance by, passes the right of both 1936 357
covenants by, only binding on owner of property 1937 357
proceeds of share of in action for partition, how disposed of in case of disagreement 3303 530
may testify against each other, when 3641 565
cannot be examined as to communications made by one to the other 3642 565

IDIOT. *See* HOSPITAL FOR THE INSANE—
cannot be admitted to hospital for insane 1434 263

ILLEGAL MARRIAGES—
rendered valid by cohabitation 2201 396

ILLEGITIMATE CHILDREN—
become legitimate by marriage of parents 2200 396
inherit from the mother, and she from children 2465 424
father, when recognized by him 2466 424
when recognition mutual, father inherits from 2467 424
mother and her heirs take precedence over father 2468 424
criminal action—complaint to be made in writing to district court 4715 723
clerk to give accused notice 4716 723
lien on real property created from time of filing complaint. 4717 723
district judge may direct attachment to issue 4718 723
attorney to prosecute 4719 723
to be tried as an ordinary action 4720 723
judgment and execution 4721 723
may be vacated, increased, or diminished 4722 723

ILL FAME—
keeping houses of, punished 4013, 4014 625
leasing house for purpose of 4015 625
enticing virtuous females to 4016 625

ILLUMINATING OILS—
mixing naptha with, etc., punished 3901 606

IMPEACHMENT—
definition of 4546 699
majority of members of house of representatives must concur in 4547 699
must specify offenses as in an indictment 4548 699
offenses to be stated separately 4549 699
senate to cause party to be brought before it 4550 699
process to be issued by secretary of senate 4551 699
reasonable time given accused to answer 4552 699
oath to be administered to senators 4553 699

Section. Page

IMPEACHMENT—CONTINUED.
officers standing impeached to be suspended from exercising duties 4554 699
when president of the senate is impeached 4555 699

IMPORTER OF LIQUORS. *See* INTOXICATING LIQUORS.

IMPRISONMENT—
for fine, satisfied at rate of $3.33 for each day confined.... 4509 695

IMPROVEMENTS—
plaintiff may pay for in actions by occupying claimants... 1979 364
should plaintiff fail, defendant may..... 1980 364
if neither so does, both become tenants in common..... 1981 364
made on lands granted state, may be removed..... 1987 365

INCEST—
defined and punished 4030 628

INCORPORATED TOWNS, §§ 511–516. *See* CITIES AND TOWNS.
officers of and terms 511 89
who to preside at meetings of council..... 512 89
vacancies in council, how filled 513 89
council may elect subordinate officers..... 514 89
appoint a marshal..... 515 89
remove councilmen or officers..... 516 90

INCORPORATED ACADEMY—
laws given to by state librarian 1898 351

INCORPORATIONS. *See* CORPORATIONS.

INCUMBENT—
means the person whom the canvassers declare elected.... 693 119
to nominate a judge in trial of contested elections..... 700 120
when liable for costs 711 121

INDEMNIFYING BOND—
officer may require before levying execution 3055 498
terms and conditions of..... 3056 498
if not given, levy discharged..... 3057 498
officer protected by..... 3058 498
application of proceeds of property sold under, etc 3059 498

INDEPENDENT DISTRICTS—
directors of—can only change school books once in three years..... 1728 320
have power to dismiss or suspend pupils 1735 320
teachers' institute, during session school must be closed... 1762 324
German, or other language taught in, when electors vote. 1763 324
Bible not to be excluded from 1764 325
judgment—against, how paid 1787 329
tax levied—to pay money borrowed of school fund..... 1788 329
meeting—time of opening and closing polls..... 1789 329
oath—directors may administer to each other..... 1790 329

Section Page.

INDEPENDENT DISTRICTS—CONTINUED.
officer superseded—to deliver moneys, books, and papers to successor 1791 329
township directors—have no jurisdiction over independent districts 1792 329
children—residing in one district may attend school in another 1793, 1794 329
districts—formation of 1800 331
people to vote on question 1801 331
directors of, and their terms of office 1802 332
meeting to elect directors 1803 332
disposition of taxes previously voted by district township. 1804 332
when to be formed of two more civil townships 1805 332
number of schools in, and how governed 1806 332
electors in, may vote tax 1807 332
annual meeting of 1808 332
remainder of township to constitute township district 1809 332
directors may set off territory 1810 333
when lying contiguous may unite 1811 333
how formed of districts in two or more counties 1812 333
directors to publish detailed statement of receipts, etc 1813 333
township districts—may be organized into independent districts 1814 334
sub-districts—may be so organized 1815 334
proceedings to effect such organization 1816, 1817 334
corporate name determined 1818 335
treated and governed as other independent districts 1819 335
old board of directors to make disposition of assets, etc 1820 335
bonds—may be issued, and money borrowed by 1821 335
question to be submitted to the electors 1822 335
tax—may be voted by directors when electors fail to vote 1823 336
orders to draw interest when not paid 1824 336
public property of, exempt from corporate debt 3048 497
tax levied to pay corporate debts 3049 497

INDEPENDENCE—
Iowa hospital for the insane located at 1388 252

INDICTMENT—
for selling, etc., intoxicating liquors, any number of violations charged in 1540 282
not necessary to set out in, kind of liquor, etc., manufactured or sold 1549 287
number of grand jurors requisite to find 4291 667
how endorsed, when found at instance of private prosecutor 4292 667
names of witnesses to be endorsed on 4293 667
presented to court and filed by clerk 4294 667
definition of 4295 667
what it must contain 4296 668
form of 4297 668
must be direct and certain 4298 668
proceedings when defendent is indicted by fictitious name 4299 668
must charge but one offense, except, etc 4300 668
precise time need not be stated in, except when material .. 4301 668

Section. Page.

INDICTMENT—CONTINUED.
erroneous allegation of name in, when not material..... 4302 669
language of, how construed.....4303, 4304 669
when deemed sufficient..... 4305 669
when insufficient..... 4306 669
statements sufficient in.....4307–4309 669
when for libel..... 4310 670
misdescription of destroyed instrument immaterial in..... 4311 670
statements sufficient in, when for perjury..... 4312 670
when intent to defraud constitutes ingredient in offense..... 4313 670
distinction between principal and accessory abrogated.... 4314 670
accessory after fact may be indicted, though principal has not been..... 4315 670
compounder of offense may be indicted thouh principal has not been..... 4316 670
statements sufficient in, when for embezzlement of money. 4317 671
process on, is a bench warrant..... 4318 671
bail—judge to fix, by endorsement on..... 4319 671
warrant—clerk to issue..... 4320 671
form of, for felony..... 4321 671
for misdemeanor..... 4322 672
endorsement on, when bailable offense..... 4323 672
when served..... 4324 672
bail on, how taken..... 4325 672
corporation—process on, how served..... 4326 672
setting aside—motion to set aside, grounds of..... 4337 674
when on the ground that names of witnesses are not endorsed..... 4338 674
when not allowed to, defendant held to answer..... 4339 674
motion heard or postponed..... 4340 674
when denied, defendant to plead..... 4341 674
effect of granting motion..... 4342 674
cause re-submitted to grand jury..... 4343 675
no bar to another prosecution..... 4344 675
bail on, how given.....4582–4586 703

INDUSTRIAL HOME. *See* COLLEGE FOR THE BLIND.

INFIRMARY—
council of cities of first class may establish for the poor... 538 95

INFORMATION—
for selling, etc., intoxicating liquors, any number of violations charged in..... 1540 282
not necessary to set out kind of liquor, etc., sold, etc..... 1549 287
preliminary definition of..... 4111 643
in criminal actions triable before justices, defined..... 4663 715

INJUNCTIONS, §§ 3386–3407—
granted pending proceedings to vacate judgment..... 3159 512
may issue to stay proceeding of foreclosure..... 3317 531
for restraining nuisances..... 3331 532
when and for what causes issued.....3386–3388 538

Section. Page.

INJUNCTIONS—CONTINUED.
temporary, when, and by whom granted..... 3389 539
when, not to be granted without notice to defendant..3390, 3391 539
not to be granted by judge when refused by court..... 3392 540
defendant may move to dissolve before or after answer.... 3393 540
clerk to issue..... 3394 540
bond and codditions of.....3395, 3396 540
when suit must be brought in the county and court where action is pending..... 3396 540
penalty of bond must be fixed by court or judge who makes the order..... 3397 540
defendant may be allowed to show cause why order should not be granted..... 3398 540
may apply to have order vacated or modified... 3399 540
application must be with notice to plaintiff, grounds for... 3400 540
judge may decide matter at once, unless cause shown for delay..... 3401 540
only one motion to dissolve or modify allowed..... 3402 541
defendant attached for violation of..... 3403 541
how released..... 3404 541
if not excused, bond to be filed for his appearance..... 3405 541
on failure to give, may be committed to jail.... 3406 541
court at next term to punish the contempt..... 3407 541

INJURIES TO PERSON OR REPUTATION—
action for, barred in two years from time same occurred... 2529 432

INJURIES TO PROPERTY—
proof in defense of actions for, limited by allegations of answer..... 2682 453

INJURIES TO PERSON—
proof in defense of actions for, limited by allegations of answer..... 2682 453

INQUEST. *See* CORONER—
coroner to hold 352 60

INSANE. *See* HOSPITAL FOR INSANE—
includes idiots, lunatics, and persons of unsound mind.... 45 7
guardian of insane person may settle for property taken for public use..... 1246 228
penalty for treating with hardship or cruelty..... 1415 260
person supposed to be, restrained only by authority of law 1416 260
relatives may be compelled to support..... 1433 262
meaning of term insane..... 1434 262
exception in favor of, in statute of limitations..... 2535 432
must prosecute and defend by guardian.....2569–2571 436
original notice, how served on.....2615, 2616 444
defendant when found to be, by jury, committed to hospital for 4472 690
where defendant alleges insanity when brought up for judgment..... 4505 694

Section. Page.

INSANE—CONTINUED.
in criminal actions—of defendant, trial of..... 4620 710
proceedings in action suspended until question determined 4621 710
order of procedure..... 4622 710
when found sane proceedings resumed..... 4623 710
insane proceedings suspended until, etc..... 4624 710
commitment of defendant releases bail..... 4625 710
defendant detained in hospital until sane..... 4626 710
expenses, by whom borne.....4627, 4628 711

INSPECTION—
of books, accounts, etc.—kept in any state office or institution 132 24
of coal mines 1567 291

INSPECTION OF SHINGLES AND LUMBER, §§ 2069–2074—
inspector to be appointed..... 2069 376
to take oath and give bond..... 2070 376
persons injured by, bring suit on bond 2071 377
duties of..... 2072 377
counterfeiting brands of, deemed forgery..... 2073 377
compensation of..... 3803 590
definition of shingle, and lumber classified..... 2074 377

INSPECTORS OF JAILS—
who constitute..... 4729 725
must visit twice a year and report 4730 725
what report must contain..... 4731 725
to have free access to jails..... 4732 725
may examine witnesses under oath 4733 725

INSTITUTION FOR THE DEAF AND DUMB, §§ 1685–1696—
election of trustees of..... 1685 312
to appoint teachers and servants, and adopt rules.....1686, 1687 313
non-residents entitled to education in 1688 313
residents entitled to education free 1689 313
trustees of to elect one of their number as president, and another as treasurer..... 1690 313
not to create indebtedness exceeding appropriation 1691 313
appropriation for 1692, 1693 313
superintendent of, to report to governor..... 1694 313
to furnish clothing to pupils 1695 314
appropriation drawn quarterly on order of trustees..... 1696 314

INSTRUCTIONS—
all to be in writing 2784 464
modification of, when asked by parties..... 2785 464
court to mark those asked, "given," or "refused"..... 2786 464
when excepted to, no reason need be given 2787 464
court may, on its own motion, charge the jury 2788 464
either party may file exceptions 2789 464
in criminal actions—how given.....4440, 4441 686

INTENT TO DEFRAUD—
how stated in an indictment 4313 670

Section. Page.

INTEREST, §§ 2077–2081—
rule of, and what may be stipulated for 2077 377
on judgments and decrees 2078 378
higher rate prohibited 2079 378
penalty for taking higher than allowed by law 2080 378
assignee may recover of usurer consideration paid 2081 378
state warrants—to bear, when not paid on presentation 78 14
on state bonds, to be provided by treasurer of state 82 14
county warrants—to bear six per cent., when not paid 328 57
school fund—rate on, loaned 1882 348
judgments—between verdict and, taxed as costs 2948 483
when stayed, to bear ten per cent 3161 499

INTERLINEATION—
pleadings not to be amended by 2692 454

INTERPLEAD—
party compelled to, or debarred of all claim 2572–2574 436

INTERROGATORIES—
may be annexed to pleadings, and must be answered 2693 454
party not confined to a mere response to 2694 455
must be answered when pleading is 2695 455
delay not to be caused by filing, unless etc, ... 2696 455
answer to distinguish what is stated on belief only 2697 455
how to be verified 2698 455
when to be taken as true 2699 455
court may compel answers to, by process of contempt 2700 455

INTERVENTION—
any person may intervene, who has any interest in subject of litigation 2683 453
intervenor not entitled to any delay 2684 453
to be by petition, and governed by same rules as other pleadings 2685 453
in cases of attachment, how tried 3016 493
claimant of personal property in action to recover, may intervene 3228 521

INSURANCE COMPANIES, §§ 1122–1160—
how formed 1122 193
certificate of, approved and recorded 1123 194
amount of capital stock required 1124 194
subscription books opened 1125 195
election of and number of directors 1126 195
annual meetings of directors 1127 195
directors to choose president, and fill vacancies in their own body 1128 196
to appoint officers, and establish by-laws 1129 196
funds invested, loans and securities 1130 196
officers to certify assets under oath 1131 196
what may be insured by 1132 197
policies of, how executed 1133 198
stock, how transferred 1134 198
capital, how increased 1135 198

Section. Page.

INSURANCE COMPANIES—CONTINUED.
dividends reserved, forfeiture of charter..... 1136 198
may hold and convey real estate for specified purposes.... 1137 199
deposit notes and losses of mutual companies..... 1138 199
settlement of losses, to what extent members liable..... 1139 200
character of company to be designated on policies..... 1140 200
annual statement, what to embrace..... 1141 200
to furnish auditor of state with information when required. 1142 202
additional statement required..... 1143 202
foreign companies, prerequisites to doing business..... 1144 203
must procure certificate from auditor of state..... 1145 203
statements of foreign companies made annually..... 1146 203
penalty for doing business contrary to law..... 1147 204
advertisement of agents to contain name and location of company..... 1148 204
examination of, proceedings when assets are impaired..... 1149 204
impaired capital made good..... 1150 205
examination of mutual companies..... 1151 206
certificate may be revoked..... 1152 206
fees to be paid by..... 1153 206
effect of laws of other states..... 1154 206
certificate of auditor to be published annually..... 1155 206
expense of examination paid by company..... 1156 207
printed forms of statements furnished..... 1157 207
statements arranged in tabular form and published..... 1158 207
cannot be both stock and mutual..... 1159 207
persons may insure each other, how..... 1160 207
to pay tax on premiums to state treasurer..... 806 135
place of bringing actions against..... 2584 438

INTOXICATING LIQUORS, §§ 1523-1559—
manufacture or sale of, prohibited..... 1523 279
may be imported in original packages..... 1524 279
manufacture of, deemed misdemeanor..... 1525 280
permit—to sell, by whom obtained.....1526, 1527 280
holder of to give bond..... 1528 280
board of supervisors to hear application for.....1529, 1530 280
place of sale to be specified in permit..... 1531 281
suit on bond, by any one injured..... 1532 281
book of sales and purchases to be kept..... 1533 281
when deemed fraudulent and void..... 1534 281
may be vacated, penalty for keeping false books..... 1535 281
when no defense to, condemnation and destruction of liquors..... 1536 282
must not sell at greater profit than..... 1537 282
penalty for, or failing to make required returns..... 1538 282
selling or giving to minors or intoxicated person, prohibited..... 1539 282
sale of, prohibited—and punished..... 1540 283
mixing with wine, beer, or cider, prohibited and punished. 1541 283
owning or keeping with intent to sell, prohibited and punished..... 1542 283
building and ground declared a nuisanc, abatement of.... 1543 284

Section. Page.

INTOXICATING LIQUORS—CONTINUED.
information—warrant and service..... 1544 284
place and liquors described with reasonable certainty..... 1545 285
notice of hearing, trial, judgment, appeal..... 1546 285
destruction of liquors and vessels..... 1547 286
intoxicated person—punished..... 1548 286
indictment or information, requisites of..... 1549 287
payments and transfers in consideration of liquors purchased, void..... 1550 287
peace officers to give information of violation of law..... 1551 288
principal and sureties liable on bond for fines and costs... 1552 288
common carriers and others, prohibited from bringing into state..... 1553 288
evasions, courts and juries to so construe as to prevent.... 1554 288
"intoxicating liquors," definition of..... 1555 288
seller of, liable to any one who takes care of intoxicated person..... 1556 288
by person injured by intoxicated person..... 1557 289
fines and costs, how collected, and who liable for..... 1558 289
making false statement to any person authorized to sell, punished..... 1559 289
not to be sold within three miles of state agricultural farm 1620 303
sale of to indian or intoxicated person, punished..... 4044 631
cities may regulate or prohibit sale of..... 463 78

INVESTMENTS—
when directed, how made..... 251 41
when made by court, can only be discharged by order entered of record..... 252 41
when and how made..... 253 41
account of, to be rendered court annually or oftener..... 254 41
courts may direct property in possession of one party, to be delivered to the other..... 255 41
delivery coerced..... 256 42
power of sheriff..... 257 42

INVENTORY—
of property of absconding father, mother, husband, or wife. 1346 246
to be filed by special administrators..... 2359 414
executors..... 2370 415
property inventoried, to be appraised..... 2373 415

IOWA CITY—
state university located at..... 1585 295

IOWA HOSPITAL FOR THE INSANE. *See* HOSPITAL FOR INSANE.

IOWA STATE AGRICULTURAL SOCIETY. *See* AGRICULTURAL SOCIETIES.

IOWA STATE HORTICULTURAL SOCIETY. *See* HORTICULTURAL SOCIETY.

IRRELEVANT—
matter stricken from pleading..... 2719 457

	Section.	Page.
ISSUE—		
includes all lawful lineal descendants	45	8
ISSUES IN ACTIONS—		
in actions of occupying claimants, how joined and tried	1978	364
of fact and law defined	2738	459
of law, must be first tried	2739	459
of fact, tried by jury, unless waived	2740	459
all to be tried upon oral evidence, except, etc	2741	459
equitable must be tried on depositions, when either party so asks	2742	459
joinder of, when answer of garnishee is controverted	2987	489
criminal actions—how tried	4347	675
of law, arises on demurrer to indictment	4348	675
of fact, on plea	4349	675
must be tried by jury	4350	675
when defendant must be personally present	4351	675
JACK—		
found at large, may be taken up and sold	1447	266
JAIL—		
sheriff, deputy sheriff, or jailor, to have charge of	340	59
city or town may use	485	83
for what purposes used	4723	724
keeper's duty	4724	724
sheriff—to keep calendar of prisoners	4725	724
to furnish copy to judge of district court	4726	725
keeper to furnish prisoners with clothing, etc	4727	725
prisoners removed when in danger of fire	4728	725
inspectors of—to visit and inspect	4729	725
to report to district court	4730	725
what it must contain	4731	725
to inspect books and papers	4732	725
have power to examine witnesses under oath	4733	725
prisoner—refractory, punished	4734	725
expenses to be paid by county	4735	726
prisoners required to labor	4736	726
on highways or public grounds	4737	726
sheriff or marshal to superintend	4738, 4739	726
may use means necessary to prevent escapes	4740	726
to be credited with labor	4741	727
cruel treatment of, punished	4742	727
any person annoying, punished	4743	727
JAILOR—		
suffering prisoner to escape, punished	3953–3955	615
JOINDER OF ACTIONS, §§ 2630–2634—		
actions of whatever kind, that may be prosecuted by same kind of proceedings, may be	2630	447
plaintiff may strike out any cause	2631	447
court may, on motion of defendant	2632	447

Section. Page.

JOINDER OF ACTIONS—CONTINUED.
objections to misjoinder of, waived, unless, etc..... 2633 447
court may allow plaintiff to file several petitions..... 2634 447
not permitted in action to recover personal property, except of same kind..... 3226 521
not in actions to recover real property..... 3245 524
of any other kind, not allowed in action for partition..... 3277 527

JOINT AUTHORITY—
to three or more, construed as giving authority to a majority..... 45 7

JOINT CONVENTIONS. *See* GENERAL ASSEMBLY—
for election of United States senator and canvassing votes for governor and lieutenant governor..... 26 4

JUDICIAL NOTICE—
matters of which taken, not stated in pleading 2722 457

JUDICIAL OFFICER—
may punish contempts..... 3491 549

JUDICIAL PROCEEDINGS—
all must be public, unless otherwise provided or agreed upon by parties..... 189 32

JUDGES—
supreme—to receive copy of supreme court reports 159 28
when to be elected..... 582 104
to administer oath of office to governor and lieutenant-governor..... 671 115
may solemnize marriages..... 2193 396
penalty for failure to make return of..... 2196 396
salary of..... 3769 582
not increased during term of office 3779 583
to be paid monthly..... 3780 583
district—when to be elected 584, 585 104
to approve bond of district attorney 680 117
may solemnize marriages..... 2193 396
penalty for failure to make return of..... 2196 396
may order transfer of criminal actions 4383–4385 679
costs of, how paid..... 4386 680
appeal cannot be taken from..... 4387 680
district and circuit—may suspend sheriffs and clerks from office 756 126
order district attorney to file petition against accused 757 126
certified to county auditor... 758 126
by consent may appoint referees in vacation..... 2825 468
may appoint receivers 2903 478
to fix penalty of bond of 2904 479
have control of..... 2905 479
order, defined..... 2922 480

Section. Page.

JUDGES—CONTINUED.
may issue order in vacation, directing officers as to duties, etc 2923 481
how long order to remain in force 2924 481
may require bond to be filed 2925 481
order of, to be filed and entered of record 2926 481
may vacate or modify a final order 3154 511
salary of 3774 582
not increased during term of office 3779 583
to be paid monthly 3780 583
circuit—when to be elected 586 104
to approve officers' bonds, when board of supervisors fail or refuse 681 117
constituted inspector of jails 4729 725
supreme, district and circuit—prohibited from acting as attorney 187 32
cannot act as judge when related to either party 190 32
records of court kept under their direction 194 32
to qualify, by taking the prescribed oath 673 115
not required to give bonds 674 116
in trials of contested state elections, may issue subpœnas 723 122
resignation of, made to governor 782 129
may send boy or girl, convicted of a crime before justice, to reform school 1656 308
to send abstract of complaint to school 1657 308
may order return of boy or girl to justice 1658 309
acknowledge instruments affecting real estate 1955 360
solemnize marriages 2193 396
penalty for failure to make return 2196 396
may approve sales and conveyances made under order of court 2893 476
to make allowance of property to be attached in certain cases 2955 485
attachment may be vacated by 2960 486
falsely assuming to be, punished 3962 616
stirring up quarrels by, " 3964 617

JUDGE. *See* SUPREME COURT.

JUDGE. *See* DISTRICT COURT.

JUDGE. *See* DISTRICT AND CIRCUIT COURTS.

JUDGE. *See* CIRCUIT COURT.

JUDGES OF ELECTION—
to select requisite number of persons to serve as jurors 238 39
who may be 606 107
when absent, others chosen 607 107
oath of 609 107
may swear each other 610 107
may appoint constable to preserve order 612 107
commit to jail any one disturbing election 613 108
to deposit ballot in box 617 108
check register 618 108

Section. Page.

JUDGES OF ELECTION—CONTINUED.
may challenge person offering to vote 619 108
administer oath to person challenged 620 108
votes canvassed by 622 109
may reject ballots 623–625 109
form of return by 628 109
deliver poll books and return to county auditor 629 110
deposit ballot-box and tally lists with township clerk 630 110
result as to township officers certified by..... 631 110
making false entries relating to, punished 4003 623
refusing legal vote, or accepting illegal 4004 623
doing or omitting any act which renders election void.... 4005 623
not returning poll books 4006 624

JUDGMENT, §§ 2849–2899—
every final adjudication is 2849 472
may be both for and against the same party 2850 472
how rendered, when matter in abatement is plead 2851 472
when execution not in common form is asked, how entered 2852 472
may be rendered for or against several plaintiffs or defendants 2853 472
when all defendants not served, how rendered 2854 472
when no answer, cannot exceed relief asked 2855 472
may be rendered for uncontroverted part of claim 2856 472
must be entered in conformity with verdict..... 2857 473
when special finding, court to order..... 2858 473
may be rendered, notwithstanding verdict..... 2859 473
for excess of counter-claim 2860 473
rendered by agreement of parties, except in divorces..... 2861 473
no distinction made between debt and damages..... 2862 473
provisions as to ferries apply to court when acting as..... 2863 473
must be entered of record, and specify relief granted..... 2864 473
when set aside, memorandum entered of record..... 2865 473
when title to land settled by, complete record made..... 2866 473
matter of discharge presented on motion 2867 473
fraudulent assignment of, set aside 2868 474
default—when judgment by, rendered..... 2869 474
none to be entered, until court is satisfied notice has been served 2870 474
may be set aside on terms..... 2871 474
amount computed by clerk 2872 474
party in may cross-examine witness..... 2873 474
in equity actions, rendered on hearing proofs 2874 474
defendant served by publication, may defend before entering of..... 2875 474
court may require security before issuing process on..... 2876 474
new trial granted at any time within two years..... 2877 475
title of purchaser in good faith not affected by 2878 475
certified copy of, may be served on defendant..... 2879 475
must be personally served..... 2880 475
personal, not rendered on service by publication 2881 475
liens—judgments rendered by courts of record on real estate. 2882 475

Section Page.

JUDGMENT—CONTINUED.
attach from rendition, on lands in county 2883 475
when in another county, transcript must be filed 2884 475
clerk must docket and index 2885 476
commissioner—conveyance by, when appointed by court 2886 476
what deed must contain 2887 476
passes title of parties ordered to convey 2888 476
or of parties to cause or proceeding 2889 476
but not until approved by court 2890 476
to be signed by, only 2891 476
to be recorded in recorder's office 2892 476
judge may approve conveyances 2893 476
confession—judgment rendered by, without action 2894 476
can only be for money due, or to become due 2895 476
verified statement must be filed 2896 477
clerk to enter 2897 477
party may offer to confess before action 2898 477
or after action brought 2899 477
may be rendered in vacation, force and effect of 183 31
on verdict rendered after close of term 185 31
or on such verdict at next term 186 31
in contested county elections, and how enforced 712, 715 121
appeal from, to circuit court, effect of 716 121
on the appeal 717 122
in contested state elections, how enforced 727 123
against heirs or devisees, how rendered 2485 426
executors, how rendered 2489 426
rendered in this state, action, when brought on 2521 430
obtained in ordinary, not annulled by equitable proceedings 2522 431
action on, when barred 2529 432
cannot be rendered against prisoner in penitentiary until defense by 2559 436
how plead 2714 456
may be rendered for cost of continuance 2748 460
rendered on report of referees 2821 468
sureties—obtained by, against principal, etc., on motion 2906 479
notice of motion to be served 2907 479
grounds of motion stated in notice 2908 479
motion considered abandoned, when 2909 479
determined without written pleadings 2910 479
on bond given to secure costs rendered on motion 2932 482
garnishee—how rendered against 2988 489
for debt not due 2989 489
when rendered against, on negotiable paper 2990 490
conclusive between, and defendant 2991 490
how to be docketed against garnishee 2992 490
appeal lies from 2993 490
attachments—on bond given to release attached property 2995 490
in attachment cases, property applied in satisfaction 3011 493
execution—requiring payment of property enforced by 3026 494
upon rendition of, clerk to issue 3029 494
transcript of, sent when execution issued to another county 3031 495

Section. Page.

JUDGMENT—CONTINUED.
surety—against principal, and how enforced..... 3039 496
meaning of term..... 3040 496
property to be exhausted in order of liability..... 3041 496
all equally liable, unless different order shown in judgment..... 3042 496
may be levied on, sold, or appropriated..... 3046 496
interest on—when stayed, to bear interest at ten per cent.... 3061 499
stay—bonds for stay of execution, force of..... 3064 500
lien—on real estate of decedent, how enforced.....3092, 3096 503
mutual may be set off..... 3097 503
equitable proceedings—to subject property to..... 3150 509
manner of proceeding in such cases..... 3151 510
lien created on property..... 3152 510
how enforced..... 3153 510
appeal—of district or circuit court may be taken from..... 3163 513
not reversed for error which can be corrected in inferior court..... 3168 513
in action to recover specific property, what to determine... 3238 523
may be rendered on bond 3242 523
collusion—rendered by, in action to recover penalty or forfeiture does not prevent another action..... 3372 537
of forfeiture and eviction when rendered in action for waste 3333 533
in action to test official and corporate rights.....3353–3359 535
on bond of public officer does not prevent action for another delinquency..... 3369 536
justice—time for entering in justices' courts..... 3552 556
mutual may be set off.....3555, 3565 556
by confession, may be entered by..... 3566 557

JUDGMENT DEBTOR. *See* EXECUTIONS—
order obtained for examination of.....3135, 3136 509
by whom granted..... 3137 509
answer of, not to be used in prosecution for fraud..... 3138 509
property of, ordered to be delivered up..... 3141 509
receiver of, appointed..... 3142 509
failing to appear, punished as for a contempt..... 3145 509
warrant for arrest of, issued..... 3148 509
discharged from, on giving bond..... 3149 509
equitable proceedings brought against..... 3150 509
answers to be verified..... 3151 510
lien on property created by..... 3152 510
surrender of property enforced..... 3153 510

JUDGMENTS AND ORDERS—
vacated or modified by court in which rendered..... 3154 511
when petition must be filed.....3155, 3157 511
done on motion..... 3156 512
proceedings to be as in ordinary actions..... 3158 512
not to be vacated until it is adjudged there is a defense... 3159 512
grounds to vacate to be first tried..... 3160 512
injunction may be granted..... 3161 512
of affirmance, how rendered..... 3162 512

	Section.	Page
JUDGMENT IN CRIMINAL ACTIONS—		
of acquittal, rendered immediately	4495	693
conviction, when to be pronounced	4496	693
presence of defendant—when necessary	4497	693
bail forfeited when not present	4498	694
bench warrant may issue	4499	694
form of	4500	694
served in any county	4501, 4502	694
defendant to be asked to show cause against	4503	694
legal causes defined	4504	694
when insanity alleged, inquiry into made	4505	694
to be deferred until motion for new trial decided	4506	694
when no cause shown, to be pronounced	4507	695
form of, when defendant is convicted of more than one offense	4508	695
for a fine, may direct imprisonment until paid	4509	695
may direct committal to jail of another county	4510	695
must direct amount of bail to be taken on appeal	4511	695
form of execution—when of imprisonment	4512	695
when entered, defendant committed into custody	4513	695
execution served by sheriff of proper county	4514, 4515	695
authority of	4516	696
return	4517	696
form of execution when for a fine	4518	696
for abatement of nuisance	4519	696
for fines are liens to same extent as in civil cases	4609	708
execution on, stayed in same manner	4610	708
JURISDICTION—		
of state	3	1
civil and criminal retained by the state over lands of U. S.	4	1
of district court	161	28
of circuit court	162	28
in cases of removal and suspension from office	747	125
circuit court has, of estates of decedents	2312	410
in pleading, judgment need not be alleged	2714	456
of supreme court	3163, 3164	513
of justices of the peace	3507, 3508	552
local, of criminal actions	4155–4164	649
facts conferring, need not be stated in indictment	4308	670
JURORS, §§ 227–245—		
who competent and liable to serve	227	38
who exempt	228	38
when persons summoned as, excused	229	38
when to attend, fined for failure	230	38
number of both grand and trial	231	39
on failure to attend, others to be drawn and summoned	232	39
may be discharged, and jury empaneled from bystanders	233	39
jury lists	234, 235	39
auditor to apportion number to be selected from each precinct	236	39
sheriff to notify judges of the election in	237	39

Section. Page.

JURORS—CONTINUED.
judges to make selection; if they fail, county canvassers to do so 238 39
term of service of grand and trial 239 40
auditor to write out names, clerk and sheriff to compare with lists 240 40
ballots to be mixed, clerk to draw names and issue precept 241 40
sheriff to serve and make return 242 40
grand jurors only summoned at first term, unless special term ordered 243 40
precept set aside, proceedings 244 40
clerk to certify as to services of, same paid by county 245 40
when trial by demanded, to be selected from regular panel 2761 461
challenge—may be to the panel or any juror 2762 461
parties cannot sever in 2763 461
cause of, when made to panel 2764 461
must be in writing, and before jury is sworn 2765 461
trial of 2766, 2767 462
to juror, is peremptory or for cause 2768 462
when it must be made 2769 462
no reason need be given for peremptory 2770 462
number allowed, and order of 2771 462
for cause, enumeration of 2772 462
trial of, by court 2773, 2774 462
sheriff to summon talesmen 2775 463
who exempt from service 2776 463
exemption not cause of 2777 463
parties may agree to take majority verdict 2778 463
court may permit them to view premises 2790 464
when cause submitted, to be kept together in charge of officer 2791 465
when permitted to separate, court to admonish 2792 465
court may discharge 2793, 2794 465
cause to be retried 2795 465
what to take with them upon retiring 2797 465
testimony given to correct oversight, before retiring of 2799 466
court may give information to upon points of law 2800, 2801 466
food and lodging furnished to at expense of county 2802 466
must distinguish between matter in abatement and bar 2851 472
to assess value of property, and damages for detention 3238 523
compensation of 3811 592
bribery of, punished 3944 614
acceptance of bribes by, punished 3945 614
attempt to improperly influence, punished 3946 614
acting corruptly by, punished 3947 614

JURY IN CRIMINAL ACTIONS. *See* TRIAL OF CRIMINAL ACTIONS.

JUSTICES OF THE PEACE AND THEIR COURTS, §§ 3507–3635—
jurisdiction of 3507 552
extent of 3508 552
actions—where brought 3509, 3510 552
in attachment, and to recover personal property 3511 552

Section. Page.

JUSTICES OF THE PEACE AND THEIR COURTS—CONTINUED.

when defendants do not reside in the state..... 3512 552
at place named in written contract..... 3513 552
when in adjoining township..... 3514 552
entries to be made in docket..... 3515 552
how brought, and proceedings in..... 3516 553
commenced by voluntary appearance or notice..... 3517 553
when by notice, no petition need be filed..... 3518 553
what notice must contain.....3518, 3519 553
time and place of trial to be fixed in..... 3520 553
must be served not less than five days before trial..... 3521 553
service and return of..... 3522 553
defendant in, may pay officer amount of claim..... 3523 553
appearance—agent must show authority for..... 3524 554
time for..... 3525 554
postponement of trial..... 3526 554
adjournment of.....3527, 3528 554
conditions on which granted..... 3529 554
pleadings may be written or oral..... 3530 554
time for putting in counter claim..... 3531 554
written instruments on which claim is founded, to be filed. 3532 554
change in place of trial granted..... 3533 554
papers and transcript transmitted to next nearest justice.. 3534 554
when title to real property is pleaded..... 3535 554
cause of action severed..... 3536 555
trial—either party may demand jury..... 3537 555
on failure of plaintiff to appear, action dismissed..... 3538 555
not dismissed when founded on written contract..... 3539 555
default entered against defendant..... 3540 555
when defendant has filed counter claim.....3541, 3542 555
judgment of dismissal, or by default, set aside..... 3543 555
day fixed for new trial..... 3544 555
costs of disposition of..... 3545 555
execution, if issued, to be recalled..... 3546 555
to issue precept for jury..... 3547 556
number of, and challenges to.... 3548 556
discharge of..... 3549 556
no motion in arrest, or to set aside verdict, can be entertained..... 3550 556
verdict must be general..... 3551 556
judgment—time of entering..... 3552 556
amount in excess of jurisdiction, remitted..... 3553 556
plaintiff may dismiss action..... 3554 556
mutual may be set off against each other.....3555–3565 556
by confession..... 3566 557
transcript of, may be filed in office of clerk of circuit court. 3567 557
thereafter treated as judgment in circuit court... 3568 557
execution—time for issuing, limited..... 3569 557
against what, and to whom directed..... 3570 557
to be dated and made returnable in thirty days..... 3571 558
may be renewed, and effect of.....3572–3574 558

Section. Page.

JUSTICES OF THE PEACE AND THEIR COURTS—CONTINUED.

appeals—from, taken to the circuit court..... 3575 558
must be perfected in twenty days..... 3576 558
in absence of justice, clerk may allow.....3577-3579 558
form of bond..... 3580 558
taking of, suspends proceedings..... 3581 558
when taken, execution to be recalled..... 3582 559
transcript of docket and papers to be filed with clerk..... 3583 559
on filing return of, cause deemed in circuit court 3584 559
circuit court may compel justice to allow..... 3585 559
correct omissions, and mistakes in docket entries..... 3586 559
time for trial of..... 3587 559
when notice of to be served on appellee..... 3588 559
how served..... 3589 559
to be tried on merits, and irregularities disregarded..... 3590 559
no new demand or counter claim can be introduced on trial of 3591 559
when appellant to pay costs of..... 3592 559
when appellee to pay..... 3593 559
judgment on to be entered against appellant and sureties.. 3594 559
when taken for delay, court may award damages..... 3595 559
from default, new pleading may be filed in court 3596 559
writs of error—persons aggrieved by decision of justice may have..... 3597 560
proceedings to obtain..... 3598 560
clerk of circuit court to issue..... 3599 560
to be served on justice..... 3600 560
proceedings before justice stayed by bond..... 3601 560
circuit court may compel amended return to..... 3602 560
render final judgment, or remit cause to justice..... 3603 560
order restitution..... 3604 560
actions to recover personal property, how brought..... 3605 560
when attachments may issue in..... 3606 560
constable may take answer of garnishee..... 3607 560
when garnishee is required to appear and answer..... 3608 560
justice to fix time for trial in certain cases..... 3609 560
notices of to be posted up..... 3610 561
forcible entry and detainer—when action for allowed .3611, 3612 561
who may bring..... 3613 561
when notice to quit required..... 3614 561
petition for must be verified..... 3615 561
before what justice brought..... 3616 561
time of appearance and pleading..... 3617 561
time for adjournment of trial limited..... 3618 561
judgment or order of removal..... 3619 561
question of title cannot be tried..... 3620 562
possession, when a bar to action, for..... 3621 562
no joinder of other cause of action with..... 3622 562
order for removal executed only in day-time..... 3623 562
proceedings in circuit court on appeal..... 3624 562
to turn over docket and papers to successor..... 3625 562

Section. Page.

JUSTICES OF THE PEACE AND THEIR COURTS—CONTINUED.
to turn over docket and papers to county auditor when no successor 3626 562
successor may issue execution 3627 562
how determined 3628 562
may interchange and hold each other's courts 3629 562
may appoint special constables 3630 563
process of cannot run into another county 3631 563
justice is his own clerk 3632 563
execution may be renewed by successor 3633 563
docket furnished to 3635 563
prohibited from acting when interested or related to either party 190 32
number and election of 389, 390 64
constables are ministerial officers of 399 65
to be elected in each even-numbered year 590 104
additional justices, when to be elected 592 104
when considered county officers 593 104
penalty of bond to be fixed by board of supervisors, but not less than five hundred dollars 678 117
vacancy in office of, when filled by appointment 794 131
township trustees to make, and clerk to record 794 131
to enter appraisement of estrays in a stray book, by 1467 269
send certified copy to county auditor 1468 269
to issue warrant for appraisement of lost goods and enter return in estray bbok 1512 276
to enter description of lost goods in estray book 1514 277
penalty for selling, trading, or loaning lost goods 1521 279
failure to comply with provisions of law in relation to lost goods 1522 279
may order boy or girl, convicted of crime or being disorderly, sent before a judge 1654 308
may acknowledge instruments affecting real estate 1955 360
may solemnize marriages 2193 396
penalty for failure to make return of 2196 396
regarded as clerk in attachment cases 3024 494
indemnifying bonds required by officers, before levying executions issued by 3060 498
provisions relating to executions applicable to 3127 507
of another state, records of, how authenticated 3714 573
compensation of 3804 590
in criminal cases, to be paid out of county treasury 3805 591
to pay uncalled-for witnesses' fees into county treasury ... 3815 593
fees of, in cases of estrays and trespassing animals ... 3821, 3822 594
falsely assuming to be, punished 3962 616
stirring up quarrels by " 3964 617
oppression by, " 3969 617
failing to pay over fees, " 3970 617
making false entries relating to, " 3971 618
appropriating fees, " 3972 618
failing to report amount of fines, etc., annually 3973, 3974 618

Section. Page

JUSTICES OF THE PEACE AND THEIR COURTS—CONTINUED.
in criminal actions—jurisdiction of, defined 4660 715
actions to be commenced by information 4661 715
statements to be contained in 4662 715
form of 4663 715
to be filed by 4664 716
to issue warrant 4665 716
service of 4666 716
to read information to defendant, etc 4667 716
pleading by 4668 716
defendant may demand trial by jury 4669 716
have change of venue 4670, 4671 716
jury—how obtained 4672–4674 717
officer to summon 4675 717
selection of 4676, 4677 717
challenges to 4678 717
talesmen summoned 4679 717
officer failing to return venire, punished 4680 717
six persons constitute 4681 717
oath of 4682 717
may retire for deliberation 4683 718
oath of officer in charge of 4684 718
verdict of 4685 718
discharge of 4686 718
judgment 4688, 4689 718
discharge of defendant 4690 718
costs taxed to prosecuting witness, appeal from by 4691 718
certificate of conviction 4692 719
judgment executed by virtue of warrant 4693 719
fine to be paid to county treasurer 4694, 4695 719
duplicate receipts given for 4696 719
defendant to be informed of his right to appeal 4697 719
amount of bail to be fixed, form of bond 4698 719
qualifications of 4699 720
by whom taken 4700 720
witnesses must be bound over 4701 720
appeal—trial of 4702 720
cannot be dismissed 4703 720
district court must carry judgment into effect 4704 720
either party may 4705 720
judgment upon 4706 720

JUSTIFICATION—
matter of must be specially plead 2718 457

KIDNAPPING—
defined and punished 3869 602
jurisdiction of 4162 649

KEEPER OF JAILS—
duty of, defined 4724–4727 724
must admit inspectors of 4732 725

	Section.	Page.
LABORERS—		
entitled to mechanic's lien	2130	386
LABOR—		
judgment recovered for, cannot be stayed	3063	499
prisoners required to	4736	726
on highways and public grounds	4737	726
LAND. *See* REAL PROPERTY—		
includes real property of every description	45	8
LANDLORD AND TENANT—		
apportionment of rent, who entitled to recover	2011	368
tenant holding over after given notice to quit	2012	368
attornment to stranger, void	2013	368
person in possession with assent of owner, is a tenant at will	2014	368
notice necessary to terminate tenancy at will	2015	368
how served	2016	368
lien of landlord	2017	369
may have attachment to enforce	2018	369
LANDLORD—		
substituted for tenant, in actions to recover real property	3253	525
LARCENY—		
mortgagor of personal property selling, etc., guilty of	3895	605
defined and punished	3902–3904	606
from building on fire	3905	606
by falsely personating another	3906	606
by finding and appropriating property	3907	606
by embezzlement by public officer	3908	607
by clerks, agents, etc	3909	607
by common carriers and others	3910	607
value of stolen property, how determined	3914	609
by removing goods from officer, etc	3915, 3916	609
LAWFUL FENCE. *See* FENCE—		
definition of	1507	274
LEAD MINES—		
drainage of, compensation for	1229	224
right to examine mines	1230	224
penalty for obstruction of right	1231	224
lien on mineral, how effected	1232	224
right of way granted	1233	225
damages for, how assesed	1234	225
right of owners of mineral protected	1235	225
LEASEHOLD—		
sale of on execution, when absolute	3098	504
redeemable	3099	504
LEGACIES—		
of property turned over at any time, upon bond being given	2429	420
when payable in money	2430	420

Section. Page

LEGACIES—CONTINUED.
may be paid off without bond, after twelve months..... 2431 420
to be paid in order named in will..... 2432 421
court may direct payments made ratable.....2433, 2434 421

LEGAL NOTICES—
compensation for publication of..... 3832 596

LEGISLATIVE PROCEEDINGS—
how proved..... 3717 573

LESSEES—
of railways, duties and liabilities imposed on..... 1278 233

LEVY. *See* ASSESSMENT OF TAXES—
to pay county bonds or judgments..... 840 142
to be endorsed on execution..... 3043 496
on property of judgment debtor..... 3044 496
other levies may be made..... 3045 496
on partnership property, on execution against a partner... 3053 497
when officer may demand indemnifying bond before..3055, 3056 498
discharged, unless given..... 3057 498
bond protects officer for making..... 3058 498
proceeds of such property, how applied..... 3059 498
provisions in relation to such bonds made applicable to proceedings under executions issued by justices..... 3060 498
holds good when property is unsold for want of bidders... 3086 502

LEWDNESS—
defined and punished..... 4012 625

LIBEL, §§ 4097–4102—
defined..... 4097 641
punishment for..... 4098 641
truth given in evidence on trial of..... 4099 641
what deemed publication of.....4100, 4101 641
in prosecutions for, jury to determine law and fact..... 4102 641
what necessary to state in petition for..... 2681 453
answer, proof limited by allegations of..... 2682 453
indictment for need not state extrinsic facts..... 4310 670
jury to determine law and fact on trial for..... 4438 686

LIBRARIAN—
of state library appointed, to give bond..... 1890 350
to give personal attention to library..... 1891 350
prepare alphabetical catalogue of..... 1892 350
label and mark each book..... 1893 350
report to the governor.....1894–1897 350
give laws to academies, colleges, etc..... 1898 351

LIBRARY OF CONGRESS—
secretary of state to furnish copies of legislative journals for 64 11

LICENSE—
peddlers to obtain from county auditor..... 907 158

LICENSE—CONTINUED. Section. Page.
for erection of toll-bridges, granted..... 1003 174
how, when in different counties..... 1006 175
for what period..... 1007 175
may be made exclusive..... 1008 175
revocation of..... 1009 175
for establishment of ferries, granted..... 1011 175
must be recorded..... 1019 176
granted to erect mill-dams..... 1198 218
forfeiture of..... 1199 218
to marry, must be procured..... 2187 395
transacting business without, punished..... 4046 631

LIEN—
of attorney—on what, and how claimed..... 215 37
may be released, how..... 216 37
when assessment by cities, becomes.....478–480 82
taxes a lien between vendor and vendee..... 853 144
taxes—made a perpetual..... 865 146
judgment against railway, for injury to person or property by..... 1309 240
of vendor—on real property, how recognized and enforced. 1940 357
of landlord—nature and extent of..... 2017 369
of warehousemen—express companies, carriers, etc..... 2177 392
proceedings to enforce.....2178–2180 392
husband or wife—may create in favor of the other..... 2206 399
mechanics'—actions to enforce, to be tried on oral evidence. 2742 459
may be tried at appearance term.....2744, 2745 460
of judgments—rendered in courts of record..... 2882 475
attach from date of, on lands in county..... 2883 475
when in other counties, attested copy to be filed..... 2884 475
to be docketed and indexed..... 2885 476
on partnership property—for debt of a partner, how enforced 2994 487
of plaintiff on partnership property, for private debt of a partner..... 3054 498
release—not released by stay of execution..... 3071 500
sale of real estate—on which judgment was not a, set aside. 3090 503
of judgment against a decedent—how enforced.....3092–3096 503
created by proceedings to subject property to judgments.. 3152 510
manner of enforcing..... 3153 510
partition—holders in action of, may be made parties to action 3281 528
reference to ascertain the nature and extent of..... 3284 528
questions arising on, determined..... 3286 528
made a charge on particular interests or proceeds..... 3287 528
proceedings in relation to not to delay distribution of other shares..... 3288 528
holder of junior, entitled to assignment of interest of mortgagee by..... 3323 531
on mortgaged property paid off in its order..... 3325 531
rafts—debts against, deemed..... 3447 545
in criminal actions—undertaking of bail, when and how made.....4606–4608 707
judgment for fines made..... 4609 708
created by filing petition in bastardy cases..... 4917 723

	Section	Page.
LIEUTENANT-GOVERNOR—		
to be elected in each odd-numbered year	580	103
not required to give bonds	674	116
to qualify by taking the prescribed oath	671	115
when	685	118
election of, may be contested by	737	124
LIFE INSURANCE COMPANIES, §§ 1161–1183—		
conditions imposed on	1161	208
amount of capital required of stock companies	1162	208
number of applications required by mutual companies	1163	208
foreign companies, prerequisites	1164, 1165	208
must obtain certificate from auditor of state	1166	209
annual statement of, what to contain	1167, 1168	210
value of each policy to be ascertained	1169	211
certificate to be renewed annually	1170	212
penalty for failure to make deposit and file statement	1171	212
books of, may be examined by auditor of state	1172	213
assets of insolvent company divided among policy holders	1173	213
may change securities	1174	213
may collect interest on securities	1175	214
condition of, to be reported to general assembly	1176	214
penalty for doing business without auditor's certificate	1177	214
how recovered and disposed of	1178	214
funds of, how invested	1179	214
may hold and convey real estate for specified purposes	1180, 1181	214
policy, to whom enure, exempt from debts	1182	215
fees of	1183	215
LIME—		
standard weight of bushel of	2049	373
LIMITATION—		
administration not granted after five years from death	2367	414
executions not to issue after judgment is barred	3025	494
LIMITATION OF CIVIL ACTIONS, §§ 2529–2542—		
time within which actions must be brought	2529	432
when based on fraud, etc., deemed to have accrued at discovery of	2530	432
on open account at date of last item proved	2531	432
action deemed to be commenced	2532	432
time of non-residence of defendant not computed	2533	432
effect of laws of another state where defendant previously resided	2534	432
exception in favor of minors and insane	2535	432
when party dies within a year of expiration of limitation	2536	432
exception when action fails without fault of party	2537	433
no application to bank bills circulating as money	2538	433
revived by new promise or admission signed by party	2539	433
counter-claim may be plead, if barred, when, etc	2540	433
exception when stayed by injunction or statutory prohibition	2541	433

Section. Page.

LIMITATION OF CIVIL ACTIONS—CONTINUED.
has no application to, brought for school fund..... 2542 433
for lands sold for taxes..... 902 157
to recover for use and occupation of real property..... 3261 525
to question sale of real estate sold by guardian..... 2265 404
to recover real estate sold by executor..... 2401 418
claims against estates of decedents 2421 420
of criminal actions—period of limit in certain cases...4165–4170 650
to recover fines imposed by city ordinance..... 486 83

LIMITED PARTNERSHIP, §§ 2147–2170—
formation of..... 2147 388
consists of general and special partners..... 2148 389
general partners only can bind partnership..... 2149 389
certificate of formation of, acknowledged, filed, and recorded.....2150–2152 389
affidavit to be attached..... 2153 389
effect of false statement in..... 2154 389
terms of, to be published..... 2155 389
affidavit of publication of terms to be filed with clerk of district court 2156 389
removal of, must be certified, acknowledged, filed, and recorded..... 2157 389
alteration in names of partners or nature of business deemed dissolution of..... 2158 390
firm name to consist only of general partners..... 2159 390
suits against, how brought..... 2160 390
capital stock not to be impaired by payment of dividends.....2161, 2162 390
special partner may examine and advise as to business.... 2163 390
partners to account to each other..... 2164 390
penalty for fraud..... 2165 390
cannot give preference to creditors.....2166, 2167 390
when special partner becomes liable as general partner.... 2168 391
claims of special postponed in favor of those of creditors.. 2169 391
dissolution of..... 2170 391

LITERARY INSTITUTION—
laws given to by State Librarian..... 1898 351

LOANS—
cities and towns may negotiate in anticipation of revenues. 500 87

LOST BOND—
action on prosecuted by ordinary proceedings..... 2512 430

LOST GOODS, §§1509–1522—
logs or timber—found adrift in any stream may be taken up. 1509 275
title when to vest in finder and when to be sold..... 1510 275
compensation of finder..... 1511 276
vessel or water craft—found adrift may be taken up..... 1512 276
title, when to vest in finder and when sold..... 1513 276
money, goods, &c.—found to be appraised..... 1514 277
proceeds, how disposed of..... 1515 277
to be advertised..... 1516 278

Section. Page.

LOST GOODS—CONTINUED.
ownership—how determined..... 1517 278
compensation of taker up or finder..... 1518 278
proceeds paid into county treasury..... 1519 278
taker-up or finder to use diligence in taking care of..... 1520 278
penalty for selling, trading, or loaning..... 1521 279
for failure to comply with law..... 1522 279

LOST PLEADING—
court may order supplied..... 2735 458

LOTTERIES—
defined and punished..... 4043 631

LUMBER. *See* INSPECTION OF SHINGLES AND LUMBER.

LUMBER. *See* LOST GOODS.

LUNATICS. *See* GUARDIANSHIP.
guardian may be appointed for..... 2272 405
may have trial by jury..... 2273 405
provisions relating to guardianship of minors applicable to 2274 405
power, authority, and duty of guardian of..... 2275 405
real estate of, may be sold..... 2276 405
guardian may complete contracts of..... 2277 405
when estate of is insolvent, how sold..... 2278 406
priority of claim to person of..... 2279 406

LYNX—
bounty allowed for killing.....1487, 1488 272

MAGISTRATE—
who considered.....4108–4110 642
power and duties of when breaches of the peace are committed.....4115–4122 644
when assult is committed in presence of, or of court 4123 645
preliminary examination—duty of in cases of persons arrested without warrant.....4219–4221 657
to inform defendant of offense charged..... 4226 659
to give defendant time to send for counsel..... 4227 659
may grant change of venue..... 4228 659
adjourn preliminary examination.....4229, 4230 659
admit defendant to bail during adjournment.....4231, 4232 659
issue subpœnas for witnesses..... 4233 659
to reduce testimony to writing..... 4241 660
to certify papers..... 4242 660
judgment of.....4243, 4244 661
commitment of defendant by.....4245–4247 661
may require witness to give security for appearance...4248–4251 661
to return papers to district court..... 4252 662
information ordered by..... 4253 662

MAIMING—
defined and punished 3857 600

	Section	Page.
MAJORITY—		
when minors attain	2237	401
MALE ANIMALS—		
found at large, may be taken up and sold	1447	266
MALICE—		
must be alleged, when intended to be proved	2727	458
MALICIOUS MISCHIEF—		
injuring domestic beast of another by, punished	3977	619
mills, machinery, etc., by, "	3978	619
bridges, railways, highways, etc., by, "	3979	619
raft, boat, or vessel, etc., by, "	3980	620
fruit, ornamental trees, etc., by, "	3981	620
boundary marks, guide-board, etc., by, "	3982	620
any building, fixtures, etc., by, "	3985	621
public buildings, by, "	3986	621
railway tracks, by, "	3990	621
breaking levees, by, "	3991	621
obstructing public ditches and drains, by, punished	3992	622
MALICIOUS THREATS—		
defined and punished	3871	602
MANDAMUS, §§ 3373–3385—		
action of, defined	3373	537
by whom order may be issued	3374	537
plaintiff in an action may have an order of, exceptions to	3375	537
not issued when there is any other plain, speedy, and adequate remedy	3376	537
to be granted on petition of any aggrieved party	3377	537
form and requisites of petition	3378	537
pleadings and proceedings on, same as in ordinary actions	3379	538
when action of may be joined	3380	538
peremptory order of, issued	3381	538
no return except that of compliance allowed on	3382	538
court may direct act done by other than defendant	3383	538
temporary orders made pending action	3384	538
state may appeal from without giving security	3385	538
MANSLAUGHTER—		
punished	3856	600
MANUFACTURER—		
defined for taxation purposes	816	137
MARRIAGE, §§ 2185–2201—		
is a civil contract	2185	395
between what ages valid	2186	395
license for, must be obtained	2187	395
when under age, consent of parents or guardian required	2188	395
clerk may require proof, and take testimony	2189	395
to make entry of applications for license	2190	395

Section. Page.

MARRIAGE—CONTINUED.
consent of parent or guardian must be filed..... 2191 395
persons disregarding law relative to marriage, guilty of misdemeanor..... 2192 395
who may solemnize..... 2193 396
person solemnizing to give certificate of..... 2194 396
penalty for solemnizing contrary to law..... 2195 396
for failure to make return of..... 2196 396
register of, to be kept by clerk..... 2197 396
provisions not applicable to particular denominations..... 2198 396
husband liable to penalty for not making return..... 2199 396
legitimatizes children born before..... 2200 396
illegal, made valid by cohabitation..... 2201 396
fee for solemnizing..... 3828 596

MARRIED WOMAN—
may convey or encumber real estate..... 1935 357
acquire, sell, and control property..... 2202 396
property of, not liable for debts of husband..... 2203 397
may maintain action against husband to recover property.. 2204 397
responsible for civil injuries..... 2205 397
conveyance by, to husband valid..... 2206 397
may control property of husband when abandoned by..... 2207 397
proceedings in such case.....2208, 2209 397
may constitute husband attorney in fact..... 2210 397
maintain and defend actions as if unmarried..... 2211 398
husband not liable for debts of, contracted before marriage..... 2212 398
contracts by, enforced as if unmarried..... 2213 398
property of, liable for expenses of family..... 2214 398
cannot be removed from homestead by husband..... 2215 398
may act as executor..... 2345 413
may sue to same extent as if unmarried..... 2562 435
defend when sued with her husband..... 2563 435
when deserted by her husband, may prosecute or defend in his name..... 2564 435

MARINER—
at sea may dispose of personalty by oral will..... 2325 411

MARKETS—
cities and towns may establish and regulate..... 456 76
city council may regulate..... 526 92

MARSHAL—
to superintend prisoners when laboring.....4739, 4740 726
punished for treating prisoners cruelly..... 4742 727
cities of first class—in cities of, to be elected by electors... 535 94
power, duties, and compensation of..... 536 94
may, upon view, arrest offenders against ordinances..... 537 95
second class—to be elected by council in cities of..... 532 93
powers, duties, and compensation of..... 533 94
of incorporated town—duties and compensation of..... 515 89

Section. Page.

MASTER. *See* APPRENTICE.

MAXIMUM—
rates of railways to be made annually and posted up..... 1304 239
of passenger fare..... 1305 239

MAYOR—
jurisdiction and power of..... 506 88
preside at meetings of council of incorporated town..... 512 89
when absent the council may appoint..... 513 89
powers, duties and compensation of.....518, 519 90
of cities of second class to be elected annually..... 518 90
to preside at meetings of council and give casting vote..... 531 93
of cities of the first class to be elected every two years.... 518 90
to report to council and appoint police. 534 94
has control of police, and arrest on view 537 95
may solemnize marriages..... 2193 396
penalty for failure to make return of..... 2196 396
may consent to adoption of children when parents of, dead 2308 409
failing to report fines imposed by, punished..... 3974 618

MECHANICS' LIEN, §§ 2129–2146—
not entitled to, when collateral security taken 2129 385
whoever does labor or furnishes materials entitled to..... 2130 386
sub-contractor to give notice of intention to furnish 2131 386
railway company or contractor deemed to have notice..... 2132 386
sub-contractor may file statement of claim with clerk.2133, 2134 386
statement of, justifies owner in not paying contractor..... 2135 387
notices relating to, by whom served and effect of 2136 387
persons other than sub-contractor to file statement of claim with clerk..... 2137 387
clerk to endorse time of filing and make record..... 2138 387
to have priority in order of filing 2139 387
extent and effect of 2140 387
preference over other liens 2141 388
to be enforced by action 2142 388
owner may require action to be brought..... 2143 388
definition of term "owner"..... 2144 388
when lien paid, satisfaction to be acknowledged..... .. 2145 388
definition of "sub-contractor" 2146 388
homestead liable for labor, or material furnished exclusively for 1991 366
action for, prosecuted in equity, nor can there be any joinder..... 2510 430
barred in two years from filing statement 2529 432
action to enforce brought where property is situate..... 2578 437
to be tried on oral evidence 2742 459
may be tried at appearance term.....2744, 2745 460
before judgment does not entitle holder to redeem..... 3103 504

MECHANIC—
judgment for wages of, cannot be stayed..... 3063 499

Section. Page.

MEDICAL COLLEGE—
may receive dead bodies for medical and surgical study... 4018 625

MEMBERS OF GENERAL ASSEMBLY. *See* CONTESTED ELECTIONS.
to qualify by taking the prescribed oath..... 672 115
not required to give bonds..... 674 116
election of, may be contested..... 730 123

MEMBERS OF HOUSE OF REPRESENTATIVES. *See* GENERAL ASSEMBLY.

MERCHANT—
defined for purposes of taxation..... 815 137

MESSENGER—
sent for missing election returns, compensation of..... 3827 596

MILITIA, §§ 1038–1057—
required to organize..... 1038 179
who compose..... 1039 179
who exempt..... 1040 179
lists of persons liable, to be made and posted up..... 1041 179
reviewed, corrected, and register of kept..... 1042 179
report made to adjutant-general of the United States..... 1043 179
to be organized into companies..... 1044 180
certain companies to return arms..... 1045 180
company to be composed of not less than forty men..... 1046 180
may be organized into battalions or regiments..... 1047 180
polls opened for election of officers..... 1048 180
when to meet for drill and discipline..... 1049 180
distribution of military stores..... 1050 180
when to be called into active service..... 1051 181
every person liable to duty, to enroll himself..... 1052 181
penalty for neglect or refusal..... 1053 181
staff of governor..... 1054 181
duties of adjutant and inspector general, enumerated..... 1055 181
of quartermaster-general..... 1056 182
duties of general and staff officers..... 1057 182

MILITARY RECORD—
governor to keep..... 57 10

MILL DAMS AND RACES, §§ 1188–1206—
owner of land may file petition for..... 1188 217
petition to describe locality..... 1189 217
clerk to issue order, notice to property owners..... 1190 217
when land is in different counties..... 1191 217
jury to appraise damages sworn..... 1192 217
may examine witnesses and report finding..... 1193 218
appeal..... 1194 218
defendants required to appear..... 1195 218
may file objections..... 1196 218
testimony may be taken on final hearing..... 1197 218
license granted..... 1198 218
forfeiture of..... 1199 218

Section. Page.

MILL DAMS AND RACES—CONTINUED.
sheriff may adjourn examination by jury..... 1200 218
proceedings no bar to action..... 1201 219
owner of land made party..... 1202 219
costs and fees to be paid by plaintiff..... 1203 219
owner of mill may repair and protect..... 1204 219
penalty for injuring works 1205 219
rights conferred on mill owners..... 1206 219

MILLET SEED—
standard weight of bushel of..... 2049 373

MINISTER OF THE GOSPEL—
when ordained and licensed, may solemnize marriages.... 2193 396
penalty for failure to make return of..... 2196 396
not to give as testimony confidential communications 3643 565

MINORS—§§ 2237–2240. *See* GUARDIANSHIP OF MINORS.
when majority attained by..... 2237 401
bound by contracts unless disaffirmed..... 2238 401
contracts by, when not to be disaffirmed..... 2239 401
payments made to for personal services valid..... 2240 401
guardian of may settle for property taken for public use... 1246 228
selling or giving intoxicating liquors, wine or beer to prohibited..... 1539 282
children of drunken or vicious parents may be apprenticed 2301 408
over eighteen years may act as executor..... 2346 413
over fourteen years of age may choose guardian..... 2444 402
exception in favor of in statute of limitations 2535 432
must sue by guardian or next friend 2565 435
defend by guardian..... 2566 435
notice must be served on, before guardian appointed..... 2567 436
may choose when over fourteen 2568 436
original notice, how served on 2614 443
may maintain action for waste or trespass..... 3338 533

MISCARRIAGE—
producing on pregnant woman, punished..... 3864 601

MISDEMEANOR—
attorney guilty of, who refuses to pay over money received as such..... 224 38
failure to file in clerk's office, records of deceased notary public, or on his resignation or removal, deemed... 264 43
violation of regulations of board of health, deemed..... 419 69
officers of municipal corporations guilty of when..... 558 99
officer acting without giving bond, guilty of..... 684 118
officer guilty of exercising duties of office after suspension. 761 126
treasurer guilty of, for discounting warrants..... 911 158
loaning or using public money 912 158
officer guilty of, for failure of duty in relation to revenue .. 919 160
keeping false books by corporation, is 1075 185
officers of insurance companies, when guilty of..... 1147 204

Section. Page.

MISDEMEANOR—CONTINUED.
officer of life insurance company failing to pay penalty, guilty of 1178 214
telegraph operator failing to transmit message, guilty of.. 1328 244
any person treating with harshness or cruelty an insane person, guilty of 1415 260
neglecting or refusing to perform duty relating to the insane 1444 265
manufacturer of intoxicating liquors, guilty of 1525 280
intoxicating liquors, selling or giving away, deemed 1540 282
mixing and selling, deemed 1541 283
keeping with intent to sell, deemed.. 1542 283
intoxicated persons, guilty of 1548 286
person using false certificate of membership in fire company, guilty of 1563 290
officers of banks, for failure to report to auditor of state, guilty of 1574 293
persons selling liquor near agricultural college, guilty of.. 1620 303
members of limited partnerhip committing fraud, guilty of 2165 390
persons violating law in relation to marriage, guilty of. 2192, 2195 395
clerk failing to perform duty relating to executors, guilty of 3030 495
failure to pay over witness fees as required by law, deemed 3316 593
officer guilty of, for taking higher fees than allowed by law 3840 597
illegal act to which no penalty is attached deemed 3965 617
punishment for 3966 617
persons unlawfully receiving dead bodies for medical study guilty of 4018 625
failing to bury remains of, is 4019 626
using body for any other purpose than medical study, is... 4020 626
definition of 4103–4105 642
person refusing to aid in execution of process deemed guilty of 4147 648
suppressing riot, deemed guilty of 4151 648
defendant may be tried for, when absent 4351 675
judgment for, pronounced in absence of defendant 4497 693
dismissal for want of prosecution a bar 4619 709
for personal injuries may be compromised 4708 721
person injured, to acknowledge satisfaction 4709 721
constitutes a bar to another prosecution 4710 721
officer cruelly treating prisoner guilty of 4742 727
person insulting prisoner when at labor, guilty of 4743 727

MISJOINDER—
deemed waived, and how corrected 2633, 2634 447

MISTAKE—
not ground for appeal until acted upon in court below.... 3167 513

MORAL CHARACTER—
may be shown as a test of credibility of witnesses 3649 565

MORTGAGE, §§ 3307–3330—
of personal property—foreclosure of 3307 530

Section. Page

MORTGAGE—CONTINUED.
notice of, to describe 3308 530
on whom to be served 3309 530
service and return of, how made 3310 530
must be published 3311 530
purchaser to take title and interest of mortgage 3312 531
sheriff to execute bill of sale to purchaser 3313 531
evidence of service of notice perpetuated by affidavit 3314 531
affidavits to be attached to bill of sale 3315 531
equities between mortgagor and mortgagee not to affect purchaser 3316 531
right to foreclose an amount due may be contested 3317 531
deeds of trust to be treated as mortgages 3318 531
of real property—effected only by action in equitable proceedings 3319 531
when separate suits are brought on bond, note, or mortgage 3320 531
judgment must direct sale of mortgaged property 3321 531
when proceeds of sale do not satisfy judgment, general execution may issue 3322 531
junior lien-holder entitled to assignment of mortgage 3323 531
disposition of overplus after satisfying mortgagee 3324 532
other liens to be paid off in their order 3325 532
sufficient property to pay mortgage only sold 3326 532
satisfaction of mortgage to be acknowledged by mortgagee 3327 532
in cases of foreclosure clerk to acknowledge satisfaction 3328 532
bond given to convey to be treated as a mortgage 3329 532
vendee in such case to be treated as mortgagor 3330 532
of railway corporations—how executed and recorded 1283, 1285 235
may cover after acquired property 1284 235
convertible into common stock 1287 235
of personal property, how executed 1923 356
action on note and to foreclose prosecuted by equitable proceedings 2509 429
action to foreclose brought where property is situate 2578 437
foreclosure of to be tried on oral evidence 2742 459
may be tried at appearance term 2744, 2745 460

MORTGAGEE—
may redeem before debt falls due 3104 504
right of, to foreclose personal property may be contested 3317 531
of personal property entitled to possession 1927 356

MORTGAGOR—
of real property entitled to possession 1938 357

MOTION—
is a written application for an order 2911 479
several objects may be included in same 2912 480
testimony to aid or resist, presented by affidavit 2913 480
notice taken of, and when to be served 2914 480
what it must contain 2915 480

Section. Page.

MOTION—CONTINUED.
served as original notice 2916 480
may be served on attorney of record 2917 480
manner of making 2918 480
penalty for failure to serve and return 2919 480
return to state manner of service 2920 480
when court or judge may direct manner of serving 2921 480
must be filed before answer or reply to pleading assailed, and but one motion to such pleading can be filed ... 2639 448
suspends necessity of filing any pleadings to that assailed. 2640 448
must be argued when filed, unless adverse party asks time. 2641 448
cannot be withdrawn, except by consent 2642 448
filing and entering in appearance docket equivalent to filing in open court 2643 448
in arrest of judgment, when granted 2650 449
pleading when not divided or numbered, corrected by 2706 456
sham defenses and irrelevant answers stricken out on 2707 456
bill of particulars made more specific on 2713 456
irrelevant or redundant matter stricken from pleading by .. 2719 457
to state wherein pleading is insufficient 2720 457
judgment may be discharged on 2867 473
judgment or final order obtained on 2906 479
notice—of, must be served 2907 479
contents of 2908 479
unless filed by day named in notice, considered abandoned 2909 479
to be heard without written pleadings 2910 479
judgment rendered on bond given to secure costs on 2932 482
attached property discharged on 3018 493
in supreme court, when to be heard 3208 519

MOTHER—
of poor person compelled to support 1330 245
proceedings 1333–1339 245
property of absconding, whose children may become a public charge, seized 1343, 1344 246
minor child of drunken or vicious, etc., may be apprenticed 2301, 2302 408
inherits from illegitimate children 2465 424
heirs of, takes precedence over heirs of father 2468 424
may sue for injury or death of minor child 2556 435

MONEY. *See* LOST GOODS.
may be attached 2971 487
officer receiving on execution, cannot remit by mail unless 3032 495
bank bills, drafts, etc., appropriated on execution without sale 3091 503
how described in indictment for embezzeling 4317 670
deposited instead of bail 4589, 4592 704

MONEY OF ACCOUNT, §§ 2075, 2076—
shall be the dollar, cent, and mill 2075 377
any other denomination to be reduced to 2076 377

	Section.	Page.
MONTH—		
means a calender month	45	8
MOUNT PLEASANT—		
Iowa hospital for the insane located at	1383	252
MUNICIPAL CORPORATION—		
how served with original notice	2613	443
public property of, exempt from execution	3048	497
tax levied to pay corporate debts	3049	497
MURDER—		
defined and punished	3848–3850	600
degree of, how determined	3851	600
pardon for, in first degree, not to be granted without consent of general assembly	4712	722
MUTUAL BUILDING ASSOCIATIONS. *See* BUILDING ASSOCIATIONS.		
NAME. *See* CHANGING NAMES.		
of person injured when not material in indictment	4302	669
NATIONAL BANKS—		
rate of taxation, shares of	818	137
principal officer to test	819	137
to be assessed in conformity with act of congress	820	138
notes of, received in payment of taxes	855	144
NEGOTIABLE—		
notes and bills payable to order or bearer, are	2082	379
failure of consideration cannot be shown as defense to, when transferred before maturity	2114	383
NEW TRIAL—		
defined, and for what causes granted	2837	470
at what time application for, to be made	2838	470
when not granted on account of smallness of damages	2839	470
costs of, to be regulated by court	2840	470
court may impose conditions	2841	470
when avoided by amendment of pleadings	2842, 2843	471
must be applied for by petition, when	3155	511
not necessary to obtain a review in supreme court	3169	513
in actions to recover real property	3268	526
notice of application for, to be served on adverse party	3269	526
result of not to affect rights of third persons	3270	526
damages in, recoverable	3271	526
writ of restitution to issue	3272	526
in criminal actions—definition of	4487	692
effect of granting	4488	692
causes for	4489	692
only granted on application of defendant	4490	693
NOLLE PROSEQUI—		
entry of, abrogated	4618	709

Section. Page.

NON-RESIDENTS—
ordinary wearing apparel of, exempt from execution..... 3075 501
how affected by statute of limitations..... 2533 432
service of notice in actions served on by publication..... 2618 444
for what time published..... 2619 445
when required to appear to action 2620 445
may be served personally without the state..... 2621 445

NOTARIES PUBLIC, §§ 258–266—
for what time appointed, when commission of those now in office expires..... 258 41
pre-requisites before commission can issue..... 259 42
secretary of state to forward copy of each commission to clerk of district court of the proper county..... 260 43
and notify such clerk when same is revoked..... 261 43
power and duties defined..... 262 43
must keep record of notices given or sent..... 263 43
on death, resignation, or removal, records to be deposited with clerk..... 264 43
removal from the county deemed a resignition..... 265 43
clerk to give attested copies of records, effect of..... 266 43
may acknowledge instruments affecting real estate..... 1955 360
protest of, is presumptive evidence of what it contains.... 3668 568
compensation of..... 3801 589
exercising duties of, after expiration of commission, punished 3975 619

NOTES AND BILLS, §§ 2082–2103—
payable to order or bearer, are negotiable 2082 379
assignee may maintain action on..... 2083 379
when not negotiable, are assignable 2084 379
when payable in labor or property, are assignable 2085 379
when by terms not assignable..... 2086 379
open account may be assigned 2087 379
assignor of, liable to action of assignee..... 2088 379
guarantor—blank endorsement of, deemed..... 2089 379
how charged.....2090, 2091 379
grace—allowed on negotiable..... 2092 380
demand on any day of, sufficient to charge endorser 2093 380
not to be presented for payment or acceptance on holidays 2094 380
protest—notice of, how served..... 2095 380
damage for non-acceptance or non-payment..... 2096 380
payable in labor or property, when convertible into money demand 2097 380
tender—of labor or property.....2098, 2999 381
made to holder..... 2100 381
effect of tender..... 2101 381
tender of perishable property 2102 381
how paid when holder is absent from the state..... 2103 381

NOT GUILTY—
plea of, can only be put in by defendant in open court 4361 677
may be withdrawn before judgment 4362 677
plea of, to be put in by court when defendant stands mute. 4367 677

	Section.	Page.
NOTICE. *See* ORIGINAL NOTICE—		
to be given before tax-deed executed	894	153
given before establishing highway	936	163
of appeal from assessment of damages	959	165
necessary to terminate tenancy at will	2015, 2016	368
required to charge guarantor	2090, 2091	379
of protest by notary public	2095	380
required to affect real property when situate in another county	2629	446
of motion for continuance	2756	461
of motion in summary proceedings	2908, 2909	479
of motions, how given	2914	480
what it must contain	2915	480
who may serve	2916	480
manner of service of	2917, 2918	480
penalty for failure to serve	2919	480
court or judge may direct manner of service	2921	480
of levy of attachment, entered on encumbrance book	3022	494
of sale of property on execution	3079, 3080	502
to effect lien of judgment against a decedent	3092, 3094	503
of appeal to supreme court	3178	514
of foreclosure of mortgage on personal property, what it must contain	3308	530
on whom to be served	3309	530
service and return of, how made	3310	530
must be published after service	3311	530
evidence of service of, perpetuated by affidavit	3314	531
when injunction not to be granted without	3390, 3391	539
original in justices' court, what to contain	3519–3523	553
of appeal from	3588	559
when personal service of cannot be made before justice	3610	561
to quit before action for forcible detainer can be brought	3614	561
of posting papers required by law	3698–3700	571
of taking depositions	3727, 3730, 3733	574
to be served on corporation when indicted	4326	672
of appeal from a justice in criminal actions	4523	669
NUMBER—		
words importing the singular or plural, how construed	45	7
NUISANCE, WASTE, AND TRESPASS, §§ 3331–3344—		
nuisance defined, and abatement of	3331	532
waste—damages recoverable for	3332	533
judgment of forfeiture and eviction may be rendered for, when	3333	533
who deemed to have committed	3334	533
wilful trespass—damages recoverable for	3335, 3336	533
owner of remainder or reversion may maintain actions for	3337	533
heir may maintain, for injuries done during lifetime of ancestor	3338	533
purchaser on execution may maintain	3339	533
occupier of premises may use timber necessary for repairs	3340, 3341	533
non-liability of settlers on public lands	3342	533

Section. Page

NUISANCE, WASTE AND TRESPASS—CONTINUED.
owner of tax sale certificate may recover damages for..... 3343 533
damages to be paid to the county auditor..... 3344 534
abatement of, by cities..... 456 76
in criminal actions—defined 4089–4091 639
punishment and abatement of.....4092–4096 640
judgment for abatement of, how executed 4519 696

OATH—
includes affirmation..... 45 8
of commissioners, regents, inspectors, trustees, managers of
any public building or state institution..... 126 22
to be filed in office of auditor of state 128 23
who may administer..... 277 45
those conscientiously opposed to taking, may affirm 278 45
chairman of board of supervisors may administer..... 300 50
coroner " " 355, 357 60
county surveyors " " 377, 378 63
of officers of cities and towns 504 88
of person challenged at polls 620 108
official; form of.....675, 676 116
of deputies, how endorsed and filed..... 770 127
of trustees of state reform school..... 1645 306
referees may administer..... 2829 469
entering on duties of office before taking, punished..... 3996 619
foreman of grand jury may administer..... 4274 665

OATS—
standard weight of bushel of 2049 373

OBSCENE BOOKS—
printing, selling, buying, etc., punished 4022 626

OCCUPYING CLAIMANTS, §§ 1976–1987—
rights of, how protected 1976 364
petition filed by..... 1977 364
issues in relation to, how joined and tried..... 1978 364
improvements, plaintiff may pay value of..... 1979 364
defendant may pay for land..... 1980 364
plaintiff and defendant, when deemed tenants in common. 1981 364
color of title of, and who deemed.....1982–1984 364
waste by, may be set off against improvements..... 1985 365
execution, when to issue in favor of plaintiff..... 1986 365
settler on land granted state, may remove improvements.. 1987 365
to prosecute actions by ordinary proceedings..... 2512 430

OFFENSE. *See* PUBLIC OFFENSE.

OFFER TO COMPROMISE—
defendant may at any time after service before trial..... 2900 477
conditionally, effect of 2901 478
not to be cause of continuance..... 2902 478

OFFER TO CONFESS JUDGMENT—
made before action, effect of..... 2898 477
after action, effect of..... 2899 477

	Section.	Page.
OFFICIAL BOND. *See* BOND—		
actions on, when brought	2579	438
OFFICIAL SECURITIES, FINES, &c., §§ 3368–3372—		
construction to official bonds	3368	536
judgment on for one delinquency, does not preclude action on same security for another	3369	536
fines and forfeitures paid into county treasury for benefit of school fund	3370	537
who may prosecute for recovery of	3371	537
judgment by collusion does not prevent another action	3372	537
OFFICIAL AND CORPORATE RIGHTS, §§ 3345–3367—		
tested by action in ordinary proceedings	3345	534
no joinder of other cause of action in	3346	534
to be brought by the district attorney	3347	534
how brought, upon refusal of	3348	534
petition, form of	3349–3352	534
judgment—in actions to test	3353–3359	535
ousting corporation, trustees to be appointed	3360	536
to give bond	3361	536
suit may be brought on bond	3362	536
to collect and pay liabilities	3363	536
books and papers delivered to	3364	536
to make and file inventory	3365	536
power and responsibility of	3366	536
penalty for disobedience to order of court	3367	536
OFFICE. *See* QUALIFICATION FOR—		
when vacant	781	129
how and by whom filled	783	129
actions growing out of, brought where located	2585	438
OFFICER—		
receiving copy of statutes, to deliver same to his successor in office	43	7
failing to render account; auditor of state to render account against	70	13
penalty for failure to pay over public money	71	13
defense by	72	13
when seeking to obtain credits for payments made to state treasurer, must take oath	73	13
of state institutions, to make detailed report to governor	125	22
prohibited from making contracts in excess of appropriation	127	23
approving bond, may require surety to justify	249	41
of city or town, salary of, neither increased or diminished during term	491	85
of municipal corporation, prohibited from purchasing any evidence of debt against, at less than par	556	99
penalty for	558	99
not to enter on duties of office until qualified	670	115
those to give and those not to give bond	674	116

Section. Page.

OFFICER—CONTINUED.
who has approval of official bond, may require additional security..... 773 128
for a fixed term, holds until successor qualifies..... 784 129
resignation of, to whom made..... 782 129
guilty of misdemeanor for failure of duty in relation to revenue..... 919 160
action against for failure of duty, barred in three years.... 2529 432
action against for act done under color of office, where brought..... 2579 438
of court not to be received as security in proceeding in... 2931 481
not liable for making levy until notified, etc..... 3055 498
may demand indemnifying bond..... 3056 498
protected, if surety was good when taken..... 3058 498
disposition of proceeds of such property..... 3059 498
provisions apply to justices of the peace..... 3060 498
duty when approving stay bond..... 3062 498
to discharge property from levy when stay is taken..... 3066 500
having charge of public record to give copy of on demand. 3706 572
signature of deemed genuine..... 3711 572
bribery of executive or judicial, punished..... 3939 613
acceptance of bribes by, " 3940, 3941 613
refusing to execute criminal process, punished..... 3949 615
suffering prisoner to escape.....3953-3955 615
officiating as without authority, punished..... 3963 617
wilful neglect of duty by, " 3965 617
making false entries and returns, etc., punished..... 3968 617

OMNIBUSES—
proprietors of liable for careless handling of baggage..... 2183 394

ONIONS—
standard weight of bushel of..... 2049 373

OPPRESSION—
by judges or other officers, punished..... 3969 617

ORDER. *See* SUMMARY PROCEEDINGS.
final, obtained on motion..... 2906 479
definition of..... 2922 480
judge may issue directing officers..... 2923 481
how long to continue in force..... 2924 481
judge may require bond to be filed..... 2925 481
to be filed and entered of record by clerk..... 2926 481
final, vacated, reversed, or modified, causes for..... 3154 511
when petition to be filed.....3155, 3157 512
by motion..... 3156 512
of district, or circuit court or judge, may be appealed from.....3164, 3165 513
in action to recover specific personal property..... 3229 521
clerk to issue..... 3230 522
counterparts of, issued to other counties..... 3231 522
sheriff to execute..... 3232 522

Section. Page.

ORDER—CONTINUED.
of mandamus, by whom issued 3374 537
when not to issue 3376 537
on what granted 3377 537
to whom granted 3382 538

ORDINANCES—
cities or incorporated towns may make and publish 482 83
formalities required on passage of 489, 493 84
how authenticated and recorded 492 85
of municipal corporations, how proved 3720 573

ORDINARY ACTIONS—
when plaintiff must bring 2509, 2512, 2513 419
record of on appeal, what to contain 3184 515

ORIGINAL ENTRIES—
book of to be procured by county recorder 3703, 3705 571
certified copies of, admissible as evidence 3704 571
signature of officer certifying deemed genuine 3711 572

ORIGINAL NOTICE—
actions commenced by serving; form of 2599 441
deemed discontinued, if petition is not filed 2600 442
may be served by any person not a party 2601 442
defendant held to appear at first term after service 2602 442
manner of service 2603 442
return on, what it must state 2604 442
sheriff to note on, when received 2605 442
defective return may be amended 2606 442
may be served on Sunday, when 2607 442
contain notice of no personal claim 2608 443
truth of return, how proved 2609 443
how served when county defendant 2610 443
on corporations other than municipal 2611, 2613 443
on municipal 2612 443
minors 2614 443
insane persons 2615, 2616 444
prisoner in the penitentiary 2617 444
by publication, when and how made 2618–2620 444
personal supersedes publication 2621 445
on unknown defendants 2622–2625 445
minor, before guardian can be appointed 2567 436
railway bridge company 1037 178
in actions against boats and rafts 3435 544

OSAGE ORANGE SEED—
standard weight of bushel of 2049 373

OVERPLUS—
to be paid to mortgagor after satisfying costs 3324 532

OVERSIGHT—
testimony to correct admitted before cause is finally submitted 2799 466

Section. Page.

OWNER—
definition of, as applied to mechanic's liens 2144 388
entitled to proceeds of unclaimed property paid county treasurer 2182 394

PARDONS—
governor may remit fines and forfeitures 4712 722
may take testimony 4713 722
return of warrant by officer 4714 722

PARTIES TO A CIVIL ACTION, §§ 2543-2575—
every action must be prosecuted in name of real party 2543 433
executor, guardian, etc.—may sue in his own name 2544 433
all persons having an interest in may be joined, except, etc 2545 433
of assignee—subject to defense existing before notice 2546 434
any person having adverse interest made defendant 2547 434
having united interest may be joined, except, etc 2548 434
common interest, one may sue for all ... 2549 434
on joint and several obligations—how brought 2550 434
other parties brought in 2551 434
on bond—payable to state, county, etc., how brought 2552 434
partnership—in favor of, or against " 2553 434
foreign corporations—may sue in corporate name 2554 435
unmarried female—may sue for her own seduction 2555 435
father and mother—may sue for injuries to, or death of child 2556 435
when name not known, may be described 2557 435
on written instrument—by name designated thereon 2558 435
when defendant is in penitentiary 2559 435
state to prosecute as individuals 2560 435
abatement—actions do not abate by transfer of interest 2561 435
married women—may sue as if unmarried 2562 435
when sued with her husband, may defend for herself 2563 435
wife—may prosecute or defend when deserted by husband .. 2564 435
minors—must sue by guardian or next friend 2565 435
defend by guardian 2566 435
cannot be appointed until minor served with notice 2567 436
when over fourteen, may choose 2568 436
insane—must sue and defend by guardian 2569-2571 436
for recovery of personal property, when third party claims interest in 2572 436
where officer is sued for taking on process 2573, 2574 436
where property is taken under landlord's attachment 2575 436
additional made, when necessary to adjudication of counter claim 2662 451

PARENTS—
natural guardians of their minor children 2241, 2242 401

PARTNERSHIP. *See* LIMITED PARTNERSHIP—
property, how listed and taxed, members of liable for 805 135
suits by or against, how brought 2553 436
suing or being sued, facts constituting need not be plead .. 2716 457
allegations as to, how denied 2717 457
how property attached for separate debt of a partner 2973 487

Section. Page.

PARTNERSHIP—CONTINUED.
plaintiff has lien on to extent of interest of partner..... 2974 487
property of, levied on to pay debt of a partner..... 3053 497
lien of plaintiff on, how made available..... 3054 498

PARTITION, §§ 3277–3306—
action for, to be by equitable proceedings..... 3277 527
form of petition in..... 3278 527
abstract of title attached to..... 3279 527
persons having contingent interests, made parties..... 3280 527
creditors having liens may be made parties..... 3281 528
form of answers in action on..... 3282 528
issues in, how joined and tried..... 3283 528
references to report encumbrances..... 3284 528
referees to give notice of the time and place of receiving proof..... 3285 528
court to direct issue between encumbrancer and owner.... 3286 528
lien-holder made a party..... 3287 528
distribution not delayed by proceedings in relation to encumbrances..... 3288 528
shares confirmed and partition directed..... 3289 528
referees—appointed to make partition..... 3290 528
to mark shares by visible monuments..... 3291 529
report of, and allotment of shares..... 3292 529
to allot under direction of the court..... 3293 529
part of premises may be partitioned, and part sold..... 3294 529
report set aside, and other referees appointed..... 3295 529
confirmed, and partition made effectual..... 3296 529
cost of proceedings in, how paid..... 3297 529
before selling, referees to give bond..... 3298 529
manner of giving notice of sale..... 3299 529
to report proceedings of sale..... 3300 529
on approval—of sale, conveyances to be executed..... 3301 529
effect of conveyances..... 3302 529
disposition of proceeds of share of disagreeing husband or wife..... 3303 530
when sales are disapproved, money and securities to be returned..... 3304 530
security required of parties prior to receiving money..... 3305 530
proceeds of tenant for life or years, how disposed of when parties cannot agree..... 3306 530

PATENTS—
to be signed by governor, and recorded by register of land office..... 87 15
can only issue upon certificate of person charged with custody of land..... 88 15
to issue to purchasers of land sold for benefit of school fund 1850 341
to be issued for land sold by state..... 1916 354

PAUPERS. *See* APPRENTICE—
minor may be bound as apprentice by clerk..... 2283 406
indenture must be signed by master and clerk..... 2284 406
bringing into the state punished..... 4045 631

	Section	Page.
PEACE OFFICER—		
who constitutes	4109, 4110	643
PEACHES—		
standard weight of bushel of	2049	373
PEDDLERS—		
defined, to pay state tax, amount of	906	157
license to be obtained	907	158
PENALTY—		
for neglect or refusal to perform duties by supervisors	302	51
for refusal to serve as township officer	394	65
for selling or leasing lots before plat is acknowledged and recorded	572	102
of officer acting without having official bond recorded	684	118
on delinquent taxes	866	147
for discounting warrants by treasurer	911	158
for loaning or using money by county treasurer	912	158
for failure of county treasurer to send statement to auditor of state	914	159
for failure of any officer to perform duty	919	160
for fast riding or driving over public bridge	1001	174
for failure of duty by county auditor in relation to militia	1042	179
for intentional fraud by members of corporations	1071, 1072	185
for creating disturbance at fairs	1116	192
for doing business without auditor's certificate	1177	214
how recovered and disposition of	1178	214
for obstructing ditch constructed by direction of trustees	1227	223
for failure to perform duties required by stray law	1478	271
for removing fire apparatus	1564	291
for giving false alarm of fire	1565	291
for secretary of school district failing to report	1746	322
for county superintendent failing to report	1773	326
county auditor and treasurer liable to, for failure to perform duties required by school law	1878	347
for misstatements of facts in certificates of acknowledgment	1964	361
for using false weights and measures	2064	375
for weighmaster failing to comply with law	2068	376
for failure to satisfy mechanics' lien	2145	388
warehousemen liable to, for false receipts or certificate	2176	392
for guardian failing to comply with order of court	2254	403
action to recover brought in county where cause of, arose	2579	438
officer failing to serve and return notices	2919	480
clerk liable to, failing to perform duty relating to executions	3030	495
for selling property on execution without notice of sale	3081	502
for failure of mortgagee to satisfy mortgage	3347	522
when judgment in action for, rendered by collusion, another action may be brought	3372	537
for wrongfully refusing to grant writ of habeas corpus	3457	546
for eluding service, etc., of writ of habeas corpus	3467	547
officer refusing to give copy of process by which any person is detained	3468	547

Section Page.

PENALTY—CONTINUED.
for failure to comply with law relating to habeas corpus.. 3476 548
for refusing to obey order in habeas corpus proceedings.. 3489 549
for failing to obey subpœna or to testify..... 3675 578
county treasurer liable to, for not answering inquiries relating to taxes..... 3795 588
of officer failing to keep list of fees posted up..... 3839 597

PENITENTIARY AT FORT MADISON, §§ 4744-4865—
government of..... 4744 727
warden—election and general duties of.....4745, 4746 727
to give bond and take oath..... 4747 728
reside in and appoint a clerk..... 4748 728
make monthly reports to governor..... 4749 728
report preceding each regular session of general assembly 4750 729
must enforce discipline..... 4751 729
clerk—to give bond and take oath..... 4752 729
to keep books and accounts..... 4753 730
deputy warden—to give bond and take oath..... 4754 730
guards—appointed by warden, to give bond, etc..... 4755 731
may be removed at pleasure of warden..... 4756 731
chaplain—appointed by warden..... 4757 731
physician—to visit daily..... 4758 731
to keep hospital record..... 4759 731
make record of every prisoner, on reception..... 4760 731
post mortem examination by..... 4761 732
with assent of warden, to purchase medicines..... 4762 732
must conform to rules..... 4763 732
be graduate of a medical school..... 4764 732
appointed by warden..... 4765 732
to nominate a steward..... 4766 732
officers—receiving perquisites, punished..... 4767 732
interested in contracts for supplies, punished.....4768, 4769 732
punishment in, to be at hard labor..... 4770 733
prisoners of U. S. received in..... 4771 733
process, how served in..... 4772 733
supplies furnished for on sealed proposals..... 4773 733
bills for, compared by clerk..... 4774 733
contractor for, to give security..... 4775 734
convict escaping, warden to offer reward..... 4776 734
prisoner not discharged until end of term..... 4777 734
prroperty of, taken care of by warden..... 4778 734
upon discharge, clothing, etc., furnished to..... 4779 734
visitors to pay fee of twenty-five cents..... 4780 734
who may visit at pleasure..... 4781 734
warden to report monthly to auditor of state..... 4782 735
appropriation—for salaries of officers..... 4783 735
to be paid monthly..... 4784 735
for support of convicts..... 4785 735
to be paid on requisition of warden..... 4786 735
when contractors fail..... 4787 735
outstanding claims collected..... 4788 735
warden may direct suit for..... 4789 735

Section. Page.

PENITENTIARY AT FORT MADISON—CONTINUED.
judgments in favor of, how collected..... 4790 736
actions on contracts made with warden, how brought..... 4791 736
deputy to perform duties of warden..... 4792 736
overseers may be employed..... 4793 736
officers liable to penalty for negligence..... 4794 736
convicts—removed in case of pestilence..... 4795 736
officers suffering to escape, punished..... 4796 737
resisting officers, punished..... 4797 737
in case of insurrection among..... 4798 737
governor—to visit quarterly..... 4799 737
may appoint visitors.....4799, 4800 737
remove warden..... 4801 737
to fill vacancy in office of..... 4802 738
traveling expenses to be paid..... 4803 738
compensation of visitors appointed by..... 4804 738
penalty for failure of duty..... 4805 738
law providing for penitentiary at Anamosa, not repealed.. 4806 738

PERCH—
standard quantity of mason work or stone in..... 2050 373

PERFORMANCE—
of conditions precedent alleged generally..... 2715 456

PERJURY—
defined and punished..... 3936 613
subornation of, punished..... 3937 613
attempt to suborn, punished..... 3938 613
allegations in indictment for..... 4312 670
poor convict making false schedule, guilty of..... 4612 708
person making false affidavit relating to pardons, guilty of. 4714 722

PERMIT. *See* INTOXICATING LIQUORS.

PERPETUITIES—
when disposition of property is void..... 1920 355
disposition of property by church organizations..... 1921 355

PERPETUATING TESTIMONY IN CRIMINAL ACTIONS—
defendant may, as in civil cases..... 4569 701

PERISHABLE PROPERTY—
taken on attachment may be sold..... 2999 491
money arising from sale of, how applied..... 3011 493

PERSON—
may be extended to corporations..... 45 8

PERSON OF UNSOUND MIND. *See* HOSPITAL FOR THE INSANE.

PERSONAL PROPERTY, §§ 1922–1927—
conditional sales of, when invalid..... 1922 356
sale or mortgage of, to be in writing and recorded ...1923, 1924 356
when deemed complete 1925, 1926 356
when mortgagee is entitled to possession of 1927 356

Section. Page

PERSONAL PROPERTY—CONTINUED.
includes money, goods, chattels, debts, and things in action 45 8
cannot be sold on execution without appraisement 3100 504
mortgagor of, selling, destroying, etc., guilty of larceny... 3895 605

PERSONAL SERVICES—
earnings of debtor for ninety days exempt from execution 3074 501

PETITION—
of occupying claimant—what it must state 1977 364
by abandoned husband or wife—to control or sell property 2207 397
by either to make conveyances when the other is insane... 2216 398
divorce—in actions for..... 2221 399
must be verified..... 2222 399
for annulling marriage.....2232, 2233 400
for sale of property—of minor must be verified..... 2258 403
drunkards, spendthrifts, or lunatics, must be verified..... 2273 405
action deemed discontinued, when not filed at time stated in notice 2600 442
original—when to be demurred to or answered 2635 447
what it must contain, enumerated 2646 448
may be amended, as of course before answer..... 2647 449
when matters of demurrer do not appear on face of..... 2650 449
defendant may demur to part and answer residue of 2651 449
of intervenor—to state facts on which his right rests..... 2685 453
counts of, must be consecutively numbered..... 2705 456
attachment—when a separate is necessary in attachment proceedings 2950 484
must be sworn to and state, etc 2951 484
averrments of, in case process is asked to issue on Sunday. 2952 485
when founded on contract..... 2953 485
when it must be presented to judge for allowance of..... 2955 485
asking attachment may be amended 3021 493
for new trial when proper 3155 511
to reverse or vacate judgment 3157 512
personal property—in action to recover, statements of 3225 521
may be amended, and claimant of property brought in.... 3228 521
real property—form of, in actions to recover..... 3250 524
abstract of title to be attached to 3251 524
partition—in action for, must describe property..... 3278 527
abstract of title must be attached to 3279 527
mandamus—for order of, must state 3377 537
boats—in action against and rafts, must be verified..... 3433 544
habeas corpus—asking writ of; must state..... 3449 545
who may verify..... 3450 546

PHYSICIAN—
not to give as testimony confidential communications..... 3643 565

Section. Page.

PLATS, §§ 559–572—
when lands must be platted 559 99
what plat must contain, acknowledgment of..... 560 99
when recorded equivulent to a deed..... 561 100
when and how vacated.....563–565 100
recorder to write "vacated" on record of plat..... 566 100
may be re-platted..... 567 100
when lands have been sold without being platted, duty of auditor 568 100
county auditor may cause plat to be made, when..... 569 101
to note on deed that land is not sufficiently described..... 570 101
heretofore made confirmed..... 571 102
penalty for selling lands not properly platted..... 572 102
of county surveyor presumptive evidence, when..... 374 63

PLACE—
when alleged, how answered or replied to..... 2701 455
need not be alleged only when it forms material part of issue..... 2703 456

PLACE OF BRINGING SUIT, §§ 2576–2589—
for recovery of or partition of real property, in county where situate..... 2576 437
injuries to, where defendant resides or property situeted 2577 437
sale of real property under a charge, in a county where situate..... 2578 437
recovery of fines or official bonds, where cause of action arose..... 2579 438
when aided by attachment, where brought..... 2580 438
written contract—sued at place of performance..... 2581 438
common carriers—in any county through which line or road passes..... 2582 438
corporation or person—constructing railway, etc., where sued..... 2583 438
insurance companies—in county of contract or business.... 2584 438
office or agency—for doing business, suits brought in county of..... 2585 438
residence—actions brought at place of, unless otherwise provided.....2586, 2587 438
change of, after suit brought..... 2588 439
effect, if brought in wrong county..... 2589 439

PLAINTIFF—
who is, defined 2505 429
may prosecute action by equitable proceedings, when..... 2508 429
foreclosure of mortgage must be by..... 2509 429
and to enforce mechanics' lien..... 2510 430
also for divorce..... 2511 430
when by ordinary proceedings.....2509, 2512, 1513 430
effect of error by, as to kind of proceedings.....2514, 2515 430
persons having united interest joined as..... 2548 434
may sue by name used in written instrument 2558 435

Section. Page.

PLAINTIFF—CONTINUED.
insane, must sue by guardian..... 2569 436
may notify defendant of no personal claim..... 2608 443
manner of suing unknown defendant by.....2622, 2623 445
affecting third person with notice of action.... 2629 446
may strike out any cause of action..... 2631 447
must demur or reply to pleadings, when..... 2636 448
pleadings by, defined..... 2645 448
what petition of, must contain..... 2646 448
may amend before answer as of course..... 2647 449
may demur to answer of defendant..... 2664 451
when reply to be filed by..... 2665 451
of what it must consist..... 2666 451
averments by, when suing as a corporation, etc..... 2716 457
may state matter of abatement in reply..... 2732 458
may dismiss action without prejudice..... 2844 471
relief granted to, cannot exceed that asked when no answer filed..... 2855 472
may serve defendant served by publication with copy of judgment..... 2879 475
must pay costs upon failure to recover more than defendant offered to confess judgment for..... 2899 477
non-resident compelled to give security for costs..... 2927 481
may have partnership property attached for debt of partner 2973 487
lien on, enforced by equitable action..... 2974 487
may controvert answer of garnishee..... 2987 489
has lien on partnership property for private debt of a partner..... 3054 498
must give officer indemnifying bond..... 3056 498
when not given, levy discharged..... 3057 498
may in writing abandon levy of execution..... 3086 502
may sue purchaser for amount bid at sale on execution.... 3089 503
enforce lien of judgment against a decedent's heirs... 3092 503
meaning of term "plaintiff," defined..... 3128 507
death of, does not prevent execution from issuing..... 3130 507
name of heirs to be endorsed on execution..... 3132 507
in action to recover personal property may amend petition, and bring in any third person claiming property... 3228 521
desiring property, to give bond..... 3229 521
in actions to recover real property must recover on strength of his title..... 3247 524
when joint tenant or tenant in common, what he must show 3248 524
may select paper for publication of legal notices..... 3832 596

PLEADING IN COURTS OF RECORD, §§ 2635–2736—
demurrer or answer to original petition must be filed by noon of second day of term..... 2635 447
to subsequent, by noon of day succeeding that on which filed..... 2636 448
day court actually opens, deemed first day of term..... 2637 448
court may extend time of filing of..... 2638 448
motions assailing, to state grounds thereof..... 2639 448
or demurrer suspends necessity of filing any other 2640 448

Section. Page.

PLEADING IN COURTS OF RECORD—CONTINUED.
motions or demurrer to be argued when filed, unless adverse party asks time 2641 448
cannot be withdrawn without consent of 2642 448
appearance docket, memorandum made in of filing of 2643 448
general issues and fictions in, abolished 2644 448
consist of statements of the respective parties 2645 448
petition—what it must contain, specified 2646 448
may be amended without leave before answer 2647 449
demurrer—to petition, may be for specified causes 2648 449
to specify and number causes of 2649 449
when objections may be taken by answer 2650 449
may demur to part, and answer to another part 2651 450
adverse party deemed to have joined in when he fails to amend 2652 450
on being overruled, party may answer 2653 450
consequences of a failure to amend or plead over 2654 450
answer—what it must contain, specified 2655 450
when by guardian, must deny allegations 2656 450
must be in divisions 2657 450
defense part of, need not pray any judgment 2658 450
counter claim—must be stated in distinct division of 2659 450
equitable matter—must be separated into paragraphs 2660 451
counter claim—when plead by co-maker or surety 2661 451
may be stricken out or new party brought in 2662 451
cross-petition—may be filed against a co-defendant or person not a party 2663 451
answer may be demurred to 2664 451
reply—when necessary 2665 451
of what it must consist 2666 451
any number of defenses to a counter claim stated in 2667 452
may be demurred to 2668 452
verification—when done, subsequent pleadings must be 2669 452
by corporation, who may verify 2670 452
when parties have a united interest 2671 452
when by agent or attorney 2672 452
by any person knowing the facts 2673 452
counter claim may be verified when petition is not 2674 452
not required of guardian, etc., nor controverting answer of garnishee 2675 452
nor when it will subject party to a criminal prosecution 2676 452
unverified, may be stricken from files 2677 453
does not apply to amount claimed, except in actions on contract 2678 453
does not make any greater proof necessary 2679 453
court may permit amendments without verification 2680 453
slander or libel—statements of petition in action for 2681 453
answer, evidence admissible in 2682 453
intervention—any person may intervene, who has any interest in subject of action 2683 453
cannot delay main action 2684 453

Section. Page

PLEADING IN COURTS OF RECORD—CONTINUED.
how effected 2685 453
variance—not material, unless adverse party has been misled 2686 454
amendment made without costs 2687 454
when allegation is unproved, not deemed a variance 2688 454
amendments—of, to to be made at any time, on proper terms 2689 454
errors or defects not affecting substance, disregarded 2690 454
do not entitle party to continuance of cause 2691 454
manner of making specified 2692 454
interrogatories—may be annexed to petition, answer, or reply 2693 454
manner of answering 2694 455
time of answering 2695 455
not to cause delay in trial, when 2696 455
matter of answer, how distinguished 2697 455
manner of verifying 2698 455
when on failure of answer, to be deemed true 2699 455
court may compel answers to by process of contempt 2700 455
denial of time, sum, quantity, or place, when sufficient 2701 455
when time is material, it must be stated 2702 456
place to be alleged only when it forms substance of the issue 2703 456
denial of allegation, what evidence admissible under 2704 456
counts and divisions to be consecutively numbered 2705 456
correction of on motion 2706 456
sham and irrelevant defenses may be stricken out 2707 456
statute, how to be plead 2708 456
courts to take judicial notice of published rules of other courts 2709 456
inconsistent defenses stated; how verified 2710 456
when a right is founded on an exception, it must be stated. 2711 456
allegations not controverted, deemed admitted 2712 456
may be made more specific on motion 2713 456
judgment, how plead 2714 456
conditions precedent 2715 457
when capacity of plaintiff may be stated as a legal conclusion 2716 457
when not sufficient to controvert allegations in terms contradictory thereof 2717 457
matters that must be specially plead 2718 457
redundant or irrelevant matter stricken out 2719 457
when allegations of indefinite may be made specific on motion 2720 457
title of cause not to be changed 2721 457
matters of which judicial notice is taken, not to be plead .. 2722 457
conveyances may be stated according to legal effect or name 2723 457
not necessary to allege commencement of a superior estate 2724 457
kind or species of goods and chattels to be alleged 2725 457
real property and right to, claimed to be alleged 2726 457
when malice is to be proved, it must be alleged 2727 458
conditions of bond noticed and breaches relied on, alleged 2728 458

Section. Page.

PLEADING IN COURTS OF RECORD—CONTINUED.
no more proof required than is necessary to recover 2729 458
when instrument referred to in, deemed genuine 2730 458
supplemented—may be filed 2731 458
abatement—matter of, stated in answer 2732 458
to be stated according to the fact 2733 458
consolidation—of actions, when made 2734 458
substitution of lost pleadings 2735 458
record not amended or impaired without order of court... 2736 458
defense arising after commencement of action, how plead. 2733 458
when special execution is desired, must state in, facts entitling party to 2852 472
when party may admit and recover costs 2938 482
in supreme court—when right to prosecute appeal does not exist 3213 519
in actions to test official and corporate rights 3349–3352 534
in justices' courts—may be written or oral 3530, 3531 554
on appeal from default in justices' courts may be filed 3596 559
in criminal actions—by defendant 4345 675
must be put in open court, and may be oral 4346 675
demurrer to indictment, and form of 4352, 4353 676
hearing of 4354 676
proceedings, when sustained 4355–4357 676
when overruled 4358 676
form of pleas to indictment 4360, 4369 677
of guilty, can only be put in by defendant.. 4361 677
may be withdrawn before judgment 4362 677
of not guilty, is a denial of every material allegation 4363 677
defendant standing mute, plea of not guilty entered for... 4367 677

POISON—
mingling with food, etc., with intent to kill, or putting into well, etc., punished 3877 603

POLICE—
city council may establish 525 92
cities of the second class may elect 532 93

POLICE COURT—
established in cities of first class 542 96
always open, qualification of jurors in 545 97
appeal from 546 97
jurisdiction of in criminal actions 4707 721

POLICE JUDGE—
to be elected in cities of first class 535 94
council of cities of first class to provide for election or appointment of 542 96
jurisdiction and power of 543 96
compensation 544 96
mayor may act as 547 97

Section. Page.

POLICE CLERK—
election or appointment of..... 542 96

POLLS—
when to be opened and closed..... 611 107
books—to be prepared and furnished by county auditor..... 615 108
names of voters to be entered therein by clerk..... 621 109
return of election made in..... 628 109
disposition of..... 629 110

POOR, §§ 1330–1382—
relatives of, to maintain.....1330–1332 245
proceedings to compel maintenance of.....1333–1341 245
appeal from judgment..... 1342 246
absconding parent, wife, or husband, property may be seized..... 1343 246
title of personal property invested in trustees by seizure... 1344 246
order affecting real estate entered on encumbrance book... 1345 246
property to be inventoried..... 1346 246
discharged or sold..... 1347 246
restored if security given..... 1348 247
defendant entitled to trial by jury..... 1349 247
county may maintain action for support of..... 1350 247
relative may also maintain action..... 1351 247
settlement of, how acquired..... 1352 247
continues till a new one is acquired..... 1353 248
having no settlement, may be sent to the state whence he came..... 1354 248
may be warned to depart..... 1355 248
warning to be in writing, and how served..... 1356 248
when applying for relief in a county other than that of settlement..... 1357 248
county of settlement liable for relief extended or expenses of removal..... 1358 248
order of removal binding, unless notice of contest given... 1359 248
trial of contest..... 1360 249
outdoor relief to, when furnished.....1361, 1362 249
relief to, paid out of county treasury..... 1363 249
where there is no poorhouse, township trustees have care of 1364 249
application for relief..... 1365 249
bills of relief for, certified by the trustees..... 1366 250
annual allowance made to..... 1367 250
may apply to board of supervisors when refused relief by trustees..... 1368 250
supervisors may contract for support of..... 1369 250
shall appoint a person to examine into and report upon condition of..... 1370 250
contractor may require paupers to work..... 1371 250
poorhouse—board of supervisors may establish..... 1372 250
contracts, purchases, and rules for, how made..... 1373 250
steward appointed, duties of, compensation.....1374, 1375 251
require paupers to labor..... 1376 251
how admitted to..... 1377 251

Section. Page

POOR—CONTINUED.
may be bound out..... 1378 251
discharge of, from..... 1379 251
visitation to..... 1380 251
expenses of, how paid..... 1381 251
to let the poorhouse, and contract for support of the poor. 1382 252
council of cities of first class may establish out-door relief to 538 95

POOR CONVICTS—
how liberated from imprisonment..... 4611 708
penalty for making false schedule by..... 4612 708

POORHOUSE. *See* POOR.

POSSESSION—
mortgagee of personal property entitled to..... 1927 356
mortgagor of real property entitled to..... 1938 357

POSTHUMOUS CHILDREN—
inherit as though no will had been made..... 2334 412
share of to be taken ratable from heirs or legatees..... 2335 412

POTATOES—
standard weight of bushel of..... 2049 373

PORT WARDENS—
city council may appoint, or provide for election of..... 528 93

POWERS—
of board of supervisors, enumerated..... 303 51

PRAIRIE—
setting fire to, punished.....3889, 3890 604

PREFERRED STOCK—
railway corporations may issue..... 1286 235
convertible into common stock..... 1287 235

PREGNANT WOMAN—
producing miscarriage on, punished..... 3864 601

PRELIMINARY EXAMINATIONS—
defendant to be informed of the offense charged..... 4226 659
time given to send for counsel..... 4227 659
may have change of venue..... 4228 659
adjournment of.....4229, 4230 659
during, defendant may be admitted to bail.4231, 4232 659
subpœnas for witnesses to be issued..... 4233 659
defendant may take depositions to be used on.....4234–4236 659
is a competent witness on his own behalf...4237, 4238 660
exclusion of witnesses and persons during.....4239, 4240 660
testimony to be reduced to writing..... 4241 660
magistrate to certify papers..... 4242 660
judgment of.....4243, 4244 661
commitment of defendant.....4245–4247 661
witnesses required to give security for their appearance.4248–4251 661

Section. Page.

PRELIMINARY EXAMINATIONS—CONTINUED.
magistrate to return papers to district court..... 4252 662
information ordered by..... 4253 662
papers taken on, laid before grand jury..... 4289 666

PRELIMINARY INFORMATION. *See* CRIMINAL PROCEDURE—
defined 4111 643

PREMIUMS—
insurance companies to pay taxes on..... 807 135

PRESIDENT OF STATE UNIVERSITY—
is member of board of regents of..... 1587 296
appointed by board of regents..... 1596 297
to report to board of regents..... 1600 298

PRESIDENT OF AGRICULTURAL COLLEGE AND FARM—
to manage, and make annual report..... 1611 300
oath of..... 1615 302

PRIEST—
not to give as testimony, confidential communications.... 3643 565

PRINCIPAL—
of college for the blind, to nominate officers of college.... 1670 310
to report to governor..... 1677 311
to make and certify account of clothing furnished pupils, to county treasurer..... 1678 311
to keep account with pupils in industrial home..... 1683 312

PRINCIPAL AND SURETY. *See* SURETY.
judgment against, first enforced against property of principal..... 3039 496
meaning of term "surety"..... 3040 496
order of liability to govern..... 3041 496
not unless recited in judgment..... 3042 496

PRIORITY—
of mechanics' liens.....2139–2141 387

PRISONER—
jailor or other officer suffering to escape, punished....3953–3955 615
aiding or assisting to escape, punished.....3956–3958 616
escaping from county jail, punished..... 3959 616
in penitentiary; original notice, how served on..... 2617 444
in jail, required to labor.....4736, 4737 726
to be credited with..... 4741 727
cruel treatment of, punished..... 4742 727
insulting when at labor, punished..... 4743 727

PRIVATE PROPERTY. *See* CONDEMNATION OF—
cannot be taken to pay debts of public corporations..... 3048 497

PRIVATE SEALS—
except those of corporations, abolished..... 2112 383
contracts in writing, import consideration..... 2113 383

Section. Page.

PRIVATE SEALS—CONTINUED.
want or failure of consideration may be plead as defense, except 2114 383

PROBATE. *See* ESTATES OF DECEDENTS—
circuit court has exclusive jurisdiction of 2312 410

PROCEEDINGS AUXILIARY TO EXECUTION, §§ 3135–3153—
judgment debtor may be examined 3135, 3136 507
by whom order for granted 3137 508
examination to be reduced to writing 3138 508
witness may be heard 3139 508
property found to be levied on 3140 508
receiver appointed to take charge of 3141 508
may sell and convey interest of debtor 3142 508
sheriff may be 3143 509
proceedings continued from time to time 3144 509
debtor failing to appear, guilty of contempt 3145 509
order to be in writing, service of 3146 509
compensation of officers, etc 3147 509
debtor may be arrested 3148 509
to be released on giving bond 3149 509
action by equitable proceedings may be brought 3150 509
answers enforced by process of contempt 3151 510
lien created from service of notice 3152 510
surrender of property enforced 3153 510

PROCEEDINGS TO REVERSE, VACATE, OR MODIFY JUDGMENTS OR ORDERS, §§ 3154–3162—
causes for in courts where rendered 3154 511
by petition for new trial, when to be filed 3155 511
to correct mistakes, etc., by motion 3156 512
for fraud, etc., by petition 3157 512
issues and pleadings to be as in ordinary actions 3158 512
must be a valid defense or cause of action 3159 512
grounds to vacate or modify to be first tried 3160 512
injunction may be obtained in 3161 512
on affirmance of, damages may be allowed 3162 512

PROCESS—
issued by a clerk must be attested by him and bear date the day issued 188 32
supreme court has power to issue 3172 514
justice's court cannot issue in another county 3631 563
officers wilfully refusing to serve, punished 3949 614
power of officer when resisted in executing 4145, 4146 647
person refusing to aid in execution of, guilty of misdemeanor 4147 648
governor may call out military to aid in executing 4148 648

PROCLAMATION—
calling an election, to be issued by governor 577, 579 103

	Section.	Page.
PRODUCTION OF BOOKS AND PAPERS—		
district or circuit court may compel the	3685	570
party asking for, to file petition	3686	570
consequences of failure to produce	3687	570
party calling for, not compelled to use as evidence	3688	570
PROOF—		
when allegation is wholly unproved, deemed a failure of	2688	454
not compelled to adduce more than sufficient to recover	2729	458
PROPERTY—		
includes both real and personal	45	8
may be acquired, conveyed, or devised, by aliens	1908	353
" " " " married woman.	2202	396
disposition of, when void	1920	355
PROSECUTING WITNESS—		
when costs taxed against on preliminary examination	4254	662
costs awarded against, when prosecution malicious	4292	667
in trials before justices, taxed against	4691	718
PROSTITUTION—		
enticing away unmarried females for purposes of, punished.	3865	601
PROTEST—		
not made on holidays	2094	380
notice of, and how served	2095	380
PUBLICATION—		
acts of general assembly in newspapers	33	5
compensation for	44	7
of reports of state officers and state institutions	130	23
of notices, who to designate papers	306	53
of legal notices, compensation for	3832	596
service of original notice by, when made	2618	444
newspaper may be designated by plaintiff or his attorney	2619	445
proof, how made	2620	445
personal service supersedes necessity of	2621	445
PUBLIC BUILDING—		
oath of person controlling or managing	126	22
contracts for, in excess of appropriation, prohibited	127	23
erection of, when to be submitted to vote of people	309	54
PUBLIC GROUNDS—		
within city, council to have charge of	527	92
PUBLIC LIBRARY—		
to receive one copy of all public documents	131	24
cities may establish and maintain	461	77
state librarian to furnish laws to	1898	351
PUBLIC MONEY—		
contracts contemplating an expenditure in excess of appropriation, prohibited	127	23
cannot be appropriated to any sectarian institution	552	98

PUBLIC OFFENSE— Section. Page.
civil remedy not merged in.. 2526 431
defined and how classed.....4105–4107 642
resistance may be made to commission of..... 4112 643
who may make.....4113, 4114 643
jurisdiction of 4155–4157 649
when part committed in one county and part in another..... 4159 649
when committed near the boundary of two or more counties 4160 649
on boat, raft, or vessel.... 4161 649
kidnapping, etc..... 4162 649
bigamy..... 4163 650
conviction or acquittal in one county a bar to prosecution in another..... 4164 650
certain, may be compromised.....4708–4711 721

PUBLIC OFFICER—
official bonds of, how construed.....3368, 3369 536
cannot be examined as to official confidential communications..... 3644 565
making false entries and returns, etc., punished..... 3968 617

PUBLIC PARKS—
cities may purchase or condemn ground for 470 79

PUBLIC PROPERTY—
exempt from execution 3048 497

PUBLIC SCALES. *See* WEIGHMASTERS OF.
what deemed..... 2065 376

PUBLIC VEHICLES—
cities may license, regulate and tax..... 463 78

PURCHASER—
at judicial sale, protected 2878 475
under judicial sale not affected by reversal of judgment ... 3199 518
of lands sold on execution may maintain action for waste and trespass..... 3339 533

QUALIFICATION FOR OFFICE, §§ 670–691—
no officer to enter on duties until qualified..... 670 115
how governor and lieutenant-governor to qualify..... 671 115
members of the general assembly 672 115
judges 673 115
who to give bond, and who not 674 116
oath of officers required to give bond 675 116
form of..... 676 116
bonds, to whom given 677 116
amount or penalty of 678 116
number and qualification of sureties on 679 117
how and by whom to be approved..... 680 117
when board of supervisors fail to approve, circuit judge may..... 681 117
where to be filed and recorded..... .....682, 683 117

Section. Page.

QUALIFICATION FOR OFFICE—CONTINUED.
penalty for performing duties without having bond recorded 684 118
when officers to qualify 685 118
a failure within prescribed time, deemed a refusal of office. 686 118
when to qualify when election is contested 687 118
bonds construed to cover duties required subsequent to giving 688 118
none void for want of compliance with statute 689 118
when officer re-elected, bond cannot be approved until he has accounted for public funds..... 690 118
appointed to fill vacancy, to qualify as other officers. 691 118
of appointed officers 787 130

QUARTERMASTER-GENERAL—
duties of, defined..... 1056 182

QUIETING TITLE—
action for 3273 526
form of petition in..... 3274 526
defendants disclaiming title, entitled to costs 3275 527
action for, to be prosecuted by equitable proceedings 3276 527

QUINCES—
standard weight of bushel of..... 2049 373

QUORUM—
of supreme court 139 25
boards of supervisors 297 50
council of incorporated town 511 89
trustees of hospital for the insane 1383 252

RAFTS. *See* BOATS AND RAFTS—
liable for debts contracted for..... 3445 545
made liens on..... 3446 545
same proceedings govern as are applicable to boats..... 3447 545
possession of obtained under bond, deemed appearance.... 3448 545

RAFTS. *See* LOST GOODS.

RAILWAY CORPORATIONS, §§ 1273–1323—
may change corporate name 1273, 1274 232
may join, intersect, and consolidate..... 1275 233
may make contracts with connecting railways 1276 233
may extend their line into other states 1277 233
provisions governing, applicable to lessees 1278 233
certain offices of must be kept in this state..... 1279 233
to make annual report to the secretary of state 1280 234
may be compelled to make report 1281 234
affairs of, may be investigated..... 1282 234
may borrow money, issue bonds, and execute mortgages .. 1283 235
mortgages of, cover after acquired property..... 1284 235
how executed and recorded 1285 235
may issue preferred stock in payment of debts..... 1286 235
preferred stock, income, or mortgage bond convertible into common stock 1287 235

Section. Page.

RAILWAY CORPORATIONS.—CONTINUED.
to erect sign-boards, make crossings, and construct cattle-guards 1288 236
liability of for stock killed, and for fire 1289 236
shall permit other railways to connect therewith 1292 237
commissioners appointed to fix rates..... 1293 237
report and confirmation thereof 1294 237
exceptions to, and effect of 1295 238
penalty for refusal to comply therewith 1296 238
parallel cannot pool earnings 1297 238
may allow drawbacks.....1298, 1299 238
may sell, lease, or make joint running arrangements 1300 238
same may be mortgaged 1301 238
change of name, contracts enforced..... 1302 238
make report to general assembly 1303 239
maximum rates annually fixed and kept posted up 1304 239
for carrying passengers 1305, 1323 239
right of controlling and regulating reserved 1306 239
liable for damages caused by injuries inflicted 1307 239
cannot be exempted from by contract..... 1308 240
judgment for a lien prior to mortgages, when..... 1309 240
operating railways terminating at or near Council Bluffs.....1310–1316 240
assessment and taxation of.....1317–1323 242

may condemn private property, extent of..... 1241 227
for water reservoirs..... 1242, 1243 227
sheriff to appoint jury, when to enter on premises..... 1244 228
either party may have damages assessed on notice to the other..... 1245 228
guardian of minor or insane person may settle with corporation..... 1246 228
notice to non-resident owner, form of..... 1247 228
publication of..... 1248 229
appraisement, how made and returned..... 1249 229
right to erect dam, determined on appeal..... 1250 229
filling vacancy in jury..... 1251 229
to pay costs of assessment..... 1252 229
report of jury may be recorded..... 1253 229
appeal, how taken..... 1254 230
not to delay work, if amount of assessment is deposited with sheriff 1255 230
acceptance of damages awarded, bars right of appeal 1256 230
trial and judgment.....1257–1259 230
property of abandoned railway, condemned.....1260, 1261 230
may raise or lower highway..... 1262 231
must keep crossings in good repair and condition....1263, 1264 231
crossings to be constructed so as not to impede travel..... 1265 231
to keep in repair bridges over or under highways..... 1266 231
liable for damages caused by neglect..... 1267 231
must make and keep in repair cattle guards and causeways 1268 232
actions against, brought in any county through which line passes..... 2582 438

	Section.	Page
RAILWAYS. *See* RAILWAY CORPORATIONS.		
crossings and grade of, near shore of the Mississippi river	1290	236
transfer of tax voted for construction of	1291	237
assessment of property of	1317	241
officers of, to furnish statement	1318	241
value of, how ascertained and assessed	1319	242
statement sent to county auditor	1320	242
submitted to board of supervisors, and action thereon	1321	242
property of, taxed as that of individuals	1322	243
parallel, not to pool earnings	1297	238
cities may authorize or forbid the laying down of track in streets	464	78
property not used in operation, including bridges across the Mississippi and Missouri rivers, how taxed	808	135
road beds of, not taxed to adjacent owner	809	135
property to be assessed by executive council	810	136
mechanics' lien, how enforced against	2132	386
liable for damage to baggage of travellers	2183	394
malicious obstruction of, punished	3990	621
in prosecutions against, for obstructing highway, proof that highway is impassable, is presumptive evidence of	4557	700
RAILWAY AND TOLL BRIDGES—		
who may construct, and over what streams	1031	178
plan to be approved by board of supervisors	1032	178
may be so constructed as to pass persons and teams	1033	178
may establish ferry until bridge is ready for use	1034	178
must not unnecessarily impede navigation	1035	178
company may issue bonds and stock	1036	178
one director of, must reside in state	1037	178
RAPE—		
defined and punished	3861	601
actual penetration sufficient to convict for	4557	700
testimony of person injured, not sufficient to convict for	4557	700
RASPBERRIES—		
standard weight of bushel of	2049	373
REAL ESTATE. *See* REAL PROPERTY—		
includes every description of real property	45	8
REAL PROPERTY, §§ 1928–1940—		
who deemed seized of	1928	356
words of inheritance not necessary to create estate in fee simple	1929	357
conveyance of—passes interest of grantor	1930	357
interest subsequently acquired may pass	1931	357
adverse possession does not prevent conveyance of interest	1932	357
estates in future may be created	1933	357
trusts or powers, how created	1934	357
married women may convey and encumber	1935	357

Section. Page.

REAL PROPERTY—CONTINUED.
husband and wife—conveyance by, passes right of both.... 1936 357
covenants, when binding on husband or wife 1937 357
mortgagor of, retains legal title and right of possession ... 1938 357
conveyances of, to two or more creates a tenancy in common 1939 357
vendor's lien on, how enforced..... 1940 357
of decedents—when and how sold.....2386, 2387 417
statement of claims and assets made..... 2388 417
notice of application to sell, given..... 2389 417
to be appraised..... 2390 417
may be sold in parts..... 2391 417
and at private or public sale 2392, 2393 417
must bring appraisement when sold at private sale 2394 417
may be sold on partial credit..... 2395 417
may be prevented by giving bond 2396 417
effect when conditions of are broken.....2397, 2398 417
conveyances of, pass interest of decedent..... 2399 418
must be approved by court 2400 418
limitation of actions to recover..... 2401 418
when executor may receive rents of..... 2402 418
application of..... 2403 418
to whom executor must account..... 2404 418
complete record to be made of sales of..... 2493 427
actions to recover—must be brought where situate..... 2576 437
for injuries to, where situate or defendant resides 2577 437
sale of under charge, where situate 2578 437
petition affecting, when filed in county where situate, charges third person with notice 2628 446
when situate in another county, how charged 2629 446
how to be described in actions for injuries to 2726 457
when title to put in issue in justices' courts, to be certified to circuit court..... 3535 554

RECEIPT—
may be demanded by person making tender..... 2106 282
of warehousemen, evidence of title of holder to property.. 2171 391

RECEIVER, §§ 2903–2905—
appointed by court or judge on notice to adverse party.... 2903 478
must be sworn and give bond..... 2904 479
power of, defined..... 2905 479
appointed to collect, etc., attached property..... 2970 487

RECORDER OF INCORPORATED TOWN—
to be clerk to council, and preside at meeting in the absence of the mayor..... 512 89
when absent, the council may appoint..... 513 89

RECORDS—
of district and circuit court consist of 196, 197 33
when kept in same set of books 202 34
may be transcribed.....1971, 1972 363
compensation for transcribing..... 1973 363

Section. Page

RECORDS—CONTINUED.
transcripts of, to be certified 1974 363
have same force and effect as original 1975 364
of court, cannot be altered or amended without order of court 2736 458
of appeal to supreme court, what to contain 3184 515
copies of, belonging to public office admissible as evidence 3702 571
judicial—of this state, and of the federal courts, how authenticated 3712 572
another state, how 3713 572
a justice of the peace of another state, how 3714 572
foreign countries, how 3715 573
executive—acts proved by 3716 573
legislative—acts proved by 3717 573

RECOVERY OF REAL PROPERTY, §§ 3245-3276—
action for, to be prosecuted by ordinary proceedings 3245 524
who entitled to recover 3246 524
plaintiff must recover on strength of his own title 3247 524
additional testimony required when plaintiff is joint-tenant or tenant in common 3248 524
service made on agent of defendant 3249 524
petition—for, to state claim of plaintiff 3250 524
abstract of title to be attached to 3251 524
answer—of defendants, to state respective claims 3252 525
landlord may be substituted for defendant 3253 525
if defendant makes defense, not necessary for plaintiff to prove his possession 3254 525
action not prejudiced by alienation 3255 525
order granted allowing survey 3256 525
must describe property 3257 525
verdict—may specify quantity of plaintiff's estate 3258 525
effect of a general verdict in plaintiff's favor 3259 525
when plaintiff can recover damages only 3260 525
limitation on right to recover for use and occupation 3261 525
permanent improvements set off against damages 3262 525
jury may award exemplary damages 3263 525
tenant in good faith, liable only for rent in arrear 3264 525
finding of jury in cases where crops are sown 3265 525
writ of possession to be issued 3266 526
plaintiff to have rent of premises after judgment and before possession 3267 526
new trial—may be granted, if applied for within a year 3268 526
notice of application for, to be served on adverse party ... 3269 526
result of, not to affect rights of third persons 3270 526
damages recoverable on 3271 526
writ of restitution issued 3272 526
action to quiet title to real property may be brought 3273 526
form of petition 3274 526
defendant disclaiming title, to recover costs 3275 526
action to be by equitable proceedings 3276 526

Section. Page.

RECOVERY OF SPECIFIC PERSONAL PROPERTY, §§ 3225–3244—
action for, where, and how brought..... 3225 521
to be prosecuted by ordinary proceedings..... 3226 521
order may issue and be served on Sunday, when..... 3227 521
when third party claims property..... 3228 521
plaintiff to execute bond before delivery..... 3229 521
clerk to issue order..... 3230 522
counterpart of order may issue to another county..... 3231 522
sheriff to execute order, and deliver property to plaintiff. 3232, 3234 522
examination of defendant, when property is concealed.... 3233 522
defendant may retain property by executing bond..... 3235 522
plaintiff may inspect property..... 3236 523
sheriff to make return of order, and statement..... 3237 523
jury to assess value of, and damages for taking and retaining..... 3238 523
judgment, form of..... 3239 523
execution, form of..... 3240 523
plaintiff may have either value or property..... 3241 523
judgment for value may be entered on bond..... 3242 523
examination of defendant, when property is concealed after judgment..... 3243 523
money judgment in lieu of property, exempt from execution..... 3244 524
in action to recover, party required to interplead....2572–2574 436
taken on landlord's attachment, who may be sued..... 2575 437
in justice's court—actions for, how brought..... 3605 560
notice, how served, when defendant not found.....3609, 3610 560

REDEMPTION—
of lands from tax sale..... 890 152
by minors and lunatics..... 892 152
after deed made, by action in court..... 893 153
lease-holds, having over two years to run, may be redeemed..... 3099 504
officer to give purchaser a certificate of..... 3101 504
when defendant not entitled to redeem..... 3102 504
who may redeem..... 3103 504
who deemed a creditor..... 3104 504
creditors may redeem from each other..... 3105 505
terms of..... 3106 505
when a senior redeems from a junior creditor..... 3107 505
the junior may prevent..... 3108 505
when a junior redeems from a senior.....3109, 3111 505
entered on judgment docket..... 3110 505
creditors cannot redeem after nine months..... 3112 505
last redemptioner gets property..... 3113 505
claim of is extinct..... 3114 505
exceptions.....3115–3117 505
manner of.....3118, 3119 506
redemptioner entitled to assignment of certificate..... 3120 506
when sale is in parcels, it may be so redeemed..... 3121 506
defendant may transfer his right of..... 3122 506

Section. Page

REDEMPTION—CONTINUED.
conveyance made to person entitled to 3124 506
to be recorded, when, etc 3125 506
imply regularity 3126 506
redemptioner may recover damages for, etc 3127 507
meaning of terms "defendant," and "plaintiff" 3128 507
proceedings apply to justices of the peace 3129 507
real estate sold under special execution, subject to 3321 531

REDUNDANT—
matter stricken from pleading 2719 457

REFEREE—
parties may agree to submit issues to 2815 467
court may refer certain causes to 2816 467
all must hear proof, but a majority may decide 2817 467
vacancies in filled by judge 2818 468
stand in place and have power of court 2819 468
trial by, how conducted 2820 468
report and judgment thereon 2821 468
finding of facts by, has force of a special verdict 2822 468
to sign bill of exceptions 2823 468
parties may agree on or court appoint 2824 468
by consent, may be appointed in vacation 2825 468
must be sworn 2826 468
reference not made until issues are made up 2827 468
to be under control of court 2828 469
any one may issue subpœnas and process 2829 469
form of procedure by 2830 469
may be appointed on default to determine amount due 2872 475
taxation of costs referred to 2942, 2944 483
appointed in action for partition 3290 528
to mark out shares by visible monuments 3291 529
make report in writing, accompanied by plat 3292 529
allotment of shares by 3292, 3293 529
report of may be set aside and other referees appointed ... 3295 529
before proceeding to sell, must give bond 3298 529
notice of sale to be given by 3299 529
after completing sale to report to court 3300 529
no conveyance made until money is paid or security given. 3301 529
compensation of 3834 597
bribery of, punished 3944 614
acceptance of bribes by, punished 3945 614
attempt to improperly influence, punished 3946 614
acting corruptly by, punished 3947 614

REFORM SCHOOL. *See* STATE REFORM SCHOOL.

REGENTS OF STATE UNIVERSITY—
of whom to consist 1587, 1603 296
classification of 1588 296
may confer degrees and grant diplomas 1589 296
meetings of 1590 296

Section Page.

REGENTS OF STATE UNIVERSITY—CONTINUED.
to appoint executive committee 1591 296
elect secretary and treasurer.....1592, 1593 296
enact laws for government of university..... 1596 297
purchase apparatus and library..... 1597 298
report to superintendent of public instruction..... 1601 298
compensation of..... 1602 298

REGISTER OF STATE LAND OFFICE, §§ 83-93. *See* STATE LAND OFFICE—
to be elected in each even-numbered year 581 104
bond not to be less than five thousand dollars 678 117
may appoint deputy..... 766 127
power and duty of..... 767 127
salary of..... 3759 579
to render verified account of fees monthly, to state treasurer 3778 583
salary to be paid monthly 3780 583

REGISTRATION OF VOTERS, §§ 594-602—
township assessor to make lists of..... 594 105
board of registry, who composes 595 105
register of election, what to contain 596 105
board to meet and correct register..... 597 105
may appoint clerk and administer oaths 598 105
registration in cities and towns..... 599 106
special elections, registration in reference thereto..... 600 106
in new townships..... 601 106
not required in cities and towns with less than six thousand inhabitants 602 106
false and fraudulent, punished..... 4007 624

RE-HEARING—
effect of, when granted by the supreme court 3201 518

RELEASE—
matter of must be specially plead..... 2718 457

RE-LOCATION OF COUNTY SEAT. *See* COUNTY—
petition for to be presented to board of supervisors.....281, 282 46
remonstrance against 283 46
notice of petition..... 284 46
action of supervisors and election 285, 286 47
removal of, election, how often held.....287, 288 47

REMAINDER—
owner of, may maintain action for waste or trespass 3337 533

REMEDIES
in civil cases, divided into actions and special proceedings. 2504 429
civil action defined..... 2505 429
every other remedy is a special proceeding..... 2506 429

	Section.	Page.
REMOVAL AND SUSPENSION FROM OFFICE, §§ 746–765—		
of county and township officers—causes of removal	746	125
district court has jurisdiction	747	125
proceedings assimilated to other actions at law	748	125
petition by accuser against accused	749	125
notice, form of, copy of petition to accompany	750	125
when clerk of district or circuit court is removed or suspended	751	125
when action for, continued, officer may be suspended	752	125
when accused is an officer of court, vacancy filled	753	125
question of fact tried as in other cases; judgment	754	125
same liability for costs as in other actions	755	125
judges of district and circuit courts may suspend sheriffs and clerks	756	126
may direct district attorney to file petition against	757	126
suspension certified to county auditor, and entered in election book	758	126
of state officers—governor may appoint commission to examine accounts of	759	126
when defalcation discovered, governor to suspend officer	760	126
consequences that follow	761	126
governor to make temporary appointment	762	126
how state to be indemnified from loss	763	126
compensation of commissioners	764	126
power of	765	127
REPEAL OF STATUTES. *See* STATUTES—		
does not revive a statute previously repealed	45	7
REPLY—		
when necessary to be filed	2665	451
what it must contain	2666	451
may contain defenses both affirmative and negative	2667	452
be demurred to	2668	452
how denial of allegation of, time, quantity, or place stated in	2701	455
divisions of, must be consecutively numbered	2705	456
may be corrected by court on terms	2706	456
inconsistent defenses stated in	2710	456
allegations of, deemed controverted	2712	456
in habeas corpus proceedings, statements of	3481, 3482	548
REPORTS OF STATE OFFICERS—		
secretary of state to make to governor	63	11
auditor of state to make to governor	66, 125	12
treasurer of state to make to governor	81, 125	14
officers of any state institution to make detailed report	125	22
of state agricultural society	1107, 1108	190
of state horticultural society	1119, 1120	193
to be published and distributed	130	23
to be printed by state printer	105	19
REPORTS OF SUPREME COURT—		
to be approved by judges, before received by secretary of state	157	27

Section. Page.

REPORTS OF SUPREME COURTS—CONTINUED.
copyright of, to belong to state..... 158 28
distribution of..... 159 28
at what price to be disposed of..... 160 28

REPORTER OF SUPREME COURT. *See* SUPREME COURT REPORTER.

REPRESENTATIVE IN CONGRESS—
resignation made to governor..... 782 129

RESIDENCE—
unless otherwise provided, actions must be brought at defendants'.....2586, 2587 438

RESIGNATION—
removal of notary public from county deemed..... 265 43
absence of member of board of supervisors from, deemed 298 50
of office, to whom made..... 782 129

RESISTING OFFICER—
in execution of the duties of his office, punished..... 3960 616
or refusing to assist, punished..... 3961 616

RETURN—
on original notice, what it must state..... 2604 442
penalty for defective, amendment of..... 2606 442
truth of, how proven..... 2609 443
of sheriff on attachment, what it must state..... 3010 492

RE-TAXATION—
of costs..... 2944 483

REVENUE, §§ 796–853. *See* ASSESSMENT OF TAXES.

REVENUE. *See* COLLECTION OF TAXES—
each county is responsible for state tax..... 908 158
when treasurer a defaulter, amount to be made up..... 909 158
when interest is allowed on warrants, holder to receipt for 910 158
treasurer liable to penalty for discounting warrants..... 911 158
loaning or using funds..... 912 158
board of supervisors to settle with county treasurer..... 913 158
treasurer to pay over to state treasurer; penalty for failure. 914 159
auditor of state may direct how payments shall be made... 915 159
to furnish county auditor statement of county treasurer's account..... 916 159
county treasurer to deliver successor public money, books, and papers..... 917 159
penalty for failure of duty by county auditor or treasurer.. 918 160

REVERSION—
owner of may maintain action for waste or trespass..... 3337 533

REVIVOR—
death of plaintiff does not prevent issuance of execution... 3130 507

Section. Page.

REVIVOR—CONTINUED.
proceedings in such case.....3131, 3132 507
death of part of defendants does not prevent issuance of execution 3133 507

REVOKED—
wills may be, by being destroyed or cancelled..... 2329 411

RIOT—
defined and punished.....4067, 4068, 4070 635
suppression of, commanded..... 4149 648
arrest of rioters..... 4150 648
person refusing to aid in suppressing, guilty of misdemeanor 4151 648
duty of peace officers in suppression of.....4152, 4153 648
military subject to orders of civil officers in suppression of 4154 648

ROAD. *See* HIGHWAY.

ROBBERY—
defined and punished.....3858–3860 601

RULES—
of court, when published as directed by law, judicial notice taken of..... 2709 456
supreme court may prescribe..... 3166 513

RYE—
standard weight of bushel of..... 2049 373

SALES—
conditional, when invalid.....1922, 1923 356
of property of estates—when real property of may be sold 2386, 2387 417
full statement of claims and assets to be made..... 2388 417
notice to be given..... 2389 417
property to be appraised..... 2390 417
may be sold in parts..... 2391 417
or at private or public.....2392, 2393 417
must bring appraisement when sold at private sale..... 2394 417
may be sold on credit..... 2395 417
parties in interest may prevent by giving bond..... 2396 417
effect when conditions of are broken.....2397, 2398 417
conveyances pass interest of deceased..... 2399 418
must be approved by court..... 2400 418
limitation of actions to recover..... 2401 418
under execution—notice of to be given..... 3079 502
how..... 3080 502
not affected if none is given..... 3081 502
time of to be fixed in..... 3082 502
officer may postpone..... 3083 502
disposition of surplus by..... 3084 502
levy holds good when there is a failure to sell..... 3086 502
defendant to be notified of..... 3087 502
may require real estate to be sold in parcels.... 3088 503
officer may treat as a nullity, when, etc..... 3089 503
of real estate, vacated on motion, when, etc..... 3090 503

Section. Page.

SALES—CONTINUED.
of lease-hold of real estate, when absolute 3098 504
redeemable 3099 504
in partition—by referees in actions for..... 3298 529
notice of to be given..... 3299 529
report of to be made to court 3300 529
approval of by court..... 3301 529
on disapproval of, money and securities to be returned.... 3304 530
on mortgage of personal property—valid in hands of purchaser 3316 531
of adulterated liquor—punished 4040 630
milk, cheese, and butter—punished..... 4042 630

SALT—
standard weight of bushel of..... 2049 373

SAND—
standard weight of bushel of..... 2049 373

SATISFACTION—
acknowledgment of, by mortgagee 3327 532
by clerk on foreclosure of mortgage.. 3328 532

SCHOOLS, §§ 1713–1824—
organization of districts..... 1713 317
notice to be given of election of directors..... 1714 317
when changes in boundaries of districts are made, disposition of assets and liabilities 1715 317
school districts are bodies corporate 1716 318
powers of electors of district when assembled 1717 318
sub-districts to hold annual meeting.....1718, 1719 318
number of directors 1720 318
sub-directors to constitute board of directors of township . 1721 319
meetings of board of directors..... 1722 319
directors to make purchases, payment, and sales, to carry out vote of district 1723 319
to fix site for each school-house, and determine number of schools taught 1724 319
divide district and determine where pupils may attend school 1725, 1796 319
may establish graded or union schools..... 1726 319
twenty-four weeks of school must be taught in each year.. 1727 319
school books not to be changed oftener than once in three years, except by vote of electors 1728 320
debts not to be contracted for the purchase of maps, charts, or apparatus..... 1729 320
directors may appoint temporary officers in the absence of regular officers..... 1730 320
secretary and treasurer of district to give bond 1731 320
directors to settle with treasurer..... 1732 320
audit claims and fix compensation of secretary and treasurer 1733 320
visit schools and fix rules for their government. 1734 320

Section. Page.

SCHOOLS—CONTINUED.
of independent districts, may dismiss or suspend pupils 1735 320
to cause certificate of election of officers to be filed 1736 321
to make rules for government of sub-directors ... 1737 321
limitation of power of in certain cases 1738 321
president of board, duties of 1739, 1740 321
district secretary—to keep record of board and countersign orders 1741 321
give notice of township meeting 1742 321
keep account of expenses incurred by the district 1743 322
notify county superintendent when schools begin and end 1744 322
make report to county superintendent of affairs of district ... 1745 322
penalty for failure to make. 1746 322
district treasurer—to pay money on orders 1747 322
keep separate account with each fund. 1748 322
receive money due district 1749 323
register orders as reported by secretary 1750 323
render statement of finances 1751 323
sub-director—to take oath 1752 323
make contracts for fuel, etc., and control school-house 1753 323
prepare list of heads of families and children 1754 323
report number of children to secretary 1755 323
with concurrence of directors, may dismiss pupils 1756 324
teachers—contracts with to be in writing; specifications of . 1757 324
to obtain certificate from county superintendent 1758 324
keep daily register of school 1759 324
file copy with secretary 1760 324
school month—consists of four weeks of five days each 1761 324
teachers' institutes—schools to be closed during session of .. 1762 324
German—or other language taught when electors so determine 1763 324
Bible—not to be excluded from any school 1764 325
county superintendent—not to be director or member of board of supervisors 1765 325
to meet and examine teachers once in each month 1766 325
give certificates of qualification to teachers 1767 325
examination to be public and record of made 1768, 1769 325
may appoint deputy 1770 325
revoke teacher's certificate 1771 325
to report to superintendent of public instruction and county auditor 1772 326
penalty for failure to make report 1773 326
must conform to instructions of superintendent of public instruction 1774 326

Section. Page.

SCHOOLS—CONTINUED.
to report name, age, and residence, of blind, and deaf, and dumb..... 1775 326
taxes—board of directors to estimate amount needed for school purposes..... 1777 326
board of directors to apportion tax for school house fund.. 1778 327
to be levied by board of supervisors.....1779, 1780 327
county auditor—to apportion county school tax and interest on permanent fund..... 1781 327
to issue warrant for amount to each district 1782 328
to report to auditor of state amount of interest in the hands of county treasurer..... 1783 328
county treasurer—to pay money collected to district treasurer 1784 328
to notify quarterly each president of district of amount collected..... 1785 328
fines and penalties—how collected and disposed of..... 1786 329
judgments—against school district, how paid..... 1787 329
tax—levied to pay money borrowed of school fund 1788 329
district meeting—time of opening and closing polls 1789 329
oath—directors may administer to each other 1790 329
officer superseded—to deliver moneys, books, and papers to successor..... 1791 329
township directors—have no jurisdiction over independent districts..... 1792 329
children—residing in one district may attend school in another 1793–1795 329
county superintendent—may attach part of a township to one adjoining 1797 330
territory so attached may be restored..... ..... 1798 331
board of supervisors cannot change township line so as to divide school district..... 1799 331
independent districts—may be formed..... 1800 331
people to vote on question..... 1801 331
number of directors of..... 1802 331
meeting to elect directors..... 1803 332
disposition of taxes previously voted by district township. 1804 332
when to be formed of two or more civil townships..... 1805 332
number of schools in, how governed..... 1806 332
electors of, may vote school house tax 1807 332
annual meeting of..... 1808 332
remainder of township to constitute district township..... 1809 332
directors of, may set off territory 1810 333
when lying contiguous may unite 1811 333
how formed of school districts in two or more counties ... 1812 333
directors of, to publish detailed statement of receipts, etc.. 1813 333
district townships—may be organized into independent districts..... 1814 334
sub-districts—may be so organized..... 1815 334
proceedings to effect such organization.....1816, 1817 334
name determined, to become body corporate..... 1818 335
to be governed and treated as other independent districts. 1819 335
old board of directors to make disposition of assets, etc.. 1820 335
bonds—may be issued by, and money borrowed..... 1821 335

Section. Page.

SCHOOLS—CONTINUED.
question of issuing bonds to be submitted to electors..... 1822 335
tax—may be voted by directors when electors fail..... 1823 336
school orders—to draw interest after presentation to treasurer and not paid..... 1824 336
appeal—from decision of board of school directors 1829 337
affidavit alleging errors filed with county superintendent.....1830, 1831 337
county superintendent to notify parties.....1832, 1833 337
to determine appeal..... 1834 338
from decision of county superintendent..... 1835 338
on trial of, no money judgment to be rendered 1836 338
apprentice—master to give schooling to..... 2306 408

SCHOOL FUND, §§ 1837-1884—
permanent—only interest of, to be appropriated..... 1837 338
temporary—to be appropriated annually..... 1838 338
five per cent fund to be apportioned among the counties.. 1839 339
portion to permanent fund payable to county treasurer.... 1840 339
temporary fund payable to county treasurer..... 1841 339
losses of permanent school fund audited by auditor of state 1842 339
auditor to issue bonds in favor of school fund..... 1843 339
to keep separate books for school fund..... 1844 339
board of supervisors to authorize sale of sixteenth section. 1845 340
to sell five hundred thousand acre grant 1846 340
minimum price fixed..... 1847 340
pre-requisites to sale..... 1848 340
when lands cannot be sold for minimum price..... 1849 341
lands bought on execution to be sold as school lands..... 1850 341
patent to issue for lands..... 1851 341
contract of sale to be reduced to writing..... 1852 341
board of supervisors to exercise discretion as to payment or security..... 1853 342
on failure to pay interest, principal becomes due..... 1854 342
same provision applies to university fund 1855 342
school lands subject to taxation from delivery of contract. 1856 342
waste on school lands, punished..... 1857 342
injunction to stay waste may be granted without bond.... 1858 342
school lands surveyed 1859 343
board of supervisors to manage school fund..... 1860 343
permament school fund may be loaned..... 1861 343
how to be secured and rate of interest..... 1862 343
real estate offered in security to be appraised..... 1863 344
application for loan to be made to county auditor 1864 344
value of security offered, how determined..... 1865 344
loans reported to board of supervisors..... 1866 344
manner of paying interest and principal of loans..... 1867 345
prior encumbrance may be paid off..... 1868 345
claim of school fund assignable to holder of subsequent lien 1869 345
examination of securities due school fund..... 1870 345
prompt payment of interest entitles the party to re-loan of principal..... 1871 346
notice to be given when money is due school fund..... 1872 346

Section. Page.

SCHOOL FUND—CONTINUED.
suit brought to enforce collection..... 1873 346
lands sold on execution to be bid in..... 1874 346
contracts or notes made in favor of school fund payable to county..... 1875 346
accounts with, to be separately kept..... 1876 347
notes, bonds, mortgages, and assets, to be recorded in a book..... 1877 347
penalty for failure of duty by county treasurer or auditor.. 1878 347
time may be given for judgment to..... 1879 347
lapse of time not to bar action on securities..... 1880 347
counties responsible for losses, and entitled to gains..... 1881 348
interest charged to counties, surplus to enure to their benefit..... 1882 348
funds transferred from one county to another..... 1883 348
county auditor to report to auditor of state..... 1884 349
statute of limitations does not apply to..... 2542 433

SCHOOL-HOUSE SITES, §§ 1825–1828—
sufficient real estate may be taken for..... 1825 336
where to be located..... 1826 336
land may be condemned for 1827 336
reversion of property, when not used for..... 1828 337

SCHOOL LAND. *See* SCHOOL FUND—
interest acquired in, by purchaser at tax sale 900 156

SEAL. *See* PRIVATE SEALS—
includes impression on paper or on wax thereto attached.. 45 8

SEALER OF WEIGHTS AND MEASURES—
appointment of.....2057, 2059 374
duties of.....2058, 2060 375
to deliver standards to successor..... 2062 375
penalty for refusal to deliver to successor..... 2063 375
compensation of 3802 590

SEARCH WARRANTS—
definition of..... 4629 711
upon what grounds issued 4630 711
cannot issue unless supported by affidavit..... 4631 711
magistrate must examine applicant, etc..... 4632 711
affidavit to state facts showing probable cause..... 4633 712
magistrate, when satisfied, to issue..... 4634 712
jurisdiction of..... 4635 712
form of warrant..... 4636 712
by whom served..... 4637 712
officer may break open doors.....4638, 4639 712
served in day time unless it directs otherwise 4640 712
must be returned within ten days..... 4641 713
officer to receipt for property taken under.. 4642 713
inventory of, returned to magistrate..... 4643 713
copy of, given applicant for 4644 713

Section. Page

SEARCH WARRANTS—CONTINUED.
form of warrant when grounds of, controverted, testimony heard 4645 713
to be reduced to writing 4646 713
disposition of property 4647, 4648 713
of papers 4649 713
maliciously and without probable cause sued out, a misdemeanor 4650 714
officer exceeding authority, deemed guilty of 4651 714
magistrate may direct person charged with felony searched 4652 714
stolen property retained for identification 4653 714

SECRET—
proceedings of grand jury to be kept 4284, 4285 666

SECTARIAN INSTITUTION—
cannot receive public money 552 98

SECRETARY OF STATE—
to arrange and prepare acts of general assembly 35, 36 3
superintend printing 37 6
distribute statutes 39 6
sell same, and make report to auditor of state 41 6
report annually to auditor of state, and pay proceeds of copies sold, to state treasurer 42 7
deliver copies remaining on hand to successor in office .. 43 7
keep office at seat of government, duty of 61 10
countersign commissions issued by governor 62 11
report to governor as to criminal returns 63 11
furnish library of congress copies of legislative journal. 64 11
file and preserve papers relating to the incorporation of cities and towns 65 11
examine and receipt for printing done by state printer. 98–100 18
deliver state printer copies of laws and journals 101 18
require state printer to receipt for paper delivered 103 19
give receipt for work done by state binder, noting deficiency therein 109 19
file and preserve abstract of census returns 116 20
keep journal of proceedings of executive council 119 21
issue receipt for paper delivered under contracts made by executive council 121 21
take charge of paper, and furnish state officers 122 22
stationery, books, fuel, etc., furnished 120 21
to transmit one copy of public documents to each public library 131 24
take five hundred copies of supreme court reports for state, when 157 27
disposal of same 159 28
to prepare and have published tabular statement of order of judges fixing terms of district and circuit courts ... 165 29
notify notaries public when commission expires 258 42
when to deliver commission to notaries public 259 42
to send certified copy of to clerk of district court of proper county 260 43

	Section	Page.
SECRETARY OF STATE—CONTINUED,		
notify clerk when same is revoked	261	43
issue certificates to commissioners in other states, when	273	44
have published with session laws, list of commissioners	274	44
keep records of appointments of	275	44
publish statement of population of cities and towns	509	88
be elected in each even-numbered year	581	104
send messenger for missing abstracts of election	649	113
record abstracts of state canvass in election book	654	113
send messenger for missing returns of election of electors of president and vice president	662	114
bond not to be less than five thousand dollars	678	116
to be filed in office of auditor of state	682	117
is clerk of court for trial of contested state elections	720	122
to select court for	722	122
may issue subpœnas	723	122
duty of, as to depositions taken in case of contested election	734, 735	123
may appoint deputy	766	127
power and duties of	767	127
cannot appoint auditor or treasurer of state	768	127
to distribute report of state agricultural society	1108	191
horticultural "	1120	193
to record the change of name of railway corporations	1274	233
select newspaper for publication of estray notices	1461	269
salary and fees of	3756	579
to render verified account of fees monthly to state treasurer	3778	583
salary of, to be paid monthly	3780	583
SECRETARY OF STATE UNIVERSITY—		
powers and duties of	1592	296
SECRETARY OF AGRICULTURAL COLLEGE AND FARM—		
to keep record	1612	301
oath of	1615	302
SECURITY—		
when no other mode is provided, to be by bond	246	41
bond given as, how and to whom payable	247	41
defective not to vitiate, if notified in a reasonable time	248	41
surety must reside in state, and be worth double the required sum	249	41
officer may require surety to justify	250	41
both old and new on official bonds, in force	774	128
court may require, in action for partition, before payment of proceeds	3305	530
SECURITY FOR COSTS, §§ 2927–2932—		
plaintiff may be ruled to give	2927, 2929	481
when given, action not dismissed	2928	481
additional security required	2930	481
attorney or officer cannot be security	2931	481
judgment rendered on bond, on motion	2932	482
appellant in supreme court required to give	3210	519

	Section	Page.
SECURITY TO KEEP THE PEACE, §§ 4115–4129—		
duty of magistrate, when complaint is made	4115–4117	643
accused discharged or bound over	4118, 4119	644
committed to prison	4120, 4121	644
papers returned to district court	4122	645
assault committed in presence of court	4123	645
district court may require accused to give bond	4124	645
accused required to appear before	4125	645
judgment by	4126	645
undertaking, when broken	4127	645
suit on	4128	645
record conclusive evidence of breach of bond	4129	645
SEDUCTION—		
unmarried woman may sue in her own name for	2555	435
of unmarried woman of chaste character, punished	3867	602
marriage a bar to prosecution for	3868	602
jurisdiction of crime of	4162	649
testimony of woman seduced not sufficient to convict, unless corroborated	4560	700
SENATOR. *See* GENERAL ASSEMBLY—		
senator in congress to be elected by general assembly	26	4
resignations of made to governor	782	129
SEPULCHRE—		
desecration of, punished	4017	625
SERVANT—		
liable as principal for selling intoxicating liquors	1540	282
SERVICE—		
original notice may be, by any person not a party	2601	442
manner of serving original notice	2603	442
may be made on Sunday	2605	442
on whom, when county is defendant	2610	443
corporations other than municipal	2611, 2613	443
municipal corporations	2612	443
how made on minors	2614	443
insane	2615, 2616	444
prisoner in penitentiary	2617	444
by publication, when and how	2618–2620	444
on unknown defendants	2622–2625	445
when by publication, defendant entitled to appear and defend any time before judgment	2875	475
security may be required before enforcing judgment rendered on	2876	475
cause may be retried on application	2877	475
copy of judgment served on defendant	2879	475
must be personal	2880	475
personal judgment rendered on, other than by publication	2881	475
of notices in supreme court, how made	3214	519
of writ of habeas corpus	3460, 3461	547

Section. Page.

SERVICE—CONTINUED.
how made when defendant cannot be found 3462 547
or conceals himself..... 3463 547
when plaintiff taken into custody..... 3465 547

SET-OFF. *See* COUNTER CLAIM—
mutual judgments may be..... 3097 503

SETTLEMENT. *See* POOR—
of paupers, how acquired..... 1352 247
continues until new one is acquired..... 1353 248
persons prevented from obtaining by warning 1355 248
removed to county of settlement 1357 248
patients in hospital for insane having none, supported at expense of the state..... 1419 261

SETTING ASIDE INDICTMENT. *See* INDICTMENT—
grounds for, manner and effect of 4337–4344 674

SHAM DEFENSES—
may be stricken out on motion..... 2707 456

SHEEP—
restrained from running at large 1446 265
bringing or importing diseased into this state, punished... 4055 633

SHERIFF—
includes any person performing duties of..... 45 8
to serve requisitions issued by auditor of state 74 13
serve notice on judges of election of number of persons apportioned to each precinct as jurors..... 237 39
compare ballots prepared by auditor with jury lists..... 240 40
serve precept issued by clerk 241 40
control publication of notices pertaining to his office... 307 53
execute and return process 337 58
for refusing to serve, may be punished for contempt 338 58
has charge of jail and prisoners..... 339 58
is conservator of the peace, duty 340 58
to attend courts, and appoint bailiffs to assist..... 341 58
not to act as attorney for any party..... 342 58
purchase of property at a sale made by him, void..... 343 58
may execute process in his hands when office expires 344 59
deliver to successor all books and papers..... 345 59
successor of, may serve process, when..... 346 59
process directed to new sheriff..... 347 59
successor may convey real estate sold on execution..... 349 59
to execute warrant of coroner..... 362 61
to cause to be published proclamation of election..... 578 103
to be elected in each odd-numbered year 589 104
penalty of bond to be fixed by board of supervisors, but not less than five thousand dollars..... 678 117
may appoint any number of deputies.....766, 768 127
duty and power of ... 767 127
who cannot be deputy. 768 127

Section. Page

SHERIFF—CONTINUED.
to summon jury for assessing condemned property....1244, 1245 228
action against for failure of duty, barred in three years.... 2529 432
to note on, when original notice is received 2605 442
return of on may be amended..... 2606 442
judgment obtained against on motion 2906 479
property to be taken by on attachments 2964 486
to execute attachments in order they are received 2965 486
may pursue property removed from county 2966 486
mode of attaching by 2967 486
to pay money attached to clerk 2971 487
to keep other attached property 2972 487
manner of attaching joint or partnership property 2973 487
by garnishment 2975 488
may be garnisheed for money of defendant..... 2976 488
to take answers of garnishee when plaintiff directs 2980 488
approve bond given for return of attached property..... 2996 490
summon appraisers to determine value of 2997 490
perishable property sold by..... 2999 491
cannot require indemnifying bond of the state 3007 492
damages paid by, becomes a charge against the state..... 3009 492
return of, on attachments..... 3010 492
necessary expenses of keeping attached property, allowed to 3013 493
to make entry of levy of attachment on real estate, in encumbrance book..... 3022 494
"sheriff," as used in chapter on attachments, includes constables..... 3023 494
to return execution when notified of stay..... 3065 500
discharge property levied on..... 3066 500
give notice of sale of property on execution 3079 502
manner of giving 3080 502
penalty for selling without 3081 502
must fix time of sale in notice..... 3082 502
may postpone sale..... 3083 502
apply excess of proceeds on another execution..... 3084 502
to notify defendant when occupying real estate 3087 502
sell according to plan furnished by defendant..... 3088 503
may treat sale as a nullity when purchaser fails to pay.... 3089 503
to execute deed or certificate of purchase of real estate sold on execution..... 3101 504
give certificate of redemption, when 3110 505
conveyances of imply regularity..... 3126 506
to execute order in action to recover specific personal property 3232 522
deliver the property to plaintiff..... 3234 522
approve bond given by defendant 3235 522
cause property to be appraised..... 3236 523
return order and doings thereunder 3237 523
execute bill of sale to purchaser of personal property sold on mortgage..... 3313 531
may perform constable's duty in justice's court..... 3632 563
compensation of 3788 585

Section. Page.

SHERIFF—CONTINUED.
salary of..... 3789 587
fees of, in criminal cases, paid by county..... 3790 587
cases of estrays and trespassing animals 3822 594
to be furnished with office, stationery, etc 3844 598
compensation of for conveying insane patient to hospital.. 3825 595
receiving consideration for neglecting, etc., to perform duty, punished..... 3948 615
falsely assuming to be, punished 3962 616
stirring up quarrels by..... 3964 617
oppression by..... 3969 617
fees of, for taking insane criminal to hospital..... 4628 711
to keep calendar of prisoners committed to jail..... 4725 724
to furnish copy of, to district court..... 4726 724
may punish refractory prisoners..... 4734 725
superintend prisoners when working on highways..... 4738 726
use means necessary to prevent escapes 4740 726
punished for treating prisoners cruelly..... 4742 727
protect prisoner from insult when laboring..... 4743 727

SHINGLE—
lawful, defined..... 2074 377

SHORT-HAND REPORTER—
judge of district or circuit court may appoint; duty of.... 181 31
oath of; must attend court when directed by judge..... 182 31
compensation of..... 3777 583

SIDEWALKS—
cities may construct and repair 466–468 78

SINKING FUND—
created by cities and towns..... 497 86
corporations may create..... 1081 186

SLANDER—
statements of petition in action for..... 2681 453
answer 2682 453

SMALL POX—
inoculation with intent to spread, punished..... 4039 630

SOLDIER—
in actual service, may dispose of personalty by oral will.... 2325 411

SOLDIERS' ORPHANS' HOMES, §§ 1623–1642—
board of trustees of elected by general assembly 1623 303
powers and duties of enumerated..... 1624 304
member of general assembly ineligible..... 1625 304
compensation and oath of 1626, 1627 304
superintendents of to give bond..... 1628 304
board to choose a president, secretary and treasurer 1629 304
appropriation for 1630 304
expenses of sending orphans to, how paid 1631 304
board to report to general assembly 1632 304

Section. Page.

SOLDIERS' ORPHANS' HOMES—CONTINUED.
orphans not enumerated in school district where home is situated 1633 304
may be adopted by consent of parent or guardian 1634 304
township assessor to enumerate children of deceased soldiers 1635 305
board of supervisors to revise list 1636 305
county auditor to furnish blanks to assessor 1637 305
board of supervisors to control county orphans' fund 1638 305
levy tax for support of orphans 1639 305
appoint some person to take care of 1640 305
orphans' fund levied, collected, etc., as other funds 1641 305
provisions regarding tax not to prevent orphans from attending homes 1642 305

SOLDIERS' ORPHANS' FUND—
board of supervisors to control 1638 305
tax for, levied and collected 1639–1641 305

SORGHUM SACCHARATUM SEED—
standard weight of bushel of 2049 373

SOVEREIGNTY—
of state 2 1

SPECIAL ADMINISTRATOR—
may be appointed 2357 414
appeal from order does not prevent from proceeding 2358 414
to make and file inventory 2359 414
cannot allow claims against estate 2360 414
powers cease upon granting full administration 2361 414

SPECIAL ELECTIONS. *See* VACANCY AND—
when held 574 103

SPECIAL EXECUTION—
shall issue on foreclosure of mortgage or deed of trust 3321 531
when not sufficient, a general execution may issue 3322 531
may issue on judgment against boats and rafts 3439 544

SPECIAL PARTNER. *See* LIMITED PARTNERSHIP.

SPECIFIC ATTACHMENTS. *See* ATTACHMENTS—
in what actions issued, and when 3000, 3001 491
by whom granted 3002 491
attachment to describe property 3003 491
bond in, court or judge to determine 3004 492

SPECIFIC PERFORMANCE—
of contract of a deceased person, how enforced 2487 426
who may be made parties 2488 426

SPECIFIC STATEMENT—
more may be required in pleadings 2706, 2713, 2720 457

Section. Page.

SPENDTHRIFTS. *See* GUARDIANSHIP—
guardian may be appointed for 2272 405
may have trial by jury 2273 405
provisions relating to guardianship of minors applicable to 2274 405
power, authority, and duty of guardian of 2275 405
real estate of, may be sold 2276 405
guardian may complete contracts of 2277 405
when estate of is insolvent, how sold 2278 406
priority of claim to person of 2279 406

STALLION—
found at large, may be taken up and sold 1447 266

STATE—
boundaries of 1 1
sovereignty of 2 1
concurrent jurisdiction over waters forming boundary of .. 3 1
when applied to any part of U. S., includes territories 45 8
may condemn private property 1271 232
damages for, how paid 1272 232
to support insane patients in hospital who have no legal settlement 1419 261
may purchase real estate on sale by execution 1910 353
person authorized to purchase 1911 354
property must be appraised 1912 354
costs and expenses paid by state treasurer 1913 354
may be leased and controlled 1914 354
buildings to be kept insured 1915 354
control of, vested in executive council 1916 354
may be sold and conveyed 1919 355
to prosecute suits as individuals 2560 435
security may be demanded for debt due to 3005 492
attachments may be issued in favor of 3006 492
no bonds can be required of 3007 492
property taken, released as in other cases 3008 492
damages obtained against sheriff, how paid 3009 492
public property of, exempt from execution 3048 497
may appeal in action of mandamus, without giving security 3385 538

STATE AGRICULTURAL COLLEGE AND FARM. *See* AGRICULTURAL COLLEGE AND FARM.

STATE AUDITOR. *See* AUDITOR OF STATE.

STATE BINDER—
when and how elected 106 19
time of entering on duties 107 19
duties of 108 19
how paid for work done 109, 110 19
bond not to be less than two thousand dollars 678 117
to be signed by at least three sureties 679 117
compensation of 3767 581
may receive pay as work progresses 3768 581

	Section.	Page.
STATE BOARD OF EQUALIZATION—		
executive council to constitute, duties of	834	141
to determine rate of state tax	835	141
STATE CANVASS—		
of special elections	793	131
STATE HISTORICAL SOCIETY, §§ 1900–1907—		
appropriation to; for what purposes to be expended	1900	351
curators of, to be appointed by governor	1901	351
members admitted	1902	352
annual meeting	1903	352
curators to choose officers	1904, 1905	352
keep record of their acts	1906	352
supreme court reports, etc., delivered to	1907	352
to receive twenty copies of supreme court reports	159	28
STATE INSTITUTIONS—		
oath of officer controlling or managing	126	22
STATE LAND OFFICE AND REGISTER, §§ 83–93—		
manner of keeping books and records	83–85	15
may be inspected and copies given by register	86	15
patents to issue from; governor to sign; record of	87	15
conditions upon which patent may issue	88	15
register may correct clerical errors in records	89	16
to preserve books, field notes, maps, and papers	90	16
governor may release apparent, but not real title of state to lands	92	16
lists of lands granted the state, which have been granted by the state to any person or company, to be certified by register	93	16
stationery, books, fuel, etc., furnished	120, 122	21
detailed report showing expenditure of public money, to be made to governor	125	22
STATE LIBRARIAN—		
to be appointed by the governor	1890	350
stationery, books, fuel, etc., furnished	120, 122	21
salary of	3762	580
to be paid monthly	3780	583
STATE LIBRARY, §§ 1885–1889—		
board of trustees, how constituted	1885	349
to make rules in relation to	1886	349
who entitled to books	1887	349
books not to be removed from seat of government	1888	349
kept open during session of general assembly	1889	350
librarian appointed, to give bond	1890	350
to give his personal attention to	1891	350
prepare catalogue	1892	350
label and mark books	1893	350
report to governor	1894, 1897	350
fines for breach of rules, how recovered	1895	350
penalty for injuring books	1896	350

	Section.	Page.
STATE LIBRARY—CONTINUED.		
books to be delivered to colleges, academies, etc.	1898	351
appropriation for	1899	351
trustees of, to exchange supreme court reports	150	28
STATE OFFICERS—		
resignation of, made to governor	782	129
governor to fill vacancies	783	129
STATE PRINTER, §§ 94–105—		
election and term of office of	94	17
enters on duties of office, when	95	17
to properly perform duties	96	17
manner of doing work	97	18
secretary to give receipt for work done	98	18
auditor to issue warrant, and to direct suit for deficiency of work	99	18
printing done for general assembly, or either house	100	18
when secretary to deliver laws and journals to	101	18
printing of, how done	102	18
to give receipt for paper delivered	103	19
to certify under oath amount of paper used	104	19
to print one thousand copies of reports of state officers	105	19
bond not to be less than five thousand dollars	678	117
to be signed by at least three sureties	679	117
compensation of	3764	580
no constructive charges allowed to	3765	580
may receive pay as work progresses	3766	581
STATE REFORM SCHOOL, §§ 1643–1663—		
where located, and object	1643	306
election of trustees—filling vacancies in, and who ineligible	1644	306
oath of	1645	306
compensation of	1646	306
trustees of, elect officers—and have management of	1647	306
to cause pupils to be so instructed as to secure their reformation	1648	307
may bind out pupils	1649	307
to visit school, examine condition, and report thereon	1650	307
superintendent of—to have charge of pupils, and govern and instruct them	1651	307
to give bond	1652	307
courts—of record, may order persons under eighteen years of age, convicted of crime, sent to	1653	308
justices—may order such persons, convicted before them, to be taken before a judge	1654	308
order, how served	1655	308
judge may direct such person to be sent to the school. 1656,	1657	308
may remand him to custody of officer	1658	309
parent or guardian may make complaint to court or judge.	1659	309
committed only until majority is attained	1660	309
binding out, or discharge, is a release of all penalties	1661	309
trustees may direct unruly pupil to be remanded to jailor.	1662	309

	Section.	Page.
STATE REFORM SCHOOL—CONTINUED.		
punishment for aiding pupil to escape	1663	310
treasurer of, to give bond	1647	306
STATE TREASURER. *See* TREASURER OF STATE.		
STATE UNIVERSITY, §§ 1585-1603—		
objects of	1585	295
not to be under the control of any religious denomination	1586	296
to be governed by a board of regents	1587	296
members of, classified	1588	296
departments included in	1589	296
meetings of regents of	1590	296
regents of, to appoint an executive committee	1591	296
to elect secretary	1592	296
treasurer, bond of	1593	297
treasurer of, to keep books showing sales of land and funds derived therefrom	1594	297
to notify persons in default of payment of interest	1595	297
regents to appoint president, professors, and officers, and fix their compensation	1596	297
may purchase apparatus, library, etc	1597	298
cabinet of natural history kept in	1598	298
lands of, sold and proceeds invested	1599	298
president of, to report to regents	1600	298
regents of, to report to superintendent of public instruction	1601	298
compensation of regents	1602	299
member of general assembly ineligible to office of regent	1603	299
law department of, to receive twenty copies of supreme court reports	159	28
when interest on fund of is unpaid, principal becomes due	1855	312
STATE WARRANTS. *See* WARRANTS—		
for not less than twenty dollars, may be divided	67	12
when no funds to pay, to be endorsed by state treasurer	78	14
STATUTES, §§ 28-45. *See* CODE—		
approval of by governor	28	5
when vetoed, how passed	29	5
when neither approved nor vetoed	30	5
deposited with secretary of state	31	5
of private nature, when to take effect	32	5
when to take effect by publication in newspapers	33	5
of public nature, when to take effect	34	5
secretary of state to arrange and superintend printing of	35-37	5
in amendment of code, how published	38	6
distribution of by secretary of state	39	6
by county auditor	40	6
at what price sold	41	6
secretary and auditor to report sales of	42	7
to deliver unsold copies of to successor in office	43	7
compensation for publishing in newspapers	44	7
construction of	45	7

Section. Page.

STATUTES—CONTINUED.
how plead..... 2708 456
when admitted as presumptive evidence..... 3718 573
words of, need not be strictly pursued in indictment..... 4304 669
private, how plead in indictment..... 4309 670

STATUTE OF LIMITATION. *See* LIMITATION OF ACTIONS.

STATUTE PENALTY—
barred in two years from time action accrued..... 2529 432

STAY OF EXECUTION—
allowed on judgments, except, etc..... 3061 499
qualifications of sureties on stay bonds 3062 499
not allowed to surety on stay bonds, etc..... 3063 499
bond to have force of judgment confessed..... 3064 500
execution recalled when bond given..... 3065 500
property levied on to be discharged 3066 500
execution to issue against sureties..... 3067 500
sureties may prevent, unless, etc 3068 500
determine stay..... 3069 500
unless other surety be given.... 3070 500
lien of judgment not released by..... 3071 500
person taking, not entitled to redeem..... 3103 504
allowed for fines in criminal actions..... 4610 708

STAY OF PROCEEDINGS—
appeals to supreme court shall not, until bond is filed..... 3186 516
bond for, approved by supreme court or judge..... 3187 516
when defective, additional required..... 3188 517
penalty and conditions of..... 3190 517
filing of, does not stay part of judgment not appealed from 3191 517
when perfected, execution countermanded 3192 517
property levied upon to be surrendered..... 3193 517

STEWARD—
of poorhouse governed by regulations of board of supervisors 1374 251
to admit paupers on written order of a trustee or supervisor 1375 251
may require paupers to labor 1376 251
of hospital for the insane, duties of enumerated. 1392 254
of penitentiary at Fort Madison, duties of 4766 732

STIRRING UP QUARRELS—
by judges, justices, or attorneys, etc., punished..... 3964 617

STOCK—
question whether same to be prohibited from running at large submitted to vote of people..... 309 54
may be restrained from running at large in counties..... 1457 267
in night time.....1461, 1462 268
driving off, punished..... 3896 605

Section. Page.

STOCK IN CORPORATIONS—
to be assessed and taxed at cash value..... 814 136

STOLEN GOODS—
receiving or aiding in concealing, punished.....3912, 3913 608

STOLEN PROPERTY—
restored to owner..... 4648 713
retained by officer as evidence..... 4653 714
to be held by officer subject to order of magistrate..... 4654 714
may be delivered to owner.....4655–4657 714
when to be delivered to county auditor..... 4658 715
officer taking, to give duplicate receipts for..... 4659 715

STONE COAL—
standard weight of bushel of..... 2049 373

STRAWBERRIES—
standard weight of bushel of..... 2049 373

STRAYS. *See* DOMESTIC AND OTHER ANIMALS—
trespassing animals treated as, where owner is unknown .. 1456 267

STREETS—
deemed part of highways 952, 953 165
when not to be established across lands owned by state .. 954 165

STREETS AND ALLEYS—
labor performed on, by whom..... 487 84
vacated as highways, when..... 562 100

SUB-CONTRACTOR—
entitled to mechanic's lien..... 2131 386
definition of..... 2146 388

SUB-DISTRICTS. *See* SCHOOLS.

SUBMITTING CONTROVERSIES, §§ 3408–3415—
without action, to court on agreed statement of facts 3408 541
must be shown by affidavit that controversy is real 3409 541
court to determine and render judgment.. 3410 541
what constitutes record..... 3411 541
judgment may be reviewed..... 3412 541
in actions pending on agreed statement... 3413 541
judgment rendered according to agreement of parties 3414 542
costs, how disposed of..... 3415 542

SUBPŒNAS—
coroner may issue..... 356 60
so may county surveyors..... 378 63
in trials of contested county elections, by whom issued... 704 120
state " " " " ... 723 122
by whom issued, and to whom directed.....3671, 3672 568

Section. Page.

SUBPŒNAS—CONTINUED.
penalty for failure to obey 3675, 3676 568
how served, when witness conceals himself 3677 569
may be issued by persons authorized to take depositions... 3680 569
for grand jury, clerk to issue 4279 665
in criminal actions—who may issue 4561, 4562 700
who may serve 4563 700
how served 4564 700
officer may break open doors to serve 4565 701
disobedience to, punished 4566, 4567 701
may run into any part of the state 4569 701

SUBTRACTION—
pleadings not to be amended by 2692 454

SUCCESSOR—
of justice of the peace, may issue execution 3627 562
how determined 3628 562
may renew execution 3634 563

SUMMARY PROCEEDINGS, §§ 2906–2910—
judgment and final orders obtained on motion 2906 479
notice of given and return of 2907, 2908 479
when motion considered abandoned 2909 479
no written pleadings to be filed 2910 479

SUNDAY—
judicial business cannot be transacted on, exceptions..... 191 32
original notice may be served on, when 2607 442
attachments issued and served on 2952 485
executions issued and served on 3028 494
order in action to recover specific personal property served on 3227 521
warrant in actions against boats and rafts may be issued on 3434 544
violation of, punished 4072 636

SUPERINTENDENT OF HOSPITAL FOR THE INSANE—
is chief executive officer of 1391 253
to procure seal 1393 254
to acknowledge receipt of insane person 1401 258
to receive insane criminal 1412 259
when restored to reason, to notify district attorney 1413 260
treat patient as coming from county of settlement 1417 260
patient escaping, to notify commissioners of the proper county 1423 261
to furnish suitable clothing to patient when cured and discharged 1424 261
to certify to state auditor amount due from each county quarterly 1428 262
fees of, when attending as a witness 1429 262
to affix seal of hospital to papers and documents 1430 262
in conjunction with governor, adopt regulations 1432 263

SUPERINTENDENT OF HOSPITAL FOR THE INSANE—CONTINUED.

	Section.	Page.
to furnish insane with writing materials	1437	264
mail letters for, after affixing proper stamp	1438	264
to notify district attorney when person charged with crime becomes sane	4626	710

SUPERINTENDENT OF THE INSTITUTION FOR THE DEAF AND DUMB—

to report to governor	1694	313
to certify account of clothing furnished pupils, to county treasurer	1695	314

SUPERINTENDENT OF MARKETS—

to be elected in cities of the first class	535	94

SUPERINTENDENT OF PUBLIC INSTRUCTION, §§ 1577–1584—

has supervision of common schools	1577	294
to keep record of matters pertaining to his office	1578	294
to prepare amendments to school law, and publish the same	1579	294
compensation of, for distributing school laws, and traveling expenses	1580	294
to subscribe for educational journal	1581	295
to report annually to the auditor of state	1582	295
to make report to each regular session of the general assembly	1583	295
may appoint teachers' institutes	1584	295
stationery, books, fuel, etc., furnished	120, 122	21
to make detailed report to governor, showing expenditure of public money	125	22
may appoint deputy	766	127
power and duty of	767	127
bonds not to be less than two thousand dollars	678	117
to determine appeals from county superintendent	1835	338
cannot render money judgment	1836	338
salary of	3760	579
to be paid monthly	3780	583

SUPERINTENDENT OF STATE REFORM SCHOOL—

appointed by trustees	1647	306
to report annually to general assembly	1650	307
to have charge of pupils	1651	307
must give bond to be filed in office of secretary of state	1652	307

SUPERINTENDENT OF WEIGHTS AND MEASURES—

appointment and bond of	2052	374
duties enumerated	2053–2055	374
to deliver to successor standards, etc	2056	374
salary of	3763	580
to be paid monthly	3780	583

SUPERVISOR OF HIGHWAYS. *See* WORKING HIGHWAYS—

to be elected annually	591	104

Section. Page.

SUPERVISORS—
members of board of not required to give bond 674 116

SUPPLEMENTAL PLEADING—
may be filed when, etc 2731 458

SUPREME COURT, §§ 133–145. *See* APPEAL TO—
when held 133 25
terms of 134 25
causes, where tried 135 25
must be heard at each term, unless continued or transferred 136 25
sheriff or deputy must attend 137 25
bills for contingent expenses of, certified by chief justice.. 138 25
three judges necessary for the transaction of business..... 139 25
when equally divided, decision below to stand affirmed.... 140 25
when none of the judges attend, court to stand adjourned. 141 26
no process or proceeding affected thereby 142 26
opinions of court or any judge to be in writing and filed.. 143 26
to designate what causes shall not be included in reports.. 144 26
may order a new edition of any volume of the reports..... 158 28
suspend or revoke license of attorney.....217, 218 37
causes for, proceedings, trial and judgment 219–222 38
not to regard exception, unless on a material point..... 2836 470
has appellate jurisdiction 3163 513
from what orders appeals to may be taken.....3164, 3165 513
may prescribe rules for appeals from other orders 3166 513
mistake of clerk not a ground of appeal..... 3167 513
order or judgment cannot be reversed by, which could be corrected below on motion 3168 513
not necessary that a motion for a new trial should be made 3169 513
there should be any finding of facts .. 3170 513
cause to be docketed as in court below..... 3171 514
power given to enforce appellate jurisdiction 3172 514
limitation on right to appeal, as to time and amount 3173 515
part of co-parties may appeal 3174 515
upon refusal to join in, can derive no benefit from. 3175 515

SUPREME COURT REPORTER, §§ 154–160—
may take opinions of court to prepare reports..... 154 27
to prepare syllabus of opinions and statement of facts 155 27
publish reports; not exceeding two volumes a year 156 27
be paid for when certified by judges 157 27
copyright of forfeited, when 158 28
penalty for disposing of reports for more than five dollars per volume 160 28
when to be elected 583 104
bond not to be less than ten thousand dollars..... 678 117
vacancy to be filled by judges of supreme court..... 783 139

Section. Page.

SURETIES. *See* PRINCIPAL AND SURETY—
must reside in state and be worth double the required sum 249 41
officer approving may require surety to justify 250 41
of officers may be discharged 775 128
petition for, and notice of application 776 128
hearing, order, and effect of 777 128
may require creditor to bring suit, or permit surety to do so. 2108 382
effect of refusal by creditor 2109 382
when suing, to give bond to pay costs 2110 382
executors of, may require suit brought 2111 382
actions by, prosecuted by ordinary proceedings 2512 430
may, with consent of principal, plead counter-claim due ... 2661 451
may obtain judgment against principal, etc., on motion ... 2906 479
notice—of motion to be served 2907 479
grounds of motion stated in 2908 479
motion—if not filed, considered abandoned 2909 479
determined without written pleadings 2910 479
meaning of term "surety" 3040 496
on stay bond—judgment entered against 3064 500
joint execution issued against 3067 500
may require execution to issue before stay expires 3069 500
unless other security is given 3070 500
may prevent stay of judgment 3068 500

SURGEON—
compensation of, when summoned by coroner 368 62
not to give as testimony confidential communications 3643 565

SURRENDER—
of defendant by bail in criminal actions 4593, 4595 705

SURVEYOR-GENERAL—
copies of maps and documents in office of, presumptive evidence 3707 572
signature of, deemed genuine 3711 572

SURVIVE—
causes of action do, notwithstanding death of the parties .. 2525 431

SURVIVOR—
on death of husband or wife, may occupy homestead 2007 367
may elect to retain, instead of distributive share 2008 367
subject to rights of, homestead may be devised 2010 368
execution issued against surviving defendant 3133 507

SUSPENSION FROM OFFICE. *See* REMOVAL AND SUSPENSION FROM.

SWEAR—
includes affirm 45 8

SWEET POTATOES—
standard weight of bushel of 2049 373

	Section.	Page.
SWIFT—		
bounty allowed for killing	1487, 1488	272
SWINE—		
restrained from running at large	1446	265
TALLY LIST—		
to be kept by clerks of election	626	109
disposition of	630	110
TAXATION—		
property of United States exempt from	4	1
church property, when leased, subject to	1921	355
TAXES. *See* ASSESSMENT OF—		
majority of whole board of supervisors must agree to levy	305	53
when warrants are depreciated, people may vote for higher rate	309	54
when people vote to borrow money and levy tax	311	55
rate of, in such case	312	55
levied to pay expenses of board of health	420	69
of cities and towns, certified and collected as other taxes	495	86
limited to ten mills on the dollar	496	86
a lien between vendor and vendee	835	144
when to become delinquent	865	146
penalty on	866	147
township trustees to determine amount of highway	969	167
supervisor to post notice of amount	980	170
to be expended in district where collected	981	170
levied to support county high school	1703	315
electors of school districts may vote	1717	318
directors of district cannot levy after third Monday in May	1738	321
to estimate amount of required	1727	326
apportion tax voted by electors	1778	327
be levied by board of supervisors	1779, 1780	327
independent districts, electors of may vote	1807	332
homestead, when platted, liable only for those accruing thereon	1991	366
levied to pay debts of certain public corporations	3049	497
TAX LIST—		
compensation for printing delinquent	3833	597
TAX SALE. *See* COLLECTION OF TAXES.		
TEACHERS—		
contracts with, to be in writing, and how signed	1757	324
must obtain certificate from county superintendent	1758	324
to keep register of school	1759	324
to file copy with secretary	1760	324
TEACHERS' INSTITUTES—		
superintendent of public instruction to attend	1577	294
appropriation for	1584	295

Section. Page.

TELEGRAPHS, §§ 1324–1329—
may be constructed over public and private property..... 1324 243
must be so constructed as not to impede travel or navigation 1325 243
damages to private property, how assessed..... 1326 243
penalty for not transmitting dispatches, or for mistakes therein 1327–1329 243

TELEGRAPH COMPANIES—
property of, listed and taxed as that of individuals..... 812 136
actions against, brought in any county through which line passes 2582 438

TENANCY IN COMMON—
created by conveyance to two or more..... 1939 357

TENANT. *See* LANDLORD AND TENANT—
for life or years, interest in estate in action for partition, how disposed of..... 3306 530
landlord substituted for, in actions to recover real property 3253 525
liable for rent in arrear only..... 3264 525
for life or years, committing waste, liable to treble damages 3332 533
joint, " " " " " 3332 533
in common, " " " " " 3332 533

TENANT AT WILL—
person in possession, with assent of owner presumed..... 2014 368
notice necessary to terminate such tenancy 2015 368
how served..... 2016 368

TENDER, §§ 2104–2107. *See* NOTES AND BILLS—
when made and not accepted..... 2104 381
offer in writing to pay, equivalent to..... 2105 382
person making, may demand receipt..... 2106 382
objection to subject of..... 2107 382
by heirs or divisees, effect of 2486 426

TERMS OF COURT. *See* DISTRICT AND CIRCUIT COURTS—
judges of district and circuit courts to fix, by an order.... 165 29

TERM OF OFFICE—
when to commence..... 576 103
officer elected for a fixed term to hold until successor qualifies 784 129

TESTIMONY—
how perpetuated.....3745–3750 576

TEXAS CATTLE—
importation of, punished.....4058, 4059 633

THEATRICAL EXHIBITIONS—
cities may regulate or prohibit..... 460 77

	Section.	Page.
THRESHING MACHINES—		
failure to box tumbling rod, punished	4064	635
TIME—		
mode of computing	45	8
when alleged in pleadings, how answered or replied to	2701	455
when material, how alleged; when not, need not be proved	2702	456
precise, not stated in indictment unless material	4301	668
TIMOTHY SEED—		
standard weight of bushel of	2049	373
TITLE TO REAL PROPERTY IN STATE OR COUNTY, §§ 1910–1919—		
may vest in, when necessary to secure debt	1910	353
when sold on execution, who to bid off	1911	354
property to be appraised before sale	1912	354
cost and expenses, how audited and paid	1913	354
lands may be leased	1914	354
buildings on, kept insured	1915	354
sale and conveyance of	1916–1919	354
TITLE—		
to personal property sold on mortgage passes to purchaser	3312	531
TORTS—		
proof in defense of actions for, limited by allegations of answer	2682	453
TOWNSHIP ASSESSOR—		
to take census and make return to county auditor	113, 114	20
number and election of	389, 390	64
to be elected annually	591	104
to make list of voters	594	105
penalty of bond to be fixed by board of supervisors	678	117
when and how to list and assess property	822, 823	138
may administer oath to person assessed	824	139
when to complete assessment and deliver books to	825	139
name of owner unknown, property of, how assessed	826	139
penalty for failure of duty	827	139
revenue laws furnished to	828	140
to meet with township board of equalization	831	140
to make list of persons subject to military duty	1041	179
to enumerate children of deceased soldiers	1635	305
blanks furnished to	1637	305
compensation of	3810	592
TOWNSHIP BOARD OF EQUALIZATION—		
who constitutes	829	140
time of meeting and duties	830	140
appeal from	831	140

	Section.	Page.
TOWNSHIP COLLECTOR—		
when to be elected	400, 411	65
qualification of	401	65
county auditor to make duplicate tax list	402	65
power of to collect taxes	403	66
to give notice and attend at a designated place to receive taxes	404	66
make demand for, collect by distress and sale	405	66
to make monthly statements, when to complete collection	406	67
compensation of	407	67
when list returned, treasurer to make collections	408	67
to deliver treasurer account of unpaid taxes	409	67
liable on bond for loss by theft or otherwise	410	67
TOWNSHIP CLERK—		
election of	389	64
to keep accurate record of proceedings of trustees	395	65
may administer oaths to officers elect	396	65
notify county auditor of officers elected	397	65
to be elected annually	591	104
is clerk of election	606	107
to keep ballots and tally lists of	629	110
duty when there is a tie-vote for township office	632	110
to notify township officers elect	633	110
to approve bonds of township officers	680	117
resignation of, made to township trustees	782	129
to record appointment of justices and constables	795	131
to give bond, and have charge of tools for working highways	970	168
to furnish highway supervisor with plat	972	168
make out tax-list	973	168
deliver same to proper supervisors	974	169
certify uncollected taxes to county treasurer	975	169
notify supervisor of election or appointment	979	170
file petition for drainage of swamp land	1217	222
notify township trustees of same	1218	222
approve bond required by trustees	1221	223
approve appeal-bond, and make out transcript	1223	223
TOWNSHIP OFFICERS—		
compensation of	3809	592
resignation of, made to township clerk	782	129
vacancy in, how filled	783	129
who are, election of	389	64
when city or town is embraced in township	389, 390	64
penalty for refusing to serve	393	65
TOWNSHIP TRUSTEES. *See* BOARD OF HEALTH—		
number and election of	389	64
to designate place of holding elections, and give notice thereof	391	65
cause record to be kept of their proceedings	392	65

Section. Page.

TOWNSHIP TRUSTEES—CONTINUED.
are overseers of the poor, fence-viewers, board of health, and township board of equalization 393 65
regulations of, as board of health 415 68
notice of to be published 416 69
may order removal of nuisance at expense of owner or occupant of premises 417 69
power to carry regulations into effect 418 69
penalty for violation of 419 69
expenses of board of health borne by township 420 69
to be elected annually 591 104
not required to give bond 674 116
to fill vacancies in offices of justice or constable 795 131
to determine highway tax and divide township 969 167
amount of township fund 970 168
direct expenditure thereof 971 168
to locate ditch to drain swamp-land 1218 222
hearing of application 1219 222
determine course and depth of, and cause record of to be made 1220 222
may require applicant to give bond 1221 223
assess damages caused by 1222 223
appeal from 1223 223
may apply to circuit court to compel relatives to support poor person 1333 245
may seize property of absconding father, mother, husband or wife, when 1343, 1344 246
make inventory of 1346 246
order notice warning poor person to depart 1356 248
remove pauper to county of settlement, or extend relief to 1357 248
provide relief for the poor 1361–1364 249
poor to apply for relief 1365 249
to assess damages done by trespassing animals 1454 267
file assessment with township clerk, appeal from 1455 267
compensation of 3808 591

TOWNSHIPS, §§ 379–388—
board of supervisors to establish 379 63
must be ten voters in; but each county shall have one 380 63
description of boundaries to be entered of record 381 63
may be divided by board, when petitioned for 382 63
notice of presentation of to be given 383 64
petition, by whom signed; township divided 384 64
election—board of supervisors to designate place of holding first 385 64
auditor to issue warrant for 386 64
served by constable, or any citizen; return of 387 64
conducted as other elections 388 64
name of changed; proceedings 412–414 68

Section. Page

TOWNSHIPS—CONTINUED.
may, by vote of people, restrain stock from running at large 1458–1460 268
provisions as to partition fences applicable to 1508 275

TOWN—
includes cities and incorporated villages 45 8

TRANSCRIPT—
of judgment sent with execution to another county 3031 495
appellant failing to file, appeal may be dismissed 3181 515
may be filed by appellee and judgment affirmed 3182 515
what to contain 3184 515
when defective, may be perfected 3185 515

TRANSFER COMPANY—
liable for damage done baggage from careless handling ... 2183 394

TREASON—
defined and punished; not bailable 3845 599
misprision of 3846 599
evidence necessary to convict for 3847 599

TREASURER OF STATE, §§ 75–82—
to keep accounts of receipts and disbursements 75 14
write across warrants paid, "redeemed," and make appropriate entries in reference thereto 76 14
execute duplicate receipts for money paid him 77 14
pay money only on warrants, if no funds shall endorse warrants 78 14
keep record of warrants endorsed for non-payment, and give notice by publication when ready to pay 79 14
certify weekly, warrants paid, and settle quarterly with auditor 80 14
report to governor the state of the treasury semi-annually 81 14
provide interest to pay state bonds 82 14
stationery, books, fuel, etc., furnished 120, 122 21
office of, to be inspected by governor four times a year 132 24
to be elected in each even-numbered year 581 104
bond not to be less than three hundred thousand dollars .. 678 117
to be signed by at least four sureties 679 117
may appoint deputy 766 127
power and duties of 767 127
cannot appoint secretary or auditor of state 768 127
to receive treasury and national bank notes of county treasurer 856 145
penalty for discounting warrants, by 911 158
money received by, how kept 918 160
penalty for failure of duty 919 160
loaning or using public money 912 158
salary of 3758 579
to be paid monthly 3780 583

Section. Page.

TREASURER. *See* COUNTY TREASURER—
of state university, to give bond and take oath..... 1593 297
keep account of sales of university lands..... 1594 297
notify persons indebted to university. 1595 297
of hospital for the insane to give bond, duties of..... 1390 253
college for the blind, to give bond..... 1673 311
agricultural college and farm, duties of..... 1614 301

TREASURY NOTES—
received in payment of taxes 855 144

TREES, &c—
malicious destruction of, punished..... 3899 606

TRESPASS. *See* NUISANCE, WASTE, AND TRESPASS—
wilful, defined and punished.....3983, 3984 620

TRESPASSING ANIMALS—
compensation in cases of..... 3822 594

TRIALS, §§ 2737-2848—
issues—are of two kinds..... ..... 2737 459
of fact and law, defined..... 2738 459
of law, must be first tried..... 2739 459
of fact, by ordinary proceedings, tried by jury unless waived 2740 459
must be tried on oral evidence taken in open court, except, etc..... 2741 459
equitable may be tried on depositions, when, etc..... 2742 459
by court—facts found and conclusions of law to be stated separately 2743 459
must be at first term after service, except otherwise provided 2744 460
equitable actions, except, etc., cannot be tried at first term. 2745 460
court may allow separate..... 2746 460
calendar, causes, how entered in..... 2747 460
continuances—when time is asked to apply for..... 2748 460
not to be granted for fault or negligence of party..... 2749 460
when on account of absence of witnesses, must be based on affidavit 2750 460
adverse party may admit facts stated..... 2751 460
motion must be filed on second day of term, when..... 2752 461
application can be amended but once..... 2753 461
adverse party may file objections to..... 2754 461
motion and objections deemed part of record..... 2755 461
copy of need not be served 2756 461
granted at cost of party making application..... 2757 461
parties may stipulate and agree as to costs..... 2758 461
remains on docket for all purposes except trial on facts... 2759 461
when one defendant may continue..... 2760 461
jury—to be selected by lot from regular panel 2761 461
challenge to—is of two kinds..... 2762 461
parties not allowed to sever..... 2763 461
to the panel, on what founded..... 2764 461

Section. Page.

TRIALS—CONTINUED.
must be in writing, and taken before sworn 2765 461
trial of 2766 462
effect of allowance or disallowance of 2767 462
to a juror, is peremptory or for cause 2768 462
must be taken before the juror is sworn 2769 462
when peremptory, no reason need be given for 2770 462
number of, and how taken 2771 462
enumeration of challenges for cause 2772 462
trial of 2773 462
court must determine the law and fact 2774 463
talesmen supplied 2775 463
who exempt from service as juror 2776 463
exemption not a cause of challenge 2777 463
parties may agree to have a struck jury 2778 463
order of—manner of introducing evidence 2779 463
party having affirmative, may open and close argument 2780 463
may waive opening 2781 464
number of attorneys allowed to appear 2782 464
court cannot restrict time of argument to jury 2783 464
instructions—either party may request 2784 464
court may modify mode of 2785 464
to read to jury those given only 2786 464
to the giving or refusal of, party may object 2787 464
court may charge the jury on its own motion 2788 464
exceptions may be filed within three days after verdict 2789 464
jury may view premises 2790 464
to be kept in charge of officer 2791 465
when permitted to separate, court to admonish 2792 465
juror becomes sick 2793 465
may be discharged by court 2794 465
cause to be retried 2795 465
may be adjourned to a future day 2796 465
jury may take with them all papers used in evidence, except, etc 2797 465
while absent, court remains open for every purpose connected with the cause 2798 465
evidence to correct oversight, to be admitted 2799 466
after retirement, court may give information to on points of law 2800 466
to be given in writing, and may be excepted to 2801 466
food and lodging furnished to 2802 466
verdict—how signed and rendered 2803 466
either party may have jury polled 2804 466
effect of sealed 2805 466
may be general or special 2806–2808 466
special controls general 2809 467
jury must assess amount of recovery 2810 467
must be moulded to meet facts and exigencies 2811 467
sufficient in form when it expresses intention of jury 2812 467
to be filed with clerk, and entered of record 2813 467
by jury, may be waived 2814 467

Section. Page

TRIALS—CONTINUED.
reference—may be made by consent of parties 2815 467
court may order in specified causes 2816 467
decision may be by majority of referees 2817 467
judge may fill vacancies in vacation 2818 468
referee stands in place of court 2819 468
power of 2820 468
report must state facts and conclusions of law separately .. 2821 468
when only to find facts, report has effect of a special verdict 2822 468
referee to sign bills of exceptions 2823 468
parties may agree on referee 2824 468
order of, made in vacation by consent 2825 468
referee must be sworn 2826 468
order of, not made until issue is made up 2827 468
referee is under control of the court 2828 469
may sign subpœnas and administer oaths 2829 469
form of procedure in court to govern referee 2830 469
exceptions—may be taken to any decision of court in matter of law 2831 469
no stated form required 2832 469
may appear in entry of decision 2833 469
bill of, what to contain 2834 469
judge refusing, may be signed by bystanders 2835 469
none regarded, unless the ruling was on a material point .. 2836 470
new trial—for what causes granted 2837 470
application for, made at term and within three days after verdict 2838 470
not granted on account of smallness of damages, when 2839 470
costs of to be regulated by court 2840 470
in criminal actions—mode of trial 4347–4350 675
court may attach conditions to 2841 470
when granted by reason of bad pleading 2842, 2843 471
of contested county elections, to take place at the county seat 707 121
state, at seat of government 725 122
for removal of officer, how conducted 754 125
of person charged with support of poor relative 1349 247
change of place of 2590 439
not made until issues made up 2591 440
to what court or county changed 2592 440
notice to be given of application in vacation 2593 440
when change deemed perfected 2594 440
clerk to docket transcript without fee 2595 441
applicant to pay costs of change 2596 441
county to pay costs of 2597, 2598 441
when defendant must be personally present 4351 675
jury—how drawn and summoned 4389 680
clerk to prepare ballots of 4390 680
persons composing panel called 4391 680
drawing of 4392–4395 680
vacancy in, filled by talesmen 4396 680
to consist of twelve men 4397 681

Section. Page.

TRIALS—CONTINUED.
challenge—may be to panel or any juror 4398 681
defendants must join in 4399 681
grounds of, when to the panel 4400 681
to panel, when taken 4401 681
either party may take 4402 681
when allowed 4403 681
causes for, when made to juror 4404 681
may be made by either party 4405 681
exemption from service not a cause of 4406 682
court to determine 4407–4409 682
state to first complete for cause 4410 682
peremptory, defined 4411, 4412 682
number of 4413 683
order of making 4414, 4415 683
when allowed, jury to be filled 4416 683
no juror sworn until twelve are accepted 4417 683
bias against a party not cause of, by the other 4418 683
provisions of civil code relating to, etc., applicable to 4419 683
order of 4420 683
witnesses endorsed on indictment only introduced by state 4421 684
order when plea is former conviction or acquittal 4422 684
counsel not to be restricted as to time 4423 684
separate trials, when granted 4424 684
evidence necessary to convict for conspiracy 4425 684
rules of, in civil cases applicable 4426 684
confession of defendant when sufficient to convict 4427 685
reasonable doubt against 4428, 4429 685
proceedings when higher offense proved 4430, 4431 685
jury may view premises 4432 685
juror sworn as a witness 4433 685
separation of jury before cause is submitted 4434 685
court to admonish 4435 685
minutes of testimony to be kept 4436 686
any of several defendants may be convicted or acquitted .. 4437 686
jury to determine law and fact in libel 4438 686
in other cases, court to determine the law 4439 686
court to give instructions to jury 4440, 4441 686
on retirement of jury, officer sworn to take charge of 4442 687
juror becoming sick, jury to be discharged 4443 687
same when court has no jurisdiction 4444–4449 687
discharge of defendant and bail exonerated 4450 688
defendant on bail committed to custody 4451 688
jury—may take with them all papers except depositions 4452 688
and notes of testimony taken by themselves 4453 688
court may give information to 4454 688
juror sick to be discharged 4455 688
when they cannot agree 4456 688
re-trial of cause in such case 4457 689
court remains open for matters connected with 4458 689
final adjournment discharges 4459 689

Section. Page.

TRUSTEES—
hospital for insane—election and terms of..... 1383 252
meetings of, and compensation..... 1384 252
to inspect hospital; keep record of acts, and make report..... 1385 252
have control of, and appoint officers and attendants..... 1386 252
hold property conveyed or devised to hospital, in trust..... 1387 253
not to be interested in building material or other articles for hospital. 1388 253
not eligible to office of superintendent or steward..... 1389 253
reform school—member, how elected, vacancies, how filled, who ineligible..... 1644 306
oath of..... 1645 306
compensation of..... 1646 306
powers and duties of..... 1647 306
to so direct instruction of pupils as to secure their reformation..... 1648 307
may bind out pupils..... 1649 307
to examine in all its departments and report..... 1650 307
may discharge pupils on evidence of reformation..... 1651 307
order unruly pupil returned to jailor.. 1662 309
college for blind—to adopt rules for the government thereof..... 1666 310
three trustees to constitute a quorum.... 1667 310
compensation of..... 1668 310
to appoint officers and employes, and fix compensation.....1669–1671 310
elect one of their own number president, and another treasurer..... 1673 311
not to create indebtedness exceeding appropriation..... 1674 311
to control industrial home..... 1681 312
admit pupils to..... 1682 312
vacancies in to be filled by governor.... 1684 312
county high school—temporary appointed..... 1699 315
permanent, election of..... 1700 315
to appoint secretary and treasurer.... 1701 315
estimate and certify to funds needed. 1702 315
select site for school-house, and let contract for building..... 1705 316
make rules and regulations for school and employ teachers.....1706, 1707 316
report to board of supervisors..... 1710 317
vacancies in, filled by board of supervisors..... 1711 317
compensation of..... 1712 317

Section. Page.

TRUSTEES—CONTINUED.
institution for deaf and dumb—election of 1685 312
powers and duties of..1686, 1687 313
to elect one of their number president and another treasurer..... 1690 313
not to create indebtedness exceeding appropriation 1691 313
state library—constituted 1885 349
to make rules for management of..... 1886 349
provide who may take books from..... 1887 349
expend money appropriated for..... 1899 351

TRUSTEES OF INCORPORATED TOWNS. *See* TOWNSHIP TRUSTEES.
not appointed to office, the salary of which has been increased during term 490 85

TRUSTS—
in real estate must be executed as conveyances 1934 357
actions relating to, how tried 2742 459

UNDERTAKING—
in cases of breaches of the peace 4119–4122 644
conditions of, when broken.....4126, 4127 645
action on..... 4128 645
conclusive evidence of breach of..... 4129 645
of witness may be forfeited..... 4568 701
of bail, when and how made liens 4606–4608 707
defendant discharged on his own..... 4615 709

UNITED STATES—
exclusive jurisdiction over all lands ceded by the state.... 4 1

UNIVERSITY. *See* STATE UNIVERSITY.

UNIVERSITY LAND—
interest acquired in by purchaser at tax sale 900 156
sale of, and disposition of proceeds.....1594–1599 297

UNKNOWN DEFENDANT—
may be described as such and sued..... 2557 435
how served with original notice.....2622–2625 445

UNLAWFUL ASSEMBLY—
defined and punished 4066, 4068, 4070 635

UNMARRIED WOMAN—
may sue for her own seduction..... 2555 435

UNMARRIED PERSONS—
ordinary wearing apparel of only, exempt from execution. 3075 501

UNWRITTEN CONTRACTS—
action on, barred in five years..... 2529 432

Section. Page.

UNWRITTEN LAWS—
of any other state or country, how proved 3719 573

USE AND OCCUPATION—
right to recover for, limited 3261 525

USURER—
assignee of usurious contract may recover of..... 2081 378

USURY—
taking illegal interest deemed 2079 378
penalty for 2080 378

VACANCIES—
in town council, how filled 513 89
in council of cities or offices thereof, how filled 530 93
how filled 575 103
in office, on failure to give additional security 774, 778 128
in trustees of state reform school, to be filled by governor. 1644 306
college for the blind 1684 312
county high schools, by board of supervisors 1711 317

VACANCIES AND SPECIAL ELECTIONS, §§ 781–795—
when office becomes vacant..... 781 128
resignations, to whom made 782 129
vacancies, how and by whom filled 783 129
officers elected for a fixed term, hold until successor qualifies 784 129
appointments to fill vacancies, how made..... 785 130
appointees must qualify in same manner as elective..... 786 130
may be removed 787 130
who to take possession when vacancy occurs..... 788 130
vacancy, when filled at election..... 789 130
of member of general assembly 790 130

SPECIAL ELECTIONS.

provisions relating to general elections govern..... 791 130
time of county canvass..... 792 131
state canvass..... 793 131
when vacancy is in office of justice or constable..... 794 131
township trustees to fill 795 131

VACATION—
of plats, streets, and alleys.....562, 563 100
effect of 564, 565 100

VAGRANTS, §§ 4130–4144—
who are..... 4130 646
complaint against, and arrest of.....4131–4133 646
required to give security for good behavior..... 4134 646
committed in default of 4135 646
breach of undertaking and new security.....4136–4138 646
trial and judgment of in district court.....4139, 4140 647
hard labor imposed as part of judgment..... 4141 647
labor, expenses, and proceeds of.....4142–4144 647

Section. Page.

VALUE—
failure to controvert, not deemed admission of..... 2712 456

VARIANCE—
between allegations of pleading and proof, not material unless it has actually misled the adverse party 2686 454
when not material, amendment may be filed without costs. 2687 454
when allegation is unproved, deemed a failure of proof ... 2688 454

VENDOR AND VENDEE—
taxes a lien between..... 835 144
lien of vendor recognized, and how enforced..... 1940 357
contracts between, relating to real property, treated as mortgages.....3329, 3330 532

VENUE. *See* CHANGE OF IN CRIMINAL ACTIONS—
in particular cases in criminal actions.....4155–4164 649

VERDICT—
parties may agree to take majority..... 2778 463
must be in writing, signed by foreman of jury 2803 466
jury may be polled..... 2804 466
sealed and jury separate, equivalent to rendering in open court 2805 466
may be general or special..... 2806 466
special—defined..... 2807 466
answers returned to interrogatories form part of..... 2808 466
controls general, when they are inconsistent..... 2809 467
amount of recovery in money to be stated..... 2810 467
made to meet facts and suit pleadings 2811 467
form sufficient when intention expressed..... 2812 467
to be entered of record..... 2813 467
trial by jury may be waived..... 2814 467
must distinguish between matter in abatement and bar.... 2851 472
judgment may be rendered notwithstanding..... 2858 473
motion to set aside cannot be entertained in justice's court. 3550 556
specifications of, in actions to recover real property..... 3258 525
effect of general in plaintiff's favor..... 3259 525
in criminal actions—effect of juror being absent at rendering of..... 4460 689
defendant's presence, when required at rendering of..... 4461 689
jury to declare..... 4462 689
may be general or special, except on trial for libel..... 4463 689
import of general..... 4464 689
when offense consists of different degrees 4465 689
necessarily included therein..... 4466 690
may be for or against some of defendants..... 4467 690
when neither general nor special..... 4468 690
informal..... 4469 690
on rendering, jury may be polled.....4470, 4471 690
insanity of defendant stated in..... 4472 690
of acquittal, jury discharged..... 4473 690
special—defined..... 4474 690
must be in writing, and signed by jury..... 4475 691

Section. Page.

VERDICT—CONTINUED.
must state facts found..... 4476 691
judgment on..... 4477 691
when insufficient..... 4478 691

VERIFICATION OF PLEADINGS—
when verified, subsequent pleadings must be..... 2669 452
by whom verified when a corporation is a party..... 2670 452
where interest is united, any party may verify..... 2671 452
when founded on written instrument, agent or attorney may 2672 452
any person knowing the facts may verify..... 2673 452
counter-claim may be verified aside from defense part of answer..... 2674 452
not required of guardian, etc., or when pleading is founded on injury to person or character..... 2675 452
not required when admission of truth will subject party to a criminal prosecution..... 2676 452
pleadings not verified may be struck from files on motion. 2677 453
does not apply to amount claimed, except in actions on contract..... 2678 453
does not require any greater proof from adverse party..... 2679 453
court may permit amendments without..... 2680 453
verification—of inconsistent defenses..... 2710 456
of answer in habeas corpus proceedings, need not be..... 3474 548
of reply, need not be..... 3481 548
of petition in action of forcible entry and detainer..... 3615 561

VESSELS. *See* LOST GOODS.

VISITING COMMITTEE. *See* HOSPITAL FOR THE INSANE—
to hospital for insane, compensation of..... 3826 596

VINTON—
college for the blind established at..... 1664 310

VOID—
defense alleging contract to be, must be specially plead... 2718 457

WAIVER—
of trial by jury, when and how made..... 2814 467

WALLS IN COMMON, §§ 2019-2030—
walls of buildings in cities may rest partly on land of another..... 2019 369
owners may contribute in erection of..... 2020 369
not to have openings, presumption that follows erection... 2021 369
repairs, expense apportioned..... 2022 369
beams, joists, and flues, rule as to..... 2023 370
wall erected higher than where held in common..... 2024 370
must be built at expense of party erecting..... 2025 370
contribution by co-proprietor..... 2026 370
may be made in common, on payment of expense..... 2027 370
cavities cannot be made in, without consent..... 2028 370
disputes as to liability, not to delay building..... 2029 370
proprietors may agree as to, in writing..... 2030 370

Section. Page.

WARDEN OF PENITENTIARY AT FORT MADISON—
election and general duties of..... 4746 727
to give bond and take oath..... 4747 728
reside in penitentiary, and appoint clerk..... 4748 728
make monthly report to governor..... 4749 728
report preceding each regular meeting of the general assembly..... 4750 729
enforce discipline; may discharge appointees..... 4751 729
appoint a deputy..... 4752 730
guards..... 4755 731
chaplain..... 4757 731
physician..... 4765 732
steward..... 4766 732
penalty for receiving perquisites..... 4767 732
being interested in contracts for supplies..... 4768 732
to execute process within penitentiary..... 4772 733
advertise for sealed proposals for supplies..... 4773 733
furnish bills of supplies to clerk..... 4774 733
approve security given by contractor..... 4775 734
offer reward for escaped prisoner..... 4776 734
receive and take care of property of..... 4778 734
furnish discharged convict with transportation, etc..... 4779 734
collect fee of persons visiting penitentiary..... 4780 734
salary, and how paid.....4783, 4784 735
may collect claims due penitentiary by suit..... 4789 735
actions on contracts with, prosecuted in name of..... 4791 736
duties performed by deputy..... 4792 736
may appoint overseers..... 4793 736
enforce penalty for delinquency in by officers..... 4794 736
remove convicts, in case of pestilence..... 4795 736
governor may remove..... 4801 737
vacancy in office of, filled by governor..... 4802 738

WAREHOUSEMEN AND CARRIERS, §§ 2171–2184—
certificates or receipts of, presumptive evidence of ownership..... 2171 391
not to issue certificate unless property is in store..... 2172 391
property to so remain in store until otherwise ordered by holder..... 2173 391
second receipt not to issue until first is cancelled..... 2174 392
property not to be sold, transferred, or encumbered..... 2175 392
penalty for selling, transferring, or encumbering..... 2176 392
have lien on property for charges..... 2177 392
proceedings by, when property is unclaimed for six months. 2178 392
sale of property by..... 2179 392
proceedings, when property is perishable..... 2180 393
disposition of proceeds..... 2181 393
duty of county treasurer, county liable to owner for proceeds..... 2182 394
common carriers—liable for damage to baggage..... 2183 394
liability of, cannot be restricted by contract or rule..... 2184 395
issuing false receipt or voucher, punished..... 4088 639

	Section.	Page.
WARRANT. *See* BENCH WARRANTS—		
coroner to issue	353, 357	60
by whom served	354, 362	60
authority, and form of	363, 364	61
to issue, when judgment debtor fails to appear	3148	509
may be issued in actions against boats and rafts	3433	544
on Sunday, when	3434	544
how served	3435	544
committing for contempt, what it must state	3498	551
of arrest by governor	4171–4175	651
magistrate, on preliminary information	4185–4196	653
in criminal actions before justices	4675	716
WARRANTS. *See* COUNTY WARRANTS.		
WARRANTS. *See* STATE WARRANTS—		
issued by auditor of state on state treasury	66	12
may be divided	67	13
state treasurer to enter memorandum of	76	14
pay no money except on	78	14
keep record of, when endorsed for non-payment	79	14
certify weekly to auditor, number of redeemed	80	14
of county—of officers, cannot purchase at less than par	556	99
treasurer must endorse when received	557	99
penalty for	558	99
county and state, receivable for taxes	854	144
WARRANTY—		
conveyances deemed to warrant that the land is sufficiently described to enable auditor to enter on plat book	570	101
WASTE. *See* NUISANCE, WASTE, AND TRESPASS—		
by occupying claimant, set-off against improvements	1985	365
WATCH-HOUSES—		
council of cities of the first class may establish and maintain	542	96
WATER-CRAFT. *See* LOST GOODS.		
WATER-COURSE. *See* DRAINAGE.		
WATER-POWER IMPROVEMENTS, §§ 1236–1240—		
corporations have power to make	1236	225
must obtain consent of cities and towns	1237	226
right of way over public lands granted for	1238	226
powers of corporation enumerated	1239	236
time for commencing and finishing improvements	1240	226
WATER-WORKS—		
cities may erect, or authorize the erection of	471–473	80
condemn private property for	474	80
levy water tax	475	80

	Section	Page.
WEAPONS—		
carrying concealed, punished	3879	603
WEIGHTS AND MEASURES, §§ 2037–2068—		
standard of, to conform with those furnished by United States	2037	372
yard, and divisions of	2038, 2039	372
rod, perch, or pole	2040	372
land measure	2041	372
avoirdupois, and Troy, and divisions of	2042, 2043	372
liquid measure	2044	372
barrel and hogshead	2045	373
half bushels and divisions of	2046, 2047	373
contracts governed by the	2048	373
weight of bushel of specified articles	2049	373
perch of mason work or stone	2050	373
box for packing hops	2051	374
superintendent—of, appointed	2052	374
to take charge of standards and furnish counties	2053	374
procure copies of original standards of	2054	374
make impressions on	2055	374
deliver to successor all standards, etc	2056	374
sealer of, appointed and duties of	2057–2060	374
expenses of, how paid	2061	375
to deliver to successor all standards, etc	2062	375
penalty for refusal to deliver	2063	375
penalty for using false standards	2064	375
WEIGHMASTERS OF PUBLIC SCALES—		
to take oath	2065	376
make true weights, keep register, and give certificate	2066	376
to procure a standard weight not less than fifty pounds	2067	376
penalty for failure to comply with law	2068	376
using false weights, punished	4076, 4077	637
WHARFMASTERS—		
city council may appoint or provide for election of	528	93
WHARVES AND WHARFAGE—		
city council to construct and regulate	528	93
WHEAT—		
standard weight of bushel of	2049	373
WIDOW—		
without children, deemed head of a family	1989	365
property exempt from execution, set apart to	2371	415
additional allowance made to	2375	415
may be reviewed on application of, or of other person	2377	416
entitled to share of personal estate of deceased husband	2436	421
share of to be paid over to	2437	421
property of may be distributed in kind	2438	421
entitled to one-third in value of real estate	2440	421

	Section.	Page.
WIDOW—CONTINUED.		
homestead to be included in	2441	422
of non-resident alien, rights of	2442	422
share of, how set off	2443	422
application, when made	2444	422
notice of to be given	2445	422
duty of referees	2446	422
report of	2447	422
report confirmed or new reference made	2448, 2449	422
right of, contested	2450	422
when property to be sold and proceeds divided	2451	422
share of, not affected by will of husband	2452	423
WIDOWER—		
without children, deemed head of a family	1989	365
WIFE—		
property of absconding, whose family may become a public charge, seized	1343, 1344	246
may have homestead platted and recorded	1998, 1999	366
entitled to custody of children when abandoned by husband	2215	398
WILD CAT—		
bounty allowed for killing	1487, 1488	272
WILLS. *See* ESTATES OF DECEDENTS—		
any person of full age and sound mind may make	2322, 2323	411
personal property may be devised orally	2324, 2325	411
all other, must be in writing and witnessed	2326	411
subscribing witness can derive no benefit therefrom	2327, 2328	411
how revoked	2329, 2330	411
may be executed and deposited with clerk	2331	411
when no executor named, one to be appointed	2332, 2333	411
posthumous children to inherit as though none had been made	2334	412
any one having, must deposit it with clerk	2338	412
penalty for failure so to do	2339	412
day to be fixed for probating	2340	412
notice to be given of by clerk	2341	412
to be certified and recorded	2342, 2343	412
authenticated copies of, to be given executor	2344	413
foreign—admitted to probate in this state	2351	413
provisions relating to domestic, made applicable to	2352	413
none can be carried into effect until probated	2353	413
suppression, defacing, or destruction of, punished	4075	637
includes codicils	45	8
WITNESS—		
in trial of contested elections compelled to answer how he voted	709	121
who competent to be	3636–3640	564
husband and wife may be against each other	3641	565
judge of court may be	3645	565
not excused on ground of civil liability	3646	565

Section. Page

WITNESS—CONTINUED.
excused when criminally liable..... 3647 565
may be interrogated as to conviction for felony 3648 565
credibility of, tested by moral character..... 3649 565
within what distance may be compelled to appear..... 3673 568
entitled to fees in advance 3674 568
penalty of, for failure to obey subpœna or testify 3675, 3676 568
testimony of, may be perpetuated.....3745–3750 576
compensation of 3814 593
unclaimed fees of, to be paid into county treasury..... 3815 593
for defense in criminal cases to be paid by county..... 3818 593
falsely testifying to traveling compensation, punished..... 3950 615
in criminal actions—on preliminary examinations.....4248–4251 661
refusing to testify before grand jury, punished..... 4287 666
attendance of coerced..... 4288 666
names of to be endorsed on indictment 4293 667
juror may be sworn as..... 4433 685
punished for disobeying subpœna, etc.....4566, 4567 701
undertakings of to appear may be forfeited..... 4568 701
defendant may examine conditionally. 4571 701
perpetuate testimony of 4572 701
bound over by justice when appeal taken..... 4701 720

WOLF—
bounty allowed for killing.....1487, 1488 272

WORDS AND PHRASES—
construed according to context and approved usage. 45 7

WORKHOUSE—
council of cities of first class may establish and maintain. . 539 95

WORKING HIGHWAYS, §§ 969–1000—
trustees to determine amount of tax and how paid..... 969 167
amount of township fund, clerk to give bond..... 970 168
expenditure of township fund directed 971 168
township clerk—to furnish each supervisor with plat 972 168
to make tax list for each highway district. . 973 168
to attach warrant and deliver same to supervisor 974 169
to certify uncollected taxes to county treasurer..... 975 169
to give county treasurer duplicate receipts for money paid 976 169
supervisor—must reside in district 977 169
to give bond, trustees to fill vacancy..... 978 170
penalty for failure to qualify..... 979 170
to post up notices of tax assessed to each taxpayer..... 980 170
duty as to taxes collected..... 981 170

	Section.	Page.
WORKING HIGHWAYS—CONTINUED.		
supervisor—tax expended in district where collected	982	170
to require persons to labor	983	170
to give notice of working, to give certificate and receipt to	984	170
penalty for failure to attend or work	985	171
to perform labor, compensation and how paid	986	171
report to township clerk	987	171
to certify to county auditor amount labor due	988	172
may use timber and material for, how paid for	989	172
when liable for damages resulting from unsafe highway	990	172
may call out all able-bodied men in district	991	172
penalty for failure to appear	992	172
may remove obstructions	993	172
to keep highways in good condition, and erect guide boards	994	173
remove Canada thistles, expenses how paid	995	173
meet and settle with trustees	996	173
orders issued to, in payment	997	173
penalty for failure of duty	998	173
hedges planted in highway	999	173
persons meeting on highway, how to pass	1000	174
WORSHIPPING CONGREGATION—		
disturbing of, punished	4023–4025	626
WRITTEN CONTRACTS—		
action on, barred in ten years	2529	431
may be brought on at place of performance	2581	438
WRITING—		
what may be included in such phrase	45	8
WRITTEN INSTRUMENTS—		
acknowledgment of, who may take	278	45
how suits may be brought on	2558	435
WRIT OF ERROR—		
stay of execution not allowed on judgment rendered in	3061	490
proceedings to obtain	3597–3604	560
WRIT OF HABEAS CORPUS. *See* HABEAS CORPUS.		

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